

**S78 Town and Country Planning Act 1990  
The Town and Country Planning (Environmental Assessment) (England and Wales) 1999**

**Appeal by Next Generation Limited against the refusal by Sedgemoor District Council to grant planning permission for wind energy development on land to the north of Inner Farm, Stoddens Lane, Edithmead, Nr Burnham On Sea, Somerset**

**Local Planning Authority reference 12/06/00007/CSM**

**Planning Inspectorate Reference APP/V3310/A/06/2031158**

**CLOSING SUBMISSIONS ON BEHALF OF APPELLANT**

**Marcus Trinick**

**Bond Pearce**

**August 2007**

## **CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT**

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### **1. Introduction**

5.1. What I said in my opening statement about the 5 and 4 turbine options is equally applicable in closing, and I specifically incorporate what I said in opening about the options in these submissions. In closing I first give my views on the main issues in this inquiry as they appear to me to be following the evidence.

### **2. Main Issues**

2.1. In my view the main issues that you defined at the start of the inquiry are indeed those which will receive your principal consideration, save that in relation to issue 2 (living conditions) I do not believe that noise and shadow flicker remain critical evidential issues having heard the various witnesses. As to the fourth issue (balancing benefits against perceived adverse impacts) I agree with your definition save that, as made clear by DS in evidence, the precise contribution that the scheme may make to emission savings and to the generation of clean energy are not matters which should influence your judgment on this appeal. The question of meeting regional targets, expressed in terms of installed capacity, is however vitally important, and I will deal with this topic, and indeed your issue 4 generally, under the heading of other material considerations.

### 3. Other matters

3.1. Apart from evidence on the main issues a substantial number of other concerns have been raised at the inquiry. These do not in my view amount to determining issues, and I will deal with them as follows: .

#### *Noise*

On this topic you have evidence from Dr AM, FB, and AM. We can deal with the evidence of AM most briefly. He ventured a series of observations on noise, unsupported by any evidence or expertise, and to be fair he did not fight his corner that hard in XX.

With regard to FB he acknowledged in XX that, on the basis of advice in PPS22 and its Companion Guide (CD20 and 21) the advice in "The Assessment and Rating of Noise from Wind Farms" (CD61 - known as ETSU) was overwhelmingly likely to be used by you when assessing acoustic issues. He did not seek to argue that noise emissions from the development would fail to meet the rating standards advised in ETSU and indeed he produced no environmental information of his own on the topic. However, FB did make a number of points of principle and detail and I will address them:

- FB agreed (2.8 Proof) that ETSU's advice on sleep disturbance was in doubt because of the sleep disturbance criterion within a World Health Organisation document of 1999 which post dated ETSU. However, Dr AM made clear, and FB accepted in XX, that the WHO recommended external noise level of 43dBL90 is precisely the external noise level recommended by ETSU. He also acknowledged that, PPS22 having been issued in 2004, there had been the opportunity to review ETSU prior to the issue of PPS22 which, together with the Companion Guide, specifically and firmly recommends the use of ETSU for the assessment and rating of night time noise from wind farms. It is clear that there is no further issue here to explore.
- With regard to amplitude modulation it is fair to note that FB's proof (paras 2.9 and following) was written prior to the publication of the Salford report on this topic by BERR in July 2007 (CD81). CD81 and the Government release

(CD82) makes it clear that no further research on amplitude modulation is currently appropriate on the basis of the research and conclusions in the report, and that ETSU is to continue to be used for the assessment of rating of noise from wind energy development. The issue of amplitude modulation should attract no further attention.

- FB asserted (para 2.15) that in the event of a complaint that the wind farm was giving rise to a statutory nuisance a Court considering an abatement notice would, on the basis of Gillingham Borough Council -v- Medway (Chatham) Dock Co. Limited [1992] 3 All ER 923, have regard to the fact that the planning permission for the wind farm had changed the character of the area, with the result that a nuisance claim might well fail. As put to FB in XX the case cited by him makes it perfectly clear that a planning permission cannot authorise a nuisance. If a nuisance claim was to be made then it would be determined by the Court on its merits, although Dr AM (in chief) made the perfectly valid point that if a wind farm was operating in accordance with the ETSU rating standards a reasonable degree of protection would be afforded to neighbouring residents.
- In para 3 of his proof FB made some assertions about the especial sensitivity of occupiers of the caravan site known as Home Farm Holiday Park. However, as explained by Dr AM the fears expressed by FB are unfounded. I refer to material in the SEI (CD8) on this topic and to figures 18-20 in the SEI. In particular figure 18 (addressing night time noise) makes it clear that ETSU rating standards would be met at the caravan site, and Dr AM further explained that the noise attenuation qualities of caravans meant that internal noise levels would be about 1 dB above those which might be expected in the room of a house, not an increase of relevance in terms of the Figure 18 SEI evidence that the ETSU night time rating standards would be handsomely met at the caravan site. It is also relevant to note that having regard to evidence from FB and AM about wind direction, Dr AM's propagation methodology assumes a constant downwind propagation of noise (obviously an unrealistic worse case). There is no further concern to explore in relation to the caravan site.

