Dear Sirs

ELECTRICITY ACT 1989
TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A WIND TURBINE GENERATING STATION AT MIDDLEMOOR, NORTH CHARLTON, ALNWICK, NORTHUMBERLAND

I. THE APPLICATION

1.1 I am directed by the Secretary of State for Business, Enterprise and Regulatory Reform (“the Secretary of State”) to refer to the application dated 7 December 2005 by NPower Renewables Limited, (“NRL”) for the consent under section 36 of the Electricity Act 1989 (“section 36 consent”) to construct and operate a wind turbine generating station of up to 75 MW at Middlemoor, North Charlton, Alnwick, Northumberland (“the Development”), and for a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for the Development be deemed to be granted.

1.2 The application falls within the scope of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000. An Environmental Statement (ES) was submitted with the application. The ES was supplemented by additional information in the form of Post-Submission Ornithological Report and an Archaeological Evaluation in September 2006.

II. PUBLIC INQUIRY

2.1 Following objections from the relevant planning authority, Alnwick District Council, to the Application, the Secretary of State was obliged to cause a public inquiry to be held under Schedule 8 to the Electricity Act 1989 into the Application.
2.2 On 6 August 2007 the Secretary of State appointed Mr Alan Novitzky BArch MA(RCA) PhD RIBA (“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”).

2.4 The public inquiry was held at Northumberland Hall, Alnwick between 13 November 2007 and 3 December 2007. The Inspector submitted his Report of the public inquiry to the Secretary of State on 16 April 2008.

2.5 The Inspector concluded, amongst other things, the following:

“502. Although a windfarm landscape would be created at close quarters, the proposed Middlemoor Wind Farm would not materially harm the simple, large scale, open, nature of the landscape. However, in addition to views very local to the site, views from the middle distance, westwards and northwards, particularly from Cateran Hill, Ros Castle and Above Hulne Park, would be harmed. Here the skyline would be broken, attention diverted from the horizon, and the scale and vertical emphasis of the turbines, seen primarily as individual elements rather than a cohesive group, would conflict with the predominantly open, horizontal character of the landscape.

503. Echoing the visual impact of the Wind Farm, harm would also occur to the settings of particular cultural features. These would be Ros Castle, where the potential for imagining the strategic relationship with its surroundings would be diminished, and Hulne Park, where the focus of the designed landscape would be disrupted.

504. The renewable energy policy background to the proposal is so strong, and the potential benefits so great, that the harm identified to visual aspects and settings should not prevent the proposal from proceeding. The cumulative effect of the Middlemoor Wind Farm, were the Wandylaw scheme already in place, would be to increase the harm arising in both these spheres compared to that arising from the Middlemoor development on its own. Nevertheless, I consider it still insufficient to halt the proposal, although serious consideration should be given to regrouping the two schemes’ array of turbines into clearly separated blocks, to lessen the impact.

505. The MoD brought a fundamental objection to the Inquiry, bearing on matters of national security. The objection is different in nature and magnitude to its earlier objections. However, it must be seen against the pressing need for onshore wind energy. I see no real difficulty in imposing a condition preventing implementation of a consent until the objection is resolved. It is at least possible that a technical solution could be found during the currency of the consent. Moreover, there would be few, if any, adverse implications for policy objectives if the consent were to lapse without the condition being satisfied.

506. No material harm is likely to arise, incapable of effective control through conditions, from other matters, including noise, nature conservation issues, construction traffic, rights of way and bridle paths, tourism and local industries. I have considered the effect of the proposal on tranquillity. However, noise would not be a concern, and any remaining aspects are captured under the analysis of landscape and visual
considerations. Furthermore, no difficulty exists in terms of justification for choice of the site.

507. The aims of the development plan and national policy guidance pull in opposite directions, reflecting the very pressing need for sources of renewable energy on the one hand and harm to visual and cultural aspects resulting from the proposal on the other. On balance, I find that the proposal would accord with the development plan and national policy guidance.

508. Overall, I consider that the proposal is acceptable and recommend approval, subject to conditions mitigating harm which might arise.”

2.6 The Inspector recommended that:

“514. The application be allowed subject to conditions.”

III. CONSIDERATION OF THE INSPECTOR’S CONDITIONS OF THE SECTION 36 CONSENT

Section 36 conditions

3.1 The Secretary of State in light of all the information has considered the section 36 conditions recommended by the Inspector carefully. In particular he has considered the Inspector’s conclusions on the issue of the effects of the Development on Brizlee Wood Air Defence Radar (ADR). He notes that the evidence indicates that the Development would cause “clutter, obscuration and shadow” [449]. The Ministry of Defence (MoD) also predict a “dead” zone of nil response behind the Development although the Inspector concludes that the “critical distance between the ADR facility and the wind farm, below which a dead zone would be expected, is far from clear” [450].

3.2 The Inspector notes that the applicant has suggested a possible Grampian condition in respect of ADR impacts. He is not convinced that a solution to the problems identified by the MoD cannot be achieved during the currency of a planning permission [452]. When considering whether a Grampian condition might be workable, he finds “few, if any adverse implications for policy objectives if planning permission were to lapse without the condition being satisfied” [453]. Significantly he concludes that an unimplemented permission would not blight the prospects of the residents of North and South Charlton because the effect of the wind farm on them would not be “significantly harmful” [453].

3.3 The Inspector considers three criticisms made by the MoD in respect of the use of a condition in respect of impacts on ADR. Firstly he does not accept that the Secretary of State is inadequately qualified to make a decision under any condition given that he may seek expert advice [456]. Secondly he rejects the MoD criticism that a condition would only require a decision maker to take into account considerations in relation to air defence. The condition as worded would require that the decision maker must be satisfied as to the acceptability of the impact of the Development on Brizlee Wood ADR [457]. Thirdly the MoD argues that the condition confines its consideration to the pre-construction stage and does not provide a mechanism for control once the turbines are erected or are operating. The Inspector finds merit in this argument and considers that the condition should be modified accordingly [458].
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3.4 The Inspector also considered that the condition should prevent development rather than erection of turbines to prevent other development work effectively removing the time limit [459] which he concluded should be five years rather than three to allow a reasonable time to find a technical solution [460].

3.5 The Secretary of State agrees with the Inspector’s conclusion that a solution to the problems identified by the MoD during the currency of a five year planning permission is possible and also agrees that a Grampian condition, in the terms suggested by the Inspector, is appropriate in the circumstances. He has therefore included such a condition within the section 36 conditions. He has not replicated it within the deemed planning permission conditions as to do so would serve no useful purpose.

3.6 Subject to the overall merits of the section 36 consent application, the Secretary of State approves the draft section 36 conditions in annex A to the Inspector’s Report.

Planning Conditions

3.7 The Secretary of State has considered carefully the conditions of the deemed planning permission under section 90 of the Town and Country Planning Act 1990 (the “Planning Conditions”) recommended by the Inspector. Subject to the overall merits of the section 36 consent application, the Secretary of State approves the draft Planning Conditions contained in annex B to the Inspector’s Report subject to variations, the reasons for which are set out below.

3.6 The Secretary of State’s reasons for the variations he proposes to the recommended wording of Planning Conditions are as follows:

(a) Definitions

Definitions are included for clarification of certain terms used in the conditions.

(b) Inspector’s condition 2

Condition 2 in Annex B is amended to ensure that the local planning authority are informed of the date when the Development is first connected to the electricity grid.

(c) Inspector’s condition 3

As explained in paragraph 3.5 above, the Secretary of State has not included the condition in respect of air defence radar in the Planning Conditions. This condition is included in the Section 36 Conditions and to replicate it in the Planning Conditions would serve no useful purpose.

(d) Inspector’s condition 7

Condition 7 in Annex B is amended to clarify that it is the blades of the turbines which must all rotate in the same direction.

(e) Inspector’s conditions 8, 10, 11, 12, 13, 15, 21 and 22
The above conditions have all been amended so that the details, scheme, layout or programme referred to in those conditions, when agreed, may be varied with the written consent of the local planning authority.

IV CUMULATIVE VISUAL AND LANDSCAPE EFFECTS

4.1 The Secretary of State notes that the Inspector considered the possible cumulative landscape and visual effects should the proposed wind farm at the nearby Wandylaw site be built. The Inspector found that the cumulative effect on landscape character would be similar to the Middlemoor proposal on its own [423]. The harm to visual aspects and the settings of particular cultural heritage features would be increased compared to the Middlemoor scheme by itself [424]. Although this additional harm would still be insufficient to halt the Development when weighed against the benefits, the Inspector recommended that serious consideration should be given to regrouping the two schemes’ array of turbines into clearly separated blocks [504].

4.2 The Secretary of State has no powers in respect of the application for consent for the proposed Wandylaw wind farm which is being dealt with by way of planning procedures under the Town and Country Planning Act 1990. He cannot therefore require that regrouping of the turbines in that development is undertaken. The Inspector found that were the Wandylaw scheme already in place, the cumulative effect would be to increase the harm compared to just Middlemoor alone. The Secretary of State notes that Wandylaw is not an approved development but still under consideration and he cannot pre-judge whether the proposal would receive consent or not. At the same time, he notes that the Inspector said that the increased harm would still be insufficient to halt the Middlemoor proposal. In the circumstances, he considers it appropriate not to further pursue the issue of regrouping Middlemoor which in any case might well amount to a variation which would need reconsideration or might even constitute a new scheme and as such would require a new application in order that the impacts of the regrouped turbines could be properly assessed. As the Inspector has found that the impacts of the current application are insufficient to halt the proposal, it would not be reasonable to ask NRL to submit a new application. The Secretary of State finds that the cumulative visual and landscape impacts of the Development are acceptable when balanced against the benefits of the scheme and that it is not necessary for the Development’s turbines to be regrouped.

V SECRETARY OF STATE’S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

5.1 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination of the section 36 application.

5.2 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (“the 2000 Regulations”) prohibit the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those Regulations.

5.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement (ES), he has considered the comments made by the local planning
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authority, those designated as statutory consultees under regulation 2 of the 2000 Regulations and other consultees and objectors.

5.4 Taking account of the extent to which any adverse environmental effects will be modified and mitigated by measures the NRL has agreed to or will be required to take either under the conditions attached to the section 36 consent or the Planning Conditions, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse section 36 consent for the Development or the deemed planning permission.

VI SECRETARY OF STATE’S CONSIDERATION OF THE CONSERVATION (NATURAL HABITATS,&C.) REGULATIONS 1994

6.1 The Conservation (Natural Habitats &c.) Regulations 1994 as amended ("the 1994 Regulations") require the Secretary of State to consider whether the Development would be likely to have a significant effect on a European Site, as defined in the 1994 Regulations.

6.2 The Secretary of State notes that the site of the wind farm is not situated in a Special Protection Area (SPA) or other designated area. He notes that Lindisfarne SPA and Holburn Lake and Moss SPA are designated for the Graylag Goose and that the Development may lie within the feeding range of geese roosting in those SPAs. He further notes that evidence given at the Inquiry, that the collision risk was “very low or negligible” and the level of disturbance “insignificant” because of the low numbers of birds involved and widespread resources nearby and that similarly the collision risk involving wintering or breeding birds was very low [44], was unchallenged. Natural England did not object to the application.

6.3 The Secretary of State therefore considers that, with regard to the 1994 Regulations, the project is acceptable.

VII. SECRETARY OF STATE’S DECISION ON THE APPLICATION

7.1 The Secretary of State, having carefully considered:

a) the Inspector’s Report and conclusions:

b) the views of the relevant planning authorities:

c) the objections received:

d) other representations made to him by various bodies: and

e) the environmental information and all other relevant matters

and having had regard to the matters specified in paragraph 1(2) of Schedule 9 to the 1989 Act;

i) accepts the Inspector's findings of fact and recommendations for approval of the application for consent under section 36;

ii) is of the view that the Development should be approved, but that a Grampian condition should be included in the section 36 consent in respect of the effects on the air defence radar at Brizlee Wood;
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iii) is of the view that the Development can be approved in a way that safeguards the amenity of residents, and

iv) believes that the project is consistent with Government policy set out in the May 2007 White Paper “Meeting the Energy Challenge”, as well as with the other policy summarised in the Inspector’s Report including his findings upon Energy Policy in his conclusions, with which the Secretary of State agrees;

and, has decided to grant section 36 consent subject to a condition that the development shall be in accordance with the particulars submitted, to a condition in respect of the air defence radar at Brizlee Wood and to a condition concerning the time limit for the start of the construction of the Development.

7.2 The Secretary of State believes that the Planning Conditions referred to in section III above form a sufficient basis on which the Development might proceed. He has therefore decided to give a section 90 direction that planning permission for the Development be deemed to be granted subject to those Planning Conditions.

7.3 I accordingly enclose the Secretary of State’s consent under section 36 of the Electricity Act 1989 and a direction under section 90 of the Town and Country Planning Act 1990.

VIII. GENERAL GUIDANCE

8.1 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 7220).

8.2 This decision does not convey any approval or consent or waiver any requirement that may arise under any enactment, by-law, order or regulation other than section 36 and Schedule 8 of the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

IX. DISTRIBUTION

9.1 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.

Yours faithfully

Richard Mellish
Director, Development Consents and Planning Reform