

Adroddiad

Ymchwiliad a gynhaliwyd ar 13-16 a 20-23/03/18

Ymweliad safle a wnaed ar 23/03/18

gan Hywel Wyn Jones BA (Hons) BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11.05.2018

Report

Inquiry Held on 13-16 & 20-23/03/18

Site visit made on 23/03/18

by Hywel Wyn Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 11.05.2018

TOWN AND COUNTRY PLANNING ACT 1990 – Section 78

APPEAL BY HENDY WIND FARM LIMITED

LOCAL PLANNING AUTHORITY: POWYS COUNTY COUNCIL

Planning application for:

The development proposed is to construct and operate seven wind turbines with a maximum tip height of 110m (hub height 69m) together with ancillary development comprising substation, control building, new and upgraded access points and tracks, hardstanding and temporary compound with associated works

Land off A44 South West of Llandegley, Llandrindod Wells, Powys, LD1 5UG

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ABBREVIATIONS

AA	Appropriate Assessment
AOD	Above Ordnance Datum
ASIDHOL	Assessment of Significance of Impact of Development on Historic Landscape Area
BOAT	Byway Open to All Traffic
CEMP	Construction and Environmental Management Plan
CPRW B&R	Campaign for the Protection of Rural Wales, Brecon and Radnor Branch
DECC	Department of Energy & Climate Change
DUKES	Digest of UK Energy Statistics
EPS	Energy Policy Statement
EIA	Environmental Impact Assessment
ES	Environmental Statement
GLVIA3	Guidelines for Landscape and Visual Impact Assessment
HMP	Habitat Management Plan
HRA	Habitat Regulations Assessment
ID	Inquiry Document
LPA	Local Planning Authority
LSA	Local Search Area
LVIA	Landscape and Visual Impact Assessment
MoD	Ministry of Defence
NPS	National Policy Statement
NRW	Natural Resources Wales
LDP	Local Development Plan
OS	Ordnance Survey
OAL	Open Access Land
OSS	Open Spaces Society
PCC	Powys County Council
PPW	Planning Policy Wales

PROW	Public right of way
PSPP	Protected Species Protection Plan
RIGS	Regionally Important Geological Site
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SLA	Special Landscape Area
SoCG	Statement of Common Ground
SSA	Strategic Search Area
SSSI	Site of Special Scientific Interest
TAN8	Technical Advice Note 8: Planning for Renewable Energy
TAN24	Technical Advice Note 24: The Historic Environment
VP	Viewpoint
VSAA	Visual and Sensory Aspect Area
WFG Act	Well-being of Future Generations (Wales) Act 2015
WG	Welsh Government
WSE	Written Statement of Evidence
ZTV	Zone of Theoretical Visibility

File Ref: APP/T6850/A/17/3176128

Site address: Land off A44 South West of Llandegley, Llandrindod Wells, Powys, LD1 5UG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Hendy Wind Farm Limited against the decision of Powys County Council.
- The application (ref: P/2014/0672), dated 27 June 2014, was refused by notice dated 18 May 2017.
- The development proposed is to construct and operate seven wind turbines with a maximum tip height of 110m (hub height 69m) together with ancillary development comprising substation, control building, new and upgraded access points and tracks, hardstanding and temporary compound with associated works.

Summary of Recommendation: the appeal be dismissed.

Procedural and Preliminary Matters

1. As the appeal scheme proposes the construction of an on-shore wind generating station that is expected to have (when constructed) an installed generating capacity in excess of 10 megawatts it is of national significance for the purpose of the relevant regulations¹. All appeals which fall within the categories and thresholds of the new Developments of National Significance process are now recovered for determination by the Welsh Ministers. Accordingly the appeal was recovered for determination by the Cabinet Secretary for Environment and Rural Affairs by letter dated 15 June 2017.
2. In accord with The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as amended the submitted planning application was accompanied by an Environmental Statement (ES) and Non-technical Summary.
3. In a letter dated 16 August 2017 The Planning Inspectorate confirmed that the ES met the minimum requirements of the Regulations. Several objectors, most notably the Brecon and Radnor Branch of The Campaign for the Protection of Rural Wales (CPRW B&R), consider the ES to be seriously lacking in detail. However, the statutory consultees including Natural Resources Wales (NRW), have confirmed that they are satisfied that it is adequate.
4. In addition to the ES I have also had regard to other environmental information contained in the responses from statutory consultees and comments from other interested parties, and the additional evidence, including technical assessments, contained in the written statements of evidence and in documents presented at the Inquiry. Taking into account this additional information which supplements and in some instances supersedes the ES, I consider the available environmental information to be adequate to determine the appeal.

¹ Regulation 4, Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) (Amendment) Regulations 2016, as amended by the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) (Amendment) Regulations 2016

5. In response to concerns expressed by the Council at the start of the Inquiry the appellant presented an amendment to its draft planning agreement under section 106 of the Act at the Inquiry (ID45). The Council confirmed that it was satisfied with the revised version. A deadline for the submission of a duly executed agreement was agreed before the close of the Inquiry but no completed document was received.
6. The CPRW B&R was made a Rule 6 party to the Inquiry, and duly submitted written evidence and presented witnesses, cross-examined the appellant's witnesses and participated in discussions on the planning conditions and obligations.
7. At the outset of the Inquiry the appellant presented drawings (ID25 and ID48) which identified an alternative approach to the construction of the proposed access tracks and associated works. These showed a vertical alignment to the tracks that would more closely follow existing site topography thus markedly reducing the engineering works identified on the details submitted with the application (ID18). The other parties were able to respond to the suggested changes (ID39) and confirmed that these later drawings represented an improvement on the original details, and there was agreement that no injustice would arise should the revision be taken into account in the determination of the appeal.
8. In a letter dated 26 September 2017 Cadw wrote to The Planning Inspectorate to suggest that the appellant be invited to consider whether to amend the ES chapter on cultural heritage to take into account changes to guidance² produced after its preparation. In a response dated 3 November 2017 the appellant explained that it considered the ES approach broadly in accord with the new guidance and that the changes to the relevant policy and guidance would be addressed in the evidence of its expert witness.
9. On the opening day of the Inquiry the Council presented an email dated 12 March 2018 from Cadw (ID01) offering to provide comments on the appellant's expert witness evidence. At the Inquiry the Council confirmed that Cadw had subsequently confirmed that it was unable to provide an officer to attend the Inquiry and therefore provided written comments on Mr Le Quesne's written statement of evidence (ID21). The expert witnesses presented their evidence in the light of these comments and the appellant provided a paper responding to the points raised (ID47).
10. At the start of the Inquiry a letter (ID02) was presented on behalf of a local land owner expressing concern that proposed improvements to an access route would extend over his land. The appellant subsequently confirmed at the Inquiry that this would not be the case.
11. The proposed access road would cross registered common land. In 2014 the appellant sought to obtain the necessary consents in relation to the common land but subsequently withdrew the application. There is no dispute that the need to obtain the necessary consents is a separate matter which is unaffected by the grant of the planning permission which is the subject of this appeal.
12. I undertook an accompanied visit to the site and its surroundings on 23 March in the company of representatives of both main parties and CPRW B&R. I also undertook unaccompanied visits to public vantage points within the surrounding area on other

² Technical Advice Note 24: The Historic Environment, and Cadw guidance: Setting of Historic Assets in Wales

occasions. All visits were undertaken in weather conditions that provided good visibility. At the suggestion of Ms Bolger, I also visited public vantage points close to the Bryn Blaen Wind Farm, at Blaen y Glyn near Llangurig.

13. The planning application was determined on the basis of the Powys Unitary Development Plan. Since that decision the Powys Local Development Plan has been subject to formal examination. By the close of the Inquiry the Council had received the Inspector's report and binding recommendations which confirmed the soundness of the Plan. All parties at the Inquiry were given the opportunity to comment on the recommended changes. In anticipation that the Council would adopt the LDP on the 17 April 2018 the main parties focussed their attention on this plan in their presentation of local planning policy evidence. The LDP was adopted on this date and is now the statutory development plan for the purposes of determining the appeal.
14. The site lies within 1.3km of the River Wye/Afon Gwy SAC. In a letter dated 22 December 2014 (ID13) NRW expressed concern regarding the lack of transparent Habitats Regulations Assessment for the SAC. This prompted the appellant to submit a 'Habitats Regulations Assessment Screening Report', February 2015. Probable effects on the SAC were identified at both construction and decommissioning stages of the scheme. However, when factoring in identified mitigating measures, it found that there would be no significant impacts. In response to that report, NRW confirmed on 18 December 2015 that it was satisfied that the proposed development would not have any significant effects on any protected sites provided that the mitigation prescribed in the report is implemented in full.
15. Since the close of the Inquiry a preliminary ruling by the Court of Justice of the European Union (C-323-17, dated 12 April 2018) has established that at the screening stage of the Habitats Regulations Assessment process, mitigation measures should not be taken into account in deciding whether an Appropriate Assessment (AA) is required. On that basis it is evident that the possibility that the proposal would have significant adverse effects cannot be ruled out without further consideration. As the competent authority it falls on the Welsh Ministers to undertake an AA and, in light of my recommendation on the appeal, I take the matter no further.

The Site and Surroundings

16. The site lies 6km or so to the east of Llandrindod Wells. There are several small villages that lie closer, including Llandegley and Penybont to the north and Franksbridge and Hundred House to the south. There are sporadic farmsteads and dwellings within the surrounding area, of which 2 are within 1km of the closest turbines (Pye Corner is some 980m distant and Hendy Farm (which has an interest in the scheme) is 960m. Most buildings in the area occupy low lying, sheltered locations.
17. The appeal site extends over mainly upland pasture fields, which broadly ranges from 290m to 360m AOD with markedly higher ground surrounding it in most directions. Fields are generally enclosed with fences with occasional hedgerows. There are several small pockets and one larger parcel of mainly conifer plantations. Ditches and streams drain to nearby larger water courses. Within and/or close to the site there are areas of Open Access Land and land subject to historic inclosure awards, bridleways, a public footpath and a Byway Open to All Traffic (BOAT). At the time of my visit the Council had temporarily closed the BOAT to vehicles because of its condition – it was deeply rutted and waterlogged apparently as a result of its recreational use by 4x4 vehicles.

18. To the south of the site there are 2 small (14m to hub) operational wind turbines, one at 1km the other at 2.5km. A turbine with blade tip height of 21m lies 3.5km to the north. The ES undertook an assessment of cumulative impacts of the scheme with other turbine projects in 2014. The Council confirmed at the inquiry that there are no other turbine schemes that have emerged since then which ought to have been considered and that some of the proposed schemes which were included in the assessment were no longer being pursued.
19. The site does not lie within, nor is it close to, a Strategic Search Area as identified in TAN8.

Planning Policy

The development plan

20. As explained above the planning application was determined on the basis of the Powys Unitary Development Plan which has now been replaced by the Powys Local Development Plan (LDP). Its approach to renewable energy is set out in supporting text at paragraphs 4.10.1-4.10.14.
21. As part of the preparation of the LDP the Council, in line with the advice in paragraph 12.8.18 of PPW to facilitate local authority-wide scale renewable energy, considered whether to designate Local Search Areas (LSAs) for renewable energy development. It decided that constraints meant that there were no areas deemed suitable as LSA for wind turbine developments. A number of LSAs were designated for solar arrays, including an area which encompasses the appeal site. It appears that the spatial extent and the identified potential energy generation capacity of this LSA were determined in the knowledge that the appeal scheme could be developed.
22. Of particular relevance is Policy RE1: Renewable Energy³. It is permissive of such development provided 5 criteria are met. Criteria 4 and 5 require satisfactory mitigation and compensatory benefits respectively. Of the remaining criteria that are relevant in this case there is some dispute over compliance with criteria 2 and 3.
23. Criterion 2 provides that within LSAs proposals for renewable and low carbon energy development, other than solar PV, must demonstrate that they would not prejudice the purpose of the LSA. The Council does not argue any conflict with this criterion, but it was raised by CPRW B&R. Given the background to the LSA designation set out above it seems to me that the appeal scheme would not prejudice solar array development within other parts of the LSA. Moreover, given that the renewable energy generated from the scheme would exceed that envisaged from solar within the LSA, it would appear that the proposal would not conflict with the purpose of the local designation, which is to facilitate renewable energy. Criterion 3 requires compliance with other relevant LDP policies.
24. Policy SP7: Safeguarding of Strategic Resources and Assets seeks to protect from 'unacceptable' adverse impacts assets, including: land designated for environmental protection; historic environment designations, including Scheduled Ancient Monuments; recreational assets, including public rights of way; and valued characteristics and qualities of the landscape. Policy DM4: Landscape is also a protective policy that seeks to avoid 'unacceptable' adverse effects on landscape. It

³ The wording of the policy has been changed on the recommendation of the Inspector, and is set out in ID41

expects the design of development to be appropriate and sensitive to the various components of landscape, including historic and ecological qualities, open views and tranquillity, and also should have regard to LANDMAP and the visual amenity by users of the landscape.

25. Policy DM13: Design and Resources permits development where a series of criteria are satisfied which relate to the general approach to good quality design, including that it has been designed to complement or enhance its surroundings, contributes to local distinctiveness and sense of place and does not impact on established tourism assets and attractions.
26. In addition to policy RE1, policies SP7 and DM4 are of particular relevance to the main considerations in this appeal. As both seek to avoid 'unacceptable' harm they require the degree of any harm to be considered. It seems to me that it is also necessary to consider any benefits that may arise in order to inform any consideration of the acceptability of harm. To avoid the dangers of double-counting I have sought to adopt a holistic approach to the issue of acceptability. To do otherwise would create the potential for the benefits of the scheme to justify a finding of compliance with individual policies when considered in isolation whereas the same benefit, when balanced against the sum of the harms identified in relation to those policies, could tilt the balance in the opposite direction.

National planning policy

27. Paragraph 4.5.7 of Planning Policy Wales, Edition 9 (PPW) sets out a commitment to take decisive action to move towards a low carbon economy in order to minimise the causes of climate change, which includes facilitating the delivery of new and more sustainable forms of energy provision at all scales. Paragraph 12.8.1 records the WG's commitment to deliver the UK target of 15% of energy from renewables by 2020. Paragraph 12.8.2 states that "Planning policy at all levels should facilitate delivery of both the ambition set out in Energy Wales: A Low Carbon Transition, and UK and European targets on renewable energy". Paragraph 12.8.10 expects local planning authorities to 'ensure that international and national statutory obligations to protect designated areas, species and habitats and the historic environment are observed' at the same time as it seeks to 'facilitate the development of all forms of renewable and low carbon energy' (paragraph 12.8.9). At paragraph 12.8.14 it expects developers to be 'sensitive to local circumstances, including siting in relation to local landform'.
28. Paragraph 12.8.12 explains that 'in the short to medium term, wind energy continues to offer the greatest potential (for activities within the control of the planning system in Wales) for delivering renewable energy. Wales has an abundant wind resource and power generation using this resource remains the most commercially viable form of renewable energy'. It acknowledges that the 'introduction of new, often very large structures for onshore wind needs careful consideration to avoid and where possible minimise their impact. However, the need for wind energy is a key part of meeting the Welsh Government's vision for future renewable electricity production as set out in the Energy Policy Statement (2010) and should be taken into account by decision makers when determining such applications'⁴.

⁴ PPW, paragraph 12.8.12

29. Paragraph 12.10.1 identifies the considerations to be taken into account in determining planning applications for renewables, including the contribution to meeting national, UK and European targets and potential for renewable energy, the wider benefits and opportunities, the impact on natural heritage and the historic environment, grid connection issues and transportation issues. Figure 12.2 identifies the scale of Local Authority-wide schemes as 5-25MW.
30. Chapter 6 of PPW deals with the historic environment. Paragraph 6.2.3 explains that 'Historic assets can make an important contribution to sustainable development objectives. When change is being considered, local authorities should seek to secure the sustainability of historic assets, taking the risks of climate change into account.....The public benefit of taking action to reduce carbon emissions, or to adapt to the impact of climate change, should be weighed against any harm to the significance of historic assets'.
31. In relation to archaeological remains paragraph 6.5.5 provides that 'It will only be in exceptional circumstances that planning permission will be granted if development would result in an adverse impact on a scheduled monument (or an archaeological site shown to be of national importance) or has a significantly damaging effect upon its setting. In cases involving less significant archaeological remains, local planning authorities will need to weigh the relative importance of the archaeological remains and their settings against other factors, including the need for the proposed development'. Paragraphs 6.5.6 and 6.5.7 deal with the assessment of a site's archaeological value and the use of planning conditions to preserve or record such remains.
32. TAN8 identifies Strategic Search Areas throughout Wales where large scale schemes (over 25MW) should be concentrated. The site is neither within nor close to a SSA. For smaller schemes, paragraph 2.3 states that local planning authorities are best placed to assess detailed locational requirements within and outside SSAs in the light of local circumstances. Annex D⁵ suggests an implicit objective of TAN8 in the rest of Wales outside SSAs is to maintain the landscape character, i.e. no significant change. In paragraphs 8.4 and 8.5 of the Annex it describes the TAN8 strategy as a means of concentrating the impact of wind turbine development in a relatively small part of the country in areas that are, on balance, technically, practically and environmentally better able to accommodate such impacts than other parts of Wales. Paragraph 2.13 of the main body of the TAN refers to a balance to be struck between the desirability of renewable energy and landscape protection.
33. TAN24: The Historic Environment provides advice on the impact of proposed development on the setting of historic assets, including scheduled monuments and unscheduled nationally important archaeological remains. In paragraph 1.25 it explains that 'The setting of an historic asset includes the surroundings in which it is understood, experienced, and appreciated embracing present and past relationships to the surrounding landscape'. Paragraph 1.6 identifies factors to consider in terms of setting, including the contribution setting makes to the significance of an asset, its prominence, lifespan of the proposed development, and non-visual factors such as noise. Section 4.2 deals with archaeological remains and the development management process and includes reference to a presumption against proposals

⁵ Annex D: Potential Methodology for Local Planning Authorities with Strategic Search Areas(excerpts from Review of Final Report, Arup 2005)

which would have a significant impact on the setting of remains. More detailed best practice guidance is set out by Cadw in 'Setting of Historic Assets in Wales' 2017.

National energy policy and statements

34. In a letter on 14 August 2015 the Minister for Natural Resources confirmed WG's vision for future energy generation based on embracing Wales' abundant renewable energy resources, and its view that onshore wind is currently the most commercially mature form of renewable energy. Despite recent announcements in England concerning onshore wind, WG continues to see renewable energy as a key element in ensuring that Wales achieves sustainable development for future generations. On 15 March 2016 the Minister reminded local planning authorities of the duty to tackle climate change and deliver sustainable development and to take the economic benefits of proposals into account when making decisions on applications for renewable energy development. It acknowledged that visual and amenity impact on surrounding communities and properties is important and often emotive, but planning decisions need to be taken in a rational way in the wider public interest.
35. Numerous other references have been made by the parties to the national energy policies and statements from both UK and Welsh Governments. There is broad agreement between the main parties (as set out in a Statement of Common Ground (ID09)) that WG is committed to encouraging the continued development of on-shore wind turbines as part of its commitment to increase the production of renewable energy in the context of national and international climate change obligations. Whilst the CPRW B&R did not concur with that agreed position with regard to the extent to which energy targets are being met there is a broad consensus that in Wales there is a supportive framework for on-shore wind turbine developments provided that it is in the right place, which means that any harmful impacts are at an acceptable level.
36. Reference has been made, particularly by the appellant, to National Policy Statements (NPS) for energy include the Overarching NPS (EN-1) and Renewable Energy Infrastructure (EN-3). There is no dispute that that these are not material planning policies in Wales. However, they also set out UK energy policy which provides a context for assessing the renewable energy contribution of the scheme. EN-1 identifies an urgent need for renewable electricity generation projects (3.4.5) and to dramatically increase the amount of capacity, much of which is likely to be wind generation in the short and medium term (3.3.10).

The Proposal

37. The proposal comprises the erection of 7 wind turbines, access tracks including upgraded access points, hardstandings, a control building, a sub-station, a temporary compound and a borrow pit⁶. The site of the turbines would extend to almost 20 hectares.
38. The maximum height of the turbines to blade tip would be 110m and the hub height would be 69m. The combined installed capacity of the turbines would be up to 17.5 MW. The proposed access tracks would link to the A44 road at 2 points, via an existing minor road and a track, both routes would require extensive alterations. The southern route would be via an existing unclassified road and would include the

⁶ ES Chapter 3 provides a description of the proposed development

repositioning of the existing highway junction, the more northern route would follow the line of an existing track which gains access onto the A road.

39. The project has identified a potential point of connection to the national grid and has identified a swathe of land within which the necessary connecting infrastructure could be provided. This falls outside the scope of the appeal scheme.

Other Agreed Facts

40. Two Statements of Common Ground (SoCG) signed on behalf of the Council and the appellant were submitted to the Inquiry. One deals with planning policy and identifies areas of agreement in relation to both local⁷ and national planning policy (ID09). The other SoCG (ID08) covers matters described as non-contentious which are not covered in the evidence of the Council or appellant. These matters are: hydrology and hydrogeology, ecology, transport, noise, shadow flicker, socio economic, telecommunications and television reception, and common land. In broad terms it confirms that the Council is satisfied with the information provided by the appellant in relation to these matters and that, with the imposition of appropriate planning conditions, the proposal raises no serious concerns in relation to any of these matters. The statement also agrees matter of fact set out in the application as it relates to the proposed works, the site description and the likely power that would be generated. With an installed capacity of up to 17.5MW it could provide the equivalent power required by over 9,800 homes and displace approximately 26,980 tonnes of CO₂ a year. It is predicted to contribute on average 5.25 MW to the grid every hour.⁸
41. The appellant has also presented 2 draft SoCG on LVIA and Heritage matters (APP-8 & APP-9). These have not been agreed by the Council.

The Case for Hendy Wind Farm Limited

The material points made by the appellant are:

Introduction

42. The application for planning permission was supported with an Environmental Statement⁹ and a suite of other documents¹⁰. It was refused, against officers' advice, on the 18th May 2017 on three grounds. The reasons for refusal raise concerns with the impact of the proposal on landscape and visual amenity, impact upon users of Open Access Land and public rights of way, and impact upon 4 Scheduled Ancient Monuments ("SAM").
43. In response to the comments made by CPRW B&R, the appellant has given further consideration to the engineering works to facilitate the use of the BOAT and new tracks by AILs. Whilst the appellant remains satisfied that the proposal as set out in the planning application is acceptable, and it was acceptable to PCC, there is scope to

⁷ As envisaged at the time of signing the document, the local policy context has changed following adoption of the LDP.

⁸ At the end of the Inquiry the appellant produced revised figures agreed with the Council which assume different load factors which ranged from total MW per annum of between 44,342 and 49,056 which is equated to 11,370 to 12,578 homes (ID53).

⁹ See docs ES-1-ES-5

¹⁰ See docs PP-2-PP-6

scale down the engineering works. The appellant has provided details of how those access works could be scaled down. It is common ground between the parties that the scaled down works would result in even less impact than shown in the application and would provide a benefit. The altered works would all fall within the red-line boundary and are within the parameters assessed and consulted upon in the ES. The appellant does not seek formally to amend the application, but if the conclusion were reached that it is appropriate to require construction of the access in accordance with the revised plans, this is a matter which could be addressed by condition and the appellant is content that such a condition be imposed.

Statutory requirements for determination

44. There are a number of important statutory requirements which need to be properly considered and applied in determining this appeal.
45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the appeal is to be determined in accordance with the development plan unless material considerations indicate otherwise.
46. Welsh Government is under a statutory obligation to promote sustainable development¹¹. This duty is now reinforced by a number of relatively new important statutory obligations. Of particular importance is the requirement imposed by section 2 of the Planning (Wales) Act 2015 to determine the appeal as part of carrying out sustainable development in accordance with the Well-being of Future Generations (Wales) Act 2015 for the purpose of ensuring that the development and use of land contribute to improving the economic, social, environment and cultural well-being of Wales. This complements the duty imposed by section 3 of the Well-being Act to carry out sustainable development and take all reasonable steps in determining the appeal to meet the well-being objectives in the Act. Recognising the limits of the global environment and using resources efficiently and proportionately including acting on climate change is recognised as an important element of those objectives¹².
47. The various provisions of the Planning (Wales) Act 2015 and the Well-being of Future Generations (Wales) Act 2015 came into force on the 1st April 2016 and are a very important change to the decision-making process and requirements. The duties are addressed further in PPW.

Welsh national policy

48. The new statutory duties in Wales with respect to sustainable development are stressed in PPW. It is noted that the Welsh Government is one of the few administrations in the world to have these distinctive duties¹³. The planning system is identified as necessary and central to achieving the sustainable development of Wales and discharging the statutory duties¹⁴. Addressing climate change and providing for renewable energy is seen as being at the heart of sustainable development. In contributing to the Well-being of Future Generations Act goals planning decisions should inter alia "**maximise the use of resources**", "**promote a low carbon economy**"

¹¹ Section 79 Government of Wales Act 2006S

¹² See section 4 Table 1 "a prosperous Wales" and "a resilient Wales".

¹³ PPW 4.1.2 and 4.1.3

¹⁴ PPW 4.2.1

and "support the need to tackle the causes of climate change by moving to a low carbon economy...facilitating development that reduces emissions of greenhouse gases in a sustainable manner, provides for renewable...energy sources at all scales"¹⁵.

49. Tackling climate change is identified as a fundamental part of delivering sustainable development. Climate change is identified as one of the most important challenges facing the world and the Welsh Government is committed to tackling climate change. That commitment is based on a scientific imperative to act and to act urgently to reduce greenhouse gas emissions and deal with the consequences of climate change¹⁶. Planning to minimise the causes of climate change means taking decisive action to move to a low carbon economy by facilitating the delivery of new and more sustainable forms of energy production at all scales¹⁷.
50. It can be seen that providing for more renewable energy in the form of this proposal is seen as lying at the heart of the sustainability duties applying in determining planning appeals.
51. Section 12.8 of PPW sets out specific provisions for renewable and low carbon energy. The section provides for a rise from 0.7 GW of onshore wind capacity to 2GW by 2015/17¹⁸. Whilst PPW looks for a significant contribution towards its target from SSAs it is important to appreciate that not all of the new onshore wind energy provision is expected to come from the SSAs. The SSAs are expected to "contribute significantly" to the 2GW target¹⁹, but they are not to be the sole contributor, the PPW clearly expects contributions to be made from outwith the SSAs²⁰.
52. PPW identifies different scales of wind farm proposals²¹. The current proposal ranks as a "Local Authority-wide" proposal. PPW provides that local planning authorities "should facilitate local authority-wide scale renewable energy"²². It can be seen that PPW attaches considerable importance to projects of the scale of this proposal, and there is no suggestion that such projects are of lesser value, still less that they should be restricted. There is furthermore no suggestion that such projects should be limited to SSAs. Indeed given that not all local authorities have SSAs within their boundaries, it is clear from the guidance that PPW is contemplating developments of this scale within local authority areas irrespective of whether they have SSAs.
53. The importance of the provision to be made from proposals of the scale of the current proposal is further emphasised by the fact that the proposal is treated as one of

¹⁵ PPW 4.4.3 – appellant's emphasis

¹⁶ PPW 4.5.1

¹⁷ PPW 4.5.7

¹⁸ POL-19 para 12.8.13

¹⁹ PPW 12.8.13

²⁰ This is clear also from the indicative capacity targets in TAN 8 (see Table 1), and the Griffiths letter.

²¹ PPW Figure 12.2

²² PPW 12.8.18

National Significance. Such projects are of greatest significance to Wales because of their potential benefits and impacts²³.

54. Technical advice to supplement PPW is provided by TAN 8. With respect to wider areas outside the SSAs the TAN recognises that a balance has to be struck between the desirability of renewable energy and landscape protection, but that this should not result in severe restrictions on the development of wind power capacity²⁴. With this in mind the TAN left open the possibility of local planning authorities introducing policies in their development plans restricting "almost all" schemes over 5MW to within SSAs and brownfield sites²⁵. It is notable that the PCC has not chosen to introduce such a policy. Indeed far from adopting such an approach the development plan is supportive of further renewable energy development²⁶ and adopts a similar approach in respect of the emerging plan.
55. There has been discussion with respect to the passage in paragraph 8.4 of Annex D to TAN 8 which suggests outside SSAs there is an implicit objective that there be no significant change in landscape character from wind turbine development. This passage has to be properly read in the context of the TAN as a whole. A number of points must be noted –
- i) Annex D is concerned with a "*Potential Methodology for Local Planning Authorities with Strategic Search Areas*"²⁷. It is, as the Introduction to the Annex explains, concerned with assisting local authorities in undertaking further studies to assist in fine-tuning SSA boundaries. It is not put forward as any form of guidance for development control or management purposes. It is therefore not relevant to the decision on this appeal.
 - ii) This point is made clear in paragraph 2.10 of TAN 8 which introduces Annex D as providing advice on the development of local policy for SSAs.
 - iii) The Annex is in fact an extract from material in the Arup report – it is not purporting to set out policy or government guidance.
 - iv) Paragraph 8.4 is in a section concerned with cumulative impact. The discussion in paragraph 8.4 is merely an introduction to paragraph 8.5 which explains the approach taken to cumulative impact at the all-Wales level. It leaves more local level approaches for more detailed assessments. These paragraphs are not concerned with any development control/management approach, they are addressing spatial planning.
 - v) As already noted the approach taken locally in PCC has not been to restrict development to the SSAs.
 - vi) In any event, and fundamentally, it is recognised by all concerned that wind farm development by its very nature will inevitably have significant impacts upon

²³ PPW 3.7.2

²⁴ TAN 8 para 2.13

²⁵ TAN 8 para 2.13

²⁶ See PRV para 3.7 with respect to the current development plan

²⁷ TAN 8 p 57

landscape character. There will inevitably be significant change in landscape character. Given that the national policy in PPW is that schemes of this nature are to be facilitated and this is further supported by TAN 8, the passage in Annex D cannot be literally interpreted as requiring that there be no landscape change.

56. It is also important that the guidance in paragraph 2.13 of TAN 8 is properly understood and applied. It is primarily concerned with the issue of cumulative impact as the second sentence makes clear and it advises on this issue that local planning authorities may wish to consider establishing criteria for suitable separation distances between wind farm proposals. It is in this context that the need to strike a balance is identified and it is important to note that the balance struck "*should not result in severe restriction on the development of wind power capacity*"²⁸. It is quite clear that the guidance is anticipating and indeed advising that there will and must be wind farm development of this scale outside SSAs.
57. When properly understood the various passages to which attention has been drawn are concerned with cumulative impact and how to address it in spatial planning. There is no issue with respect to cumulative impact in this case²⁹ and no local policy precluding development in this area. PCC's witnesses accepted that TAN 8 does not preclude wind farm development outside the SSAs³⁰, and this has been recognised in appeal decisions³¹.
58. The Welsh national policy recognises and properly responds to the international obligations arising from the widespread recognition of the challenges raised by climate change and the urgency of addressing these problems.
59. The proposal must be viewed against the pressing need to address climate change and improve the country's security of energy supply. There is widespread national and international recognition of the problems arising from climate change, the need to reduce carbon dioxide emissions and provide more electricity from renewable sources. The EU Climate and Energy package (formally agreed April 2009) commits the EU to achieving a reduction in EU greenhouse gas emissions of 20% by 2020 compared to 1990 levels and included a binding renewable target of 20%. The UK's share of this target is to deliver 15% renewable energy by 2020 which compares with a figure of 3.8% in 2011. Under EU Decision 406/2009/EC the UK has a binding target of a 16% reduction in greenhouse gas emissions by 2020 compared to 2005 emissions levels³². Not surprisingly, the UK Renewable Energy Strategy (UK RES) states that the UK needs to increase radically its use of renewable energy³³.
60. The importance of achieving these aims, and the inevitable impacts arising from achieving them, has been reiterated on numerous occasions not only at a UK level but also in Wales.

²⁸ TAN 8 para 2.13

²⁹ PRV during cross-examination

³⁰ PRV during cross-examination

³¹ See for example POL-35 para 55

³² See POL-6 (UK Renewable Energy Strategy) p31 box 1.3

³³ POL-6

61. At the UK level this is for example very clearly set out in the National Policy Statements which stress that the need for new renewable electricity generation projects is urgent³⁴, and that there is a need for a dramatic increase in onshore wind generation³⁵. Importantly it is also recognised that development on the scale required to meet the energy needs identified and to satisfy the UK Government's policy will inevitably result in significant residual adverse impacts³⁶. Whilst the NPS specifically address development under the Planning Act 2008 they were importantly presented to Parliament and the general statements reflect widely recognised views accepted by Parliament.
62. Although the primary driver of legislation and policy in this area is undoubtedly the importance of tackling climate change and ensuring security of energy supply it is also important to remember that there are significant economic and employment benefits associated with the development of renewable energy as is recognised for example in the UK Renewable Energy Strategy³⁷.
63. The need to address these matters must be considered with a proper recognition of the vital role that energy in general and electricity in particular plays in maintaining our current way of life and living standards:
- "Energy underpins almost every aspect of our way of life. It enables us to heat and light our homes; to produce and transport food; to travel to work around the country and the world. Our businesses and jobs rely on the use of energy. Energy is essential for the critical services we rely on – from hospitals to traffic lights and cash machines. It is difficult to overestimate the extent to which our quality of life is dependent on adequate energy supplies."* (NPS – EN1 para 3.2.1)³⁸
64. It can be observed that the UK Conservative government has been less enthusiastic about onshore wind energy development in England, but importantly that position has not been adopted in Wales. Indeed the Welsh Ministers have demonstrated an increasing enthusiasm for further onshore wind energy development. For example Welsh Ministers have repeatedly made plain that they are unimpressed with the Amber Rudd statement made in June 2015³⁹ and that it does not alter the policy position in Wales or their support for onshore wind proposals⁴⁰. Furthermore in so far as the Ministerial Statement affects the availability of financial support for onshore wind energy in Wales, Welsh Ministers are actively seeking to have this changed⁴¹ and appear to be meeting with some success⁴².

³⁴ POL-1 – NPS EN 1 @ 3.4.5

³⁵ POL-1 – NPS EN 1 @ 3.3.10

³⁶ POL-1 – NPS EN 1 @ 3.2.3

³⁷ POL-6

³⁸ POL-1

³⁹ POL-11

⁴⁰ See POL-26, 17, 27 and 31

⁴¹ POL-21

⁴² POL-17

65. The bottom line is the Minister for Environment and Rural Affairs has recently confirmed:
- i. A desire to focus on accelerating the transition of the energy system in Wales particularly through the increased deployment of renewable energy.
 - ii. A need for many more projects at all scales and technologies to transform the energy system.
 - iii. A determination to drive change using all the levers available in Wales.
 - iv. Accordingly a new target of Wales generating 70% of its electricity consumption from renewable energy by 2030.
 - v. A need for the bulk of energy supply to come from the most affordable technologies if the costs are to be found from energy bills⁴³.
66. As PPW and TAN 8 recognise and as remains the case onshore wind energy remains the cheapest and most tried of these forms of energy. The direction of travel is clear. Far from there being a reduced need as CPRW B&R erroneously contended, the need for additional proposals of this nature has been strengthened. This is further reinforced by the duty placed on Welsh Ministers by the Environment (Wales) Act 2016 to ensure that net emissions are at least 80% lower than 1990 levels by 2050⁴⁴.
67. As the Council's witness recognised there is "*a clear direction of travel on the part of the Welsh Government that has implications for the renewable energy sector in Wales, and the context for the assessment of related planning applications*"⁴⁵.
- Development Plan policy
68. The starting point for determination of the appeal is of course the development plan which is now the Powys LDP.
69. Policy RE1 of the LDP will provide that proposals for renewable energy development will be permitted subject to criteria set out in the policy.
70. In so far as relevant to the current proposal the first criterion requires it to be demonstrated that the proposal would not prejudice the purpose of the SSA. The appeal site is about 13 miles from SSA C (the nearest SSA) and it is common ground that the proposal would not prejudice delivery of any development in the SSA⁴⁶.
71. The appeal site falls within a Local Search Area for solar PV and the second criterion requires that the proposal should not prejudice the purpose of the LSA. There is no suggestion that the proposal would prejudice the delivery of solar PV development in the LSA. Furthermore the underlying purpose of the LSA is to facilitate the delivery of renewable energy. In practical terms the proposal would provide significantly more renewable energy than a solar farm and would in reality further the purpose of the LSA.

⁴³ POL-22 – Ministerial Statement 26/9/17

⁴⁴ See AS 6.40

⁴⁵ AS 6.40

⁴⁶ See AS 6.11

72. The third criterion requires consideration of all other relevant policies in the LDP. These policies are considered further below. The fourth criterion requires satisfactory mitigation. This can and will be secured by condition. The fifth criterion is concerned with compensatory benefits. The section 106 obligation provides for additional recreational routes and payment towards the local PROW network. There is scope for works of mitigation/offsetting to be provided with respect to the cultural heritage interest. Whether this comes within the fourth or fifth criteria is of no importance.
73. With respect to the landscape and visual amenity concerns raised by PCC the principal policy of interest is policy DM4. This sets a test of "unacceptable adverse effect". Whilst the relevant policy with respect to the cultural heritage interest is policy SP7 which sets a test of "unacceptable adverse impact".
74. The adoption of a test of *unacceptable* impact or effect is significant. It plainly accepts that a degree of adverse impact or effect can be tolerated and will not render a proposal in conflict with the development plan. In the context of wind turbine development this is highly significant because it is recognised that they must always have a significant adverse landscape and visual effect. Furthermore where heritage interests are present the development of wind turbines is also likely to have some form of impact.
75. The question arises as to what is the test of *acceptability* for the purposes of the LDP policies. The approach adopted by PCC is to consider whether there is conflict with the development plan (i.e. unacceptable impact) and only then to weigh the need for and benefits of the proposal against that conflict. Accordingly PCC's position is that these factors do not go towards determining whether the proposal is acceptable. That being the case there must be some different test for acceptability. In practical terms as Ms Hawkins explained, given the policy support for this form of development, this must be whether given the inevitable impacts of this form of development there is an undue effect.
76. For the reasons discussed below the appellant invites the conclusion that whilst the proposal would have the inevitable form of impacts arising from a wind farm development it does not go beyond those inevitable impacts and is therefore acceptable and in accordance with the development plan. If such a view is not accepted it would remain necessary to weigh any harm arising from the proposal, including any conflict with the development plan against the clear need for and benefits of the proposal.

Need

77. It is often asserted at inquiries into these form of proposals that good progress is being made nationally towards meeting targets and/or that the particular local area has been making a good contribution and has "done its bit" so to speak. At the outset it can be observed that there is no support in policy for the contention that any good progress towards meeting targets in some way reduces the weight to be given to the need for this form of development and it is notable that no such policy support has been identified. In fact the various statements which support the need for further and greater provision have been made at the same time as statements commenting on the provision to date. There is also no support for any contention that the weight given to these issues is to be reduced in any area which has already performed well against any targets (even were it the case).
78. With respect to the UK's legal obligations the point is often made that good progress is being made towards achieving the aim of 30% electricity derived from renewables

by 2020. It is, however, important to understand that the binding target is to achieve 15% of energy use from renewables and this includes heating and transport as well as electricity. The 30% figure for electricity derives from the lead scenario in the UK Renewable Energy Strategy which relied upon 30% from electricity together with 12% of heat demand and 10% of transport demand in order to achieve the binding 15% requirement⁴⁷.

79. Unfortunately progress with respect to heat and transport has been disappointing and it is clear that they will not make the necessary contribution. The latest figures show only 6.2% for heating and 4.5% for transport⁴⁸. It is quite plain that the necessary contributions from heat and transport to satisfy the lead scenario are not going to be met and this is recognised in the "leaked" Amber Rudd letter although the position is not being made public⁴⁹. In the circumstances there is plainly a need to achieve even greater contributions from renewable electricity generation and this is recognised in the Welsh Government statements. The only logical conclusion is that a significantly greater provision will be required from renewable electricity generation⁵⁰.
80. If one looks at the position in Wales there is also a need for more onshore wind proposals. The Welsh Government's Energy Policy Statement in 2010 evinced an aim to have 4.5 kWh/d/p of installed wind generation capacity by 2015/17⁵¹. These aims are reiterated in the more recent Welsh Government document *Energy Wales: a low carbon transition*⁵².
81. Unfortunately the objective of achieving 2GW capacity by 2015/17 has not been realised⁵³. The TAN 8 database for 1st April 2017 reveals an operational capacity of some 880 MW with a further 552 MW consented⁵⁴. It is furthermore important to note that onshore wind has always been seen as the technology most able to deliver in the short term which places all the more importance upon the provision of onshore wind energy which offers a mature and proven technology which can be delivered in the necessary timescales.
82. The disappointment of failing to achieve existing targets and the inevitable impacts arising from trying to meet those targets has not resulted in any lessening of policy support for further renewable energy development in general and onshore wind in particular. To the contrary the Cabinet Secretary for Environment has recently announced a desire to focus on accelerating the transition of the energy system in Wales particularly through the increased deployment of renewable energy, and a determination to drive change using all the levers available in Wales, which will need many more projects at all scales. As part of this a new target is set of generating 70%

⁴⁷ POL-6 – para 2.7

⁴⁸ POL-16 key points p153

⁴⁹ POL-13

⁵⁰ PF 3.9

⁵¹ POL-28 section 11

⁵² POL-27

⁵³ SOCG APP-7 para 8

⁵⁴ See POL-30

of electricity consumption from renewable energy by 2030 – to put that in context 43% was generated in 2016⁵⁵.

83. This announcement is but one of a number of announcements reiterating Welsh Ministers' support for further renewable energy development which has emphasised the need for planning authorities to facilitate all forms of renewable energy development⁵⁶ and the opportunities arising from embracing development of onshore wind energy⁵⁷.

Landscape and visual impact

84. The appeal site lies in an area of undulating farmland laid to pasture, up to 330m AOD which is drained by a number of man-made and natural ditches, to the west of the A44. A block of coniferous forestry is located just east of the site and small conifer pockets are dotted across some parts of the site. Field boundaries are formed mainly by post and rail fencing, with very occasional hedgerows⁵⁸.
85. The site is located outside any landscape designations. The closest national landscape designations are of the order of 19km from the nearest turbines⁵⁹. The town of Llandrindod Wells is some 6km to the west of the appeal site whilst the smaller settlements of Penybont and Franksbridge are 2.8km to the northeast and 2.5km to the south respectively⁶⁰. Scattered cottages and farmsteads are located sporadically in the surrounding area, but the only residential properties within 1km of any turbine are Pye Corner (980m from T5) and Hendy Farm (960m from T1)⁶¹.
86. There is an area of Access Land to the east of the appeal site which comes to within approximately 200m of the nearest turbine⁶². Sustrans cycle route 825 is approximately 1km to the west of the nearest turbine at its closest point. A BOAT crosses the site whilst two bridleways are to the east crossing the Access Land. A footpath runs from Hendy Farm up to Nant Brook within the site boundary, located approximately 340m south of the nearest turbine (T3) at its closest point. Finally, a bridleway crosses Llandegley Rocks and is approximately 750 north of the nearest proposed turbine (T5)⁶³.
87. As Ms Hawkins explained onshore wind turbines have particular locational requirements which mean that the number and location of suitable sites for such developments are quite limited before one goes on to consider any other constraints

⁵⁵ See SOCG APP-7 para 15

⁵⁶ See POL-23 & 24 and PF 2.64 & 2.65

⁵⁷ See POL-32

⁵⁸ ES-2 para 5.4.1 and PP-2 para 3.1

⁵⁹ ES-2 para 5.4.3 – Shropshire Hills AONB 19 km to the northeast and Brecon Beacons National Park 19.2 km to the southeast

⁶⁰ PP-2 para 3.1

⁶¹ ES-2 para 5.4.4 and PP-2 3.2

⁶² ES-2 5.4.3

⁶³ ES-2 5.4.4

to their development⁶⁴. However, they have time-limited conditions and are completely reversible so that all landscape and visual effects cease on decommissioning. Furthermore they bring benefits to the wider landscape by contributing to tackling climate change⁶⁵. These are important factors to take into account in forming a view on the impact of the proposal. All of this was accepted by Mr Russell-Vick⁶⁶.

88. The scale of wind turbines is such that they must inevitably have some landscape and visual impact wherever they are located and such impacts always figure large in any consideration of wind farm proposals, as national and local policy recognises. Views differ as to whether such impacts are generally positive or negative, but given the inevitability of such impacts the clear national and local policy support for this form of development means that a degree of impact must be acceptable. Consequently the decision for the decision-maker is not whether the wind farm appeal proposal would result in significant effects on landscape and/or visual amenity but whether the scheme (including the proposed mitigation and enhancement measures) has been designed so that any likely significant residual adverse effects can be considered acceptable when weighed in the planning balance⁶⁷.
89. This is an important consideration in the context of the development plan policy which is concerned with *unacceptable adverse effects* upon landscape⁶⁸.
90. Mr Russell-Vick accepted that merely identifying an adverse or even significantly adverse impact would not place the proposal in conflict with the development plan. He also accepted that any wind farm development would inevitably have significant effects and that most wind farms will be located in rural areas where their significant effects will be considered to be significant adverse effects⁶⁹. This was also eventually accepted by Ms Bolger.
91. The original proposals evolved by way of an extensive site search and an iterative site design and assessment process. This included consultations and detailed feasibility and technical studies and took into account a wide range of technical, environmental, planning and economic issues (as outlined in chapters 2 and 3 of ES Volume 1)⁷⁰.
92. A range of embedded and good practice mitigation measures have been incorporated into the site search and detailed design of the appeal proposal that would limit the effects of the proposed development on the landscape and visual amenity of this site and locality.
93. The embedded mitigation includes: selecting a site that is outside any national or local landscape designations, and not within any LANDMAP visual and sensory area with a high or outstanding overall evaluation, or with a high or outstanding evaluation for

⁶⁴ KH 3.2

⁶⁵ KH 3.4

⁶⁶ PRV in cross-examination

⁶⁷ KH 3.7

⁶⁸ See LDP policy DM4

⁶⁹ PRV in cross-examination

⁷⁰ See KH 3.12

scenic quality and/or character; locating the site on an interim plateau with higher land to the west and east which creates a "bowl" and largely screens the turbines from view from all but the most elevated land beyond 5km; reducing the number and height of the turbines by way of iterative design; making use of existing access tracks wherever possible; constructing new tracks from material quarried on-site or nearby so that they would appear similar to existing tracks in the area; and locating the substation and the single storey, pitched roof control building close to an existing building and using local building materials and finishes⁷¹.

94. The good practice mitigation measures would include: a clerk of works to oversee the environmental protection measures during the construction and decommissioning phases; the use of temporary protective fencing; retaining and reusing site derived subsoil and topsoil; protecting mature trees and boundary hedges; creating low soil bunds to help screen views of the running surface; restoring all areas temporarily disturbed during the construction and decommissioning phases; and the planting of native hedgerow species to in-fill existing "gappy" hedgerows within the application boundary. These measures would be included in the Construction and Environmental Management Plan (CEMP) and Decommissioning and Restoration Plan (DRP), to be secured by way of condition⁷².
95. These mitigation measures would limit the residual effects of the appeal proposal on landscape and visual amenity. The appellant has also offered additional mitigation and enhancement in the form of an Access Management Plan⁷³.
96. The appeal site lies within LANDMAP VS112 which is described as an area of "*upland hills, plateau with a smooth and rounded profile and mix of semi-natural rough moorland landcover and large fields*". It is identified as large scale and exposed and its perceptual and sensory qualities include *exposed, remote, and wild*. Whilst it is recognised as attractive it is not considered special or particularly distinctive. As already noted it is an area of moderate scenic quality and character and overall evaluation. It is the type of area to which the LANDMAP Guidance Note 3 would tend to direct this form of development⁷⁴, and the qualities of the area as described in LANDMAP are those commonly associated with wind farm development.
97. The appeal site also falls within LANDMAP HL427 which is given an outstanding overall evaluation. Whilst the area is recognised as having value as an historic landscape it is important that this is not over-rated. As was accepted by Mr Russell-Vick and Ms Bolger valuable historic landscapes are recognised as Registered Landscapes. This is not such a landscape. There is furthermore some tension and confusion in the LANDMAP data sheet. The justification given for the outstanding overall evaluation is "*Area of **unenclosed** upland with rich early and late prehistoric and medieval landscape elements in a relatively undisturbed condition*" which does not sit with the summary description of the area as "**Enclosed** 19th century common on upland ridge

⁷¹ KH 3.13

⁷² KH 3.14-15

⁷³ KH 3.16

⁷⁴ LVIA 3 – see Table 1 p8

*just to the east of Llandrindod Wells with large, straight-sided fields defined by fences and hedges*⁷⁵. The appeal site comes within the enclosed land with the large fields.

98. It is furthermore important to note that the ASIDOHL did not give rise to any objection or reason for refusal. It is finally important not to double count this aspect of the matter with the impact upon the setting of the SAMs which is the actual historic issue for consideration.
99. There was agreement amongst the landscape witnesses that significant landscape effects are limited to an area within 5.5km of the wind turbines and significant effects on visual amenity are limited to within 6km of the appeal site.
100. The relatively limited extent of these impacts is in part attributable to the careful siting of the proposal on an interim upland plateau with higher land to the west and east which effectively creates a "bowl" and largely screens the wind turbines in views from all but the most elevated locations beyond 5km.
101. The proposal would not have any significant effects on landscape fabric or landscape designations⁷⁶. It would have significant landscape impacts upon the host unit within which it is located, but this unit does not have a high scenic quality, character or overall evaluation and none of the key qualities and elements that should be conserved as identified in LANDMAP would be affected by the appeal proposal⁷⁷. There would also be significant adverse impacts upon the two VSAs which wrap around the host VSA. Again these VSAs do not have a high scenic quality, character or overall evaluation and they effectively create a "buffer" between the appeal site and higher quality VSAs further afield⁷⁸. There would be some limited adverse impacts upon two higher quality VSAs more than 2km from the site. The effects are indirect being limited to views out, and they would not significantly affect the existing key qualities and elements that should be conserved within these VSAs. Furthermore these are extensive VSAs and the majority of these VSAs are unaffected being outside the ZTV of the proposal⁷⁹.
102. There would be significant effects on the visual amenity of users of the Access Land, BOAT, bridleways and footpaths on and immediately around the site up to a maximum distance of 4km. However, these routes and access land would remain accessible to users and the surrounding countryside will remain clearly visible from these routes⁸⁰. There are, furthermore, mitigation measures which will bring about improvements to public access on and around the site. These benefits have been recognised in the consultation response form the Council's Countryside Services team and noted in the Officers' report⁸¹.

⁷⁵ Appellant's emphasis

⁷⁶ KH 7.20

⁷⁷ KH 7.13

⁷⁸ KH 7.14

⁷⁹ KH 7.15

⁸⁰ KH 7.17

⁸¹ KH 7.18 and PP 11 pp11-12

103. Whilst there was agreement over the area of impact Mr Russell-Vick and Ms Bolger tended to argue that the impact would be greater in most cases by one degree. It can be noted at the outset that the points made by Mr Russell-Vick were the same as those he made at the time of the application which were taken on board and accepted by the PCC planning officer, who nevertheless considered that the benefits of the proposal outweighed these impacts and recommended approval⁸².
104. Mr Russell-Vick's methodology involved treating any LANDMAP aspect area with an outstanding evaluation as if it were a National Park or AONB and any with a high evaluation as though it were a designated landscape⁸³. Mr Russell-Vick sought support for this approach from LANDMAP Guidance Note (GN) 1, but there is no support from this source, nor was he able to find any support from any other guidance still less any policy. Indeed his approach is in conflict with the guidance in PPW 5.3.2, which advises that while the value of all the landscape in Wales is recognised "*local planning authorities should have regard to the relative significance of international, national and local designations in considering the weight to be attached to nature conservation interests and should take care to avoid placing unnecessary constraints on development*".
105. Furthermore rather than rely upon LANDMAP and in particular the VSAA, which is the approach he conceded he had previously done and which was that followed by other practitioners and Inspectors, Mr Russell-Vick adopted a "unioning" approach which he said was supported by the guidance in LANDMAP GN1. This was a misguided approach. There is a specific GN for assessing wind farm proposals – GN3, which does not advocate "unioning". GN1 is concerned with identifying SLAs. In fact PCC have concluded that there are not to be SLAs in Powys and the GN accordingly is not relevant. Mr Russell-Vick accepted all of this and agreed that the "unioning" approach as used by him was not supported by any policy or guidance.
106. Mr Russell-Vick's error is even greater as if one looks at GN1 it advises the potential use of unioning to assist in identifying potential broad areas of search to look for SLAs. In other words it does not suggest that unioning provides an answer as to which are higher quality or more valuable areas, it merely assists in identifying broad areas in which one might then look for SLAs.
107. Ms Bolger's position was that the critical issue was the quality of the landscape of the site and surrounding area, which she also sought to enhance above that suggested in LANDMAP. She identified 3 factors which she said led to it having a greater value:
- i. The presence of Llandegley Rocks.
 - ii. The valuable historic landscape.
 - iii. The PROW network.
108. When subject to examination it was clear that these factors did not support Ms Bolger's position whether considered alone or in combination. Ms Bolger agreed that the presence of Llandegley Rocks was a visual and sensory issue. However, the Rocks are in a different VSAA to the appeal site. Ms Bolger accepted that VSAs are carefully selected and distinguished and that she had no reservations about the way it

⁸² PRV XX

⁸³ PRV XX

had been done here. In those circumstances she had to concede that it had clearly been considered that there was a distinction between the area within which the appeal site lies and that within which the Rocks lie. Furthermore and fundamentally as Ms Bolger had to accept the VSAA within which the Rocks are located is also adjudged to be moderate. Given the presence of the Rocks has not elevated the VSAA within which it is located they cannot sensibly be put forward as a reason for elevating the value of the appeal site and surrounding area.

109. With respect to the historic landscape Ms Bolger accepted that valuable historic landscapes are identified as Registered Landscapes of Historic Interest and that this is not one. She agreed that the interest lay in the SAMs which are addressed separately as the cultural heritage objection and there should not be double counting.
110. There is no evidence to suggest that the PROW network in this locality is any different from anywhere else in Powys, and one would not downgrade the value of a landscape because there is no public access, so it is difficult to see how one can increase it because of such access.
111. There is a further difficulty with Ms Bolger's approach in that she seeks to "pick and mix" her landscape. It is notable that in contrast with Ms Hawkins and Mr Russell-Vick she does not use the LANDMAP aspect areas, despite the guidance to use them. Instead she used an area which is neither defined on a map or in text. When asked about the area used she struggled to answer but it was clear that in reality she used different areas depending upon what point she was seeking to make.
112. Both Mr Russell-Vick and Ms Bolger had to accept that the "bowl" restricts the area over which the turbines can be seen and have any impact. However, they sought to downplay this point and argue that there was something inappropriate or less acceptable about looking at turbines with a backdrop of land rather than sky. This is a bad point. In actual fact unless a turbine is absolutely on the skyline it is always going to be seen against land from somewhere, and it is not unusual to see turbines against landform. Indeed if a turbine is on the skyline this is often argued to be a situation in which it may have most impact.
113. Mr Russell-Vick also sought to make a point about stacking, but he had to accept that stacking occurs in all wind farms from some location. Ms Hawkins explained how the wind farm had been designed to avoid stacking from any "static" viewpoint, and that there was nothing unusual or harmful about the degree of stacking which might occur in this case.
114. Given that it is impossible to site any large wind turbines without some significant effects on landscape character and visual amenity⁸⁴, the significant effects in this case are limited. The proposal could be satisfactorily accommodated in this location without undue consequences for landscape character or visual amenity⁸⁵.

Cultural heritage

115. It is common ground that in so far as any objection is taken to the proposal on cultural heritage grounds the issue is one of impact upon setting⁸⁶. Whilst the impact

⁸⁴ KH 10.29

⁸⁵ KH 7.21

⁸⁶ AC during cross-examination

upon the setting of a number of historic assets has been assessed by Mr Le Quesne the reason for refusal only raises concern with the impact upon 4 SAMs and Mr Croft confirmed that his concerns and evidence were limited to these 4 SAMs⁸⁷. These monuments are Nant Brook Enclosure, Graig Camp, Llandegley Rocks Hillfort and Castell Crug Eryr. In its consultation responses to the application Cadw also made mention of Cwm-Maerdy Standing Stones but nothing now appears to be made in respect of this monument.

116. It was suggested by Mr Croft that Cadw's response was unusually strong. He even went so far as to suggest that he had never experienced such a strong response. In making this point he maintained that Cadw do not object to applications⁸⁸. His position is wrong and untenable. For example in the Bryn Blaen decision the Inspector recorded that Cadw had objected to the application⁸⁹ (something not done here). The Cadw response to the Pant y Maen proposal also records that Cadw objected to the proposal and the response is plainly stronger in terms than the current response⁹⁰. It can be observed that in both cases the appeal was allowed despite the Cadw objection.
117. Shortly before the inquiry PCC appear to have sought to enlist Cadw's support for their position which led to the remarkable and unsatisfactory position of Cadw putting in a document which purports to compare Mr Croft and Mr Le Quesne's evidence and express a view as to which is to be preferred. The precise circumstances by which this came about have not been made clear nor has the information received by Cadw. It is not even clear that the author of the document has visited the monuments for the purposes of the comments. Of particular concern is the failure of the document to address matters which Mr Croft accepted should have been addressed (for example the conflict between the reason for the scheduling of Nant Brook Enclosure and Cadw's views as to what the monument actually is). In the circumstances fairness required Cadw to attend to properly explain its position and to answer questions. Cadw declined to attend and their undefended views should accordingly carry limited weight.
118. It is also important to note that the planning officer recommended that planning permission should be granted in the light of the points that are made about the impact upon the setting of these 4 SAMs. In forming his judgement as to the planning balance he had before him both Cadw's consultation response and 2 reports prepared by Mr Croft which raised the very points made in evidence on behalf of PCC. Mr Croft agreed that the officer had accepted his advice and properly taken it into account in making his recommendation to PCC. He further agreed that there had been no material change with respect to cultural heritage issues which might have provided any greater ground for refusal.
119. Given that the only issue is one of impact on setting it is very important that the matter is approached and considered carefully and correctly. Sadly this has not been done by PCC and Mr Croft.

⁸⁷ AC during cross-examination

⁸⁸ AC 2.4.1

⁸⁹ POL-35 para 36

⁹⁰ ID 33

120. At the outset it important to recall a number of points agreed with Mr Croft:

- i) Setting is not an historic interest in its own right.
- ii) The value of any setting derives from how it contributes to the significance of the historic asset in question⁹¹.
- iii) Given that the value of setting derives from its contribution to significance of the historic asset there are three essential questions.
 - a) First what is the significance of the historic asset in question.
 - b) Second how does the setting contribute to that significance.
 - c) Third what will be the impact (if any) upon the significance of the historic asset as a result of the particular impact upon setting that has been identified.
- iv) Change to setting over time is inevitable⁹².
- v) Change to setting is not necessarily harmful⁹³.
- vi) One of the factors which will change setting is climate change.
- vii) Policy urges authorities to plan positively to address climate change and this includes encouragement for renewable energy projects of the type proposed here.
- viii) Importantly policy advises that one should weigh the public benefit of renewable energy against any harm to the significance of the heritage asset⁹⁴.
- ix) The Cadw Setting of Historic Assets in Wales⁹⁵ sets out the advice on how to assess impact of change or development within the setting of historic assets and that advice should be followed in this case⁹⁶.
- x) Although one should give considerable weight to the desirability of preserving the setting, that can still be outweighed by amongst other things the benefits arising from renewable energy projects of the nature of this proposal.
- xi) It is important not to confuse an impact on landscape and visual amenity with an impact on setting.
- xii) Merely because one can see a development in views to or from a heritage asset does not of itself equate to an impact on setting.
- xiii) It is necessary to consider the significance of those views and in particular how they contribute to the significance of the setting.

⁹¹ See also TAN 24 para 1.25 and HER-1 p2

⁹² See also TAN 24 para 1.8 and HER-1 p3

⁹³ HER-1 p3

⁹⁴ TAN 24 para 1.9

⁹⁵ HER-1

⁹⁶ TAN 24 para 1.1

- xiv) The presence of a wind farm within a view to or from an historic asset does not necessarily have a detrimental impact on setting even if one considers views of windfarms to be unattractive.
121. As the importance of setting derives from its contribution to significance of a heritage asset any assessment of impact on the setting needs to start with a proper understanding of the significance of the historic asset. One must also properly understand how the setting contributes to that significance.
122. Before moving to consider the impact of the proposal upon the 4 SAMs in question there are some other various elements of policy and guidance which it is important to consider and apply properly.
123. PPW paragraph 6.5.5 advises that there should be a presumption in favour of the *physical protection in situ* of scheduled monuments and their setting and that it "*will only be in exceptional circumstances that planning permission will be granted if development would result in an adverse impact on a scheduled monument...or has a significantly damaging effect upon its setting.*" It can be noted that the guidance refers to a *significantly damaging effect* rather than a damaging effect to setting. It plainly allows for there to be a damaging effect upon setting.
124. It follows that merely identifying a damaging effect is not sufficient, if there is to be an objection to the proposal it is necessary to identify a *significantly* damaging effect. Unfortunately the PPW does not define or provide any guidance as to what amounts to a *significantly damaging effect*.
125. In his proof of evidence Mr Croft appeared to seek to rely upon the identification of significant effects in the ES and to try to equate this with a *significantly damaging effect*, but in cross-examination he properly accepted that the two concepts are different and one cannot simply equate a significant effect in EIA terms with a *significantly damaging effect* on setting for the purposes of the PPW guidance.
126. Mr Croft also drew attention to the definition of "significant" in the glossary of TAN24. This does not assist the matter as Mr Croft had to concede that the TAN does not define, or even address, what is meant by *significantly damaging effect* for the purposes of the PPW. It can furthermore be observed that in so far as the word "significant" is used it appears to be being used in the context of scheduled monument consent⁹⁷. It plainly provides no assistance in defining what is meant by *significantly damaging effect*.
127. As the importance of setting is its contribution to the significance of the monument, it is clear that for there to be a *significantly damaging effect* upon setting the impact would have to be significantly damaging to the monument itself. This is obvious not only from a proper understanding as to what is important about setting, but also when one considers the context of the passage in PPW which is concerned with physical preservation of the monument. It is important that this is properly considered and addressed. Unfortunately this was not done by Mr Croft.
128. The Cadw guidance on setting⁹⁸ also provides helpful guidance⁹⁸ on a range of factors to take into account in evaluating the potential impact of a proposal upon the

⁹⁷ See TAN para 2.4 which cross-refers to Annex A

⁹⁸ HER-1

significance of the historic asset⁹⁹. An important element of the assessment is "*the lifetime of the proposed change or development and whether or not the impact might be reversible*".

129. As Mr Croft conceded whilst in theory all development might be argued to be reversible the reference in this guidance to reversibility is addressing a particular situation where there is a guarantee that the impact will be reversed. Wind farm development is the classic example of reversible development in that it is for a limited period of time with a requirement that the land then be restored so that after that limited period it will be put back into the same position as it was before. This guidance is particularly relevant to the case of wind farms, and could almost be said to have had them in mind.
130. Unfortunately although Mr Croft acknowledged this guidance¹⁰⁰, and claimed to have considered it, in fact he applied a different consideration which did not accord with the guidance¹⁰¹. Instead of looking at lifetime and reversibility as required in the guidance Mr Croft looked at a self-imposed test of whether the development was temporary and then, without providing any indication as to what amounted to a temporary development for these purposes, concluded that because it would last for up to 25 years this did not amount to a temporary development because it was a generation in human terms¹⁰².
131. There is no support for this approach of considering whether the proposal is "temporary". Given that there is no support for this approach it is not surprising that there is no guidance as to what might amount to "temporary" for these purposes. Even were there any support for this approach, a 25 year period is a very short period in the life of the SAMs as Mr Croft had eventually to concede¹⁰³. It was plainly an error to argue that the development is not a "temporary" development. This error is compounded by the failure to consider the issue of reversibility as required by the guidance.
132. Mr Croft agreed that reversibility is seen as a significant factor in the guidance. He also had eventually to concede that the proposal is reversible in the sense intended by the guidance. Finally he had to concede that his failure to consider and address the reversibility of the proposal was an important omission in his evidence. The failure to consider this important issue calls his assessment of the impact of the proposal and its significance into question. The failure of Cadw to address this also seriously undermines their comparative review of Mr Croft and Mr Le Quesne's evidence.
133. Mr Croft's approach as to whether the proposals may have a *significantly damaging effect* upon setting is seriously flawed. If, however, the proposals were considered to have a *significantly damaging effect* upon setting it would then be necessary to consider whether there are any exceptional circumstances. Again there is no guidance

⁹⁹ HER-1 p 8 Stage 3

¹⁰⁰ AC 4.3.8

¹⁰¹ AC 4.3.9

¹⁰² AC 4.3.9

¹⁰³ AC in cross-examination

provided as to what might amount to exceptional circumstances or how one should approach the issue.

134. When advising PCC on this issue Mr Croft drew attention to "*the great weight being given to renewable energy in planning decisions taken by the Welsh Government*", referring to the decisions at Bryn Blaen and Garreg Lwyd which he said was a particularly comparable example (even though it was for many more turbines)¹⁰⁴. His advice was that, given the weight given to the delivery of renewable energy targets, exceptional circumstances could be said to apply¹⁰⁵.
135. It is clear from the recent Pant y Maen decision that the need and policy support for renewable energy development can amount to exceptional circumstances and that this merely requires a normal balancing exercise to be undertaken as Mr Croft accepted¹⁰⁶. Indeed it was clear that this was the approach taken by Mr Croft in his proof, albeit he did not go on to consider whether there were exceptional circumstances as he said this did not involve any heritage input and was not a matter for him. It is notable that PCC's evidence does not address the presence or absence of exceptional circumstances as such.
136. In the circumstances it is clear that the reference in the policy to exceptional circumstances does not require anything more than a balancing exercise and if the conclusion is reached that the need for and benefits of the proposal outweigh any harm to the heritage interest this will amount to exceptional circumstance, albeit it would be prudent to address the issue and make it clear that one had found there to be exceptional circumstances, as Mr Croft acknowledged.
137. In considering this issue it is very important to keep in mind the guidance provided with respect to the impacts of this form of development upon heritage interests. Policy urges authorities to plan positively to address climate change and particularly encourages further renewable energy development. It advises that one should weigh the public benefit of renewable energy against any harm to the significance of historic assets¹⁰⁷.
138. In this regard renewable energy development is singularly identified in a way which other development is not. Mr Croft ultimately had to agree that this was unusual and significant, as was the fact that as well as being found in PPW it was also flagged up in the specific guidance on heritage interests in TAN24. This sets this form of development apart from other forms of development in the way its impacts upon heritage interests are to be assessed. It also confirms that one is to undertake a balancing exercise. As Mr Croft agreed renewable energy is flagged up in this way because it is recognised that in tackling climate change it provides a wider benefit for heritage interests and because of the public interest and benefit in proposals coming forward to tackle climate change. It is again difficult to see that this was ever properly recognised in Mr Croft's evidence or PCC's case (although it had been recognised by the PCC officer recommending approval).

¹⁰⁴ HER-11 paras 2.53 – 2.55

¹⁰⁵ HER-11 para 2.56

¹⁰⁶ AC in cross-examination

¹⁰⁷ See PPW 6.2.3 and TAN 24 para 1.9

Nant Brook Enclosure

139. There are a number of fundamental problems with Mr Croft and Cadw's approach to this monument which start with consideration of the contradictory scheduling description which is set out at 6.2.1 of Mr Croft's WSE. The scheduling description starts by saying that the "*date or precise nature of the enclosure is unknown*", but then goes on to say that it is of national importance (and hence scheduled) "*for its potential to enhance our knowledge of later prehistoric defensive organisation and settlement*" and claims that the "*site forms an important element within the wider later prehistoric context*".
140. It is clear from the scheduling description that the importance of the monument (and the reason for scheduling) is said to be its prehistoric age and what it can tell about defensive organisation. This cannot sit with the concession that its date and precise nature are unknown.
141. The matter does not stop there, however, because both Mr Croft and Cadw now say that the monument is not prehistoric, but is instead medieval, and that it is not a defensive enclosure. This is a very fundamental point. The position of Cadw and Mr Croft is that there is no substance in the basis for the scheduling of the monument, indeed they assert it is wrong, but they fail to address this fundamental point. This is a serious failure on the part of an expert witness who is required to draw all relevant matters to the attention of the inquiry, even if unhelpful to their case. It is very concerning that Cadw did not address this, compounded by their failure to attend the inquiry. There is in fact no evidence that the monument is worthy of scheduling as a simple medieval stock enclosure.
142. The scheduling description makes it clear that the principal importance of the monument lies in its archaeological potential. This will not be impacted upon by the wind turbine proposal, albeit the mitigation measures would assist in realising some of this potential, and help in furthering our understanding of the monument.
143. Mr Croft's evidence fails properly to identify the contribution the setting of the monument makes to its significance and fails to consider the changes that have already occurred to its setting. He had to concede that the enclosure of what was previously common land would have made large change to the setting of the monument; all the more so if it were some form of stock enclosure. Significantly Cadw suggest that the monument was "*associated with a possible deserted rural settlement*"¹⁰⁸ (without adducing a shred of evidence for this conjecture). If Cadw are correct with respect to that claim the loss of the associated settlement would also have made a fundamental alteration to the setting.
144. Surprisingly Mr Croft made his assessment of the impact of the proposal upon the monument without ever attempting to gain access to the monument, although he did not reveal that until asked in cross-examination. This is a significant omission, and something which he should have disclosed at the outset. The weight to be given to his evidence must accordingly be reduced.
145. In his proof of evidence whilst conceding that the monument does not have a strong visual presence¹⁰⁹, Mr Croft suggests that the highly rural, agricultural and quiet

¹⁰⁸ See AC 6.2.2

¹⁰⁹ AC 6.2.10

nature of the landscape is a defining aspect of the monument's setting and that it makes a significant contribution to its significance by providing people with a sense of the monument's rural history and role in the landscape¹¹⁰. This ignores the changes to setting already made. Furthermore this will not be significantly altered by the appeal proposal.

146. In evidence Mr Croft tried to elaborate upon this by emphasising that the landscape was large scale, in agricultural use, separate from any settlement and still tranquil. This is of course the classic landscape in which one might expect to find wind turbines and Mr Croft conceded that with the exception of tranquillity this was unaltered as a result of the proposal. With respect to tranquillity there is no basis for suggesting that this would be materially altered by the presence of the turbines, most of which would not even be visible from the monument.
147. Mr Croft tried to raise an issue about intervisibility with other sites, but this is untenable as the monument is not visible from any distance. In truth his assessment of the impact of the proposal is essentially an assessment of landscape and visual effects. He does not establish any true impact upon the significance of the monument.
148. As Mr Le Quesne explains the proximity of the rock outcrop on the north of the monument, the track and nearby ford are fundamental aspects of the monument's setting¹¹¹. All significant views are southwards, and the fact that one turbine would be visible from the monument 600m to the west will have little effect on the heritage significance of the monument¹¹².

Graig Camp

149. Graig Camp lies on a marked south-east facing slope overlooking the headwaters of the River Edw¹¹³. Its importance as explained in the scheduling description again is principally concerned with its archaeological potential¹¹⁴. The monument looks essentially to the valley to the south-east away from the appeal site as Mr Croft concedes¹¹⁵ and the analysis confirms. Its position and aspect strongly suggests that whatever its function, it related to the community living in the lowlands to the south-east¹¹⁶. The monument is hidden from long distance views in the landscape.
150. Any northern views (i.e. towards the appeal site) are only available from the top of the north-western defences and do not include Llandegley Rocks Hillfort¹¹⁷. There is no visual connection between the two monuments. There is no evidence that they were even contemporary. The suggestion that the land between them was either

¹¹⁰ AC 6.2.10

¹¹¹ CQ 71

¹¹² CQ 72

¹¹³ CQ 53

¹¹⁴ CQ 55 and AC 6.3.1

¹¹⁵ AC 6.3.3

¹¹⁶ CQ 55 and AC 6.3.3

¹¹⁷ CQ 58

contested or shared is not only unsupported by any evidence but does not fit with the orientation of both monuments.

151. Surprisingly this is another monument not visited by Mr Croft who nevertheless opines about the significance of views in the setting of the monument. Again this significantly undermines his evidence.
152. Mr Croft contends that the links between Graig Camp and Llandegley Rocks Hillfort are important aspects of the setting of Graig Camp¹¹⁸. This assertion is made without having visited the monument and is wrong. He also seeks to argue that the views from the monument are important in generating a sense of control and influence¹¹⁹, but it is plain that these are away from the appeal site. This also ignores the fact that Graig Camp is lower than many surrounding hills.
153. Given that the monument relates to the south-east away from the appeal site and that any views of turbines would be limited to views on the top of the defences there would be minimal impact upon the significance of the monument as a result of this proposal¹²⁰. Furthermore the turbines would be on lower ground some 1.3km – 1.7km away from Graig Camp. The monument is not prominent from the north and its prominence will not be challenged. It must be remembered that there is already a turbine and masts on the ridge on which the monument is situated¹²¹ and the monument is not situated on the highest ground in the vicinity.
154. Mr Croft also relies upon the open rural character of the landscape around the monument contributing to its significance by providing an appropriate landscape context that reflects the agricultural history and prehistory of the landscape¹²². This ignores the changes which have already occurred, as previously noted, and the fact that there is no change as a result of this proposal in the area of interest to the monument in the south-east.

Llandegley Rocks Hillfort

155. Llandegley Rocks Hillfort sits on a projecting north-eastern spur of Llandegley Rocks. Whilst the scheduled area includes a rocky area on the south of the spur the enclosure is to the north-east and it seems likely that any settlement is most likely to have stood within this fortified area¹²³.
156. Again the scheduling identifies its value primarily as its evidential value¹²⁴. The only clear views of the enclosure are those looking from the higher upper enclosure¹²⁵. The monument looks and primarily relates to the vale to the north of Llandegley; i.e.

¹¹⁸ AC 6.3.11

¹¹⁹ AC 6.3.10

¹²⁰ CQ 59

¹²¹ AC 6.3.4

¹²² AC 6.3.12

¹²³ CQ 43

¹²⁴ CQ 44

¹²⁵ CQ 46

north-east away from the appeal site¹²⁶. There is no evidence that views to the south from the lower enclosure were of particular significance¹²⁷. The monument is not on the highest ground emphasising that its relationship is with the vale to the north-east. Despite this relationship it is very difficult to identify the archaeological features except when standing on the monument or on upper enclosure to the west.

157. Any views of the turbines from the scheduled monument are limited to the summit of the spur where the evidence for Iron Age activity is far from clear. There will be no impact upon the relationship to the north-east¹²⁸. The impact of the scheme on the significance of the scheduled remains would be low¹²⁹.

Castell Crug Eryr

158. Castell Crug Eryr comprises the earthwork remains of a small but prominently positioned medieval motte and bailey castle¹³⁰, which was positioned to command the route through the pass. It is likely that the line of the former Roman road ran directly past the castle¹³¹. The castle was positioned at the point where the Welsh medieval kingdom confronted the Saxon and Marcher lordships to the east¹³². It is the relationship of the castle to this road and the pass which is the key element of its setting. This would be unaffected by the turbines sited on lower ground some 2.5 – 3.5km to the east¹³³. The impact of the proposal on the significance of the monument would be low to medium and would not amount to a significantly damaging effect¹³⁴.

Mitigation

159. The proposals would not have a significantly damaging effect upon any of the heritage assets of interest. However, they would provide scope for works of mitigation. This is appropriate and reference is made to such works in the Cadw documents. The point is made by Mr Croft that this is offsetting rather than mitigation, but this is to some extent a matter of semantics. The guidance explains that such measures will not reduce the impact of a proposal within the setting of an historic asset but "*should nevertheless be presented to the decision-making authority so that it can weigh the benefits of the scheme, including the compensatory measures, against the impact of the development on the historic asset and its setting*"¹³⁵.

¹²⁶ CQ 47

¹²⁷ CQ 48

¹²⁸ CQ 50

¹²⁹ CQ 51

¹³⁰ CQ 61

¹³¹ CQ 62

¹³² CQ 64

¹³³ CQ 65

¹³⁴ CQ 66

¹³⁵ HER 1 p10 section 5 and see also HER 2 p11

CPRW B&R objections

160. CPRW B&R raised a number of issues, which found no support from PCC or any of the consultees with the relevant expertise to address these matters. In general terms the complaints were essentially that more information should have been provided rather than that there would actually be any harm arising from the proposal.
161. In considering their points it is important to keep in mind that the application has been subject to EIA and the various consultees have had a chance to respond to the information provided. In so far as issues are raised concerning ecology, ornithology and hydrology they are all within the responsibility of NRW. When initially consulted on the application NRW raised an objection but they were subsequently satisfied with the information provided. Plainly NRW looked at the matter carefully and did not simply take matters at face value. It is furthermore important to note that the various CPRW B&R witnesses were not expert witnesses in the particular fields which they covered.
162. The particular points raised by the CPRW B&R witnesses are addressed in the ES and the letters provided at the start of the inquiry. They do not raise any harm to put into the planning balance.

Balance

163. The evidence establishes that there would not be unacceptable adverse harm and the proposal complies with the development plan. In such circumstances there is no need to undertake a planning balance and the proposal should be granted planning permission.
164. If it is considered that the proposal is in conflict with the development plan then it remains necessary to undertake a planning balance in accordance with policy.
165. Furthermore, if contrary to Mr Le Quesne's evidence the conclusion were reached that the proposal would have a significantly damaging impact upon any of the SAMs it is again necessary to undertake a balancing exercise. Whilst it is important to give due weight to any impact upon SAMs, it is also important to appreciate that this does not preclude any development which may have an adverse impact upon a SAM. This is something properly recognised in the Officers' report and numerous appeal decisions. In so far as there is impact upon the setting of the SAMs, this is something which ultimately needs to be weighed in the balance.
166. Given the limited adverse impacts arising from this proposal and the very significant need for this form of development and the benefits arising from this proposal the planning balance very firmly falls in favour of this proposal.
167. In the circumstances it is requested that the appeal be allowed and consent be granted for the wind farm and associated development, subject to appropriate conditions.

The Case for Powys County Council

The material points made by the Council are:

Introduction

168. The essential issues between PCC and the appellant concern questions of judgment as to the extent and significance of the impact of the proposals on the environment which have been set out within the reasons for refusal. These are:
- i. The significant and harmful changes to landscape character;
 - ii. The significant adverse effects on the visual amenity of users of public rights of way, and open access land;
 - iii. The significantly damaging effects on the setting of four Scheduled Ancient Monuments.
169. The Council accept and recognise the need urgently to meet the Government's renewable energy targets identified by the Welsh Government (WG). The specific figures are set out in the SoCG (CD APP-7) and because this very properly recognises (para 17) that the Well-being of Future Generations Act 2015 places tackling climate change within (ie not in a way which is superior to or separate from) the pursuit of the economic, social, environmental and cultural well-being of Wales.
170. Also accepted and recognised is the scale and character of the windfarm proposed: the turbines are the kind generally used for the large scale 25MW+ schemes which are directed to locations within or close to Strategic Search Areas, and it would take only another three of these turbines to reach that threshold. The infrastructure they require for access and for their stability is substantial and much of it would stay, but the consent itself is time limited, following which the turbines would be removed – unless replaced by a recommissioned facility. The impacts of the turbines themselves, therefore, would be long term reversible impacts – for the 25 years in operation – and should be assessed on that basis.
171. Ultimately, the recommendation and decision in this case should turn in on the disputes over the magnitude of adverse impact on each of these issues. On this the view of the principal statutory consultees – both NRW and Cadw – as well as the independent conclusions of experienced professionals advising the authority at application stage, is that the appellant has very substantially under-reported the impact of the proposals. This robust and forthright advice (of statutory consultees and of Mr Russell-Vick and Mr Croft), articulated consistently and repeatedly over 3½ years is worthy of very significant weight.
172. In contrast, Mr Le Quesne's abandonment of the ES's assessment of heritage impact when under cross examination (albeit this could be anticipated within his proof on account of the scant regard he gives the ES assessment) risks making a mockery of the EIA process.
173. For the reasons set out in the Council's opening, while the officers' report remains an excellent source of information about the responses to consultation and judgments on harm, the recommendation is now no more than a background fact, having been very considerably overtaken by events. The inquiry has provided an opportunity to assess and to test the evidence, which has of course been added to, and to give very much greater weight to the emerging Plan and its strategy for renewable energy in Powys.

174. The Council's submissions do not cover the points made by and on behalf of CPRW B&R and others and nothing should be read into the failure to comment. Meanwhile letters of support or objection are only as relevant as the evidence they contain and the planning points they make – the weight of the paper on one side or the other of the argument is neither here nor there.

Legal and Policy Context

175. This is an appeal under s78 of the Town and Country Planning Act 1990, which has been called in for determination by the WG on account of its scale (at over 10MW capacity).
176. RE1 and other relevant policies of the recently adopted LDP are up to date and have been specifically and recently endorsed by the WG and through the examination process subject to the IMACs, which include a replacement RE1 drafted by the WG (CD POL-51 and ID 41). Mr Southerby's proof presents the relevant policies and material considerations in a thorough and authoritative assessment of the principal material considerations. His approach is orthodox, clear and robust, and subsequent events (the binding Inspector's binding report at ID 41) have shown that he was measured but essentially right in his assessment of the emerging LDP.
177. As the Inspector said at 2.7 she was satisfied that the LDP will contribute towards improving the economic, social, environmental and cultural well-being of Wales and, in that respect, complies with the overarching principle of the WCFG Act. [ID 41]
178. S2 of the Planning (Wales) Act 2015 applies to the WG's decision, and ensuring these well-being objectives is the essential statutory purpose of the power to allow or dismiss the appeal. It is submitted that the relevant national policy within PPW and its supporting guidance, as well as the current and emerging development plan, promote these aspects of sustainable development in tandem – all are to be pursued and none is dominant.
179. There are tensions between achieving the benefits of renewable energy generation and environmental protection and the planning system provides a coherent framework for resolving them. After applying the specific policy tests of the Development Plan, a balance is struck between the benefits and dis-benefits of the development – to assess whether other material considerations indicate otherwise (to use the words of s38(6)). But care is needed not to double count the benefits of the development. The appellant's evidence suggests that its benefits are all typical of all renewable energy proposals rather than other material considerations and they have therefore been taken into account in the drafting of the relevant policies.
180. The LDP does not repeat policy provided by PPW and the TANs but they implement it at the local level. The key policy test in each case is whether the adverse impact of the development is acceptable (SP7 of the LDP).
181. In preparing its LDP, Powys has responded positively to the need for new sources of renewable energy and has two SSAs both of which have capacity for additional windfarm development within its area [CD POL-30].
182. LDP policy RE1's supporting text (most notably 4.10.12) shows that it is properly informed by the strategy for renewable energy set out in TAN8, and it is therefore clear that there are large areas of Powys which have been chosen for their suitability in principle for the needs of windfarm development and their ability to accommodate significant landscape change without unacceptable harm.

183. While unable to identify any Local Search Areas for wind energy development, PCC does not rule out the possibility that such a project/s may find a home in Powys. RE1 requires that – for it to do so – there should be no unacceptable adverse impact on (amongst other matters):
- i. The valued characteristics and qualities of the landscape (with a reference to DM4)
 - ii. The historic environment (with a reference to DM13 and SP7)
 - iii. The amenity of the surrounding area – and SP7 requires that there should be no unacceptable impact on recreational assets including the public rights of way network.
184. DM4 is eloquent on the subject of the landscape: for this, the proposals must be appropriate and sensitive in terms of integration, siting, scale and design to the characteristics and qualities of the landscape including its topography; development pattern and features; historical and ecological qualities; open views; and tranquillity [DM4].
185. The adjective “unacceptable” features in a variety of places and – it is submitted – provides for a straightforward planning judgment informed by the circumstances of any one project. Inspector Nixon had no difficulty with the word when dismissing the appeal at Pentre Tump, and an approach along similar lines is contended for by PCC [see CPRW B&R Williams Appx E].
186. For landscape change, an obvious consideration is the scale of the project and its location: propose a wind farm within or close to an SSA and a greater degree of change to landscape character will be accommodated; propose a wind farm on brownfield land and you benefit from the encouragement given to its use within TAN8. But propose a windfarm in a location such as the appeal site, and the judgment of what is acceptable must be assessed by reference to the particular values of the particular landscape and its susceptibility to change of the kind proposed - the implicit objective of TAN 8, now stated explicitly in the supporting text to RE1, “to maintain the landscape character, i.e. no significant change in landscape character from wind turbine development.”
187. Mr Frampton’s intellectual contortions (during cross-examination by Mrs Townsend) to explain the operation of a “normal/inevitable effects” threshold below which adverse landscape effects could not be judged unacceptable were a sure sign of its problematic character. Effectively he seeks a “discount” as against the degree of harm which would be accepted from “other” unnamed forms of development, or an exception from the policy to accommodate the “inevitable” effects of a large scale windfarm. But the formulation has a circularity that is troubling – all things being equal the larger the scheme the greater the inevitable impact and therefore the higher the bar (according to him). For the reasons explored with him in cross-examination it is submitted that the approach would be so flawed as to be unlawful. In short neither RE1 can sustain such an interpretation.
188. When it comes to adverse effects on the historic environment, the SP7 criterion embraces the full range of possible effects including effects on heritage assets themselves, and change within their setting. If the changes significantly damage the setting of a SAM (as Mr Croft and Cadw have argued these proposals do, and as the ES might be judged to have done) the effect is unacceptable unless exceptional

circumstances are shown to exist [6.5.5 of PPW] (a point referred to again in the consideration of heritage evidence).

189. So, how to judge whether any particular level of harm is “acceptable” in this case? The answer is deceptively simple: assess the impact objectively, and reach a judgment whether it is acceptable in the light of the particular facts of this case and any relevant national planning policy and guidance. This involves a balance of considerations, but it also involves close attention to the way PPW and its TANs indicate the balance should be struck.

Landscape Character

190. The appeal site is set in a depression within the upland landscape, surrounded by higher ground on all sides. The land here is gently undulating, it has an atmosphere of stillness and beauty that has to be experienced to be appreciated. The site slopes generally down towards its eastern and southern edges from 354m AOD at the western edge of the Site, to a low point of 290m AOD at the River Edw, towards the Site’s eastern boundary.
191. The site is overlooked by public access land and public rights of way to the north. Rights of way cross the site and pass close by, while the BOAT which is to form part of the access runs through the site east west, past Pye Corner, and bridleways to the north and south. It is a settled landscape – the open “bowl” within which the appeal site lies is, although you do not see them, surrounded by settlements.
192. The A44, a tourist route from England to the coast, provides stunning views across this complex undulating landform to the Aberedw Hill uplands in the west and the instantly recognisable site of the SAM, Llandegley Rocks, in the north.
193. The turbines would sit within this landscape, transforming it in a way they could not if they were where one might expect them – above the landscape, after all the wind belongs to the sky not the earth.
194. Over an area of about 80 ha, the seven 110m high turbines would stand tall with their revolving blades introducing for the first time an industrial element to this ancient landscape. Their arrangement is semi-formal, with clear stacking effects from north, east and west – illustrated following the review of the ES by Enplan [CD LVIA-9].
195. As mentioned, the objective of renewable energy policy is to maintain landscape character in areas away from the SSAs. Mr Russell-Vick has been exceptionally clear and consistent about the implications of this: if the landscape is characterised by the windfarm, such that the main characteristics of the landscape are lost or changed, the proposal does not accord with the implicit objective of TAN8.
196. Ms Hawkins in contrast, did not mention TAN8 in her proof, and expressly confirmed in cross-examination that she considered it not relevant to the task she undertook in her proof.
197. On the change to landscape character she accepted readily that the VSAA is not a policy designation. However, her repeated return to the “landscape unit” (by which she meant the VSAA as a whole) and the area of land within a given VSAA which lies outside the area of significant impact reveals a fundamental flaw in her entire approach.
198. This was illustrated when she was asked what test she had applied to conclude that the degree of effects was limited she answered “whether the description of the

LANDMAP character area would form a key characteristic, a defining characteristic of the landscape unit" (by which she meant the LANDMAP character area). If there was a consequence for the landscape character description that would be a significant adverse effect.

199. The landscape affected is the relevant landscape unit, and the fact that it is made up of interlocking VSAs is happenstance. In this case there's considerable level of agreement that the area of landscape significantly affected by this proposal is an area stretching to 4.5-5km from the turbines. What counts is the degree of effect, and whether it matters.
200. The characteristics of the VSAs affected by the windfarm are not in dispute: these are for the host VSA a landscape which is "attractive, tranquil, exposed, remote, wild, spiritual" and these themes recur in each of the VSAs affected; nor is the value of the receiving landscape a matter of any significant dispute; nor is the extent over which significant adverse effects will be felt in dispute at about 5km (Mr Russell-Vick says 4.5km from the turbines within the ZTV); nor is the assessment of those significant effects as adverse in dispute – a fact not to be dismissed simply because the appellant considers it inevitable.
201. On the key issue, Mr Russell-Vick's evidence is to be preferred. As he stated quite simply these are "big pieces of kit" and the access roads are very different to those required for a domestic scale windfarm. They would stake their claim in no uncertain terms to this settled landscape in a break from the pattern discerned by Mr Russell-Vick for the relatively large scale windfarms of Powys, generally found within high plateau landscapes. As he set out, the effects of the proposals may be described by reference to the five most directly affected VSAs in the following way:
 - i. The host VSA, a landscape of high value, would, over an area of approximately 1.5km from the windfarm "radically alter to become a windfarm landscape". Ms Hawkins did not consider this in her proof but when under cross-examination put the limit of this radical transformation at 0.5km. To get a feel for the area over which there is, it seems, agreement as to the radical transformation, Ms Bolger viewpoint C at Fig09 may be useful. This is 530m from the nearest turbine, and TP1 and PRV1 (680m distance) are just outside the area she identifies in this way. But we think the area of radical change is about three times as far, and that the submitted photographs and a view of the site confirms this to be the case.
 - ii. Affecting the Upland Moor, Radnor Forest VSA, a VSA of high value lying to the east of the site, over an area up to 4.5km the wind farm would "become a key characteristic in its context, would compete with and detract from the key characteristics / qualities of the VSA";
 - iii. There would be a similar effect on the high value Upland Moor, Glaschw Hill VSA, an extensive VSA lying to the south and southeast of the site;
 - iv. Affecting the Rocky Moorland Gilwern Hill VSA [RDNRVS 107], a VSA lying to the west of the site where, over 1.5km the turbines "would be dominant and become a defining characteristic, would override and be in stark contrast with the key characteristics / qualities of the VSA";
 - v. Affecting the Rolling Hills, central south east VSA lying in pockets both, broadly, to the south west and the north east of the site, for a distance of over 1.5km from the windfarm it would be dominant and become a defining characteristic in stark contrast with the key characteristics and qualities of the VSA.

202. These are the professional findings, and they add up to a significant change to a landscape of (in large part and in the part most directly affected) county value (using Ms Hawkins' methodology). This means that – purely in value terms – the landscape here is on a par with a special landscape area designation (of which there are none in Powys). In historic environment terms the aspect area within which the appeal site lies is of outstanding value, that is to say of international or national importance, and the LANDMAP unioning process he describes in his proof [at 4.11-4.19] provides a useful tool corroborating the opinion both he and Ms Hawkins hold of the quality, the value, of the landscape immediately affected (to about 5km distant) from the turbines.
203. NRW's consultation response suggests strongly that they would agree and their serious concerns about the "regional effects" of this development on landscape character should be given very significant weight.

Visual Amenity

204. On this the Appellant shows an extraordinary lack of care over the detail – glossing over the impact of the proposal on the immediate locality somewhat and the many walkers, tourists and horse riders who enjoy the gloriously unspoilt, tranquil, views it currently offers anyone with the time to look.
205. The appellant has persisted in a failure to illustrate, or to describe in any detail the changes which would take place when the access tracks are introduced to the site, crossing the byway at three places, whether or not in a cutting – and whatever the depth of the cutting. However, four years into the progress of the application and on the first day of the inquiry, we were informed of changes to the tracks, changes which are supported by a letter from WYG and some additional illustrative plans and which may be the subject of a condition if considered necessary [ID18]¹³⁶.
206. Of the 10 representative viewpoints from which an adverse effect judged significant in EIA terms would be caused by the development, Ms Hawkins agrees with seven. What is striking is
- i. The unspoilt, intact, rural quality of the views affected; and
 - ii. That views from all around the site – across and into the bowl within which the appeal site sits – are significant adverse effects on views highly sensitive to change of the kind proposed.
207. As for landscape character change, there is much common ground between Mr Russell-Vick and Ms Hawkins. She identifies within her summary table of effects nine viewpoints representative of views of national or county value. There is a notable overlap of opinion between the two witnesses in every respect, save the magnitude of change – and for Ms Hawkins this is driven by her idiosyncratic methodology.
208. She volunteered that there would be many views of the turbines, not least from the BOAT, which would meet her definition of "very substantial" change in the view¹³⁷, but

¹³⁶ After careful assessment PRV concludes the changes, while positive in landscape and visual amenity terms, do not make a significant difference to his conclusions [ID 39].

¹³⁷ Defined as 'Where the proposed turbines would be close to the viewpoint, visible in their entirety, would occupy the majority of one sector of the view (90°), the rotors would be moving and facing the viewpoint, the turbines would be in stark contrast to the landscape context

none of her representative viewpoints do so. For whatever reason, nowhere does she explicitly acknowledge that her chosen methodology has this idiosyncratic requirement that very substantial changes are only experienced where the turbines occupy the majority of one sector of the view. The methodology in fact represents an impediment to her ability to provide a complete or balanced report of the degree of the impact – unless she were to include viewpoints close to the 80 hectare site occupied by the turbines. It is notable that this is the same methodology as was relied upon at Bryn Blaen, inviting the Inspector’s comment at paragraph 25 “I note that this approach is not adopted by many other landscape architects and I do not favour it”. [CD POL-35]

209. Another idiosyncrasy was the argument that VP1 and PRV1 show the nearest turbine is dominant and the furthest only prominent. It may be thought that from these locations, both over 500m from the 80 ha “site” of the turbines, there would be a group effect, the turbines to the rear reinforcing the dominance of the closer turbines in the view.
210. Finally, on stacking, Mr Russell-Vick has shown that it was under-assessed in the ES (which did not have the benefit of PRV1, PRV2 and PRV3) and that it is likely to be a feature of the chosen layout, which lies somewhere between the formality of a grid and the looser arrangement which is necessary for the stacking effect to be minimised. Ms Hawkins was keen to emphasise that stacking is caused by the number of turbines, and this may be so, and it may be that the proposal is for too many turbines, but neither can the appellant argue that the layout has been designed to minimise stacking since the layout was fixed before any consideration of three viewpoints illustrative of stacking effects.

Heritage

211. PCC’s third reason for refusal concerns the adverse impact on the setting of four Scheduled Ancient Monuments, namely:
- i. Nant Brook Enclosure to the immediate south of turbine 3
 - ii. Graig Camp hillfort, upon the ridge to the south of the turbines
 - iii. Llandegley Rocks Hillfort, upon the ridge to the north of the turbines
 - iv. Crug Eryr Mound and Bailey Castle, upon a mound to the east of the turbines.
212. Mr Croft’s proof sets out the chronology of assessment and counter-assessment in some detail. The story begins with an ES prepared in 2014 when this application was first submitted. Cadw’s response to consultation on the heritage chapters was critical of its methodology and of the assessment of impact which led – so they believed – to an under-reporting of the significance of the several impacts on the setting of designated monuments and other heritage assets. One of the methodological criticisms was its reliance on the DMRB – suitable for linear schemes such as trunk roads but less suitable for turbines (see Cadw’s second letter within ID29) and was considered by Mr Croft and Cadw to underscore the magnitude of impact.

(particularly in terms of scale and an absence of similar structures), such that they would be a dominant new feature which would be present for a long, albeit temporary and reversible, time frame’

213. Although in cross-examination Mr Le Quesne came very close to saying that the WG should give the ES assessment within Chapter 8 and Appendix 8.1 no weight, it remains part of the environmental information before the inquiry and must be taken into account to meet the requirements of Reg 3 of the EIA Regulations 1999. Notably the ES finds significant adverse effects on the significance of three of these SAMs, the Nant Brook enclosure, as well as the iron-age hillforts Graig Camp and Llandegley Rocks. This is recorded for ease of reference within Mr Croft's Note ID11.
214. As it did for the LVIA, PCC obtained expert advice on the methodology of the ES and the judgments reached. The reports (prepared by Mr Croft under the Atkins name) are at CD HER-10 and CD HER-11. His views have been endorsed by Cadw.
215. Mr Le Quesne points out that Cadw and Mr Croft have not actually visited the hillfort of Graig Camp, nor stood upon the enclosure at Nant Brook – but the absence of any additional information/insight which can be specifically related to his own visit, together with the vast array of photographs and other documentation available to Mr Croft and the experts at Cadw makes this – a weak distinction.
216. Mr Le Quesne claims to have carried out a full assessment following the four stages recommended by Cadw within their 2017 Guidance [CD HER-1], but his written assessment is shallow and limited, perhaps because he fails to recognise fully the positive contribution the setting makes to the significance of the monument and confines its significance to its "evidential value". Further, bearing in mind his proof of evidence is offered in place of the ES, it is insufficiently rigorous and detailed. His findings record each in turn as low (according to the table of definitions (Table 4.1) derived from the EIA for the HS2 project dating back to 2012).
217. The source of Table 4.1 was given for the first time when he gave evidence to the inquiry, and is somewhat ironic since he has replaced the (rightly criticised) DMRB approach with an extract from another linear project, supported by Act of Parliament, for which significant effects were going to be a likely inevitability. My point is that the DMRB methodology was criticised for the fact it concerns a linear project [ID 29 second letter from Cadw]. Neither does the table add to the text of his proof in any meaningful way. It almost seems an irrelevant addition with no obvious place in his assessment. The irony is compounded by the strong defence of the ES methodology within the Aaron and Partners letter of 3 November 2017 which was several months after Mr Le Quesne's appointment (ID43).
218. So with a less than orthodox procedural/documentary background I turn to the specific monuments.
219. In respect of Nant Brook, most likely a medieval stock enclosure, Mr Croft notes that the nearest turbine would be a mere 450m from the monument and would "very significantly damage the setting" with a "significant adverse impact on its significance" (paragraph 6.2.16). Useful photographs of the monument in its setting include the panorama at Ms Bolger's Fig10-11 taken from the footpath to the south, and showing the positions of the turbines, something Mr Le Quesne has not done.
220. Mr Le Quesne's summary of impact within his proof focusses exclusively on views from the monument and views out to the north. He describes the impact as low – apparently because he doubts the monument's significance. He is the first and only expert to do so. He doubts its significance because Cadw and Mr Croft believe it is most likely to be a medieval stock enclosure in contrast to the reason for significance attributed to it within the Schedule description. Mr Le Quesne's problem, however, is that as the enclosure's origin was always known to be less than certain (see the

Schedule's full description which recognises it may be medieval or prehistoric in origin) but it is generally fairly well understood – and its significance not controversial. There is a process for reappraising the significance of a monument – and revising the description. The evidence suggests that the description may be out of date but not that there is any good reason to remove it from the Schedule.

221. Also a feature of Mr Le Quesne's analysis which is unique to him is his characterisation of the landscape as "intensively exploited" for which proposition he sets himself up in opposition to LANDMAP, both landscape witnesses, and of course Cadw and Mr Croft. Of course the setting has changed since this was unenclosed moorland – nobody disputes that – but Mr Le Quesne's description is startling in its lack of appreciation for its essential qualities, recognised by every other relevant witness, and the role played by this essentially humble monument's setting. Mr Le Quesne is incorrectly conflating historical change with modern character. For example in 3.5.2 he states that "There is no 'undeveloped rural landscape' – since the early nineteenth century the moorland has been transformed by grassland improvement, enclosure, woodland planting and construction of farm buildings." Are these not typical "rural" features?
222. Graig Camp, in contrast to Nant Brook, is a defended hilltop enclosure lying in a prominent position to the south of the proposed wind farm which, Mr Croft advises, would "significantly challenge" its prominence "in the landscape, a landscape it was designed to dominate and control. This is a significant impact." (paragraph 6.3.15).
223. In the case of an iron-age monument each of the experts is interpreting the evidence left after hundreds of years of non-use. Interpretation is essential and not something to denigrate. In this case it is agreed that this monument's primary aspect is to the south, but that it would also have defended its northern aspect, with substantial ramparts providing open views to Llandegley Rocks hillfort across the intervening space, as illustrated in Figure 3.1 of Mr Le Quesne's photographs¹³⁸.
224. The scheduled Llandegley Rocks Hillfort is another iron-age hill fort occupying the steep-sided promontory to the east of the main higher part of Llandegley Rocks and situated on open access land, Mr Croft finds a similarly harmful impact (paragraph 6.4.14). The form of the rocks here effectively is the monument. As he said under cross-examination Mr Croft believes that the natural crags and outcrops were part of the natural defences. Mr Le Quesne's focus on the upper enclosure is a distraction.
225. The two scheduled hillforts were statements of power and control as well as defensive structures and they form part of a wider network of hillforts which highlight the importance of the area as a route through the region. Their prominence and visibility in the landscape are key elements of their setting, as are views out from each of them – bearing in mind their defensive function. Hence, Mr Croft explains, the visual link between them makes a significant contribution to their significance. The proposed development would "seriously detract from the visual relationship between the two monuments." (paragraph 6.4.16).

¹³⁸ The ZTV plans submitted during the inquiry [ID 27] should be given no weight in the appeal: the assessment is made from within the monuments in each case and do not reflect the ability to look out from the ramparts/defensive structures to the north of Graig Camp, or indeed to see them from the north.

226. Finally, Crug Eyr Castle, a medieval motte and bailey castle which lies to the east of the proposed windfarm, occupying a distinctive elevated spur above the valley floor with extensive views to the southwest, west and northwest (paragraph 6.5.3). For the reasons set out in his proof Mr Croft concludes that the development would significantly damage elements of the site's setting that contribute to its significance (paragraph 6.5.16).
227. If Mr Croft's evidence, and that of Cadw, is accepted, paragraph 6.5.5 of PPW applies. There must be at least the question whether even the ES's assessment (which Cadw advised under-reported the magnitude of effect) would trigger the test (since the ES finds significant adverse effects on the significance of three SAMs).
228. This is a (still relatively) new policy requirement that exceptional circumstances are required to justify a significantly damaging effect on the setting of a SAM. This specific policy test requires specific attention in any decision to grant planning permission and is clearly triggered by the number and degree of adverse effects identified by AC. The recent case of *Steer v Shepway DC* 2018 EWHC 238 (Admin) is a stark reminder of how important it is to grapple with a policy of this kind, such that in that case a common law duty arose to give reasons for granting planning permission for major development in an Area of Outstanding Natural Beauty against officer advice. There are of course many and varied differences between that case and this – it is referred to a reminder that where a policy requires there to be exceptional circumstances (see judgment para 24 and see for example PPW at 5.5.6) that is what it means. Something about the particular project which is exceptional, different, beyond the norm – and the decision maker needs to justify it specifically.
229. Mr Frampton recognised this during cross-examination but then offered as an exceptional circumstance a characteristic of this case that it shares with any renewable energy project anywhere in Wales: that it would produce renewable energy. This is, in my submission, not capable of being "exceptional circumstances" on the evidence before the inquiry.
230. Mr Frampton draws attention to the approach taken by the WG in Denbighshire, and it is noted that the Inspector drew attention to the policy – but, just as happened in *Steer*, the WG did not follow the Inspector's recommendation (to dismiss the appeal). Given her recommendation there was no need for the Inspector to grapple with/identify/speculate about exceptional circumstances, but there was a need for the WG to do so and unfortunately it would seem that they did not.
231. From what I understand there are several possible reasons for this oversight flowing from the fact that there was little if any argument over the application of the test (it was a written representations appeal), the appeal proposal had been revised since the letter of Cadw (ID33) had been written, and they were not involved at any time after the policy test had been introduced.
232. As Mr Le Quesne, recognises this new paragraph was introduced to better meet the objectives of the Historic Environment (Wales) Act and it's my submission that it must be read with that intention in mind.

Conclusions

233. The WG has made is clear that all levers will be used to deliver its renewable energy targets. Within that context it has set a policy context for planning decisions which provides appropriate protection for landscape character, visual amenity of recreational rights of way, and nationally important heritage assets such as SAMs.

234. This policy context has informed and shaped the emerging LDP policy which Powys is close to adopting, and which has been endorsed specifically by the WG. These local policies should be given substantial weight and they should govern the decision in this case.
235. If the landscape, visual, and heritage effects are judged unacceptable then the appeal should be dismissed. The acceptability of these effects is a judgment with which Tan 8 and PPW para 6.5.5 provide essential policy guidance. The evidence is overwhelming that the degree of landscape change is such that there will be a significant change to landscape character. There is no proper basis upon which the exceptional circumstances test could be said to be satisfied.
236. In this particular case the harm caused by the development is unacceptable, despite the recognised renewable energy benefits of the appeal proposal, and that accordingly the appeal should be dismissed.

The Case for Campaign for the Protection of Rural Wales, B&R

The material points made by the CPRW B&R are:

Introduction

237. CPRW is a charity with the aims of protecting all Welsh landscapes, championing their responsible use, providing a voice for rural communities and promoting appreciation of the heritage and culture of rural Wales. In pursuing those aims CPRW B&R recognises that landscapes are not to be preserved under glass as a museum exhibit but ensuring that such changes as do occur respect the valued qualities and characteristics of the landscape in all its aspects.
238. CPRW B&R acknowledges that anthropogenic climate change is a serious threat to landscape, the habitats and species which inhabit it and to mankind. It recognises that limiting greenhouse gas emissions is urgent and that generating electricity from low carbon sources rather than fossil fuels is part of the solution. It also recognises the benefits of security of supply to the UK.
239. By identifying SSA's at an all Wales level and accepting significant landscape change in those areas, Welsh Policy seeks to limit harm to landscapes elsewhere. The LANDMAP system of data provision provides the basis for a broadly consistent Wales-wide approach to landscape assessment. Properly applied, taking all aspect layers into account, it provides a sound starting point for valuing landscape. Valuing at a finer grain and assessing landscape susceptibility to change from a particular form of developments is, inevitably, proposal specific.
240. CPRW B&R says that Welsh Planning Policy has proved successful in providing renewable electricity in a timely manner. Through TAN 8 and the MIPPs in 2005 it sought to provide 7TWh by 2020. It achieved that by the end of 2016. Today Wales meets about 50% of its own needs for electricity from renewable sources (43% at end of 2017). England, which imports electricity from both Scotland and Wales, had only achieved 23.5% by the end of 2016.
241. The relatively recent English policy change, effectively allowing local residents to prevent onshore wind development, is less rational than the Welsh policy stance. Here, when considering the landscape impact of a proposal, evidence of whether significant landscape adverse change will result from a proposal is required. CPRW B&R have provided such evidence as has the LPA.

242. CPRW B&R considers that EN-1 and EN-3 as planning guidance are irrelevant to this appeal. They are supported in their view by the recent decision by the Cabinet Secretary Lesley Griffiths regarding a 17.5MW wind farm at Llyn Bran, Bylchau, also known as Pant y Maen, issued on 11/01/2018.
243. The responsibility for dealing with planning issues is devolved to Wales¹³⁹. EN-3, the National Policy Statement for Renewable Energy Infrastructure, and EN-1, the overarching energy policy, were promulgated in 2011 by the DECC, to provide the primary basis for decisions by the now defunct Infrastructure Planning Commission (IPC) on applications it received for nationally significant renewable energy infrastructure. Both documents set out that *"In England and Wales this NPS is likely to be a material consideration in decision making on relevant applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case by case basis."* It is inappropriate to rely on the planning advice in either, more particularly when it is not consistent with Welsh Policy. Neither NPS is a material consideration for a development of this scale¹⁴⁰.

Energy UK

244. CPRW B&R recognises the international obligations currently applying to the UK. The EU in 2001 approved a Directive ("the Electricity from Renewables Directive") aimed at promoting an increase in the contribution of electricity from renewable energy to electricity production. The national indicative target for the UK was 10% by 2010 and 20% by 2020. That was replaced in 2009 by the Renewable Energy Directive seeking similar targets for final energy consumption. The target for the UK was 15%. The UK Renewable Energy strategy¹⁴¹ included 3 sub-targets: 30% in electricity; 12% heat and 10% transport. In Wales and Scotland¹⁴² these electricity sub-targets have been well exceeded.
245. On 30 November 2016, the Commission published a proposal for a revised Renewable Energy Directive to make the EU a global leader in renewable energy and ensure that the target of at least 27% renewables in the final energy consumption in the EU by 2030 is met. Currently only partly in draft it will enter into force on 1 January 2021. The proposed 2030 target is *binding only at EU level*: the target is not translated into individual targets per Member State. The current 2020 binding national targets are however maintained in the proposal as a "minimum baseline" for individual Member States from 2021 onwards. If Brexit means Brexit the UK will not be a Member State and there is no certainty that the UK government will adopt this or any other mechanism.
246. In 2008 the UK set legally binding greenhouse gas emissions through the Climate Change Act 2008. By 2016 UK emissions of carbon dioxide had fallen by 42% since

¹³⁹ Schedule 7 of the Government of Wales Act 2006 sets out the 21 broad subject areas for which the National Assembly has legislative competence.

¹⁴⁰ POL-50

¹⁴¹ POL-6 par.2.7

¹⁴² POL 22 p.10

1990¹⁴³. Total UK supply of electricity in 2016 was 337.7TWh¹⁴⁴. Of that Wales generated 38.8TWh and consumed 16.1TWh¹⁴⁵.

247. Renewable energy in 2016 provided 24.6% of the UK electricity generation mix.¹⁴⁶ Nuclear (low carbon) produce 19%¹⁴⁷. In due course the Wylfa nuclear power station if the application is successful will add significantly to Wales low carbon supply. In 2004 Wales was generating approximately 32TWhs of electricity and consuming approximately 18TWhs¹⁴⁸. It is rather surprising that Mr Frampton was unable to help with Welsh generation figures as he was looking at that page of the document at the time. However it demonstrates that Wales is, as the document sets out, a net exporter of electricity.
248. Unfortunately, the range of documents at UK and Welsh level are inconsistent in unit usage, swapping between oil equivalents, MWs and TWh, so tracing down the comprehensible figures is not easy. CPRW B&R relies on the figures in Wales Energy Generation 2016.

Energy Wales

249. The total energy usage of Wales is 93.5TWhs of which 16.1TWhs is electricity¹⁴⁹. Lesley Griffiths, Cabinet Secretary for Energy, Planning and Rural Affairs, in March 2017 identified that in 2015 Wales had generated 32% of its electricity from renewable sources¹⁵⁰. By 7 December 2016 that figure had risen to 43%¹⁵¹. She has set an ambitious but achievable 70% by 2030.
250. She said "*We've seen significant progress in Wales, with the Government in 2005 setting a target of generating 7 TWh of renewable energy every year by 2020.*" It is worth noting that the 2005 7TWh target was 20% of Wales *generation* output, not its *consumption*¹⁵². 20% of today's consumption would be only 3.2TWh.
251. Since the figures quoted by the Cabinet Secretary, based on Energy Generation Wales 2016, do not extend beyond that year end CPRW B&R have provided up-dated figures¹⁵³. It has only proved possible to update to February 2018 so as to include new wind provision and not that of other renewables. Onshore and offshore wind

¹⁴³ POL-55 p.13

¹⁴⁴ POL-55 p.25

¹⁴⁵ POL-49 p.3

¹⁴⁶ Frampton 2.41

¹⁴⁷ POL-55 p.25

¹⁴⁸ POL-49 p. 3 Electricity Generation trends

¹⁴⁹ POL-49 p.5

¹⁵⁰ POL-21

¹⁵¹ POL-49 p. 5

¹⁵² POL-49 p.3 and TAN8 Annex A par.5

¹⁵³ CPRW B&R Vol 3, file 7, Appendix AE

contribution to the 6.9Twh total, has now advanced from 4.75Twhs¹⁵⁴ to 5.282TWhs¹⁵⁵. This means that the 7TWh target has been exceeded by more than 500GWh (0.5Twh). CPRW B&R notes that currently there are 367.225MW of additional consents where construction has not yet started.

252. Mrs Tregear has checked the figures in the Energy Generation Wales¹⁵⁶ document. The national figures are consistent with DUKES, unfortunately the figures for individual Local Authorities are not. That can most readily be seen on p.7 where the graphical representation of generation in Powys is shown to produce an estimated 7.5TWh. Equally erroneous if less obvious is the identification of 183.6 MW capacity for Powys providing only 55% of requirement. The actual consumption figure in the Aecom Study 2016 and the draft LDP, as Mr Frampton would surely recall, although he appeared not to, set Powys consumption at 606GWWh. That figure is within the 2016 REA¹⁵⁷ and until the recent MACs (MAC 124) appeared in the draft LDP.
253. By 2017 the REA¹⁵⁸ removed the part of Powys that is within the Brecon Beacons National Park and calculated that Powys consumed 500GWh. It identified output from renewables as 809.5GWh from 336.7MW installed capacity. That is Powys generated from renewables 181% of consumption¹⁵⁹, however, the REA included consented in their figures. The Installed capacity figure is in the new LDP. Assuming a common ratio of MW to GWh 183.6MW would generate approximately 441GWWhs or 88% of consumption. Mrs Tregear used a conservative estimate and put that figure at 81%.
254. In 2016 Wales had an installed capacity 2,854MW of renewable electricity¹⁶⁰ with 920.2MW of that being onshore wind. The output of 6.9TWhs was made up of 35% offshore and 34% onshore wind with 30% of installed capacity being solar.
255. Lesley Griffiths's new target of 70% of consumption fits better with International obligations and allows for the reduction in usage which Welsh policy seeks. No sub-targets for technologies are set which allows for the target to be met by any mix of renewable energy. If Wales succeeds in bringing tidal energy forward Swansea Lagoon would add 330MW of capacity, whilst Cardiff Tidal Lagoon would add 3240MW. CPRW B&R welcomes any technology which will aid reduction of greenhouse gases - provided they are appropriately located.
256. Lesley Griffiths apparently takes the same view and in answer to questions said *"I'm passionately in favour of windfarms in the correct place. You don't want them all together - well, that is why we have strategic search areas. We put the large ones together there to save them from being on every mountain top"*.¹⁶¹ She was, at the

¹⁵⁴ CPRW B&R Vol 3, File 7, Appendix Y Energy Generation Wales 2016 p.6

¹⁵⁵ CPRW B&R Vol 3, file 7, Appendix AE

¹⁵⁶ POL-49

¹⁵⁷ POL-41, p.15

¹⁵⁸ POL-42 Table 31,p.56

¹⁵⁹ POL-42

¹⁶⁰ POL-49 p.5

¹⁶¹ CPRW B&R Vol 3, File 7, Appendix Z

time, seeking to persuade the UK Government to provide renewable investment, either through CfD or price floor, to support onshore wind and solar deployment¹⁶².

257. CPRW B&R acknowledges that additional renewable energy is required, that financial support will assist in its deployment and, potentially, the economy of Wales but the crux is as spelled out by her - it has to be in the right place. This proposal is not.

258. A similar view is expressed in the Welsh Government public position on support for onshore wind and solar development of 29/11/2017.¹⁶³ *"Policy in Wales supports further renewable generation in the appropriate sites and at an appropriate scale. Their impact and contribution to the resilience of our natural resources and ecosystems, and the benefits they provide to wellbeing, will be key to their consideration. We believe the Wellbeing of Future Generations Act, the clear direction in planning policy and the direction set within the Natural Resource Management policy provide a supportive framework to appropriately harness our rich natural resources, maintaining and enhancing the resilience of Wales' ecosystems, in a way which people who live and work in Wales will support. With careful planning, there is potential for significant renewable energy deployment in Wales"*. This is not an appropriate site.

Welsh Planning Policy and Legislation

259. Wales has taken a lead in seeking a more sustainable future through the Environment Act 2016 and the Well-being of Future Generations (Wales) Act 2015. The two are linked, the first addressing sustainable use of natural resources and targets for greenhouse gas emissions, and the second defining sustainable development and setting well-being goals. The Planning (Wales) Act 2015 introduced a statutory purpose for the planning system - any statutory body carrying out a planning function must exercise those functions in accordance with the principles of sustainable development as set out in the Well-being of Future Generations Act.

260. The goal¹⁶⁴ of sustainable development is to "enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations." The Well-being of Future Generations (Wales) Act 2015 identifies 7 well-being goals to help ensure all public bodies are working towards the same vision of a sustainable Wales¹⁶⁵. Wales has taken those targets and goals into Welsh planning policy. Many of those goals have relevance to this proposal and but not all are supportive of it. One of the goals is "Using scientific knowledge to aid decision-making, and trying to work out in advance what knowledge will be needed so that appropriate research can be undertaken"¹⁶⁶. The evidence showed that goal to be particularly relevant to the issues raised by this appeal.

261. TAN8 continues to be endorsed by Planning Policy Wales (ed.9). TAN8 and the MIPPs update to the then current PPW, in 2005, made a marked divergence from English guidance by identifying at an all Wales level where onshore wind energy should in the

¹⁶² CPRW B&R Vol 3, File 7, Appendix AA Written Statement Lesley Griffiths 29/11/17 Witness 7

¹⁶³ POL-21

¹⁶⁴ POL 19, PPW 4.2

¹⁶⁵ POL 19, PPW 4.4.4

¹⁶⁶ POL 19 PPW 4.4.1

main be located. When updated in 2011, to increase the number of turbines that the SSA's could accommodate, giving a new potential of 1700MW, no changes were made to the tests of impacts on areas in or outside the SSA's.

262. TAN8 advises that *"Most areas outside SSAs should remain free of large wind power schemes"*¹⁶⁷. For the purposes of the TAN large scale is defined as over 25MW. The TAN is accompanied by an Annex¹⁶⁸ containing excerpts from the 2005 Arup Report, identifying a potential methodology for LPAs with Strategic Search Areas to assist them in their study and refinement of such areas. The Annex notes the implicit objectives of TAN8 for landscape character with reference to 3 area types: within National Parks; in or adjacent to SSAs; the rest of Wales outside the SSAs. This development is located in the latter category.
263. Only within and immediately *adjacent to SSA's should "significant change to landscape character from wind turbine development" be accepted*¹⁶⁹. In the rest of Wales, except the National Parks, *"the implicit objective is to maintain the landscape character i.e. no significant change in landscape character from wind turbine development."*
264. Outside SSAs the TAN advises that *"In these areas, there is a balance to be struck between the desirability of renewable energy and landscape protection. Whilst that balance should not result in severe restriction on the development of wind power capacity, there is a case for avoiding a situation where wind turbines are spread across the whole of a county. As a result, the Assembly Government would support local planning authorities in introducing local policies in their development plans that restrict almost all wind energy developments, larger than 5MW, to within SSAs and urban/industrial brownfield sites. It is acceptable in such circumstances that planning permission for developments over 5MW outside SSAs and urban/industrial brownfield sites may be refused."* (emphasis added by CPRW)
265. This guidance is particularly apposite to Powys which has, as its energy contribution demonstrates, already played host to numerous wind power schemes and where its up to date Renewable Energy Assessment indicates there remains capacity for a bare 4MWs more. The paragraph of guidance is also indicative of a scale of development which might be appropriate, that is under 5MW, here we are concerned with 17.5MW.
266. PPW seeks to optimise renewable energy development which indicates it seeks the best outcome when balancing the benefits of renewable energy provision with harm to the local environment, which may contain assets of national and international value. Decision makers need to ensure that development management decisions are consistent with national and international climate change obligations, including contributions to renewable energy targets and aspirations; and at the same time ensure that international and national statutory obligations to protect designated areas, species and habitats and the historic environment are observed¹⁷⁰.

¹⁶⁷ POL 20, TAN 8 par.2.13

¹⁶⁸ POL 20, Annex D

¹⁶⁹ POL 20 TAN 8, Annex D, par.8.4

¹⁷⁰ POL-19, 12.8.10

267. This location is ill chosen. It is accepted that the annual production of approximately 45GWhs is a useful contribution to the UK's energy needs and to the global fight against climate change but it is, according to Mr Croft harmful to nationally important heritage features, according to Mr Myhill harmful to red list bird species, puts at risk a European site according to the evidence of CPRW B&R and NRW who seek to address risks to it and species within it through conditions.
268. PPW 9 says that *"2.1.2 Up-to-date Local Development Plans (LDPs) are a fundamental part of a plan-led planning system and set the context for rational and consistent decision making in line with national policies. Planning applications must be determined in accordance with the adopted plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004)."*
269. CPRW B&R leaves the main discussion of LDP policies to the LPA.
270. This site is located within a solar PV LSA. Such areas are those least constrained for that form of development. There is no indication in the plan that it is in any way "unconstrained" for wind energy save that the site does not lie in a designated area.
271. RE1 now considers that proposals for other renewable and low carbon energy in solar PV LSAs will only be permitted where they can demonstrate they would not prejudice the purpose of the LSA. This LSA is already affected by mineral safeguarding of the southern part. Only southerly facing slopes are suitable for PV. It is an undulating area. Clearly not all of the area will be suitable for PV and there is, therefore, danger that other development which takes up potentially suitable areas may prevent development of 10MW of PV. There is no evidence adduced by the appellant which shows that this proposal would not prejudice the purpose of the LSA. All renewable energy proposals must accord with other policies in the Plan.
272. The LDP examination Inspector's Report identifies that:
- "Strategic Policy SP7 as modified by MAC 35, provides a framework for the safeguarding of: land designated at international, European and /or national level for environmental protection; the historic environment; recreational assets; and the landscape.*
- The strategic policy is supported by Policies DM2 (A), DM2, DM3, DM15 and MD1 which provide a mechanism for assessing proposals in relation to the natural environment, historic environment, public open space, landscape, design and resources and Sennybridge Training Area. Matters in relation to the safeguarding of minerals resources and strategic infrastructure routes are addressed in Sections 8 and 9 of this report"*
273. Those policies of the emerging LDP that are conflicted by the proposal are: SP7 which requires no unacceptable adverse impact on a range of strategic resources and assets including European Sites, SAMs and their settings, landscape and public rights of way; DM2 which replicates the statutory position on species and habitats, the setting of assets, recreational resources including but not limited to the public rights of way network; DM4 which requires proposals to be sensitive to the characteristics and qualities of the landscape including its topography, historical and ecological qualities and tranquillity and to have regard to the visual amenity enjoyed by users of Powys Landscapes; DM6 Flood Prevention which advises that any development that unacceptably increases risk will be refused and requires satisfactory provision for land drainage.

274. That the LDP and Welsh Policies did not and do not set a high barrier to renewable energy but rather seek and have sought to facilitate deployment is established by the results. Both have notably exceeded the expected EU target and the indicated UK sub-target. They have done so whilst protecting assets acknowledged in policy and guidance at all levels.

Environmental Information & The Habitats Regulations

275. This is an EIA application. The ES is only part of the environmental information which the decision maker must take into account. The responses of consultees and local people are also part of the necessary information. They can point out errors and omissions in the ES and bring forward additional information where there is a lack.

276. That is made clear by The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017¹⁷¹. Not only must the decision maker take such information into account as well as the ES but the EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of proposed development on, inter alia, people; biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC(1) and Directive 2009/147/EC(2); soil, water and climate, material assets, cultural heritage and the landscape; the operational effects of the proposed development; and the Welsh Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement. The ES must contain a description of the proposed development comprising information on the site, design, size and other relevant features of the development; a description of the likely significant effects of the proposed development on the environment; a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment.

277. The Regulations define the "area of the works". It includes any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation.

278. The "works" therefore include both routes from the A44 to the site as well as the turbine sites, crane pads, service tracks to them, the quarry to the south and its associated tracks and any drainage/attenuation or filtering/settling provision, the control building and any temporary or permanent compounds. Unfortunately, the description of this development fails to properly describe the works. There are alternative turbine track designs, no drainage/silt trapping/attenuation schemes, an assertion that the North and South access tracks require "upgrading" when what is intended is radical alteration and widening. There is no plan showing all water features or areas of wetland on site. As a result of these omissions it is impossible to describe the likely significant effects of the development or to adequately describe mitigation measures.

279. This proposal also concerns risk to a European site so that the Welsh Ministers will have to consider whether they have sufficient information to be sure that harm to the

¹⁷¹ At the end of presenting closing submissions the CPRW B&R acknowledged that the earlier (1999) version of the EIA Regulations are the ones in force for this appeal but pointed to its similarity with the more recent version as set out in a short paper (ID57).

SAC will not arise¹⁷². In this case prevention of harm as NRW pointed out in their original objection depended on mitigation. They now suggest that can be achieved by condition. That can only be right if you have cogent evidence that what is suggested will work. Unfortunately, the red line around the works is very tight making provision of attenuation or filtration or settlement ponds potentially impossible. The plans and drawings provided contain no designs for such works and do not even show the nature of the structure adjacent to Pye Corner and hard by the Edw.

280. There have been provided no details of the current surface water run off nor any demonstration that it will not increase following the development nor any assessment of the streams' capacity to accommodate additional flow or to dilute any suspended silts. It hardly increases confidence in the appellant's hydrologist's bland assertions that all will be well that this work was not done, nor did the fact that neither he nor the NRW respondent who advised that conditions would serve, note that the supposedly supportive Technical Appendix was omitted from the ES.

281. In this case:

- NRW originally objected having identified the need for additional information by their scoping response. They now seek conditions to protect the SAC and protected species. It is doubtful that given the lacuna in the ES that sufficient information exists for suitable and certain conditions to be framed to satisfy either the EIA or Habitats Regulations. NRW's advice regarding landscape still stands.
- Cadw and the LPA have supplemented the information provided regarding heritage interests and disagree with the ES assessments.
- The LPA and CPRW B&R have provided professional evidence to show that the impact on landscape character is understated in the ES.
 - i. There is broad agreement between all landscape architects regarding the range and extent of visual impact. What is apparent from Ms Bolger's evidence, and she is an experienced assessor for wind farm inquiries as well as a noted educator of both Inspectors and members of her own Institute, that visual impacts of over 6km are rarely significant whilst landscape character effects which are significant beyond the extent noted here are a rarity.
 - ii. The evidence of Ms Bolger, taking the information from all layers of the LANDMAP data, then carrying out her own finer grained assessment, and applying the methodology of GLVIA3 arrives at very similar conclusions on Landscape character as Mr Russell-Vick who has used the technique of unioning supported by LANDMAP Guidance Note 1.
 - iii. The impact assessed by NRW is that the proposed development would have a significant adverse regional effect upon landscape and visual resource. That advice supports Ms Bolger's enhanced value to the VSAA of Llandegley Rocks. The Open Spaces Society (OSS)¹⁷³ describes the views as "breathtaking".

¹⁷² S63 - Assessment of implications for European sites and European offshore marine sites, Conservation of Habitats and Species Regulations 2017/1012

¹⁷³ CPRW B&R Volume 3, File 7, tab U of CPRW B&R Appendices

- CPRW B&R adopts the evidence of Mr Croft on heritage assets. Ms Bolger did not seek to address other than the heritage elements of the Landscape beyond the LANDMAP layer. That values the relevant area as outstanding. These historic assets take their setting from the landscape in which they lie and are appreciated within it. Mr Croft has addressed the assets and the contribution to their significance flowing from the setting. The two assessments are mutually supportive but different in intent.
- CPRW B&R, as did OSS at application stage, noted that the area within which 5 of the turbines of this proposal stand, formed part of Awards made under the Inclosure Acts. By those awards the public were granted in perpetuity a right of access “*for air, exercise and recreation*” for which gates and stiles should be provided at convenient intervals. The award is gratefully recorded on tablets in 2 local parish churches¹⁷⁴: Cefn Llys and Glascwm. Mr Le Quesne was unaware that OSS had provided information relating to the Commons Awards at application stage. Inevitably he was unable to comment on their content. Ms Hawkins was equally unaware of the Public rights of access when preparing her evidence.
 - i. CPRW B&R have provided a copy of the relevant extant parts of the Commons Act 1876 and of the Local Acts and Awards.
 - ii. No evidence has been adduced by the appellant to negate those rights nor have CPRW B&R, despite extensive research in the archives found any such evidence. Such public rights are an overriding interest surviving registration. This is therefore an element which should have been considered by the appellant’s Landscape and Heritage witnesses not least as it had been raised at application stage. It is unfortunate that Mr Le Quesne was in error regarding the period of enclosure¹⁷⁵. The former commons were in fact enclosed during the 19th century.
 - iii. Asked about the impact had she considered it Ms Hawkins took the view that it would reduce impact as people would have access over all of the area. Whether increased access to a wind turbine development is beneficial to one wishing to walk, fly a kite or watch one, is a matter of judgment.
 - iv. What is clear is as Ms Tregear pointed out there is already a public right to pass over the land proposed as a mitigative permissive footpath extension.
 - v. In CPRW B&R’s view relevant enclosed land should be treated in the same way as OAL under the CROW Act.
- CPRW B&R have pointed out:
 - i. that the bare but ever-changing details of the track design, the omission of site specific data on existing and post construction surface water flows, on water treatment to prevent silt pollution of water courses above the SAC, and on attenuation, prevent the degree of certainty required, in respect of water issues, for EIA and AA purposes. Furthermore the tight redline boundary suggests that should any substantial works be required to address such issues

¹⁷⁴ CPRW B&R Vol3, file 6, tab f. Photo Glascwm Church St David Glascwm

¹⁷⁵ Le Quesne Appendix 1, final page

- there is very limited scope to provide them. Additionally the 20m watercourse buffer proffered by the ES in CPRW B&R's view cannot be achieved by the Edw.
- ii. As a result, CPRW B&R submits that there can be no certainty that the SAC will not be adversely affected.
 - iii. The response from WYG (of 14/03/2018) under the heading Chapter 10 says that "*the hydrology assessment did not consider the amount of earthworks it considered the effectiveness of the mitigation proposed to address the effects identified from the type of construction activities that would be required to build the scheme as shown on the application drawings.*"
 - iv. CPRW B&R notes that no culverts or other drainage, attenuation, or filtration system was shown or supported by any calculation of by how much the road construction would affect the surface water flows from the site or how the new design mitigated a previously unassessed impact.
 - v. It also notes that the tight redline and the lack of detail at the bends by Pye Corner raise concern regarding the impact on Mrs Everett's home from the required engineering of the 3.25m structure identified on map ES 2020783-100-002 Rev A. That is the one plan which has not been replicated in the new drawings. It also shows a 1m retaining structure directly opposite her entrance with some unspecified addition, possibly showing drainage works.
- The ES ornithological assessment, whether conducted in accordance with guidance of any period or not:
 - i. severely underestimated the starling, a red list bird, numbers;
 - ii. failed to observe a wide range of raptors, including red list birds, drawn to the site by the starlings;
 - iii. failed to conduct surveys suitable for providing information regarding bird presence in areas adjoining the north and south access tracks to the site despite an adventitious observation of breeding curlew, one of the most threatened red list birds;
 - iv. failed to adjust their surveys to address the species and site issues, most obviously by omitting dusk surveys of the starling roost and night surveys of the wader migrations;
 - v. failed to record on the VP survey notes weather conditions, times of flight duration over WT locations, flight height, failed to provide sufficient surveyors to cover entire survey area at any one time.
 - vi. CPRW B&R provided clear evidence by film, photographs, oral evidence of an experienced watcher together with a written record (Jennings Birds Of Radnorshire), of numbers, types, and threatened status of the birds present on the site.
 - vii. Whilst the watcher, Mr Myhill, claimed no experience of wind turbine development and its capacity to harm such birds, whether by disturbance, displacement or killing, the appellant has identified no site where such numbers and types have been exposed to such risks.
 - viii. Mr Myhill's experience and those fellow ornithologists he consulted took the view that the development would cause the roost to disappear. This would

inevitably not only displace the starlings but also remove a food source for the local raptors.

- CPRW B&R also provided evidence of the failure of the ES or the HRA to provide adequate information to satisfy the strict requirements of the R.63 of the Habitats Regulations by:
 - i. Failing to comply with recognised guidance on habitat and species assessment and policy guidance on the necessary information for addressing hydrological concerns which potentially puts the SAC at risk.
 - ii. Failing to provide the information required by NRW so that conditions are now needed to be drafted in the absence of such information.
 - iii. CPRW B&R notes that the emerging LDP requires full information relating to surface water flows and drainage to be provided.
- The ES identified tourism as one of the most important employment sectors in Powys¹⁷⁶. It reviewed mainly Scottish and English tourist reports prepared between 2003 and 2008¹⁷⁷ on behalf of the energy industry. It is notable that the Scottish study in 2008 noted a minimal impact if the windfarm was not visible from important tourist corridors. The 2013 Renewable Cymru report reported in the ES showed a 23-33% response that their desire to visit would be affected.
 - i. CPRW B&R note that the area is within an analogous situation to an important tourist corridor. It is at the heart of the best bridleway network in Wales. It is close to and clearly visible from the main route to Wales from the English Midlands – the A44.
 - ii. Inspector Nixon at the Pentre Tump Appeal in 2013¹⁷⁸, when considering 3 WTs of 103.5m in height, south east of Llanfihangel Nant Melan identified the volume of traffic using the A44 (par.17) which he describes as a “principle leisure route into Wales”, the permanent change to riders' experience from the physical alteration of the bridleway to access track (par.25), and found (par.36) the LVI impacts unacceptable due to its effects on the A44, the village and the bridleway network.
- CPRW B&R produced evidence on tourism.
 - i. A business owner, Graham Williams, gave evidence of potential impact on the economy of the area of adverse impact on the scenic quality of the landscape. Mr Williams identified 58 riding routes used by his business which all pass within view of the site. Using local accommodation for 2500 nights a year it contributes £175,000 to that part of the local economy. Additionally it provides a similar multiple of £170 pounds a day from horse hire and provides employment for 7 people.
 - ii. Mrs Jill Kibble, Chair of Montgomery Tourism Committee, identified both the lack of peer review for those Welsh studies, the unique tourist draw of Powys and the

¹⁷⁶ ES, Volume 1, par.6.3

¹⁷⁷ At 6.5.4

¹⁷⁸ Vol 3, file 5, tab E

higher degree of concern expressed by those using rights of way. She identified The Welsh Government Strategy for Tourism 2013 which included a 10% growth target. Tourism earns some £190 million from day walking alone. The claimed benefits to the local economy from the windfarm (at ES Tables 6.3 & 6.4 and paragraph 6.7 of the ES) compare poorly with that tourism earning figure.

- A Mr Lloyd claims to own land which will be affected by the development. He received no notification of the application and Mr Fraser says, on behalf of the appellant, that the works will take place on highway land. Only the surface of the road is vested in the Highway Authority. Mr Lloyd's land is separated from the unclassified road by a bank. The highway boundary in such a location is the toe of the bank. The drawings of the ES show a 1m high retaining feature and a gate requiring removal and relocation. These features are immediately opposite Mrs Everett's home. It is difficult to see by what right the appellant claims to be able to carry out such works in the absence of Mr Lloyd's agreement. If the result is that the road is narrowed at that location there may be adverse impact on Mrs Everett's access. In any event she is much concerned regarding access during construction works for herself and emergency vehicles.

LVIA Witness Assessments

282. NRW advised that the *"proposed development cannot be accommodated without significant adverse regional scale effects."* The statutory consultee notes *"the landscape and visual sensitivity of the area, which includes valued perceptual qualities of ridges and uplands of high scenic quality; attractive views, tranquillity and historic landscape integrity across much of the area; and the areas access and openness to views from the public rights of way network, open access land, national cycle trail and main roads."*
283. It is notable that NRW considers that LANDMAP has underplayed the scenic qualities of this northern part of the extensive area. NRW rates the Llandegley Rocks as of high scenic quality. It also notes the outstanding (national level) historic landscape evaluation and the high (regional value) of much of the area.
284. Mr Russell-Vick, landscape witness for the LPA, and Ms Bolger, landscape witness for CPRW B&R, and Ms Hawkins for the appellant all find significant (moderate/major or greater) adverse impact on landscape of the area, extending out to about 5km and significant visual impact extending to 6km and beyond.
285. Mr Russell-Vick finds these impacts unacceptable. Ms Bolger considers the impacts show that, contrary to PPW, the development is not sensitive to local circumstances, and that the appellant has failed to minimise impact through careful choice of location: the landscape and visual harm that would result from the Hendy WTD would be as a direct result of the choice of location in a distinctive generally unspoilt landscape. Furthermore Hendy WTD would result in a major adverse impact on landscape character contrary to the implicit objective of TAN 8 to maintain the landscape character.
286. Ms Hawkins, although acknowledging major impacts considers that it would be impossible to site large, moving structures such as wind turbines in the UK landscape without some significant effects on landscape character and visual amenity and, in her opinion, the appeal proposal could be satisfactorily accommodated in this location without undue consequences for landscape character or visual amenity. In giving that opinion she ignores the somewhat different Welsh advice in PPW and relies on EN-3, she considers that a proposal, having in her own opinion major and wide-ranging

impacts, can be satisfactorily accommodated in an area of regional value, and fails to recognise that at the very least one of the "*undue consequences*" is to conflict with Welsh policy, and the development plan, the LDP.

287. Both Ms Hawkins and Mr Frampton cite from EN-3¹⁷⁹ par. "2.7.48 *Modern onshore wind turbines that are used in commercial wind farms are large structures and there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around a site.*" Neither makes reference to par. "2.7.12 *Developers will usually need to construct access tracks to connect onshore wind farms to the public road network. Applications should include the full extent of the access tracks necessary and an assessment of their effects.*"
288. The ES fails to consider the full impact of the tracks either to viewer or user, identifying only that the northern access track will be "upgraded" when both it and the BOAT to the south will require substantial works of alteration and widening. The ES and the appellant's photomontages fail to provide visualisations which show the tracks despite this development being widely visible from surrounding areas including those looking down on the site and the suggestion that they may be permanent features if local farmers wish them to remain.
289. Welsh Guidance in 12.8.12 of PPW gives somewhat different advice with regard to the impact of wind development. "*The Welsh Government accepts that the introduction of new, often very large structures for onshore wind needs careful consideration to avoid and where possible minimise their impact.*" It continues at paragraph 12.8.15: "*The impacts from renewable energy developments and associated infrastructure will vary depending on their type, location and scale. This requires different policy and development management considerations*".
290. This development is of Local Authority scale but, according to the statutory consultee will have regional impact on landscape. PPW repeats the advice regarding location, scale (12.10.3) "*Developers for renewable and low carbon energy developments should seek to avoid or where possible minimise adverse impacts through careful consideration of location, scale, design and other measures.*" It also advises that "*Developers will need to be sensitive to local circumstances, including siting in relation to local landform, proximity to dwellings and other planning considerations.*"
291. Ms Bolger had identified a commonly accepted list of characteristics which rendered landscape more or less suitable to wind turbine development. Ms Hawkins in cross-examination agreed their relevance. In re-examination she claimed that the area affected was open and dominated by forestry or impoverished moorland. In so doing she contradicted the ES and her own previous description of the landscape around the site as being in a "bowl"¹⁸⁰. The ES identifies the appeal site as being improved or semi improved pasture with hedged boundaries, having a "small group of conifers"¹⁸¹. Miss Hawkins found impact on a number of VSAs of differing character¹⁸². The ES says "large parts of the study area comprise upland moorland and plateau landscape, although these areas are generally at a distance from the proposed site, which is

¹⁷⁹ POL-2

¹⁸⁰ 3.13

¹⁸¹ 4.2 and 4.3

¹⁸² 5.11-5.17

within and surrounded by rolling hill and valley landscape"¹⁸³. This can be seen in the range of photographs showing the land cover and from visiting the site.

292. Mr Frampton's last ditch attempt to suggest that a site identified for solar PV is suitable for WTs should be disregarded. The Inspector makes quite clear at 11.7-11.8 of her letter that she considers the LSA relatively unconstrained for solar. The LSA has not been assessed in accordance with the toolkit for any other purpose and she does not imply that it might have potential for any other technology.

Conclusion and request

293. CPRW B&R submits that the planning balance should be conducted in the light of Welsh Policy and Welsh targets. This is a location where development of this scale will do significant harm to landscape, historic assets and enjoyment of rights of way. The proposal is so poorly designed that it cannot show that it will avoid impact on the SAC. Its proposed mitigation in respect to one of the most important starling roosts in Wales is to fell the roost. It is a proposal which will have an adverse impact on local tourism, harmful to the local economy.
294. For the reasons set out above CPRW B&R respectfully requests that the appeal is dismissed by the Welsh Ministers.

Other Persons appearing at the Inquiry

295. Ms Christine Wozencraft and Ms Catherine Mitchell support the scheme. Ms Wozencraft lives nearby at Graig Farm. She emphasised the benefits of renewable energy, particularly when compared to the environmental and health harm caused by nuclear power. Ms Mitchell is a local resident who suggested that the silent majority of local residents were in favour of the scheme as well as referring to the sustainable and security benefits of renewable energy and pointing to the benefit to the local economy. Ms Alison Williams was also a local resident in support of the scheme who explained that, as there was no public access to Graig Camp, any effects would not be seen by the public.
296. Cllr Dodman represented 2 local Community Councils – New Radnor and Penybont. He was concerned that the local community had not been properly engaged by the developer, noting that there had no meeting of the commoners to address the effect on graziers. The landscape was an asset that was owned by everyone. The impact on the local starlings was a matter of particular importance both in terms of their ecological value and as a tourist attraction.
297. Cllr Dodman also explained that he was presenting the concerns of Mr W Lloyd as set out in a letter (ID02). Whilst Mr Lloyd, who lives in Carmarthenshire and is now of advanced years, had been aware of the scheme for some time but he became aware of the details very recently. As a result he considers that the scheme would include proposed works on land which he owns, and to which he would not agree.
298. Mr Michael Rolt lives in Llandrindod Wells. The bowl like shape of the site and surroundings made it particularly susceptible to visual harm and was in marked contrast to the larger, more remote landscapes within which other Powys wind farms were located. It would be jarring for users of the A44 road. As a keen walker, Mr

¹⁸³ 5 Page viii par.5

Rolt was particularly concerned over the significant harmful impact of the scheme on several circular routes from Llandrindod to Llandegley Rocks that were locally popular.

299. Mr Geoffrey Sinclair described his extensive experience of windfarm projects throughout and beyond Wales. His written representations in advance of the Inquiry are wide ranging but he focused his oral evidence on the status of the nearby Llandegley Rocks as a Regionally Important Geological Site (RIGS) (supplemented by ID10 & ID24). It was explained that whilst the geological characteristics would not be directly affected by the scheme, they produced a distinctive landscape which was easily understood by passers-by.
300. Ms Diane Hulton lives some 3.5km from the site and expressed concern that the visual impact from her property and surrounding area was not analysed in the photomontages that support the appellant's assessment.
301. As a local resident Ms Azra Dale (ID36, ID42) pointed out that much of the proposed development will not be reversed. The concrete structures required to anchor the turbines are vast and there is no intention to remove them when the turbines are decommissioned. The irreversible impact on the earth's finite resources including aggregates and metals and the implications of transport run counter to sustainability principles. The impacts on a highly valued landscape and the consequential impacts on heritage and tourism were significant concerns.
302. Ms Mary Davies and Ms Julie Leggett are local residents with experience of providing holiday accommodation. Both emphasised the importance to the local economy of tourism opportunities linked to horse riding in the local countryside which would be much affected by the presence of turbines. Ms Davies also referred to the well-being benefits enjoyed by many visitors. Ms Leggett was concerned over the safety implication to riders when horses are startled by turbines. Ms Pip Le Teppitt reinforced Ms Davies' comments and emphasised the increasing reliance of Powys on tourism in response to a decline in farming.
303. Mr Leigh Harling-Bowen is a former Environmental Co-ordinator for PCC and is a local resident who, on the basis of his relevant professional experience and qualifications, raised concerns over potential pollution of local private water supplies and drew attention to recent legislation¹⁸⁴. He emphasised the importance of establishing baseline data to enable any impacts to be identified and also expressed concerns over the potential impact of water borne silt on fish in the SAC.
304. Mr John Raymond Doré's concerns were focussed on the Bryn Blaen site near his home in Llangurig in terms of the way the construction work has proceeded including issues over compliance with some planning conditions (ID38).
305. Mr Richard Martin is a local resident who had a career as an electrical engineer. He expressed concern over inconsistencies in the way UK and Welsh policy statements defined targets in relation to renewable energy as detailed in ID49.

Written Representations

306. In response to the appeal Cadw pointed to the introduction of a new definition of the setting of historic assets in TAN24 to that used in the ES and reiterated its advice as statutory consultee to the planning application. It expressed concern that the

¹⁸⁴ The Private Water Supplies (Wales) Regulations 2017

methodology used to assess the indirect impact on historic assets had led to a downgrading of the importance, and consequently led to an underestimation of the magnitude of impacts on 4 SAMS – Llandegley Rocks Hillfort (RD264), Graig Camp (RD112), Nant Brook Enclosure (RD147) and Castell Crug Eryr (RD003). It also expressed concerns that the other works, including access tracks and other structures, had not been assessed, certain SAMs had not been visited during the study and impacts on settings and inter-visibility (particularly RD264 and RD112) had not been fully assessed. It also referred to limited consideration of the impacts on undesignated monuments including a larger enclosure of potential national importance occupying Llandegley Rocks and sharing the same setting.

307. On the eve of the Inquiry Cadw expressed a desire to comment on the appellant's written statement of evidence on heritage (ID01) which were subsequently set out in a paper (ID21). It explains that it considers that Mr Le Quesne's assessment to be more detailed than that of the ES but continues to significantly understate the impacts on local SAMs. It expresses agreement with the analysis of Mr Croft that the scheme would have a significantly damaging impact on the setting of Llandegley Rocks Hillfort, Graig Camp, Nant Brook Enclosure and Castell Crug Eryr. It also considers that there would be a cumulative adverse impact on these settings and a 'considerable number of other designated and undesignated heritage assets'.
308. At the application stage NRW confirmed, in response to additional information provided by the appellant, that the scheme would not have a significant effect on protected species subject to the mitigation measures outlined in the ES and the imposition of conditions to secure a Protected Species Protection Plan and a Habitat Management Plan. In an earlier letter NRW set out its response on the landscape and visual impact of the proposal advising that it would have significant adverse regional effects upon landscape and visual resource. It advises that the LVIA underplays the significance upon views from some locations and fails to consider the impact of associated infrastructure works such as the access tracks. It also confirmed that no nationally designated landscapes would be impacted (ID13).
309. In addition to letters submitted at the planning application stage some 125 letters were submitted in response to the appeal stage. Almost all were in objection to the development and were from local residents, local businesses, visitors to the locality or the wider area. The objections also included the Community Councils of Penybont District and New Radnor. The local Assembly Member, Kirsty Williams, has strongly objected to the proposal in her capacity as a constituency AM. Several organisations have also objected, including: Open Spaces Society (OSS), Powys Ramblers, Southern Marches Area Quaker Meeting; Llandrindod Wells & Area Chamber of Trade & Tourism; Radnorshire Wildlife Trust.
310. In addition to those matters of concern to the Council and CPRW B&R, the other main matters raised in objection are: the implications of transportation on the highway network; the effect on nearby living conditions from the noise of the turbines and potential triggering of epilepsy; effect on listed buildings including The Pales Meeting House; failure to assess impact on Larch Grove listed building; the health and safety risk of structural failure including turbine blades being 'thrown'; the danger to equestrians; the disproportionate contribution by Powys to renewable energy production already; clustering of turbines increases risk of targeting by terrorists; and that overwhelming local opposition should be respected by the decision maker. Whilst some objectors argue that scheme would be ineffective in terms of contributing to energy generation or consider that different strategies should be deployed to tackle

energy demand, others emphasise that they are supportive of such developments in principle.

311. The OSS suggests that legal advice should be sought on the implications of the scheme on the rights of access afforded by the inclosure awards. Noting the separate consents under the Commons Act 2006 that would need to be obtained, it suggests that there is 'no possibility' of finding suitable land to offer in exchange of the common land that would need to be deregistered.
312. At the outset of the Inquiry a bundle containing 85 or so undated letters was submitted expressing support for the proposal (ID55). The main points raised are: that the construction and maintenance phases of development would benefit local businesses and would generate between £4.5-6.75 million of investment on the Powys region and some £20 million into the Welsh economy; it represents farm diversification which is supported by Government; a proposed benefit fund it would support local groups and projects; it would reduce the use of fossil fuels and would generate enough electricity to power 9,800 homes per year; it has its own grid connection to existing capacity without depending on the mid Wales hub; there would be no harm to the local ancient monuments, to wildlife or the views; there are no wind farm within 20 miles or so of the site; the 'silent majority' of local residents support the scheme.

Conditions and Obligations

Planning Agreement

313. During the Inquiry the appellant presented a revision to Schedule 2 of an earlier draft version of a section 106 agreement (ID45). The appellant confirmed that it was confident of obtaining the signature of the mortgagee to the amendment to the agreement, having already obtained its approval to the earlier version. The Council confirmed that it was satisfied with the amended version and produced a note (ID46) to confirm that it considered that the submitted obligations met the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. It also confirmed that as the obligations refer to works within the locality that no breach of the 5 project limit set out in Regulation 123 would arise.
314. The obligations would secure a financial contribution to be used to improve public rights of way within 10km of the appeal site and would also secure the provision and maintenance of a recreational route across the site during the lifetime of the development that would provide an alternative route to that directly affected by the works.
315. I consider that the obligations are necessary, are related to the proposed development scheme and are related in scale and kind, and thereby meet the tests set out in Section 122(2) of the Community Infrastructure Levy Regulations 2010 and Circular 13/97: Planning Obligations. However, an executed agreement has not been submitted. In the event that a duly signed version of the document was provided to the Welsh Ministers it should be afforded weight in the determination of the appeal.

Conditions

316. The main parties presented several iterations of draft suggested conditions (ID31, ID44) which were discussed at the Inquiry in the light of Circular 16/2014. CPRW B&R provided written comments (ID51) and subsequently participated in a detailed

discussion of these conditions. As a result a refined list was subsequently submitted (ID54). That list forms the basis of the schedule set out in an Annex to this report.

317. The conditions seek to ensure that the development commences within the standard 5 years of permission and is time limited in accordance with the description of the project to 25 years. There are controls over the decommissioning of the scheme and to secure adequate restoration. Micro-siting is permitted within specified limits and in accordance with a protocol to be agreed. Management plans to control environmental effects, pollution, hydrology, public access, traffic, protected species protection, and habitat enhancement are to be agreed and implemented. Other conditions would: control the appearance of the development; control the construction work; require landscaping; require the investigation and protection of archaeological features; require the monitoring of ecological features; maintain the supply of television signal; and ensure that the Ministry of Defence are notified of the presence of the turbines. During the potentially disruptive periods of construction and decommissioning a condition to require a community liaison scheme is proposed. Finally a condition to control noise emissions to protect local residents is proposed.
318. In drawings submitted at the start of the Inquiry the appellant has demonstrated that the extent of the engineering operations to construct access tracks could be considerably reduced from that shown in the details accompanying the planning application. There was no objection to the imposition of a condition requiring the work to be undertaken in accordance with these latest drawings which would reduce the visual impact of these works whilst ensuring effective access for the construction work.
319. The proposed scheme requires approval to be obtained to undertake work to the common land. An application submitted in 2014 seeking the required consent was subsequently withdrawn and no further explanation has been provided on how this has been progressed. To be effective the scheme would also require consent to carry out works to secure connection to the electricity grid. There is presently uncertainty over whether the necessary consents can be obtained.
320. Given this uncertainty CPRW B&R sought a condition that would prevent the commencement of development until the consents had been obtained. The appellant explained that it wished to commence some works on site in anticipation of obtaining these separate consents, acknowledging that such works would be at their risk and would need to be undone should the other consents not be secured. It considered that no such condition was necessary pointing to the Llyn Bran decision¹⁸⁵ to support its case. If deemed necessary it has produced a condition that would secure the reinstatement of the site should the required consents not be obtained within a specific timeframe. As an alternative it has also suggested wording for conditions preventing the erection of any turbine before the consents are in place and requiring the removal of tracks and turbine bases if the scheme is not further progressed within a specified period (ID54).

¹⁸⁵ APP/R6830/A/17/3171058

Inspector's Conclusions

321. These conclusions are based upon the evidence given at the Inquiry and the written representations summarised above, and the findings of accompanied and unaccompanied inspections of the site and surroundings. In my conclusions, numbers in [..] refer to paragraphs earlier in this report.

The main considerations

322. The main considerations are the effect of the proposed development on:

- (i) the landscape character and visual amenity of the area;
- (ii) the setting of historic assets in the locality; and
- (iii) whether any harm identified in relation to the foregoing considerations is outweighed by the benefits of the scheme, particularly its contribution to renewable energy generation and combating the effects of climate change.

Landscape and Visual Amenity

323. The site does not lie within, nor would the proposal impact on, any national landscape designation. Within Powys there are no local landscape designations in the LDP. [85, 105, 202, 308]

324. The assessment of landscape and visual impact undertaken in the ES follows the latest guidance on methodology in GLVIA3¹⁸⁶. The ES chapter on the LVIA includes a series of photomontages depicting the appearance of the scheme from various viewpoints (VP). The extent of this work was criticised by the Council, NRW, CPRW B&R and others. In response additional viewpoints have been provided in Ms Hawkins WSE. I have visited most of the identified viewpoints and have taken into account the photomontage depictions alongside the information I gleaned from my visits to the site and surroundings. [12, 91, 204-206, 281, 288, 308]

325. The Council, CPRW B&R and NRW (ID13) consider that the LVIA underplays the significance of the effects of the scheme from certain views. Generally the difference has not been more than one category in any individual instance. All 3 landscape witnesses broadly agree that the significant effects on landscape character would occur within some 5.5km of the site. A study area of just over 6km from the turbines was used to assess landscape and visual amenity effects. [99, 199, 281, 284]

326. The site and its surroundings comprise a mix of landscape types. LANDMAP identifies 3 different visual and sensory aspect areas (VSAA) closely located to the appeal site. The VSAA of the site itself is valued as moderate as is the adjoining aspect area which includes Llandegley Rocks. Further from the site the upland hills and ridges of the Radnor Forest and Gwaunceste Hill to the south and east are within VSAA's of high value. These various aspect areas incorporate distinctive elements of the local landscape which combine to produce the defining landscape character against which the scheme would be viewed. [96, 97, 101, 108, 197-200, 283, 308]

327. The appellant points out that in some cases the spatial extent of the area affected by the scheme is a relatively small proportion of a given aspect area, and that as a

¹⁸⁶ LVIA-1

consequence its overall value as scored by LANDMAP would not be reduced even though the more localised impact on a part of the aspect area would be significant. Both Mr Russell-Vick and Ms Bolger sought, by different means, to draw together the various discrete elements of the landscape character (which fall within several different aspect types) in their assessment of the effect of the scheme on the character of the surrounding landscape, rather than focussing on the effects on the various individual aspect areas identified by LANDMAP. [101, 108, 197-200, 291, 308]

328. Neither the site nor the surrounding area is designated as a registered historic landscape, however LANDMAP identifies the historic aspect area of the site as outstanding (national) value and much of the surrounding area is of high (regional) value. There are various man-made features within the landscape which are, to varying degrees, modern additions. These include the enclosure of the fields, the presence of tracks, buildings and a small turbine and telecommunications mast. I observed that these are relatively modest intrusions into the largely unspoilt open landscape in which the historic associations can be appreciated as an important component of the local landscape character. [109, 202, 283]
329. The appellant points out that it is important not to double-count the historic aspect of the surroundings by giving consideration to the same matters when considering landscape and historic assets. There is a clear distinction between the value of particular historic assets and their setting in their own right and any contribution that they make to the character and visual amenity of the landscape. I deal with the latter in this part of my conclusions, the former is addressed in the second of my main considerations. [98]
330. Mr Russell-Vick adopted a "unioning" methodology to assessing the effect on the landscape which sought to combine the various dataset layers of LANDMAP. He explained that it was an approach which he had developed in the light of recent NRW guidance on using LANDMAP material to define Special Landscape Areas in Wales¹⁸⁷. He accepted that it was an approach which had been developed to assist LPAs in the identification Special Landscape Areas. However, he saw it as a useful approach to drawing together the overall landscape value of an area as identified in the various datasets, which avoided decision makers over concentrating on the visual and sensory aspect layer by giving due attention to those other datasets according to their significance. He acknowledged that it was not an approach he had adopted previously in windfarm work but was one that he would use in the future. Ms Bolger agreed that it was a useful approach. [105, 106, 202, 281]
331. Whilst I am mindful that the specific guidance on wind turbine assessments produced by NRW does not promote the unioning approach set out in the guidance on SLAs, I also note that the former guidance was produced in 2013, some 4 years earlier. Whilst I have not relied upon this unioning approach I have taken it into account as it assists in drawing together the various elements of landscape valued by LANDMAP to provide an overall understanding of the landscape value of the area within which the development would be located. I am mindful that in this case over relying on the VSAA would fail to adequately reflect the historic value of the landscape. Indeed it was suggested by Mr Russell-Vick that some aspects of the historic landscape that have a visual or sensory value are not scored in the VSAA to avoid double counting

¹⁸⁷ LANDMAP Guidance Note 1: LANDMAP and Special Landscape Areas, National Resources Wales, 2017

matters that are scored in the historic datasets. This approach, undertaken as part of a Landscape Sensitivity Study that informed the LDP identification of a Local Search Area which contains the appeal site, concluded that the landscape value was High overall, i.e. a landscape of regional or county value.

332. In response to the planning application NRW opined that LANDMAP has underplayed the scenic quality of Llandegley Rocks which it considers to be of high scenic quality. It explains that this is the result of the averaging out of scores over a wider aspect area. 'Irrespective of the overall landscape evaluations' it refers to the attractive views, tranquil, exposed, remote, wild and spiritual perceptual qualities that can be experienced across the area. My visit confirmed the sense of tranquillity and remoteness of the site and its surroundings despite its proximity to 2 A class roads and nearby settlements. This perception of the area is one described by many objectors. NRW advised that the proposal would have "significant adverse regional effects upon landscape and visual resource". [308]
333. In terms of the local topography the site sits within a 'bowl' defined by surrounding higher ground. The extent to which the turbines would be viewed against land rather than sky in relatively close views is unusual; most larger-scale turbines in Powys occupy locally elevated positions. As a consequence of the local topography the turbines in this case, or at least the lower parts, would be well screened from view by nearby steeply-sloping topography in certain directions, most notably from points within an area in an arc from points from the west to the north of the site. The ZTVs contained in the ES demonstrate this screening effect. [93, 100, 112, 191, 206, 291, 298]
334. However, the bowl shaped topography also means that from many of those areas where the development would be visible the turbines would be seen in the context of a relatively enclosed landscape. This visual context would influence the apparent scale of the proposed turbines and means that they would be perceived as relatively larger structures than would be the case when located in more expansive landscapes, such as the mountain tops occupied by most wind farms in Powys. [93, 100, 112, 191, 206, 291, 298]
335. There is no dispute between the parties that within and close to the site the impact on the landscape would be very considerable. It seems to me that it would be altered to a wind farm landscape within an area some 1km to 1.5km of the turbines given the impact that their size and number would have on the landscape. Whilst the surrounding countryside would effectively continue to be visible the sheer size and number of the turbines, the sweeping motion of the blades and, to a lesser degree, the existence of the access tracks and associated remodelling of the land and other aspects of the development, would continue to have a dominating influence on the landscape for some distance beyond the site itself. In response to criticisms of the lack of close quarter viewpoints that were provided in the original LVIA, others were provided in an appendix to Ms Hawkins' WSE (VP PRV1-2). Annotated photographs appended to Ms Bolger's WSE also illustrate the impact from close quarters. These illustrate the dominating impact of the turbines from popular recreational routes such as the BOAT that crosses the site and Llandegley Rocks which overlooks the site and from which point all of the turbines would be seen against higher ground. [102, 201, 208, 209]
336. In terms of the precise siting and layout of the turbines, there would be incidence of stacking where the swept path movement of the blades of one turbine would overlap with that of another turbine creating a visual cluttering or jarring effect. Nonetheless

it seems to me that the design of the scheme has taken reasonable steps to avoid this from the more important static viewpoints whilst avoiding siting the turbines too far apart. [113, 194, 210]

337. In response to criticisms that the scheme's design and assessment had failed to have sufficient regard to the impact of the access tracks on the landscape fabric the revised details of the new tracks that were presented to the Inquiry shows that it is possible to follow more closely the existing terrain in terms of the vertical alignment of the tracks thereby avoiding excessively deep cuttings and tall embankments. [7, 43, 205, 278, 288]
338. Other impacts on the landscape fabric include the loss of hedgerows affected by new tracks, the widening and realignment of the 2 existing routes connecting the new access tracks with the A44. This includes creating a new access point onto the A road from the unclassified highway. Subject to controlling the details of the work through suitable conditions, as have been suggested, the visual impact of the scheme on the landscape fabric is relatively modest and would be mostly reversible, save for the possible retention of access tracks to serve future farming activity. [101, 301, 317, 318]
339. It is evident that the landscape in question is one which is valued by local residents and those who use the network of public rights of way. Its proximity to settlements, most notably Llandrindod Wells, means that the routes are regularly used by many residents as well as being enjoyed by visitors to the area. In his WSE Mr Williams provided evidence of the particular significance of the local bridleways in linking up to the wider network in relation to his business. These users of the public rights of way that cross over or close to the site are sensitive receptors and it is likely that their enjoyment of the attractive undulating landscape would be significantly harmed by the presence of the development. [298, 300-302, 309]
340. Whilst the scheme makes provision for a new recreational route which is the subject of the draft S106 agreement, the impact on users of those sections of the public rights of way within and close to the site would be considerable. At such close quarters the sheer size of the turbines, the sweeping motion of the blades and the noise created would dramatically reduce the enjoyment of users of the landscape, although it may well be the case that the opportunity to view the development close-up would be enjoyed by some others. The financial contribution included in the draft s106 agreement would, if executed, enable the accessibility including the physical condition of local public rights of way to be improved but would not mitigate the harmful visual impact that users would experience along sections of several routes. [5, 86, 102, 208, 209, 281, 313-315]
341. The turbines would be visible from sections of other public rights of way, including the Sustrans national cycle route 825, Radnor Ring. The screening effect of topography and vegetation will limit views for users of these routes, but such screening would also result in the sudden opening up of views from certain points. For instance VP8 near Franksbridge (some 3.9km distant) shows a clear view of the proposal from the Sustrans route, but at this point the view would be short-lived and the turbines would be perceived as more distant, modest structures against more prominent foreground features. [86, 282]
342. In their objections numerous local residents and visitors also refer to the iconic presence of the distinctive Llandegley Rocks on the scenic quality of the surroundings. Several objectors also refer to the special value they place on this landscape as a

subject for drawing, painting and photographing. The Rocks is a feature readily noticeable from various vantage points in the wider surroundings and provides a dramatic skyline that frames views of the site particularly on approaching Llandegley from higher land near Castell Crug Eyr on the A44 from the south east. Many objectors have recounted their first experience of travelling along the road and the sudden opening up of views over Llandegley Rhos and towards the Rocks and which remains a valued experience despite being often repeated. [298, 309, 310]

343. Although motorists travelling along a main road may generally be considered to be less sensitive receptors in terms of their surrounding landscape, as many objectors have emphasised, this section of the A44 is an important tourist route from England into mid Wales and was a consideration that influenced a decision to dismiss an appeal at nearby Pentre Tump¹⁸⁸. [192, 281, 298, 309, 310]
344. On approaching the site views of the development would be obscured until The Van has been reached. Thereafter a dramatically winding section of the road begins to open up to reveal panoramic views over lower lying ground framed by the distinctive skyline of ridges, including Llandegley Rocks. From these views, as demonstrated in VP4 the turbines would be readily visible in a westward direction occupying lower lying land. This elevated vantage point, which is some 2km from the nearest turbine, means that virtually the whole of each turbine tower would be seen against the rising ground behind with the blades breaking the skyline. The light colour of the towers would be in striking contrast to the darker ground behind emphasising their presence in most daylight conditions.
345. There are vantage points of the proposed development from the south east including a section of the A481 including a large layby (VP5) and, in the same direction but from further away on a local high point, Gwaunceste Hill, which is crossed by a network of public rights of way (VP9). From the road layby parts of some of the turbines would be obscured by topography with only the blades of some being visible as they break the skyline. In this view, which would be some 2.6km distant, the development would be readily visible on a prominent ridge. From VP9, which would be 4.6km or so away, the turbines would be wholly seen against land which, as previously explained, would highlight their visual presence. However the fact that they would be seen in the mid distance in a vast landscape would assist in reducing the apparent scale of the development. However, this is a sensitive vantage point where users of the rights of way would be seeking to enjoy the impressive views of largely undeveloped countryside in the direction of the site which would be harmed by the presence of prominent and intrusive man-made features. [308, 309]
346. From the north east the turbines would appear to be located on a ridge above lower lying foreground land, characterised by fields bounded by mature hedgerows (VP7). The landscape seen from this direction is more intimate which serves to emphasise the large scale of the turbines. A similar effect would arise from PRV3 which is taken from a BOAT at the head of Llan-Evan Dingle.
347. There are 2 dwellings within 1km of a proposed turbine, Pye Corner and Hendy Farm, with a relatively few others within 1.5km. Given its outlook Pye Corner is the one that would be most affected in terms of visual impact. During my site visit I stood outside the garden room of the property which contains large picture windows on the 2 elevations facing the appeal site. The upgrading of the unclassified public highway

and the construction of a new access track adjacent to the property will erode the largely undeveloped appearance of the immediate surroundings. Whilst intervening rising ground and, to a lesser degree vegetation, would screen the turbines in whole or in part there would be a marked visual impact caused by those parts of the turbines that would be visible. Given the orientation of the garden room windows and the outside decking area, the turbines and the movement of the blades would be readily visible and would impact on a valued aspect of the dwelling. However, taking into account the separating distance (980m from the nearest turbine), intervening topography and extensive outlook that would remain available to the property the impact would not lead to an overbearing or otherwise unacceptably visually intrusive impact. I concur with the findings of the ES that the scheme would not lead to an unsatisfactory residential environment for any nearby residents.

348. Both Mr Russell-Vick and Ms Bolger consider that the degree to which the scheme would impact upon the landscape and the effect on the visual amenity of receptors has generally been understated in the ES and in Ms Hawkins' evidence. ID12 provides a table comparing the visual impact assessments of the witnesses for the Council and the appellant. Based on the documentary evidence and my visits to the site, I consider that the impact would be significant on a landscape that has a quality which is of regional value. [171, 281]
349. Whilst the nearby higher landforms provide a screening effect that limits the visual impact of the scheme from much of its surroundings this landform, including highly distinctive features, in particular Llandegley Rocks, creates a relatively intimate local landscape which is poorly suited to accommodate a development of the scale proposed. Accordingly I consider that the scheme does not perform well in terms of responding sensitively to local circumstances as sought by paragraph 12.8.14 of PPW. The extent to which the visual qualities of the landscape would be harmed leads me to find that the scheme fails to strike an acceptable balance between facilitating renewable energy and landscape protection as advised in paragraph 2.13 of TAN8. [54-57, 186, 264-266]
350. I conclude that the scheme would have a substantially detrimental effect on the visual character of the landscape. Its topography creates a distinctive and valued landscape which would be harmed by the development. Users of the local public rights of way and other publically accessible land within the site's vicinity would suffer a considerable reduction in visual amenity and their recreational enjoyment of these routes. Occupiers of some nearby dwellings and holiday accommodation would experience an appreciable reduction in visual amenity. The impact would also be experienced by users of the A44 which is an important tourist route to mid Wales at a point which has particular significance as a 'gateway' from the England into mid Wales. Whether these impacts are unacceptable in terms of LDP policy DM4, and by association policy RE1, is a matter that is considered in the overall balance.

Historic Assets

351. The ES assesses the effect of the scheme on the historic environment and confirms that there would be no direct effect on any designated historic assets. The settings of several SAMs and listed buildings have been assessed. [115, 211]
352. As the ES records, most of the listed buildings in the locality would be screened from views of the turbines by topography and vegetation. Parts of one or more turbines would be visible from some of the listed buildings, for instance the Grade II Llandegley Church and, from further away, The Pales (a grade II* Quaker meeting

room). Whilst the introduction of modern structures into a predominantly natural scene would have an effect on the setting of these buildings, the evidence presented, including in Mr Le Quesne's WSE, leads me to find that there would be no material harm to the significance of such assets. In reaching this finding I have borne in mind the protective effect of the statutory duty in relation to listed buildings and their setting. An objector suggests that the impact on Larch Grove, which is a grade II listed building, has not been assessed, however the Technical Appendix to the ES¹⁸⁹ demonstrates that this is not the case. There are no conservation areas that would be affected. [310]

353. There is general consensus between the main parties that the ES is correct in identifying the main effects on cultural heritage as being the impact on the setting of 4 SAMs. The importance of protecting the setting of scheduled monuments from significantly damaging effects is set out in national policy. The ES identifies the effects on 3 SAMs, Nant Brook, Graig Camp and Llandegley Rocks, as moderate to large significance, with the effect on the Castell Crug Eryr SAM as minor to moderate significance. The assessment and its findings have been criticised by Mr Croft on behalf of the Council and by Cadw. The appellant's heritage witness, Mr Le Quesne, was not involved in the ES. He has carried out his own assessment of the effect on cultural heritage, taking into account national policy and advice that post-dates the production of the ES, and made it clear in oral evidence that he did not agree with some of the findings of the ES. [29-31, 115, 211]
354. One of the criticisms of the ESs approach was the use of DMRB methodology in the assessment on the basis that it was intended for use for in highway projects which, given their linear nature, were distinguishable from the appeal scheme. Mr Le Quesne's evidence refers to an approach that has been used in the HS2 high-speed train line project in his criteria for assessing magnitude of impact. I share the Council's concerns that this approach, which for instance requires an asset to be 'totally altered or destroyed' to be of high magnitude, may have been developed for use in a specific project deemed of national importance by the UK government may not be as suitable for the appeal scheme. [212, 217]
355. In its response to the planning application Cadw questioned the assessment of the effect on the Cwm-Maerdy Standing Stone which stands some 1.2km south east of the nearest proposed turbine. This is not a matter pursued in its more recent comments and the available evidence, including Mr Le Quesne's WSE, leads me to find that any effect on its setting would not affect the asset's significance.
356. The Nant Brook Enclosure lies within some 500m of the nearest turbine. Its raised enclosure is clearly visible within a secluded hollow sheltered by higher ground on 3 sides. The Schedule description identifies 2 potential explanations for its origins dating back to either the Iron Age or Medieval period and refers to its importance within the surrounding landscape. The main parties' witnesses and Cadw agree that it is the latter which is the more plausible account of its origins. Mr Le Quesne sought to suggest that its status as a SAM should be re-considered on that basis, despite the fact that the scheduling identifies the possibility that it is of medieval origins. [139-142, 220]
357. Whilst the immediate vicinity of the SAM has been affected by recent human activity, including quarrying, a pond, and farm tracks, these are relatively modest changes. In

¹⁸⁹ Table A9.6/1, ES-4

contrast the sweeping motion of turbine blades viewed on the skyline immediately above the SAM would represent a more intrusive change to the generally unspoilt upland setting. Figure 11 of Ms Bolger's WSE depicts the effect from a point close to the enclosure. I concur with Cadw's opinion that the visible presence of a small turbine at Cwm-Maerdy does not reduce the sensitivity of the monument to the impact of the proposed turbines. The degree of impact on its setting would be substantial and would affect its historic significance and its appreciation. [143, 145, 219, 221]

358. The turbines would be sited between the Iron Age hillforts of Llandegley Rocks to the north west and, to the south east, Graig Camp. Mr Le Quesne emphasises that the focus of both hill forts would face away from Rhos Common to overlook settled communities on lower land in opposite directions to the appeal site. However, he also acknowledged that both forts would also provide views over the intervening lower lying land that would be occupied by the proposed development. [153, 156]
359. Both Cadw and Mr Croft consider this lower lying ground as important to the setting of both SAMs, they believe to be broadly contemporary. Although the exact historic relationship between the 2 sites is not known the evidence suggests that the hinterland which includes the appeal site is likely to have had a significant association with these assets. Given the visual impact of the proposed turbines they would have a significant impact on the relationship between these monuments, notwithstanding that their presence would not physically prevent views across this lower land. I also acknowledge the intervening distance means that inter-visibility between the two monuments is not readily discernible but, as I observed during my visit, the prominent and distinctive landforms on which they are sited means they are easily located. [149, 152, 153, 225]
360. Graig Camp is described as a well-preserved hillfort believed to be of Iron Age period. It sits on a prominent ridge summit. There is no public access to the SAM although I was given access to conduct my visit. Its physical remains extend over the summit of the hill and at its northern extent reveal extensive views in the direction of the Llandegley Rhos and Llandegley Rocks within an extensive panorama. Views in this direction are impeded to some extent by the presence of a higher part of the ridge in this direction. Most of the turbines would be clearly visible, with the closest turbine some 1.3km away, as illustrated in a wireframe image provided in Mr Croft's WSE. [149, 223]
361. Whilst the clear presence of a telecommunication mast on high ground close to Graig Camp in the direction of the appeal site and a nearby small turbine detract from the monument's prominence I consider that this would not materially reduce the impact of the much larger proposed development on its setting. The predominant character of the surrounding land is of undeveloped countryside, which is undoubtedly different in detail to that which existed when the hillfort was active but nonetheless enables the historic dominance of this feature over lower lying lands to be appreciated. The extent to which the large moving structures that are proposed would challenge the prominence of Graig Camp would significantly harm its historic significance. [153, 154, 222]
362. Llandegley Rocks Hillfort is probably Iron Age and is described in the Schedule as 'situated on an imposing ridge on the NE side of Llandegley Rocks, commanding the lower slopes to the S and E and overlooking the valley between it and the hills of Radnor Forest..... The monument forms an important element within the wider Iron Age context and within the surrounding landscape'.

363. It occupies a highly prominent and elevated position overlooking the appeal site and affording views of Graig Camp hillfort. Mr Croft's opinion that there were likely to have been other hillforts in the locality that would have been visually and functionally connected appears to be plausible. As with Graig Camp the site's function means that its visual prominence was critical to its role of defending and generating a sense of control. The dominant visual impact of the proposed turbines on its immediate surroundings would challenge this prominence and significantly harm its historic significance (VP10 shows the impact of the development when viewed from a point on Llandegley Rocks some 1.37km from the closest of the proposed turbines). [156, 157, 224]
364. Castell Crug Eyr (also known as Crugerydd) is a medieval motte and bailey castle perched on one of several pronounced hilltops in the vicinity of The Van. At some 2km from the nearest proposed turbine it is the furthest of the 4 affected SAMs. It is situated close to a section of the A44 which contains a series of sharp bends elevated high above the land to one side as described earlier and shown in VP4. It dates to the medieval period and was an important symbol of Welsh power during turbulent times. Its position was chosen to emphasise its importance and influence over its surroundings and exert control over important transport routes of the time.
365. The prominence of the Castle within the landscape is largely unaltered since the time it was built. Views of the castle and the land it overlooked would be considerably altered by the introduction of the turbines. Their prominence, emphasised by their contrasting colour against the darker background and their movement, would compete for attention with the castle and undermine its visual dominance. Such an impact would be significantly harmful to the monument's significance. [158, 226]
366. From Crug Eyr there are panoramic views in which the Llandegley Rocks skyline is prominent as is the lower ground of the valley floor which includes the appeal site, the generally sloping nature of which faces the monument. The SAM is not publically accessible, however from the public right of way which crosses the access to it, the appeal site occupies a significant proportion of the available vista framed by the SAM on one side, and roadside vegetation and higher ground on the other.
367. My visit to the site confirmed the perception described by several objectors that the site and its environs provide a tranquil setting. The presence of the 2 hillforts and the Crug Eyr motte and bailey castle, and the degree to which they all overlook the area, contributes to this atmosphere. The appellant points out that the character of the site and its surroundings has been extensively altered since the SAMs were built and used. Their previously open moorland state was changed following the introduction of field enclosures. However, such changes and the more modern developments are modest in scale and impact, in marked contrast to the impact that would be caused by the scheme.
368. The effect of the introduction of the 7 large modern structures on the landscape would be significant. Their size, colour and the sweeping motion of the blades would be prominent from all 4 SAMs. The extent to which the natural landscape would be altered and that the turbines would become a focus of attention would affect the appreciation of these historic assets, their historic function and their relationship with their surroundings. This effect on their setting would harm the significance of each of these historic assets.
369. In reaching this conclusion I generally prefer the findings of the Council's witness with whom Cadw broadly agrees, over that of the appellant. The former considers the

harmful impacts to be significantly damaging in relation to all 4 SAMS, whilst the latter rates the impact as low in relation to the SAMS of Nant Brook, Graig Camp and Llandegley Rocks, and rates the impact on Castell Crug Eyr as low to medium. Mr Croft's paper (ID11) compares the impact assessments that have been undertaken and notes that, other than in relation to Castell Crug Eyr Mr Le Quesne's scoring of impact is lower than the ES. [214]

370. I share the appellant's view that as the harm that I have identified is reversible and the setting of the SAMS will revert to its present state that this reduces the extent of the harm. However, whilst 25 years is a comparatively short time in relation to the age of the assets, it is a significant period in the lifetime of individuals who would be denied the opportunity to properly appreciate the assets. Thus its reversibility does not alter my view that the development would lead to a significantly damaging impact. I am also mindful that the appellant has suggested a condition that would provide for improved interpretation and understanding of the historic interest of the local SAMS. Having regard to Cadw guidance¹⁹⁰, these offsetting measures, whilst they would not reduce the degree of harm that I have identified, represent benefits to be taken into account. In this case I find that these benefits are not sufficient to alter my findings on the detrimental effect that would arise. [128-132, 159]
371. The extent to which the setting of the SAMS would be altered by the large and moving structures would represent a significantly damaging effect, in the terms of paragraph 6.5.5 of PPW. Whether there are exceptional circumstances that justify the effect, and whether the harm is one that outweighs the carbon emissions reduction benefits of the scheme are matters that I shall address later as part of the overall balance. In that balancing exercise I shall also consider whether the identified harm is 'unacceptable' for the purposes of assessing compliance with LDP policy SP7 and, by extension, policy RE1. [123-127, 216]
372. I have considered the impact on the setting of other archaeological features. Mr Le Quesne considers these in his WSE and I concur that any effects would be low. In terms of possible direct effects on undesignated archaeological features, the Clwyd Powys Archaeological Trust has expressed concern regarding the potential impact on a buried Roman Road. This matter, along with any other features of potential archaeological interest that may be revealed, can be adequately addressed by a suggested condition.

Benefits of the Scheme

373. The scheme is estimated to produce sufficient energy to power up to 12,578 homes over its operational lifespan (ID53), and to displace some 26,980 tonnes of CO₂ a year. This represents a substantial contribution to the production of energy from a renewable resource and to the reduction in greenhouse gas emissions. Such a contribution is significant in the context of the UK Government's energy policy and the targets required by WG, and the commitment of both Governments to address climate change. [40]
374. In response to a change in the UK Government's position in recent years WG has emphasised its continued commitment to the important role of onshore wind in meeting renewable energy production targets. Whilst there is evidence that good progress is being made in relation to the 2020 target the more ambitious target for

¹⁹⁰ Setting of Historic Assets in Wales, Cadw

2030 of 70% of electricity consumption from renewable energy appears more challenging, particularly given the likely degree of reliance on electricity production given the more limited progress in relation to heat and transport. [78-83, 169, 249-255]

375. Many objectors point to the presence of 2 SSAs in Powys and to the number of operational windfarms in the County as evidence that it is contributing more than its share of renewable energy both in relation to Wales and the UK. However, there is no provision in either national or local planning policy to support the concept of an upper limit on wind energy developments within a local planning authority area. Indeed, in accord with national policy, the recently adopted LDP acknowledges the County's continued role in facilitating such development. The acceptability of such schemes must be assessed on their individual merits within the framework of planning policy. [77, 79, 171, 256-258, 308-309]
376. A potential route providing connection to the national grid at a point which has adequate capacity has been identified. This is significant in terms of ensuring the deliverability of the project although the required infrastructure connection would require a separate consent that would be pursued by Western Power Distribution. [39, 312]
377. The scheme would provide benefits to the local economy in terms of investment and employment opportunities, particularly during the construction and decommissioning phases as identified in the ES. As a proportion of the overall project such local opportunities would be limited given the specialised nature of much of the work as Ms Kibble notes in her WSE. Nonetheless there would be some benefits to the local economy. [312]
378. In light of the national renewable energy targets and the associated supportive thrust of planning policy, the scheme's identified contribution to renewable energy is an important consideration that attracts significant weight.

Other Considerations

379. Given the scope to control the development through suggested conditions, the Council's objections to the scheme are confined to those detailed in the above main considerations. However, the CPRW B&R and other parties have raised other concerns, the main ones are addressed below.

Ecology

380. The site does not lie within an area designated for nature conservation interest, however, there are several SSSIs and a SAC nearby. The effects of the scheme on these areas have been considered in the ES and in other environmental information. [275-276]
381. The NRW and the Council's Ecologist initially expressed concerns over the potential impact of the scheme. However, during the course of the planning application further discussions took place which led both consultees to confirm that they had no objections subject to the imposition of suitable protective conditions. Whilst the CPRW B&R has provided detailed criticisms of the information provided, it seems to me that the absence of detailed information relate to matters that could be adequately addressed by the suite of suggested planning conditions, including those that would control construction work, would require further surveys to be undertaken and would require the works to proceed in accordance with protection and

management plans. The Council confirmed at the Inquiry that this is an approach that has been adopted on other wind farm projects and that it would seek the specialist advice of its in-house ecology team and of NRW when discharging and monitoring these planning conditions. [308, 317]

382. Among the concerns of the CPRW B&R in relation to ecological matters is the possible contamination of the Edw river which drains part of the site and is designated as a SAC 1.3km or so downstream, pointing to the impact of past local forestry clearance which led to damaging soil run-off. The appellant has proposed a series of conditions that would seek to control the development, including measures that would prevent water pollution, which are considered acceptable by both the Council and NRW. I agree that these conditions are necessary however, as already explained, an Appropriate Assessment would be required to establish the impact on the integrity of the SAC. Such an assessment could take into account mitigation measures, including those that could be secured by condition. [279-281, 317, 399]
383. In terms of the effect on European protected species it has been established that there may be great crested newts on the site. Any works that would disturb their habitat, or any other protected species, would require a licence and there is no indication from the Council or NRW that a licence would not be forthcoming.
384. Evidence has been produced, including a film (ID14) played at the Inquiry, of the significant starling presence on the site. Mr Myhill explained that starling population in the UK has declined very significantly over the past 50 years and its existence is now under threat such that it is a Red List species. He shared his detailed knowledge gained from observing the site over many years and points to the fact that the starling presence, and the associated visits of raptors during the periods of their daily movement to and from the roost, has been considerably under played in the appellant's evidence despite it being recorded in a significant reference book, Birds of Radnorshire.
385. In a recent letter (ID06) the appellant's specialist reiterated the belief that the starlings fly across the site at a sufficiently low level to make the risk of collision 'very low'. Based on their film, and my evening visit overlooking Llandegley Rhos, I am persuaded by the opinion of CPRW B&R that this would not be the case. The large scale and elaborate murmurations over the area involved extensive vertical movements which Mr Myhill estimates to be in the region of 100m high, well above the lowest point of the sweep path of the turbine blades. On the basis of the targeted surveys undertaken by Mr Myhill and his colleagues it also seems to me that the appellant has under-estimated the size of the population during the over wintering season.
386. Adopting a precautionary approach Mr Myhill opined that the scheme would have a potentially significantly damaging impact on the local starling population. However, there is no reason to believe that the population would not secure an alternative roost in the locality should the present one be removed through the felling of the trees. This is an option advanced by the appellant. It was accepted by Mr Myhill that there was no evidence to show that the woodland's attributes as a roost were not to be found elsewhere in the wider countryside. Moreover, the appellant's specialist points to the polluting effect that such an intensive use of a roost can cause over time which would suggest a limited life time to the roost, although Mr Myhill considers that the roost effectively moves over time from one part of the woodland to another. It follows that measures to safeguard starlings would protect raptors that are presently

attracted to the site by their prey at the relatively short periods of the day when the starlings arrive and depart the roost.

387. The appellant's specialist advises (ID06) that starling roosts are well-known to be transitory and that the birds easily adapt to alternative locations and that the roost largely moved to Llandegley Rhos in 2003. During bad weather the birds are less likely to travel to the roost, when it is presumed that they stay closer to their daytime feeding areas.
388. The bird surveys undertaken have been criticised by CPRW B&R, including in its paper ID37 and I concur that, with regard to starlings flock size and the height reached in their approach flight, these appear have been underestimated. However, more generally I do not consider that the differences in the findings of the appellant's consultants and those cited by CPRW B&R mean that the former are unreliable. The information has been assessed and found acceptable by specialist consultees at the application stage. Accordingly, I consider that the evidence submitted is sufficient to determine that the proposal would not significantly affect any protected species, subject to the collation of additional survey information and mitigation measures that could be secured through a condition. [160-162, 281, 308, 317]

Hydrology and Hydrogeology

389. The CPRW B&R raises concerns over the lack of detail on hydrological and hydrogeological matters, including in relation to the access track details presented at the Inquiry (ID34). Given the extent of ditches and watercourses that drain from the site I do not doubt the potential significance of some of the concerns, including the potential impact on the SAC. However the ES considers these matters and identifies means of avoiding harmful effects through mitigation measures. The appellant's specialist adviser confirms (ID04) that the proposed measures are based on well understood methods. Subject to an Appropriate Assessment finding that the integrity of the SAC would not be harmed, I consider that these matters are ones that can be adequately and straightforwardly dealt with through the suggested conditions. [281, 308, 317]

Tourism

390. Several interested parties raised concerns regarding the potential for the scheme to lead to a decline in visitors to the area, particularly those tourists staying in the area and using the bridleways and public footpaths. The anticipated impact on local business offering accommodation, some of whom are specifically geared to equestrian visitors, as well as the horse trekking business that use the local network was described in oral evidence as well as in letters of objection. [281, 301, 302, 309]
391. For reasons I have already explained the development of the turbines would alter the local landscape and its visual amenity. For some visitors this would be perceived as sufficiently harmful to influence their choice of destination. However, as is acknowledged in the ES, research shows that the majority of visitors are either neutral or respond positively to the presence of turbines. Whilst the available evidence has been criticised by some objectors as out of date or unrepresentative, no reliable alternative research has been presented. Businesses that might be more directly affected by the development, such as long distance horse trekking, may choose to adjust their present routes, particularly during the construction period, to reduce any impact. The available evidence does not demonstrate that the scheme would be materially harmful to the local economy.

Living Conditions

392. Whilst there are few residential properties that are located close to the proposed turbines, the scheme would have an impact on the living conditions of some local residents most notably the occupier of Pye Corner. The resident of that property, Mrs Everett, described these concerns in oral evidence in addition to a WSE. Impacts such as shadow flicker, noise and television interference have been assessed in the ES and subject to the imposition of conditions there would be no unacceptable impacts in this respect. [310, 317]

Public access

393. The effect on the visual amenity of users of the local public rights of way and other accessible land has been considered in the first main consideration. Within the site the impact would not only arise from the visual dominance of the development but there would also be noise from the blades that would contribute to the impact on users' recreational experience. There would also be more physical impacts, in particular caused by the proposed crossing of existing paths by access tracks with associated changes in gradient which could provide physical obstacles. Measures to reduce such impacts can be secured through the suggested conditions and the draft planning agreement. For that reason it is considered necessary to secure binding obligations from the appellant to ensure that the proposed mitigation measures, including a financial contribution to the Council is secured before any permission is granted. Concerns over health and safety are addressed in the ES and can be suitably controlled through the suggested conditions. [72, 102, 281, 313-315, 317]

Transportation

394. The ES considers the implications arising from the transportation of the components of the turbines and other heavy goods vehicular traffic on the public highway, including in terms of safety and the efficiency of the road network. The occupier of Pye Corner is concerned that construction works, particularly to the unclassified highway, would obstruct vehicular access to her property. There is particular concern over the lack of details of the necessary engineering operations. The inevitable disruption and inconvenience work that would arise during construction, both in relation to the nearby residents and more widely to users of the affected highway network, can be mitigated to an acceptable level through arrangements that can be secured through the suggested conditions. [310, 317]

Geology

395. The RIGS Statement of Interest in relation to the Llandegley Rocks (ID24) explains the significance of the designated area which includes the visible evidence of the sequence of particular geological features which influence the outcrops and its diverse fauna. Given the intervening distance between the designation and the scheme its geological interest would not be harmed by the proposal. [299]

Land ownership

396. The appellant has responded to concerns from Mr Lloyd that the scheme would require land in his ownership which forms part of Corn Hill Farm and which lies on the opposite side of the unclassified road to Pye Corner, and to concerns from CPRW B&R (ID35) that the extent of the proposed work would extend beyond the appeal site boundary. The appellant has confirmed that the proposed work can be undertaken, including that which would be required to satisfactorily meet the mitigating measures

that would be required by the suite of suggested planning conditions, within land which it controls. It is on that basis that I have assessed the scheme, in the knowledge that any work on other land would be outside the scope of this permission and, in any event, would not affect the rights of any affected land owner. [10, 43, 281, 297]

Inclosure Awards

397. Several of the turbines would be sited on land subject to inclosure awards for Hendy Bank and Llandegley Rhos which afford public rights of access. I consider that it is a matter for the developer to address any legal implications that may arise, which would be unaffected by any planning permission that may be granted. [17, 281, 311]

Other Decisions

398. My attention has been drawn to numerous appeal decisions in relation to wind turbine developments, mostly in Powys. Some are specifically mentioned in this report. However, whilst I have taken all decisions into account in the interests of ensuring consistency in decision making, my assessment is made on the specific circumstances of this case which, given the nature of the main considerations mean that they are highly site specific.

Conditions and Obligations

399. The suggested conditions agreed by the Council and the appellant are all necessary to ensure that the development avoids, or where that is not possible, mitigates as far as is reasonable, the potentially harmful effects of the scheme. Those effects and the scope to mitigate are for the most part identified in the ES and other documentary evidence or were discussed at the Inquiry. Given my findings in relation to the extent of the presence of starlings on the site I have amended the suggested condition requiring a protected species protection plan to include explicit reference to starlings and their raptors. This would ensure that further surveys of starlings and their raptors are undertaken and that appropriate mitigation measures are put in place to mitigate potential collisions with the turbine blades. [317]
400. The revised access track details demonstrate that the scheme can be constructed with appreciably reduced engineering works. Whilst the precise details of such works would need to be controlled through condition, it is evident that the revisions shown would reduce the visual impact of the tracks. It is therefore reasonable and necessary to impose a condition that identifies the revised details as forming part of the approved plans (ID48). [318]
401. The main issue of dispute with regard to conditions relates to whether development should be allowed to proceed before the necessary consents are secured in relation to common land and grid connection. The justification for the work - with its associated impact on local residents and users of the rights of way and potential impact on ecology, hydrology and archaeology - is the envisaged generation of renewable energy. Given the present degree of uncertainty over whether the necessary consents will be forthcoming to enable the renewable energy benefit to be realised, I consider that such a condition is necessary to safeguard the aforementioned interests. I acknowledge that this may have the effect of delaying implementation of the project and the delivery of its benefits but consider that the potential disruption that would be caused in the event that abortive site works were carried out outweighs this consideration. [319-320]

402. The CPRW B&R expressed concern that some of the mitigation measures would require works outside the red line boundary of the application site. In response, the appellant confirmed that it was confident that it could carry out the work within the confines of the identified appeal site. If it were to transpire that the site boundaries prevented adequate mitigation measures from being implemented or, for that matter, if the necessary engineering works could not be accommodated within the boundaries of the site, it would be necessary for the appellant to secure means of overcoming such an issue. [43, 281, 317]

Planning Balance and Overall Conclusion

403. For the reasons set out above, the scheme would give rise to significant harm to the character of the landscape and its visual amenity, including its recreational enjoyment by users of local public rights of way and those passing through the area on an important tourist route. [350]

404. The development would also cause harm to heritage assets, specifically by virtue of the impact on the setting of 4 SAMs. The nature and extent of this impact is such that it would harm their significance. Notwithstanding the time limited and reversible nature of the impact, the extent to which the scheme would alter the largely unspoilt and remote character of the site and surroundings and the consequential effect on the appreciation of the setting of these SAMs would represent a considerable harmful impact on the significance of these assets, including the ability of visitors to appreciate their historic context and function. [368]

405. Having regard to the scope to control and mitigate certain effects, none of the other matters raised in objection to the proposal weigh appreciably against the scheme. Nevertheless the impact on the landscape and its amenity, and on cultural heritage are weighty considerations in this case. National policy adopts a generally protective stance in relation to both considerations, but in the context of proposals for renewable energy generation that protection is qualified by a need to strike a balance between the harm and need to facilitate renewable energy generation. In the case of the LDP the policies that are relevant to these considerations qualify their protective stance by presuming against developments that would give rise to 'unacceptable' adverse effects or impacts. This suggests a need to strike a balance between the extent of the harm and benefits that would arise to establish whether the identified harm is one which is acceptable. [27-33, 40, 52-57, 73-76, 179, 182-189, 317, 380-398]

406. The main benefit arising from the scheme would be its contribution to the production of renewable energy and consequential reduction in CO₂ emissions. It is a significant contribution capable of meeting the power needs of up to 12,578 homes and would displace approximately 26,980 tonnes of CO₂ a year. In the context of the supportive stance of national planning policy and the need to meet increasingly ambitious national and international targets this is a benefit that attracts significant weight. [378]

407. The scheme would also provide local economic and employment benefits. For reasons I have already explained these local effects would be relatively minor and thus attracts modest weight. Subject to securing an executed agreement, the suggested financial contribution to improving local public rights of way would be a local benefit. However, it would, alongside the proposed recreational route, only partly offset the harmful effects of the scheme on the enjoyment of the existing local network and thus attracts minor weight. Likewise the improvements to the interpretation of the historic

heritage through a suggested condition would be a minor benefit set against the harmful effects to historic assets that have been identified. [312, 340, 370, 391]

408. National policy permits significant damage to the setting of historic assets only in exceptional circumstances. It seems to me that the benefit associated with renewable energy production is capable of providing circumstances that are exceptional given the generally supportive thrust of national policy. However such support is a qualified one; it requires the public benefit of reducing carbon emissions to be weighed against the harm to the significance of historic assets. National policy also requires a balancing exercise in relation to landscape protection and facilitating renewable energy generation. [123, 133-136, 188, 189, 228-230]
409. The host landscape has a distinctive character which makes it valued for its own sake and for the publicly accessible amenity it provides. Its topography provides a relatively intimate environment which makes it particularly susceptible to impact from development of the scale proposed. It also provides an important setting to 4 SAMs, including an inter-relationship between 2 monuments. When taken individually the extent of harm to the landscape and historic assets leads me to conclude that the scheme fails to strike an appropriate balance between promoting renewable energy projects and protecting these interests as sought by national policy. It follows that, when taken together, the combined harm to landscape and heritage matters significantly outweigh the identified benefits. Thus, in terms of the relevant policies of the LDP, I consider that the scheme would cause unacceptable adverse effects on the landscape and on SAMs. The scheme is therefore in conflict with those policies, DM4 and SP7, and as a consequence is also contrary to policy RE1. [20-33, 52-57, 73-76, 179, 182-189]
410. In reaching my recommendation I have taken into account the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-being of Future Generations (Wales) Act 2015. As I have reached the conclusion that the harm which would be caused by the development would clearly outweigh its benefits I consider that it fails to accord with the wide reaching aims and objectives of the WCFG Act. [48, 169, 177, 259, 260]

Recommendation

411. For the reasons given above, and having had regard to all other matters raised, I recommend that the appeal be dismissed.

Hywel Wyn Jones

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Harriet Townsend, of Counsel	Instructed by Colin Edwards, Solicitor, Powys County Council
She called	
Philip Russell-Vick DipLA CMLI	Director, Enplan
Andrew Croft BA MA	Director, Chris Blandford Associates
Alan Southerby DipTP MRTPI	Alan Southerby Planning

FOR THE APPELLANT:

Vincent Fraser QC	Instructed by Aaron and Partners
He called	
Kay Hawkins BSc (Hons) BLD CMLI	Director, Hawkins Bell Associates Limited
Charles Le Quesne MA MCIfA	Principal Cultural Heritage Consultant, ERM
Peter Frampton BSc (Hons) TP MRICS MRTPI	Director, Frampton Town Planning Limited

FOR THE CPRW B&R (RULE 6 PARTY):

Miss T Douglass, of Counsel	
She called	
Ms Michelle Bolger CMLI DipLA BA PGCE BA	Director, Michelle Bolger Expert Landscape Consultancy
Dr Christine Hugh-Jones	Ecology and SAC
Nicholas Gray Myhill	Ornithology
Sarah Bond	Hydrology and Hydrogeology
Jill Kibble BSc (Hons) MA	Socio-economic
Graham Williams	Outdoor Tourism
Penny Everett	Amenity
Margaret Tregear	Commons and Planning

INTERESTED PERSONS:

Catherine Mitchell	Local resident
Christine Wozencraft	Local resident
Alison Williams	Local resident
Cllr N Dodman	Representing both New Radnor and Penybont Community Councils and Mr W Lloyd (neighbouring landowner)
Michael Rolt	Local resident
Geoffrey Sinclair	Environment Information Services
Diane Hulton	Local resident
Azra Dale	Local resident
Mary Davies	Local resident
Julie Leggett	Local resident
Pip Le Teppitt	Powys resident
Leigh Harling-Bowen MSc	Local resident
John Raymond Doré BSc CEng FIEE	Powys resident
Richard Martin BSc MIET	Powys resident

INQUIRY DOCUMENTS

ID01	Cadw email dated 12.3.18
ID02	Letter from Mr W Lloyd
ID03	Notification of the inquiry
ID04	Letter from WYG dated 2.3.18 (including Appendix 10.1 of ES)
ID05	Letter from WYG dated 9.3.18
ID06	Letter from ADAS dated 12.3.18
ID07	Amended Fig 1 to Mr Le Quesne’s Written Statement of Evidence
ID08	Signed Statement of Common Ground, appellant and Council (general matters)

ID09	Signed Statement of Common Ground, appellant and Council (policy matters)
ID10	Mr Sinclair's Supplementary evidence
ID11	Summary Note relating to Impact Scoring Paper from Mr Croft
ID12	Comparative Visual Impact Assessment Table from Mr Russell-Vick
ID13	NRW consultation responses to planning application
ID14	DVD showing starling murmuration and list of associated photographs
ID15	Mr Fraser's Opening Statement
ID16	Mrs Townsend's Opening Statement
ID17	Miss Douglass' Opening Statement
ID18	Explanatory Paper on Update Plans for site tracks
ID19	Llandegley Geological Landscape (omitted from Appendix 3, Ms Bolger WSE)
ID20	Figure 05A showing revised track details, Ms Bolger
ID21	Hendy Wind Farm Appeal, Cadw Comments
ID22	A2 version of ES Volume IV provided by Council
ID23	Enlarged version of ES Figure 1.2.4 provided by CPRW B&R
ID24	RIGS Statement of Interest
ID25	Revised track drawings
ID26	Commons Act 1876 (CPRW B&R)
ID27	Photomontage and maps showing theoretical visibility of 2 of nearest SAMs (appellant)
ID28	Aerial photographs (CPRW B&R)
ID29	Planning Application Consultation Replies
ID30	Campion Associates Powys Landscape Assessment
ID31	Agreed list of suggested conditions and marked-up committee report
ID32	OS map extract of site
ID33	Cadw consultation response on Llyn Bran wind farm
ID34	CPRW B&R response on hydrology, dated 20.3.18
ID35	CPRW B&R response on commons and planning
ID36	Ms Dale's speaking notes
ID37	CPRW B&R response on ecology

ID38	Mr Doré's speaking notes
ID39	Council's response on landscape and visual impact matters
ID40	Extract from NRW's National Landscape Character Areas (CPRW B&R)
ID41	Local Development Plan – Inspector's Report and Council's Note
ID42	Paper by Ms Dale on heritage and tourism
ID43	Aaron and Partners letter dated 3.11.17
ID44	Agreed list of suggested conditions (2 versions)
ID45	Amended Schedule 2 to s106 Agreement
ID46	CIL Compliance Note on s106 Agreement
ID47	Appellant's comments on Cadw response
ID48	Plans showing site access works with culvert locations added (dated 20.03.2018)
ID49	Mr Martin's speaking notes
ID50	Steer v Shepway DC 2018 EWHC 238 (Admin) (Council)
ID51	CPRW B&R comments on suggested conditions
ID52	Mr Dodman note on starling roost
ID53	Agreed position on annual energy contribution
ID54	List of suggested conditions following Inquiry session (including appellant's note on pre-commencement condition relating to grid connection and common land)
ID55	Bundle of letters in support of the scheme
ID56	Bundle of consultation responses to planning application
ID57	Closing Statement including Addendum, CPRW B&R
ID58	Closing Statement including heritage issues Annex, Council,
ID59	Closing Statement, Hendy Wind Farm Limited

CORE DOCUMENTS

<i>Doc Ref</i>	<i>Doc Description</i>	<i>File</i>
Environmental Statement		
ES-1	Environmental Statement Non-Technical Summary	1

ES-2	Environmental Statement (Vol I)	1
ES-3	Environmental Statement (Vol II – Non-LVIA Figures)	A3
ES-4	Environmental Statement (Vol III - Technical Appendices)	2
ES-5	Environmental Statement (Vol IV – LVIA Figures)	A3
<u>Planning Application Documents</u>		
PP-1	Application Form	3
PP-2	Planning Statement	3
PP-3	Design and Access Statement	3
PP-4	Statement of Community Involvement	3
PP-5	Transport Assessment	3
PP-6	Traffic Management Plan	3
PP-7	Letter and associated documents from Cunnane to Powys County Council dated 24 March 2015	3
PP-8	General correspondence	3
PP-9	Correspondence regarding section 106 agreement	3
PP-10	Correspondence regarding noise	3
PP-11	Planning, Taxi Licensing and Rights of Way Committee Report dated 27 th April 2017	3
PP-12	Planning, Taxi Licensing and Rights of Way Committee Update Report and Conditions	3
PP-13	Planning, Taxi Licensing and Rights of Way Committee Second Update Report and Reasons for Conditions	3
PP-14	Decision Notice dated 18 th May 2017	3
<u>Appeal Documents</u>		
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LVIA-3	Natural Resources Wales, <i>LANDMAP</i> Information Guidance Note 3 – Using <i>LANDMAP</i> for Landscape and Visual Impact Assessment of Onshore Wind Turbines (June 2013)	10
LVIA-4	Scottish Natural heritage, Visual Representation of Wind Farms – Good Practice Guidance (March 2006)	10
LVIA-5	Scottish Natural Heritage, Siting and Designing Wind Farms in the Landscape (Version 3) (February 2017).	10
LVIA-6	Scottish Natural Heritage, Assessing the Cumulative Impact of Onshore Wind Energy Developments (March 2012)	10
LVIA-7	Welsh Government Practice Guidance: Planning for Renewable and Low Carbon Energy – A Toolkit for Planners (September 2015)	10
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ANNEX – Schedule of Recommended Conditions

Preamble: terms and time limits

In these conditions, unless the context otherwise requires:

“**AIL**” means abnormal indivisible loads;

“**approved plans**” means:

- Site Location Map and Application Boundary (Revision A Sept 2014);
- WYG Figures HENDY 100-0001 (P3) and Hendy 700-0001-0007 (P3);
- Environmental Statement Figure 1.2.2 (Drawing No. 202783-100-002A), save that the existing gate will not be relocated as indicated in the figure;
- Environmental Statement Figure 1.2.3 (Drawing No. 202783-100-003A);
- Environmental Statement Figure 1.2.9 (Drawing No. 202783-100-009A);
- Environmental Statement Figure 1.3 (Drawing No. HEP-WTG-02-01 A00-02);
- Environmental Statement Figure 1.4 (Drawing No. GCS0012B);
- Environmental Statement Figure 1.5;
- Environmental Statement Figure 1.6 (Drawing No. 202783-100-007A);

“**commencement**”, in relation to the authorised development, means the date on which the authorised development begins by the carrying out of a material operation as defined in section 56 of the Town and Country Planning Act 1990 and "commence" and "commenced" shall be construed accordingly;

“**Construction Environmental Management Plan**” means the plan as described in Condition 21;

“**Construction Period**” means the period from work commencing on the Development until the date 18 months after first export;

“**dB**” refers to the Decibel noise measurement unit;

“**dB(A)**” refers to a Decibel noise measurement unit, with the inclusion of the A-weighting filter in the measurements as referred to in ETSU-R-97;

“**development**” means the works that are permitted to take place as a result of this permission. This includes;

- (a) 7 (up to 110m tip height and maximum hub height of 69m) wind turbines (up to 2.5 MW each) and associated infrastructure including crane hard standing areas;
- (b) 1 no. new site entrance to the east off the A44;

- (c) construction of circa 3.3 km of new access tracks;
- (d) circa 1km of existing track to be upgraded;
- (e) construction of temporary site compound (20m x 30m) close to turbine T5;
- (f) construction of a new on-site substation (circa. 40m x 20m) which includes a control building (25m x 10m) south of turbine T3;
- (g) upgrading of the byway through the applicant's property;

"emergency" means circumstances in which there is reasonable cause for apprehending imminent injury to persons, serious damage to property or danger of serious pollution to the environment;

"existing tracks" means the circa 1km of existing tracks that are to be upgraded as part of the development;

"expiry of this permission" means the date 25 years from the date of the first export; **"ETSU-R-97"** means the ETSU Report number ETSU-R-97 'The Assessment and Rating of Noise from Wind Farms' published in September 1996;

"first export" means the date the authorised development first exports electricity to the Grid on a commercial basis;

"LA90" means the decibel (dB) level exceeded for 90% of each sample period;

"Local Planning Authority" means Powys County Council;

"micro-siting" means the movement of the turbines, crane pads and new tracks from their location on the approved plans;

"new tracks" means the circa 3.3km of new access tracks to be constructed as part of the development;

"NRW" means Natural Resource Wales, a Welsh Government sponsored body and statutory consultee on environmental protection; regulation; and maintenance of natural resources;

"other documents" means:

- Design and Access Statement - 27th June 2014
- Environmental Statement (Vol I) and Technical Appendices (Vol III)
- Environmental Statement Figure 1.2.2, save that the existing gate will not be relocated as indicated in the figure
- Environmental Statement Figure 1.2.3
- Environmental Statement Figure 1.2.9
- Environmental Statement Figures 1.3 – 1.6
- Transport Assessment - May 2014

- Transport Management Plan - January 2015
- Habitats Regulation Assessment Screening Report – February 2015

“**Public Holiday**” means a day that is, or is to be observed as a public holiday;

“**site**” means land within the development boundary; and

“**wind turbines**” means the wind turbines forming part of the development and “wind turbine” shall be construed accordingly.

Timings & Plans

- 1) The development shall begin not later than five years from the date of this decision.
- 2) Subject to the conditions attached to this permission and micro-siting, the development shall be carried out in accordance with the approved plans and in accordance with the principles set out in the other documents.
- 3) The permission hereby granted shall endure for a period of 25 years from the first export. Written confirmation of the first export date shall be sent to the Local Planning Authority within one month of the first export date.

Site Decommissioning & Restoration

- 4) At least 30 months prior to the expiry of this permission, details and methodologies for a full ecological survey to be undertaken to inform a site decommissioning and restoration scheme shall be submitted to the Local Planning Authority.
- 5) Within the 24 months prior to decommissioning of the site, but no later than 12 months prior to decommissioning, a full ecological survey of the site shall be undertaken to inform decommissioning, in accordance with the methodologies and timings as required by Condition 4. A survey report shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of decommissioning and then implemented as approved. The report shall include ecological mitigation measures, as appropriate, based on the ecological assessment findings to be followed during decommissioning, and beyond.
- 6) No later than 12 months before the expiry date of this permission hereby granted a decommissioning and site restoration scheme shall be submitted in writing to the Local Planning Authority for its approval in writing. The site decommissioning and restoration scheme shall be implemented as approved and be completed within 12 months from the expiry date of this permission. The site decommissioning and restoration scheme shall include, but not be limited to:
 - a) details of the removal of all the wind turbines and the surface elements of the development plus one metre of the wind turbine bases below ground level;
 - b) details of means of the removal, including how this will avoid effects on protected species and habitats;
 - c) timing of the removal of new tracks, structures, buildings and other associated infrastructure;
 - d) earth moving and soil replacement;
 - e) restoration of the landscape;

- f) temporary protective fencing around landscape features to be retained on-site (and when the fencing is to be removed);
- g) reinstatement of any public rights of way, paths and footpaths;
- h) monitoring and remedial actions; and
- i) the management of traffic.

Turbine Failure

- 7) In the event of a wind turbine failing to produce electricity to the grid for a continuous period of 6 months or more, other than required by Conditions 38, 39, 40 and 51, a scheme for the repair or removal of that turbine shall be submitted to the Local Planning Authority for its written approval within 2 months of the end of that 6 month period and implemented within 6 months of approval unless a longer period is agreed in writing by the Local Planning Authority.

Micro-Siting

- 8) The location of the wind turbines, crane pads, existing tracks and new tracks shall be as positioned on the approved plans, save that the wind turbines may be located up to 30 metres from the positions on the approved plans and the new tracks may be located up to 20 metres from the positions on the approved plans (save that the new tracks may be extended as necessary in the event that the micro-siting of the wind turbines or crane pads is more than 20 metres). These allowances are subject to the red line boundary within Site Location Map and Application Boundary (Revision A Sept 2014).
- 9) No development shall commence until a micro-siting protocol has been submitted to and approved in writing by the Local Planning Authority. It shall set out a protocol for deciding on micro siting of all development to minimise the impact on environmental constraints. The protocol shall be implemented as approved and include, but not be limited to, the following criteria:
 - a) Take account of peat, blanket bog habitat, curlew, protected species, watercourses, public and permissive rights of way, heritage assets, bats, health and safety and any other identified environmental or engineering constraints.
 - b) Wind turbines 2, 3 and 6, their crane pads and directly associated infrastructure to be micro-sited from the positions shown on the approved plans so as to be further away from PROW.

Turbine Design

- 10) No development shall take place until details of the external finish of the wind turbines hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 11) The wind turbines hereby approved shall have a blade tip height of no greater than 110 metres and hub height no greater than 69m.
- 12) All wind turbine blades shall rotate in the same direction.

- 13) All electricity cables connecting the wind turbines and the substation, and other services within the site boundary shall be installed underground and alongside the new tracks and existing tracks. Any variation shall be submitted to and approved in writing by the Local Planning Authority before development commences. The development shall be carried out in accordance with the approved details.
- 14) No development shall commence until detailed design of the layout, external treatment, design, materials, and orientation and screening of the on-site substation have been submitted to and approved in writing by the Local Planning Authority. The substation shall be constructed in accordance with the approved details.
- 15) Save for the lighting in condition 17, no development shall commence until details of any permanent outdoor lighting provision have been submitted to and approved in writing by the Local Planning Authority. Outdoor lighting should only be provided to comply with health and safety requirements. Any outdoor lighting shall be provided in accordance with the approved details.
- 16) No symbols, signs, logos or other lettering, other than those required by law for health and safety reasons, shall be displayed on any part of the wind turbines nor any building or structures without written approval from the Local Planning Authority.
- 17) All wind turbines shall be fitted with either 25 candela omni-directional red lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point.

Construction Work

- 18) No construction work (other than the delivery of abnormal loads) shall take place outside the hours of 07:30 and 19:30 Monday to Friday inclusive, 07:30 and 13:00 on Saturdays with no construction work at all on Sundays and Public Holidays. Outside these hours, works at the site shall be limited to emergency works, erection of wind turbines, dust suppression, and the testing and maintenance of plant and equipment, or construction work that is not audible from any noise sensitive property, unless otherwise approved in writing by the Local Planning Authority. The Local Planning Authority shall be informed in writing of emergency works within three days of occurrence.
- 19) Notwithstanding the provisions of Condition 18, delivery of wind turbine and crane components may take place outside the times specified in Condition 18 subject to such deliveries first being approved by the Local Planning Authority.
- 20) All activities associated with the construction of the development shall be carried out in accordance with British Standard BS5228:2009: Code of Practice for noise and vibration control on construction and open sites - Part 1: Noise and Part 2: Vibration.

Construction Environmental Management Plan

- 21) No development, including site clearance, scrub and vegetation removal and tree felling works, shall commence until a detailed, site specific Construction Environmental Management Plan covering the periods of site clearance, construction and the restoration of all work areas has been submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan must be implemented as approved and shall include, but not be limited to:
 - a) the mitigation measures to be implemented to avoid harm to protected species and minimise damage to species and habitats;

- b) the timing of construction works, including the timing of vegetation removal to avoid the potential for effects on reptiles, amphibians and nesting birds;
- c) the wheel washing facilities, including siting;
- d) the timing of works and methods of working for cable trenches, foundation works and erection of the wind turbines;
- e) the timing of works and construction of the substation / control building;
- f) the cleaning of site accesses, site tracks and the adjacent public highway and the sheeting of all heavy goods vehicles taking spoil or construction materials to / from the site to prevent spillage or deposit of any materials on the highway;
- g) a Pollution Prevention Plan containing measures to be implemented including:
 - i. sediment control;
 - ii. the bunding of fuel, oil and chemical storage areas;
 - iii. sewage disposal;
 - iv. measures for the protection of water courses and ground water and soils; and
 - v. a programme for monitoring private water supplies, water courses and water bodies before and during the authorised development, including details of the action to be taken if monitoring indicates adverse effects on private water supplies, water courses or water bodies;
- h) the disposal of surplus materials;
- i) the management of construction noise and vibrations (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise);
- j) the handling, storage and re-use on site of site-derived soil;
- k) the handling, storage and management of any peat excavated;
- l) the location, design and construction methods of the new tracks including drainage provisions, and the pollution prevention measures to be implemented to ensure there are no polluting discharges from the new tracks and disturbed areas including provision to ensure that no polluting discharge from the existing tracks and disturbed areas enters any watercourse;
- m) the design and construction methods of the upgrade works to the existing tracks including drainage provisions, and the pollution prevention measures to be implemented to ensure there are no polluting discharges from the existing tracks and disturbed areas including provision to ensure that no polluting discharge from the existing tracks and disturbed areas enters any watercourse;
- n) Invasive Non-Native Species Control Plan;
- o) the landscaping of the access track;
- p) the nature, type and quantity of materials to be imported on site for backfilling operations or construction of the access track;
- q) the management of ground and surface water (including mitigation to protect private water supplies);
- r) the management of dust;

- s) the proposed temporary site compound for storage of materials, machinery and parking within the sites clear of the highway, including the siting of the temporary buildings and all means of enclosure, oil/ fuel and chemical storage and any proposals for temporary lighting, and details of proposals for restoration of the sites of the temporary compound and works within 12 months of the first export date;
- t) the design and construction of any culverts (to include the use of open bottomed culverts);
- u) the restoration of all areas of the site which will be temporarily used for construction;
- v) details (including location and pollution prevention measures) for any concrete batching plants;
- w) protocols and programme for any required environmental monitoring to be made publicly available on an annual basis;
- x) proposed communications protocol and mechanism for investigating complaints, including the action to be taken where complaint investigations indicate materially adverse effects have occurred as a result of the construction of the authorised project;
- y) a protocol for ecological compliance auditing;
- z) reporting and liaison mechanisms between the contractor, Ecological Clerk of Works (ECoW), the local planning authority and NRW;
- aa) measures to prevent the importation or export of alien or invasive plant or animal species, as well as measures to prevent the spread of animal or plant diseases;
- bb) details of the mitigation measures to be adopted as set out in chapter 10 of the Environmental Statement and the Habitats Regulation Assessment Screening Report;
- cc) measures to restore the contractor's compound and revegetation of crane hard standing areas and to stabilise of all verges, embankments and cuttings;
- dd) the landscape mitigation measures to be implemented including:
 - i. measures to ensure the retention and re-use of site derived materials including the stockpiling of site derived subsoil and topsoil for reuse when reinstating any temporary works;
 - ii. temporary protective fencing around landscape features to be retained on-site;
 - iii. the use of locally sourced aggregate for the surfacing of the access track;
 - iv. seeding of all restored and reinstated areas, including the temporary contractor's compound, crane hard standing areas, verges, embankments, cuttings and reinstated sections of the access track; and
 - v. planting of any vegetation on the site.

The Construction Environmental Management Plan shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.

- 22) Before any wind turbine is removed or replaced a revised Construction Environmental Management Plan dealing solely with that removal or replacement shall be submitted

to and approved in writing by the Local Planning Authority, and implemented as approved.

Hydrology

- 23) No development shall commence until a Surface Water Management Plan containing details of the surface water drainage system (including means of pollution control) has been submitted to and approved in writing by the Local Planning Authority. The plans must be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.
- 24) No development shall commence until a water quality monitoring strategy (including monitoring at sources of private drinking water supplies) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- a) the identification of properties and private water supplies that may be affected by the development (either located within the site or dwellings located outside the site boundary but served by water supplies originating within the site boundary);
 - b) the minimum acceptable water quality and parameters to be tested, in relation to drinking water;
 - c) the measures to be taken to protect private water supplies (Wells, Springs or Boreholes) which must include a baseline assessment of the water quality and subsequent testing during the construction phase; and
 - d) mitigation measures should the quality of water deteriorate.

Public Rights of Way

- 25) No development shall commence until an Access Management Plan (AMP) has been submitted to and approved in writing by the Local Planning Authority. The AMP shall be implemented as approved and include:
- a) details of how safe access by the public on public rights of way during construction of the authorised development will be maintained including details of any temporary closures of public rights of way required and the diversions that would be put into place;
 - b) details of the provision of signage and other information alerting the public to construction works;
 - c) details of how construction traffic and construction workers are informed and trained about public rights of way and their use by members of the public;
 - d) details of any fencing or barriers to be provided during the construction period;
 - e) details of the new permissive route from the footpath south of the substation to the BOAT which is to be designated as a permissive right of way for the life of the scheme;
 - f) details of improvements to Public Rights of Way within the site;
 - g) details of how the AMP shall not conflict with the ecological provisions contained in these conditions;
 - h) details of maintenance and any required restoration work to all Public Rights of Way (including repairs to any damage caused at the construction stage) to an acceptable standard;
 - i) provision of suitable interpretation boards; and

- j) details of a promotional day to be held on site after first export and all Public Rights of Way improvements on site have been completed.

Highways & Traffic Movements

- 26) Prior to the commencement of any construction works on site, a scheme to provide for the remediation of any incidental damage or deterioration directly attributable to the development on the A44, within 100 metres of the proposed site accesses (and to include the unclassified roads leading from the A44 to the site) shall be prepared in consultation with Powys County Council as the local highway authority and submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include:
- a) The undertaking of a condition survey of the proposed highway to be used as AIL and construction delivery routes prior to the commencement of development;
 - b) The undertaking of further condition survey work after the first export; and
 - c) Provision of details and timescale for works to remediate damage or deterioration to all parts of the highway including street furniture, structures, highway verge and carriageway and footway surfaces.

The scheme shall be implemented as approved.

- 27) No development shall take place until detailed engineering drawings of all highway works on the A483 (T), A44 and U1574 have been submitted to and approved in writing by the Local Planning Authority. The details submitted shall also include:
- a) drainage details;
 - b) road markings and signage proposals;
 - c) a programme for the implementation of the works;
 - d) details of visibility splays that shall be kept free of obstruction exceeding 0.26 metres above the carriageway level; and
 - e) the submission of Road Safety Audits prior to the works being undertaken and upon completion of the highway works.

The works shall be implemented in accordance with the approved details.

- 28) AILs associated with the development shall be delivered strictly in accordance with an AIL Traffic Management Plan (AILTMP) which has been submitted to and approved in writing by the Local Planning Authority. In this respect, the AILTMP shall be prepared in consultation with the Welsh Government as Welsh trunk road highway authority and Powys County Council as the local highway authority prior to the commencement of any works. AIL's shall be delivered along the routes specified in Sections 1,2,4 and 5 of the Strategic Traffic Management Plan for Mid-Wales Wind Farms dated August 2012 unless the Newtown Bypass is completed and operational. The AILTMP shall include:
- a) proposals for transporting AILs from their point of entry to the Welsh trunk road network to the site that minimise any impact on the safety and free flow of trunk road traffic;
 - b) management and maintenance of layover areas, junctions, passing places, public rights of way and welfare facilities while AIL deliveries take place;

- c) details of temporary signage;
- d) details of any alterations to any works that are carried out to enable AIL movements;
- e) evidence of trial runs that mimic the movement of the worst case AILs along the access route;
- f) number and size of AILs, including loaded dimensions and weights;
- g) number and composition of AIL convoys, including anticipated escort arrangements;
- h) methodology for managing trunk road traffic during AIL deliveries, including identification of passing places and holding areas as necessary;
- i) convoy contingency plans in the event of incidents or emergencies;
- j) estimated convoy journey durations and timings along the route, including release of forecast traffic queues;
- k) swept path analysis modelling the movement of the worst case AILs at all potential horizontal and vertical constraints along the access route;
- l) proposals for the temporary or permanent modifications required to the highway or its associated infrastructure along the access route and details of how this would be managed;
- m) plans for the reinstatement of any temporary works after completion of the construction phase;
- n) a review mechanism in light of the construction of the Newtown Bypass;
- o) land ownership must be clarified on all drawings showing proposed highway modifications. The developer shall be responsible for the acquisition and reinstatement of all third party land including re-instatement of boundary features;
- p) proposals to liaise with all relevant stakeholders (including the relevant highway and planning authorities, Police, members of the public and local communities, hauliers, developers and landowners) prior to the submission of notifications for AIL deliveries and applications for special orders for AIL deliveries;
- q) consideration of the cumulative impact of other wind farm schemes proposing to use all or part of the same access route and coordination with those schemes where possible;
- r) the appointment and role of a transport coordinator to administer the abnormal indivisible load delivery strategy;
- s) means of control of timing of delivery of AIL movements;
- t) temporary traffic diversions and traffic hold points;
- u) restrictions of AIL movements during the Royal Welsh Show;
- v) details of banksmen and escorts for abnormal loads;
- w) full details of any highway works associated with the construction of layover areas, passing places and highway improvements including:
 - i. the detailed design of any works;
 - ii. geometric layout;

- iii. construction methods;
 - iv. drainage; and
 - v. street lighting.
- 29) No construction works shall take place on site until a Construction Traffic Management Plan (CTMP) for non-abnormal indivisible load vehicles has been submitted to and approved in writing by the Local Planning Authority. The approved Construction Traffic Management Plan shall thereafter be complied with and shall include the following:
- a) construction vehicle routing, including specific measures to ensure that construction traffic uses the proposed route;
 - b) means of monitoring vehicle movements to and from the site including the use of vehicles displaying a unique vehicle number, a livery indicating use at the development site and a telephone number for complaints to be logged;
 - c) the complaint's procedure;
 - d) timing of vehicle deliveries to the site;
 - e) the management of junctions and crossings of highways and other public rights of way;
 - f) contractual arrangements for the control of construction traffic offsite and to ensure that complaints and breaches of the TMP requirements are able to be remedied;
 - g) a travel plan aimed at maximising the use of sustainable travel by the construction workforce associated with the development;
 - h) communications with members of the public and local communities; and
 - i) a review mechanism in light of the Newtown Bypass.
- 30) No development works shall be undertaken until the developer demonstrates rights of access to all proposed works that are not part of the highway network to the satisfaction of the Local Planning Authority.
- 31) Full details of the highway works associated with any approved access onto the A44 including the detailed design, geometric layout, construction and drainage, shall be submitted to and approved in writing by the Local Planning Authority prior the commencement of any works on the site.
- 32) No development shall commence until full construction details have been prepared for the sections of the U1574 that may be subject to alteration. These details shall be submitted to and approved in writing by the Local Planning Authority
- 33) Adequate provision shall be made within the development to enable vehicles to turn around, so they may enter and leave the site in a forward gear.
- 34) No drainage from the site shall be connected to or allowed to discharge into the A44 drainage system or onto its carriageway.
- 35) Wheel-washing facilities, to be approved in writing by the Local Planning Authority shall be provided at the site exit before any other development commences. Such facilities shall thereafter remain available during the construction period and be used by all vehicles exiting the site.

- 36) AILs associated with the maintenance, repair, replacement or decommissioning of the development shall leave the site strictly in accordance with a Traffic Management Plan prepared in consultation with the relevant highway authority. The Traffic Management Plan shall be submitted to and approved in writing by Local Planning Authority prior to commencement of any removal of wind turbines, replacement of wind turbines or decommissioning works.

Ecology

- 37) No development shall commence, including vegetation clearance and tree felling, until a suitably qualified Ecological Clerk of Works (ECoW) has been employed. The ECoW shall be appointed prior to the commencement of any tree felling, site/vegetation clearance works or development. The scope of the ECoW shall include, but not be limited to:
- a) monitoring compliance with and reporting on the success or failure of the approved mitigation works and in the event of failures advising on remedial mitigation measures;
 - b) advising the developer on the implementation of the approved mitigation proposals and the protection of important nature conservation interests on the site;
 - c) directing and consulting on the micro-siting and placement of wind turbines, roads and other infrastructure;
 - d) monitoring and reporting on the compliance with the Construction Environmental Management Plan and other associated environmental plans; and
 - e) attending liaison meetings with and reporting compliance with conditions and plans and mitigation measures to the Local Planning Authority and other parties as necessary.
- 38) No development shall commence until a Protected Species Protection Plan has been submitted to and approved in writing by the Local Planning Authority. The Protected Species Protection Plan shall include:
- a) All mitigation measures outlined in the Environmental Statement to ensure that the development has no detrimental effect on the maintenance of the favourable conservation status of protected species.
 - b) A detailed pre-commencement survey programme including specification for pre-commencement surveys to be undertaken for bats, otter, curlew, starlings and their raptors, water vole, badger, great crested newt reptiles and include:
 - i. survey methodology;
 - ii. schedule and timing; and
 - iii. the development of casualty risk models for bats.
 - c) Details of specifications for mitigation or reasonable avoidance measures including in relation to bats, great crested newts, otters, reptiles, breeding birds, starlings and their raptors, water vole, pillwort and badgers to ensure their protection throughout the pre-construction, construction and operational phases of the development.

The Protected Species Protection Plan must be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.

- 39) No development shall commence until a Bat Protection Plan has been submitted to and approved in writing by the Local Planning Authority. The bat protection plan must be implemented as approved and include details of:
- a) any necessary mitigation measures to ensure the protection of the species during site clearance works and construction of the development;
 - b) a monitoring procedure to record bat activity and weather conditions;
 - c) a monitoring procedure to record bat mortality at wind turbines;
 - d) a requirement for the annual reporting of the results of monitoring, and where necessary details of any remedial action to reduce bat mortality;
 - e) a procedure for agreeing and implementing remedial measures aimed at reducing or avoiding bat mortality, such measures must include wind turbine curtailment and/or land management changes; and
 - f) an agreed timeframe for monitoring, sufficient to determine the impact of the operation of the authorised development on bats and the efficacy of any remedial measures to be implemented.
- 40) No development shall commence until a Habitat Management and Enhancement Plan (HMEP) has been submitted to and approved in writing by the Local Planning Authority. The Habitat Management and Enhancement Plan shall include:
- a) the nature conservation management and enhancement objectives including the management, restoration or creation of priority habitats and/or species, and a timetable for its implementation;
 - b) confirmation of the deliverability of the identified measures; and
 - c) all mitigation measures outlined in the Environmental Statement.
- The Habitat Management and Enhancement Plan must be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.
- 41) No development shall commence until an Ecological Monitoring Plan (EMP) has been submitted to and approved in writing by the Local Planning Authority. The EMP will need to include details of monitoring of Ecological features through construction, operation and decommissioning of the development, the monitoring will also need to be linked to appropriate contingency plans and identify when results would trigger implementation of relevant contingency measures identified in the CEMP. The EMP shall also include the monitoring arrangements for the Habitat Management Plan (HMP) and Protected Species Protection Plan (PSPP).

Archaeology

- 42) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority in writing. The Written Scheme of Investigation shall include:
- a) an assessment of significance of the known heritage assets in the locality and an assessment of the potential of the development site to contain currently unknown archaeological remains;
 - b) a programme and methodology for site investigation and recording which may include geophysical survey, trenching, archaeological excavation and/or watching brief as appropriate;

- c) the programme for post investigation assessment
- d) provision to be made for analysis of the site investigation and recording;
- e) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- f) provision to be made for archive deposition of the analysis and records of the site investigation; and
- g) nomination of a professionally qualified archaeologist.

The Written Scheme of Investigation must be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.

- 43) No development shall take place until a scheme of works in relation to the historic environment has been approved in writing by the Local Planning Authority. The scheme of works shall include:
- a) sample trenching of the Nant Brook Enclosure (Scheduled Ancient Monument No.RD147);
 - b) details of a sign board to be erected to explain the archaeological/cultural context and significance of the Nant Brook Enclosure to visitors;
 - c) an aerial Lidar survey, transcription and interpretative study of Llandegley Rhos and adjacent area, including: Nant Brook Enclosure (Scheduled Ancient Monument No.RD147), Llandegley Rocks Hillfort (Scheduled Ancient Monument No. RD264), Graig Camp (Scheduled Ancient Monument No. RD112) and Crug Eyr Mound and Bailey Castle (Scheduled Ancient Monument No. RD003); and
 - d) a timetable for the completion of the approved scheme of works.
- 44) No development or site clearance shall commence until the Local Planning Authority has been informed in writing of the name of a professionally qualified archaeologist who is to be responsible for ensuring the Written Scheme of investigation approved under condition 42 is carried out in a full and proper manner. He/she is to be present during the undertaking of any excavations in the development area so that the watching brief can be conducted. No work shall commence until the Local Planning Authority has confirmed in writing that the proposed archaeologist is suitable.
- 45) The developer shall afford access at all reasonable times to any archaeologist nominated by the Local Planning Authority, and shall allow him/her to observe the excavations and record items of interest and finds.

Television interference

- 46) Prior to the erection of any wind turbine a scheme providing for a baseline survey and the investigation and alleviation of any interference to television reception caused by the operation of the wind turbines shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified independent television engineer within 3 weeks of any complaint of interference with television reception, where such complaint is notified to the developer by the Local Planning Authority. Where impairment is determined by the qualified television engineer to be attributable to the development, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Local Planning Authority.

Aviation / Defence

- 47) Prior to the erection of any turbine, the developer shall provide written confirmation to the Local Planning Authority that the following information has been provided to the Defence Geographic Centre of the Ministry of Defence:
- a) the date construction starts and is likely to end;
 - b) the maximum height of construction equipment; and
 - c) the latitude and longitude of every wind turbine.

Community Liaison

- 48) No development shall commence until a community liaison scheme for the construction and decommissioning period has been submitted to and approved in writing by the Local Planning Authority. The community liaison scheme shall be implemented as approved and include:
- a) details of developer liaison with the local community to ensure residents are informed of how the construction or decommissioning of the development is progressing;
 - b) a mechanism for dealing with complaints from the local community during the construction or decommissioning of the development; and
 - c) a nominated representative of the developer who will have the lead role in liaising with local residents and the relevant planning authority.

Common Land

- 49) No development shall commence until commons consent, as required, has been granted.

Grid Connection

- 50) No development shall commence until planning permission, as required, has been granted for all stages of the grid connection from the substation to the National Grid.

Noise

- 51) The rating level of noise emissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:
- (a) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). This data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the local

- planning authority on its request, within 14 days of receipt in writing of such a request;
- (b) No electricity shall be exported until the wind farm operator has submitted to the local planning authority for written approval 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 local planning authority;
- (c) Within 21 days from receipt of a written request from the local planning authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the local planning authority to assess the level of noise emissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the local 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 emissions shall be undertaken in accordance with an assessment protocol that shall previously, have been submitted to and approved in writing by local planning authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes 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 local planning authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits;

- (e) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the tables to be adopted at the complainant's dwelling 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 dwelling. The rating level of noise emissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.
- (f) The wind farm operator shall provide to the local planning authority the independent consultant's assessment of the rating level of noise emissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the local planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant's assessment of the rating level of noise emissions;
- (g) Where a further assessment of the rating level of noise emissions from the wind farm is required pursuant to Guidance Note 4(c), the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (d) above unless the time limit has been extended in writing by the local planning authority.

Table 1 - Noise limits expressed in dB LA90,10 minute to be applied at all times of Day or Night

	Easting	Northing	Standardised Wind Speed m/s					
			5	6	7	8	9	10
Bwlch-Y-Cefn	312088	261106	36	38.4	40	40	40	40
Pye Corner	314385	260363	36	37.6	39.9	40	40	40
Nursery Cottage	311435	260061	36	36	36.9	40	40	40
Sunny Bank	311584	260601	36	36	36.9	40	40	40
Graig (South)	312730	258692	36	36	37.4	39.5	40	40
Blaen Edw	314571	259481	36	37.6	39.9	40	40	40
Penffynon	311423	260780	36	36	36.9	40	40	40
Bwlch Llwyn	311382	259545	36	36	36.9	40	40	40
Graig (North)	312577	261773	36	38.4	40	40	40	40
Hendy Farm	312380	258778	45	45	45	45	45	45
The Green	312450	258563	36	36	37.4	39.5	40	40
Gelynen	312328	258485	36	36	37.4	39.5	40	40
Bwlchau	311753	258555	36	36	37.4	39.5	40	40
Cornhill	314704	260670	36	37.6	39.9	40	40	40
Pen y Bank	311467	260526	36	36	36.9	40	40	40

Guidance Notes for Noise Condition 51

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise emissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

(a) Values of the La90,10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The La90,10 minute measurements should be synchronised with measurements of the 10- minute arithmetic mean wind and operational data logged in accordance with

Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis.

All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres . It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise emissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)

(b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions the Local Planning Authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA90,10 minute noise measurements and corresponding values of the 10-minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3

(a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise emissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

(b) For each 10 minute interval for which LA90,10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise emissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

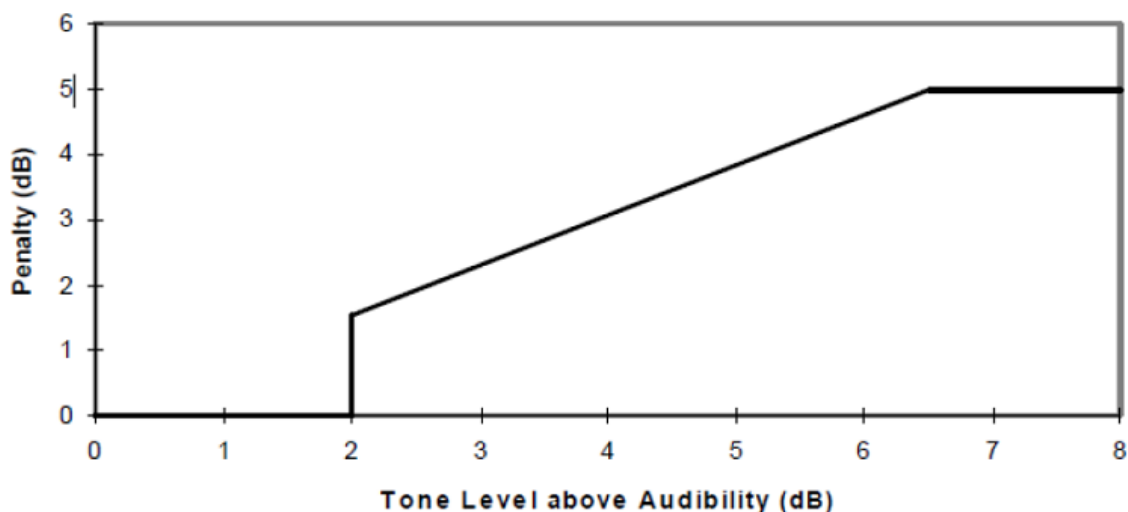
(c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.

(d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.

(e) A least squares "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind

speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written protocol under paragraph (d) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

(e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the development fails to comply with the conditions.