



**AGENDA ITEM:**

**PLANNING COMMITTEE:  
6<sup>TH</sup> OCTOBER 2016**

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**Report of: Director of Development and Regeneration**

**Contact: Mrs. C. Thomas (Extn.5134)  
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**SUBJECT: LATE INFORMATION**

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**1.0 INTRODUCTION**

The information below has been received since compilation of your Agenda. The following also includes suggested adjustments to the recommendations further to the receipt of late plans and/or information.

**2.0 ITEM 7 – PLANNING APPLICATIONS**

**REPORT NO. 1 – FIFTEENS AT THE FOX, ROBY MILL, UPHOLLAND**

Please note the planning application 2016/0808/FUL described at section 2.2 has been refused planning permission (22.09.2016).

**ADDITIONAL REPRESENTATIONS**

I have received a representation from St Theresa's Catholic Church. This confirms that contrary to the supporting information received from the applicant's representative on 6<sup>th</sup> September 2016, the cemetery car park at Roby Mill is solely for the patrons of St Theresa's visiting the cemetery and not for commercial use. There are problems with unofficial cars parking on this site and there is an element of unsocial behaviour in the evenings.

A further representation has also been received from a local resident who advises that on Sunday evening (2nd Oct), the car parking for the PH had spilled out onto the School Lane and into the nearby Church car park.

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It should be noted that while the applicant has erected a fence which dissects the existing car park, no change of use has occurred at this time and the whole of the

site remains available for use for car parking purposes associated with the Public House.

### **REPORT NO. 3 – 192-198 ENNERDALE, TANHOUSE, SKELMERSDALE**

The applicants have advised that the exterior of the building may require refurbishment as part of the conversion works, although this detail has not yet been finalised. For this reason they have requested that condition 4 be amended.

### **OBSERVATIONS OF DIRECTOR OF DEVELOPMENT AND REGENERATION**

Given this information condition 4 to is amended to read as follows:

Details of the colour and texture of the external facing materials shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details prior to occupation of the dwellings.

### **REPORT NO. 5 – LAND TO THE WEST OF CABIN LANE, GREAT ALTCAR**

There is an error in the agenda report. This relates to the consultation response from the MOD. The agenda report indicates that the MOD maintain an objection to the application. This is incorrect. The MOD initially objected but withdrew their objection on 29th June 2016, subject to a condition relating to the submission of a Radar Mitigation Scheme.

### **FURTHER SUPPORTING INFORMATION**

I have received additional information from the applicant between the report being written and published and also since publication. Notably, this includes a Planning Review, a Population Viability Analysis for pink footed geese and comments on ecology, landscape, green belt, aviation and benefits of the scheme.

Planning review:

- The applicant submits that scientific evidence shows that taking significant material actions to combat climate change is growing more urgent as a consideration and that today's policy context demonstrates that it is as important a priority as ever, if not more so;
- The UK Government Committee on Climate Change reported in October 2015 that there is a growing scientific evidence base for action on climate change and they found the level of proposed EU share of international action was below that which they considered consistent with the 2 degree goal;
- The Climate Change Risk Assessment 2017: Evidence Report July 2016 examined the impacts of climate change on UK society, which will be of critical importance to West Lancs;
- The State of the Nature Report 2016 undertaken by the RSPB and 50 other wildlife organisations reiterates the adverse impact of climate change on wildlife;

- The Paris Climate Agreement December 2015 represents a result far stronger than most were predicting, with references particularly now to a far more challenging 1.5° target, stressing enhanced ambition required pre-2020 (which may well result in the current EU and UK 'Nationally Determined Contributions'/ Climate Change Act/ Renewable Energy Directive targets being raised), and the so-called "ratcheting mechanism" of five-yearly upwards-only reviews (to take the UK from current trajectory from promises of 2.7° down to "well below 2°") .
- The 5th UK Carbon Budget for the period 2028 -2032 was set into law in July 2016, mandating a reduction in greenhouse gases against a baseline of 57%. Current projections still suggest a shortfall against the 2020 targets.
- The applicant advises that the Committee on Climate Change (referred to section 4.4 and 4.14 of the Planning Appraisal) are already looking to review the implications of the Paris Agreement for UK climate change mitigation under the Climate Change Act – including potentially a review of the 2050 target (which reportedly might well need to increase to ~90% reduction from 1990 baseline) and reviews of the 4th and 5th Carbon Budgets (both of which DECC are already forecasting a shortfall against...). This work will doubtless include assessment of "least-cost" technology adoption pathways, and could therefore result in higher than present scenarios for onshore wind out to 2030.
- The applicant also advises that in the time since the submission of the application, there has been an update in respect of the Government's published "Digest for UK Energy Statistics" figure for the rolling five-year average load factor for onshore wind energy which means an increase in assessed output in the proposed wind farm of 5.8% - from 94,923 MWh up to 100,442 MWh per year;
- The applicant advises that overall, West Lancs are ranked 117th of Councils for installed capacity, and 152nd for onshore wind. The district currently produces just 5.8% of its overall electricity consumption from renewable sources, which using the figures from our ES the Lower Alt project could increase by 9% (so up to 15%).
- In regards national renewable energy targets, the applicant's Planning Appraisal states that the UK's legally binding 15% renewable energy target for 2020 (and more loosely legally binding sub-target of 10% renewable transport fuel) is supported by indicative figures for electricity (30%) and heat (12%) which were set out in the 'Renewable Energy Strategy (2009)'. These indicative figures, notably for electricity, are not in any sense legally binding or a cap, and in order to meet the legally binding overall target if there is a shortfall in either heat or transport then electricity will be required to shoulder a much greater burden. The Renewable Energy Association have carried out some analysis, which suggests that due to shortfalls in both heat and transport, electricity is likely to be required to deliver up to 44-45% (an increase of 50% over the current stated requirement). Whilst it might be current Government position that the 30% renewable electricity 'target' will be met, evidence of a shortfall against the legally binding targets ought to be a material consideration.
- Continued onshore wind delivery is still an essential part of the above, and the applicant is of the view that it would be unsound to give it any reduced weight in the planning balance;
- The applicant is of the view that the delivery of the Development Plan relies on the contribution of significant scale onshore wind energy developments, of which the current application is the only in the pipeline or on the horizon;

- That the renewable energy generation benefits of the scheme can be considered to be quantitatively greater now than in the original Planning Appraisal, due to updated Government statistical data;
- The applicant indicates that the case on the Written Ministerial Statement (18th June 2015), as put forth within the Planning Appraisal, has been supported by a number of other similar cases;
- The applicant considers that the Lower Alt wind farm site is expressly identified as suitable for wind energy in numerous referenced reports supporting the Development Plan;
- The applicant concludes that the delivery of the Development Plan fundamentally rests on the delivery of significant amounts of onshore wind energy development, and the Lower Alt site is both the only scheme of scale to have come forward to date, and in respect of constraints mapping (see our Figure 4.1 and RSPB's 'Energy Futures: Opportunities' map, as well as the Renewable Energy Capacity Study and Landscape Sensitivity to Onshore Wind Development study) is effectively the only viable such location in the borough, and can provide practically almost half of the boroughs ~100MW target for onshore wind and enough renewable energy for over half of all households.
- There has been a significant showing of public and business support for the application.

#### Visual amenity:

- The applicant indicates that the submitted ES finds that there will be significant landscape and visual effects from various locations, but "significant" and even "significant adverse" is not synonymous with "unacceptable harm" in the round. The highest level of national policy within the NPS's (EN-1 and EN-3) establish that it is universally the case that wind farms will always result in significant landscape and visual impacts within up to a few kilometres distance, and so this is accepted and any harm identified (when balanced in the round) would have to be very substantial indeed in order to override the "presumption in favour" of both the NPS and NPPF for renewable energy and sustainable development respectively.
- For Lunt Meadows – the primary recreational amenity is in the ecological interest of the reserve itself, rather than the "panoramic views" (which are incidental really, and for that matter include plenty of other modern infrastructure, including the HV-pylons that flank the site), and it is hard to see how the visual presence of turbines here would specifically detract from this ecological interest. This is what the LVIA assessment finds, which was supported by consultation with the ecological consultants who are familiar with Lunt Meadows' development (and naturally similar reserves/ areas of ecological interest around the country);
- For the Cheshire Lines Path – the primary recreational amenity is the availability of the long-distance path itself as a resource for walking, cycling etc., and there is surely no question that the visual presence of the turbines will either restrict or diminish this availability in any way. Nonetheless, that close-by visual impacts on the route represent only a relatively small proportion of the overall long-distance path resource should be a relevant consideration;
- The applicant advises that for the entirety of the run of the Cheshire Lines passing the wind farm site the path is flanked by up to 60m high-voltage overhead pylons and hanging cables a relatively short distance on one side (~80m), with Acres Lane/ Altcar Lane (with associated traffic) only a short

distance to the other side (~150-200m), and even passes right by the sewage treatment works at Hill House. In other words, this section of the path is not by any means a pristine, natural journey through some exceptional landscape designated area, which it's users will be well aware of;

- The applicant comments that the agenda report states that combined factors could result in an overpowering effect of being in close proximity to the proposed development site – from the distances that are identified, of 300-500m, I have no doubt that we could find you countless examples of schemes, similar and larger size than this and in similar settings, where recreational receptors e.g. footpaths/bridleways can be found much closer than this. For instance, the British Horse Society (representing arguably amongst the most sensitive of recreational users in a non-designated area such as this, being in charge of a large animal) recommends a minimum separation distance for bridleways from turbines of only 200m. Just to clarify though – the distance from the nearest turbine to the Cheshire Lines is actually 480m, and to the nearest publicly accessible part of Lunt Meadows is 340m, albeit walking atop of the Environment Agency's flood defence banks (none of the paths within the reserve or in fact along the River Alt banks are designated PRow, so these are private footpaths/property). The actual predominant interest in the reserve is in bird watching, and this takes place from the hides, none of which are located on the Alt bank (and from where the focus naturally would be into the pools/ reedbeds of the reserve);
- The assessment identifies conservatively that there will be a wholesale change in local landscape character (within ~800m) to a "wind farm landscape", and beyond that (up to 1.75km) to a "landscape with wind farm subtype" (although noting that within this these distances the actual degree of impact on the physical fabric and key features/characteristics of the landscape are very limited).

#### Green Belt:

- The applicant comments that, in summary, wind turbines do technically represent "inappropriate development" in the green belt (per NPPF/ LDP policy), however it is long established (and indeed noted in the LDP) that "very special circumstances" to permit this exist in the form of renewable energy generation (there are numerous examples of wind farms consented in green belt, including Mawdesley Moss/ Cliffs Farm). Nonetheless, the LVIA considers the impacts in terms of the green belt criteria (openness etc.), and concludes that the "permeable" nature of wind farms (as compared to other forms of development, such as housing or solar farms) means that they do not 'carpet' the ground in the way that the 'openness' criteria is intended to protect against (this proposal covers only 1.4% of the total application site, for instance), and so the level of 'harm' assessed must be correlated in respect of this fact. The LDP even acknowledges that "development will be required in the green belt".

#### Built Heritage:

- The applicant advises that Historic England have not objected in principle regarding the highest Grade I and Grade II\* assets, and varying (although never more than slight-moderate in EIA terms, even after conservation officer revisions) degrees of "less than substantial harm" (NPPF terms) on a number of GII listed buildings and conservation areas (and in view of the Mordue case, this NPPF assessment amounts effectively to a S66(1) assessment). The NPPF and LDP are both clear (notwithstanding P(LBCA)A) that different

levels of weight/protection are to be afforded in accordance with the significance/listing of individual assets, and it would not be hard to find precedents of other wind farm schemes consented with similar levels of less-than-substantial harm to lower-designated assets as in this case.

#### Agricultural Land:

- The applicant comments that in the worst case scenario, the scheme will remove 12 hectares of agricultural land (including upgraded existing access tracks), out of an 867 hectare application site (less than 1.4%). Natural England only require consultation for the permanent loss (which this is not) of more than 20 hectares of high grade land. There are 14,815 hectares of grade 1 and 2 land in West Lancs, meaning this scheme would temporarily remove less than 0.001% of such land just in the borough. There are a sample list of 20 other wind farms located in grade 1 and 2 land in England in the Socioeconomics chapter, so there is ample precedent.

#### Aviation:

- The applicant comments that the MOD withdrew their objection in June 2016, subject to a condition which we are happy with, apart from “No development shall commence” being replaced with “No turbine shall be erected”
- The applicant advises that an agreement has almost been reached with NATS. Whilst they don't generally remove their holding objections until these agreements are signed, the applicant considers it should be clear that NATS do consider that a mitigation solution exists which enables them to do this and suggest a Grampian-style condition could be imposed.

#### Ecology:

- The applicant points out that MEAS consider that the Population Viability Assessment for Pink Footed Geese addresses just this one specific issue from their previous comments. This is because the applicant considers it would be unnecessary to undertake such an assessment for any species for which we are not predicting ‘significant effects’ in EIA terms, or potential for ‘Likely Significant Effects’ in HRA terms;
- The applicant disagrees with the approach MEAS has adopted regarding the population modelling for pink footed geese. The applicant is of the view that MEAS are requiring the scheme to safeguard a rate of population growth of pink footed geese rather than population stability and the applicant advises there is no legal basis for this approach;
- The applicant advises that impacts on pink footed geese could be reduced by preventing legal quarry shooting which currently occurs on the site. The presence of the turbines could restrict the freedom of the existing shooting tenant on the site in future – with the existence of a ‘Shooting Code’ being put in place in order to avoid any potential damage to the machines - then the benefits of this reduction in shooting freedom may even very well outweigh the impacts of the turbines;
- The applicant is of the view that there is no predicted decline in population at the SPA associated with the wind farm, even using the very worst case assumptions, and in line with the EU Directive MEAS should be able to conclude that there will be “No Likely Significant Effects” in respect of pink-footed geese to the SPAs.
- The Goose Management Scheme is not being implemented to mitigate for any level of identified “significant effects” (i.e. effects above a certain acceptable level), but rather to actually reduce non-significant impacts such

as they are (from theoretical 'loss' of feeding resource within the turbine envelope) to net zero.

- The applicant has submitted further information regarding the justification for the size and scale of the pink footed goose mitigation area.
- The applicant advises that earlier this year the RSPB brought out a major study considering the potential for deployment of various renewable energy technologies around the UK. RSPB identify areas of "high" and "medium" sensitivity for birds, as well as "policy" and "physical" constraints to onshore wind energy development. The applicant indicates that in this study, the Lower Alt site is identified as an "opportunity" for onshore wind energy development. In fact, looking at the scale of West Lancashire (and factoring in only one other known constraint in RAF Woodvale), the Lower Alt site is the only onshore wind energy opportunity in the Borough.

In addition to the above information, the applicant's solicitor has written to the Council to request a deferral of the application for two reasons. The letter states the following:

*"Draft reason for refusal 4 suggests that there is currently insufficient information to demonstrate that the proposed development would not adversely affect internationally designated sites, their qualifying features and supporting habitat. The Council has been advised by MEAS that an Appropriate Assessment under the Habitats Regulations is required prior to any decision. Natural England must be consulted on the scope of an HRA. Natural England has not responded so far to the council's consultation request on either the application or on the scope of an HRA.*

*The Applicant has been in discussion with Natural England for a number of months about its requirements for additional information. The planning department is fully aware of this. As a result of those discussions, Further Environmental Information was requested and submitted by the Applicant on Monday 26th September. This was before the officer report to committee was published. This FEI has not been referred to or taken account in the officer's report. Both MEAS and Natural England need to consider the FEI and provide detailed consultation responses to the Council which can then be considered by the Applicant before any decision can be properly be made. The consultation period extends for a period of 21 days from the date of submission. Clearly, the Council believes that impact of ornithological interests is a principal issue in this application. The Applicant is confident that the outcome of its discussions with Natural England will be positive. Natural England's response is expected to influence the advice given to the Council by MEAS, and the Applicant intends to continue discussions with MEAS in order to resolve their remaining concerns. Adequate time needs to be afforded for the statutory consultee to respond.*

*There is an incorrect reference in the officer's report to the MOD maintaining an objection, when this was in fact withdrawn subject to imposition of a suitable planning condition on 29th June 2016. Further, there is no reference within the Report to the correspondence which the Council has received from NATS confirming that (1) a suitable technical mitigation solution has been identified which would enable them to remove their objection, and (2) that completion of a Mitigation Agreement with the applicant to this end is very close to completion.*

*The overriding objective is to ensure that a rational, fair and proportionate decision is made by elected members. Given the central importance of ornithological impacts to this scheme, it is essential that the views of the statutory consultee on both the application as a whole and on the scope of an HRA are known. Without this, it is not possible to make a lawful decision.*

*Further, there are identifiable flaws in the way the scheme has been reported which have the capacity to mislead elected members and prevent them from making a lawful planning judgement. These matters could be addressed properly in a re-written or supplementary report with which the Applicant is willing to assist but they cannot be dealt with properly as "late information" presented orally ahead of next week's meeting.*

*In light of the above, the sensible course of action would be to defer consideration of the application until full information is known and set out properly for elected members and we trust that this will be done."*

The additional information submitted by the applicant in relation to ecology regarding population viability analysis of pink footed geese has been forwarded to the relevant statutory consultees and responses have been provided below.

## **CONSULTATION RESPONSES**

### **NATURAL ENGLAND (05.10.2016)**

At present it is Natural England's advice that further assessment is required regarding impacts on designated species from the Ribble and Alt Estuaries SPA and Ramsar site, and Sefton Coast SSSI and Martin Mere SPA and Ramsar site, and Martin Mere, Burscough SSSI.

The application site is in close proximity to the following European designated sites (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect their interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations')

- Ribble and Alt Estuaries Special Protection Area (SPA). The site is also listed as Ribble and Alt Estuaries Ramsar site<sup>1</sup> and also notified at a national level as Sefton Coast Site of Special Scientific Interest (SSSI).

- Martin Mere SPA. The site is also listed as Martin Mere Ramsar site and also notified at a national level as Martin Mere, Burscough SSSI

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

The Ribble and Alt Estuaries SPA and Martin Mere are designated for their important populations of wintering waterbirds; the SPA is also of major importance during the spring and autumn migration periods. Several species of waterbirds (notably Pink-footed Goose *Anser brachyrhynchus*) utilise feeding areas on agricultural land outside of the SPA boundary (functionally linked land).

The application site is within land which is functionally linked to the Ribble and Alt Estuaries SPA (and possibly Martin Mere). This is acknowledged within the submitted Environmental Statement *'The region is known to support an important wintering population of this species (pink-gouted goose), which will be very likely ecologically linked to the Ribble and Alt Estuaries SPA (roosting on the SPA at night but feeding by day on the surrounding farmland), and possibly also the Martin Mere SPA to the north'* (Section 7.2.17).

The submitted 'Report to inform a Habitat Regulations Assessment for the Proposed Lower Alt Wind Farm' (appendix 7.5) concludes that there will be no likely significant effects from the proposed development. On the basis of information provided, Natural England advises that there is currently not enough information to rule out the likelihood of significant effects. Natural England therefore advises that your authority should not grant planning permission at this stage.

Natural England advises that the information and evidence gaps could potentially be resolved with additional information formally submitted by the applicant.

Natural England recommends that any information gaps should be met by the formal submission of information, so that the project as a whole, i.e. as submitted with all information and measures to protect the European site, can be screened to check whether the likelihood of significant effects can be ruled out.

Natural England's advice:

- The submitted ornithological survey information is over 2 years old. Ideally the applicant should present more recent survey information, however Natural England considers the 3 years survey effort as acceptable. However, PFG populations have increased and therefore the figures are likely to be an underestimate, and without more recent data there will be greater uncertainty in the planning process.
- Table 7-14 provides a summary of the number of birds recorded within the potential 600m disturbance zone around the wind turbines; within this table there are several SPA bird species. It is unclear from the information submitted whether consideration has been given to what proportion of the SPAs populations (5 year mean peak count) these peak counts are (both as qualifying individual species, and as part of the assemblage where appropriate). Table 7-12 considers the peak counts from the study area as a proportion of the regional population; Natural England would like to see a similar table demonstrating SPA bird peak counts (within the 600m) as a proportion of the SPAs populations as stated above. This will indicate if there are potential significant effects on other SPA species that need to be considered. Please note that the 5 year mean peak count has been submitted for PFG.
- We note that the applicant has recently submitted additional information relating to collision risk modelling/population viability assessment for PFG. The assessment considers both 99.8% and 99% avoidance rates; the assessment concludes no significant effects on population viability from collision.
- Natural England note that a PFG management scheme (Appendix 7.4, October 2015) has been submitted to mitigate for potential effects; the scheme will aim to provide supplementary foraging resource for PFG. We note that the applicant has used the mean count rather than the mean peak count (as requested previously by Natural England and RSPB) to calculate the amount of supplementary feeding

required. The applicant has recently provided Natural England with additional information relating to the PFG survey counts so that we can assess whether the mean or mean peak count would be the most representative count to use; Natural England is still in the process of assessing this information

- Amount of provisioned food: The figure of 1,100kJ provided appears to be based on Daily Energy Expenditure. Expenditure is different to energy intake; it is the latter figure that should form the basis for the amount of food provided, as the former does not take into account assimilation (a goose's digestive system is not 100% efficient, so not all the energy contained within food is available). Depending on the species-food specific assimilation rate, there will need to be an equivalent uplift in the amount food provisioned.
- Annex A provides further comments relating to supplementary feeding schemes

Our concerns regarding the potential impacts upon Sefton Coast SSSI and Martin Mere SSSI coincide with our concerns regarding the potential impacts upon site and are detailed above.

Should the application change, or if the applicant submits further information relating to the impact of this proposal on the SSSI, Natural England will be happy to consider it.

If your Authority is minded to grant consent for this application contrary to the advice relating to the SSSI contained in this letter, we refer you to Section 28I (6) of the *Wildlife and Countryside Act 1981* (as amended), specifically the duty placed upon your Authority, requiring that your Authority;

- Provide notice to Natural England of the permission, and of its terms, the notice to include a statement of how (if at all) your authority has taken account of Natural England's advice, and
- Shall not grant a permission which would allow the operations to start before the end of a period of 21 days beginning with the date of that notice.

#### Protected Species:

You should apply our Standing Advice to this application as it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation.

The Standing Advice should not be treated as giving any indication or providing any assurance in respect of European Protected Species (EPS) that the proposed development is unlikely to affect the EPS present on the site; nor should it be interpreted as meaning that Natural England has reached any views as to whether a licence is needed (which is the developer's responsibility) or may be granted.

#### MEAS (30.09.2016)

The applicant has submitted a further report with respect to impacts on pink-footed geese. I have reviewed the report and advise that the report does not significantly affect my previous comments (MEAS memo dated 13 May 2016).

The report addresses one impact, collision risk, to one species, pink-footed geese. However, impacts to passage and wintering bird species extend to other species and to impacts other than collision risk which have not been addressed by this report. As identified in our previous comments the focus on pink-footed geese is a short coming of the Environmental Statement.

The report addresses the effects of predicted collision risk on pink-footed goose populations over a 25 year period. The report shows a number of outcomes depending on the avoidance rates used to model collision risk. The report argues for the use of the higher avoidance rate 99.8% as advocated by Scottish Natural Heritage rather than the lower rate of 99% as advocated by Natural England. The report references a number of studies and wind farm monitoring indicating higher avoidance rates. However, there are relatively few studies or long-term monitoring and therefore national advice from Natural England's is to use a 99% avoidance rate.

The report concludes that even with a 99% avoidance rate there would be no likely significant effects on pink-footed geese populations over a 25 year period as the population would continue to grow at 3.3% per annum. Figure 3 of the report clearly shows that with a 99% avoidance rate, the population would be significantly below the population predicted with no additional mortality figure (a predicted population of 49,200 compared to 74,000) I therefore disagree that this would not be significant.

Secondly, I disagree with conclusions made in relation to the effectiveness of the Goose Management Scheme in reducing collision risk further. For the goose management scheme area to effectively mitigate impacts from collision risk it must be located in an area which does not result in geese needing to over fly the windfarm to get to the Goose Management scheme area and this will be difficult to achieve given the location of the various roost sites and feeding areas for this species within the West Lancashire and Merseyside area.

The studies and monitoring reports show the avoidance of wind farm sites by pink-footed geese. This will result in functional loss of habitat through avoidance and displacement of this species from feeding grounds. The report does not address this impact on population viability of PFG and other qualifying bird species. This impact has not been fully addressed within the Environmental Statement.

#### RSPB (30.09.2016)

The RSPB have responded to the applicant's assertion that the recently published RSPB 2050 Energy Vision superseded the views of the RSPB local branch made in January 2016. They state:

Responses to individual planning applications are led by RSPB's national response criteria. Obviously the original response in respect of the proposed wind farm was submitted before the RSPB 2050 Energy Vision was published, however, I still stand by my response on behalf of RSPB.

The 2050 Energy Vision report at the outset states: *"The maps should not be interpreted as areas that should or should not be used to deliver renewable energy....."*

The Energy Futures report is highly ambitious in scope, attempting for the first time to undertake a comprehensive analysis of how the UK can transition to a low carbon energy system and deliver its climate change targets in harmony with nature. In particular, the spatial analysis of renewable energy technologies in Annex 1 of this report has not previously been undertaken at this (national) scale

for a number of the technologies analysed. Given the ambitious nature of the analysis contained in this report, the future energy scenarios presented are not intended to be definitive or prescriptive at the detailed level.

In short, the maps are not designed to identify sites for renewables opportunities, but to answer a broader question about whether it is possible to meet UK emissions reduction targets in harmony with nature, i.e. without adverse impacts on ecologically-sensitive sites. So the maps are not intended to identify areas where the RSPB supports renewable energy development, or would necessarily oppose it.

Therefore, we maintain the position that site-based assessments such as EIA are required to determine whether particular developments will have unacceptable levels of ecological impact. As such, the maps do not affect the RSPB's engagement with projects on a case-by-case basis. Rather, we advocate this methodology being used by national Government(s) to inform energy policy at a strategic level, and by local authorities to help identify suitable sites at the more local level (which is something we are currently working to develop in our policy and advocacy work). This information is covered in the FAQs and in the Annex to the Technical Report which states; *"The maps should not be interpreted as areas that should or should not be used to deliver renewable energy, but rather as indicative of the aggregate land area available for renewable energy capacity at different levels of ecological sensitivity"*.

The West Lancashire goose & swan alert area mapping is available to us at regional and local levels, it is important to note that these were not referenced in the mapping by the report's authors for the reasons given below:

There is no single national data source for goose and swan feeding areas on cropped land, and, although we have good datasets for the Northwest, data at the national scale is patchy. WeBS counts are focused on estuarine and coastal populations, with only cropped land in the immediate vicinity of these core sites being surveyed. For this reason, cropped feeding areas for geese and swans have not been included on the sensitivity mapping layer which were used to produce the maps, hence the area on which this development is proposed is not shown on the mapping.

The decision not to buffer SPAs (i.e. to not include functionally linked areas) was made after discussion with the UK casework and site protection teams. The technical report contains the following reasoning "Buffers were not applied to protected areas because: (i) sensitivities to energy projects of qualifying species are often unknown and species-specific; (ii) protected area boundaries often have integral buffers; and (iii) the risk of over-estimating areas of sensitivity." Argument (ii) does not apply to wildfowl SPAs but the other two clauses are relevant in this case.

Specifically on *Functionally Linked Areas* - we acknowledge that these are important for wildfowl populations, however, it is not that case that all areas within foraging distance of a roost will be used to the same extent (if at all, for some areas may not contain suitable feeding habitat) or that no development should be permitted within this zone. However, for a development to be acceptable in the foraging zone we would normally expect adequate mitigation to replace the

resource to be damaged or lost, and clearly we do not believe this to be the case in respect of this development.

In direct response to Mr Hunter's line; "*Happily, the Lower Alt site is identified as an "opportunity" for onshore wind energy development!*" The area surrounding the proposed development is actually marked as low/unknown sensitivity, not as an opportunity area for wind farm development, as I have already stated above this is because of the use of national rather than local data sets in the production of the report.

To reiterate our message these maps are not intended to indicate suitable sites for renewable energy development, and do not affect the RSPB's engagement with individual casework – which will of course continue on a case-by-case basis.

It is also important to remember that poorly-planned energy infrastructure can seriously harm wildlife, adding to existing pressures, including those caused by climate change.

### **OBSERVATIONS OF DIRECTOR OF PLANNING AND REGENERATION**

The applicant has submitted a large amount of information since the preparation of the agenda report and this has been considered in detail as well as forwarded to the relevant consultees. The applicant has sought to address each of the proposed reasons for refusal and provide additional supporting information to address the issues identified. I have given due consideration to the submitted information and responses received from consultees. Although it is acknowledged that the proposed scheme would provide a significant proportion of renewable energy within West Lancashire I remain of the opinion that in the overall planning balance, the harm caused by proposed development in this particular location is not outweighed by the recognised renewable energy benefits.

The impact on visual amenity, landscape character and overall harm to the Green Belt are subjective matters and the agenda report outlines my view on these issues. Despite the additional information submitted by the applicant I cannot conclude that the harm caused to the landscape, visual amenity and openness of this part of the green belt, would be outweighed by the benefits of the scheme, namely the production of renewable energy.

In terms of heritage assets, whilst the applicant points to the fact that Historic England have not lodged objections to the scheme, Historic England only provide comments on the impact of development upon Grade I and Grade II\* assets and their settings. Historic England has no responsibility for assessing the impact of the development on Grade II listed buildings and Conservation Areas. HE must defer to the Local Authority to carry out a balancing exercise to conclude whether the totality of harm to heritage assets is outweighed by the benefits of the proposal.

The Council has received comments from the Conservation Officer at Sefton Council and has sought in house advice from The Heritage and Environment Manger regarding the impact of the proposal on all heritage assets which are likely to be affected by the development. Having reviewed the scheme, and taken into consideration the comments from HE, although the harm to heritage assets

is considered to be less than substantial, the Council must still consider the statutory duty imposed upon it by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 which places a duty on decision makers to preserve heritage assets including their settings. In accordance with paragraph 132 of the NPPF, I give this great weight and cannot conclude that the development would preserve the setting of heritage assets within the vicinity of the site. I do not consider that the public benefits of the scheme, namely the production of renewable energy outweighs the harm to the setting of the heritage assets which lie close to the application site.

In terms of loss of agricultural land, the applicant's submission does not add to the case previously made. The applicant considers the loss of agricultural land to be minimal, to be temporary and that a precedent has been set allowing the loss of agricultural land elsewhere in the country. As stated in the agenda report, the thrust of the NPPF and NPPG is that, where significant development of agricultural land is demonstrated to be necessary, Local Planning Authorities should seek to use poorer quality rather than higher quality agricultural land. Whilst the applicant points to the fact that the scheme would result in disturbance to a small fraction of the Borough's best and most versatile agricultural land resource, the application site is some of the highest grade agricultural land in the Borough which is currently in use for arable farming. The agenda report refers to a Written Ministerial Statement from March 2015 when the former Secretary of State for DCLG indicated that "meeting our energy goals should not be used to justify development in the wrong location and this includes the unnecessary use of high quality agricultural land". I remain of the view that loss of the best and most versatile agricultural land is not justified

With regards to aviation, I acknowledge the MOD's withdrawal of their objection. At the time of the publication of the agenda report, Officers were under the impression that discussions were still on-going between the MOD and the applicant regarding the wording of a potential planning condition which would result in the MOD objection being withdrawn. However it appears that the discussions have been satisfactorily concluded and the MOD objection is formally withdrawn. The supporting information submitted by the applicant advises that discussions are currently on-going with the National Air Traffic Service (NATS) and the applicant believes that subject to further discussions NATS will also withdraw their formal objection.

I have spoken with NATS following the submission of the applicant's information and have been advised that the applicant has put forward a proposed mitigation scheme to alleviate the harm to radar which may prove satisfactory. A legal agreement is required between the applicant and NATS to secure such a scheme and the contracts are under consideration. However at the current time NATS are not in a position to withdraw their objection. Therefore given this situation, I conclude that the impacts of the development on aviation have not been made acceptable and therefore proposed reason for refusal number 5 is recommended.

With regards ecology, the applicant has submitted further information, which was requested by Natural England, regarding impacts to pink footed geese. This information has been considered by both MEAS and Natural England, but it does not resolve the fundamental concerns of either ecology body in relation to the impacts on designated species from the SPA's, Ramsar sites and SSSI affected. The views of Natural England are clearly outlined above and, as a statutory

consultee, they advise that there is currently not enough information to rule out the likelihood of significant effects and the advice of NE is that the Council should not grant planning permission at this stage.

In addition, MEAS, as the Council's ecology advisors undertake the necessary "appropriate assessment" under the Habitats Regulations on behalf of the Council. However, despite the submission of the further information, they remain of the opinion (for the reasons outlined in the agenda report) that there is insufficient information to allow a habitats regulations assessment to be completed.

The applicant's solicitor states that, given the importance of ornithological impacts to the scheme, it is essential that the views of the statutory consultee on both the application as a whole and on the scope of an HRA are known. Whilst it is unfortunate that the full consultation response from Natural England was not received prior to the main agenda report being written, the views of Natural England are now clearly set out above. Moreover, the views of MEAS, as well as those of the RSPB, the Lancashire Wildlife Trust and the Wetlands and Wildfowl Trust have been known for many months.

The applicant asserts that the site is identified as a suitable site for wind energy development in the Local Plan through the West Lancashire Renewable Energy Capacity Study. This is not the case, the site is not specifically allocated as a site suitable for wind energy development. The Capacity Study was a "broad-brush" study prepared as the evidence base upon which to inform the West Lancashire Local Plan and no specific site or sites were identified or allocated for such development.

Finally, I consider the details of the application, the views of consultees and other interested persons have been fully assessed and considered in accordance with national planning policy and guidance, the West Lancashire Local Plan and any other material considerations and that a rational, fair and proportionate judgement has been clearly set out within both the main report and this Late Information Report and on this basis I see no reason to defer the application.