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Dear Sir

ELECTRICITY ACT 1989 (“the Act”)
TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A WIND
TURBINE GENERATING STATION ON LAND NEAR KIRKWHELPINGTON,
NORTHUMBERLAND

I THE APPLICATION

1.1 I am directed by the Secretary of State for Energy and Climate Change (“the Secretary of State”) to refer to the application dated 12 April 2006 (“the Application”) on behalf of Steadings Windfarm Limited (“the company”) for both the consent of the Secretary of State under section 36 of the Act (“section 36 consent”) to construct and operate a 66MW wind turbine generating station on land near Kirkwhelpington, Northumberland (“the Development”), and a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for the Development be granted.

II PUBLIC INQUIRY

2.1 Following objections from the relevant planning authority, Tynedale District Council, to the Application, the Secretary of State was obliged to cause a public inquiry to be held into the Application under Schedule 8 to the Electricity Act 1989. The public inquiry also considered an application made by AMEC Project Investments Limited, under section 36 of the Electricity Act 1989, to construct and operate a wind turbine generating station on land at Ray Estate, Northumberland (“Ray”) and an appeal by Wind Prospect Developments Limited against the failure of Tynedale Council to determine within the statutory time period an application for the erection and operation of 18 wind turbines with associated tracks, underground cables, switchgear building and anemometer mast on land at Green Rigg Fell, Birtley Parish, Tynedale (“Green Rigg”)

2.2 The Secretary of State appointed Mr David M H Rose BA (Hons) MRTPI (“the Inspector”), to preside over the public inquiry. The public inquiry was

governed by the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 2007, (“the Inquiries Procedure Rules”).

2.3 The public inquiry was held at The Britannia Hotel, Newcastle Airport, between 15 January 2008 and 18 Decemebr 2008. The Inspector submitted his Report of the public inquiry to the Secretary of State on 30 November 2009.

2.4 In respect of the Development, the Inspector’s overall conclusion was: “Steadings by itself would be at odds with those aspects of the development plan which aim to protect the built environment and the inherent consideration of such impacts required by Policy EN2 of the Tynedale Local Development Framework Core Strategy which seeks to secure the sensitive development of commercial scale renewable energy development. The considerable adverse cumulative landscape impacts of the project when added to Green Rigg and Ray would also be at odds with the same policy; and in conflict with policy 40(i) of the Regional Spatial Strategy. Although the proposal would fulfil the requirements of various other policies, I conclude that its material conflict with those policies, which seek to secure wind energy development in a sensitive manner, brings it into conflict with the development plan as a whole. Consent should therefore be refused for the reasons that I have set out. The absence of appropriate mitigation measures in relation to the operations of NERL and NIAL....is a further factor leading to my recommendation of refusal.”

The Inspector recommended that:

“16.1 I recommend that consent be refused.

16.2 In summary, the reasons, on balance, relate to the adverse impact of the proposal on the landscape framework of the Great Bavington Conservation Area and the setting of Saint Aidan’s Church Thockrington; the uncertainty of appropriate measures to mitigate the adverse impacts of the proposals on the operations of NERL and NIAL and the related inappropriateness of imposing a Grampian condition, in that the condition might not be fulfilled; and consent for the project could preclude other wind farm projects from coming forward in the locality. Additionally, the cumulative landscape impacts of Steadings, if added to Green Rigg and Ray, would cause serious harm.”

III DEVELOPMENTS SINCE THE PUBLIC INQUIRIES CLOSED

3.1 The Inspector closed the inquiry on 18 December 2008 and has reported on the basis of the evidence he received before that date. The Secretary of State has to consider whether anything has occurred since that date which is material to any decision he may make on the granting of the section 36 consent.

3.2 Since that date, the Secretary of State is aware that trials of the Raytheon radar system have been funded and have begun. He considers that this is a potentially extremely significant development in respect of the possible mitigation of adverse impacts of the Development on the operations of NERL and NIAL. However, for the reasons explained in paragraph 4.2, he does not consider it significant in terms of the overall planning balance in respect of the Development. Therefore he does not intend to take any further action in respect of this new evidence as far as it affects the Development.

IV. SECRETARY OF STATE'S DECISION ON THE APPLICATION

4.1 The Secretary of State, having carefully considered the Inspector's Report, the views of the relevant planning authorities, the objections received, other representations made to him by various bodies, the environmental information and all other matters he considers relevant, has decided to refuse to grant section 36 consent or issue a section 90 direction for the Development.

4.2 Except as noted in paragraph 4.3 below in relation to the mitigation of adverse impact on the operations of NIAL and NERL, the Secretary of State accepts the Inspector's findings on the section 36 application in all respects. In particular, he notes the Inspector's findings of adverse impacts of the development on the landscape framework of the Great Bavington Conservation Area and the setting of Saint Aidan's Church, Thockrington and of adverse cumulative landscape impacts which would result if the Development was added to Green Rigg and Ray found by the Inspector. It is the Secretary of State's view that in view of these impacts, particularly when considered in the context of the relevant local development framework and regional spatial strategy (see paragraph 15.610 of the Inspector's Report), it would not be appropriate to grant consent to the Development, notwithstanding the potential benefits which the Development would bring, notably in terms of renewable electricity generation.

4.3 The Secretary of State considers that the weight to be given to the adverse impacts noted above is such that he would reach the same decision even if there were no concern about the operations of NERL and NIAL. It is therefore immaterial that, as noted in his letter indicating that he is minded to consent Ray, he has reached a different conclusion to the Inspector as regards the appropriateness of imposing a Grampian condition in order to secure mitigation of those impacts, as a result of new evidence about the development of Raytheon technology. Accordingly, the Secretary of State is not putting the new information which is now available on Raytheon radar to the parties

interested in the Development, because he is not relying on this information in respect of it, and he is not disagreeing with the Inspector's overall recommendation in respect of it.

4.4 On the question of cumulative landscape impacts, the Secretary of State notes the following points.

- (a) He understands that the Secretary of State for Communities and Local Government intends to allow the appeal in respect of Green Rigg. The Secretary of State is himself minded to grant consent to Ray. The Secretary of State agrees with the Inspector that the cumulative landscape impact of the Development when added to Green Rigg and Ray is unacceptable.
- (b) It is true that the Inspector has found that, if Ray were not to be granted consent, then the cumulative landscape impact, i.e. the Development and Green Rigg, would be acceptable. However, the Secretary of State does not consider that this makes any difference to his overall conclusion, for the following reasons:
 - (i) The adverse impacts on Great Bavington Conservation Area and Saint Aidan's Church would remain.
 - (ii) In the Secretary of State's view (and the Inspector's), the only reason for refusal of consent for Ray would be the uncertainty surrounding the implementation of appropriate measures to mitigate adverse impacts on NERL and NIAL. However, it is inconceivable that if consent were not granted to Ray for this reason, it would be appropriate to grant consent to the Development, because the prospects of a solution to the civil aviation problems arising from it are no more likely to be resolved than those arising from Ray (indeed, if anything, they are less likely to be resolved, since Raytheon was not put forward as the basis for a solution in respect of the Development: 15.394). Therefore the Secretary of State does not consider that it is necessary to wait until he makes his final decision on Ray before making a decision on Steadings.

V. DISTRIBUTION

Copies of this letter together with a copy of the Inspector's Report have been sent to the main parties and individuals listed in the Inspector's Report.

VI. GENERAL GUIDANCE

The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review.

Such application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).

VII. COSTS

The company made an application for an award of costs against MOD during the course of the inquiry. The Secretary of State is still considering matters arising from the Inspector's separate report on the question of such an award and will issue a decision on it in due course.

Yours faithfully

Giles Scott
Head of Development Consents and Planning Reform