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Cobbetts LLP
No.1 Whitehall Riverside
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Your ref: DRH/KLW/HU638-1
Our ref: P/PPA/110/649
17 January 2008

Dear Sir

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND
SCHEDULE 4
PLANNING APPEAL BY HUGH GORDON (A FIRM): CLOCHNAHILL,
STONEHAVEN, KINCARDINESHIRE**

1. I refer to your client's appeal, which I have been appointed to determine, against the refusal of planning permission by Aberdeenshire Council for 4 wind turbines, associated tracks, transformers and infrastructure at the above site. I conducted a public local inquiry at the Kinneff Public Hall on 12 December 2007; I have also considered the written submissions and made an accompanied inspection of the appeal site and the surrounding area on the same day. Your client's claim for an award of expenses is dealt with in a separate letter.

2. The **appeal site** is located to the west of the A90 on Clochna Hill on a gently sloping hillside at a height approximately 190m AOD. The site lies within the Scottish Natural Heritage landscape character assessment area known as 'Agricultural Heartlands-Garvock and Glenbervie'. The surrounding area is characterised by the gently undulating landscape and low hills. To the northeast, the landscape undulates and then falls as it reaches Caron Water. To the northwest, the land rises to the summit of Carmont Hill (236m AOD) and then falls away again as it crosses the railway and a minor road running southwest from Stonehaven. The land then rises to reach the summit of the Hill of Trusta (321m AOD). From this area, the hills sweep around to the southwest, partly enclosing the area from this side. To the southwest, the land falls slightly as it crosses the A90 from Stonehaven. The topography undulates where the highest points are at Ferbiebrae (148m AOD), Bruxie Hill (216m AOD) before reaching the cliffs and Forlet Craig. The nearest settlements are at Drumlithie (4.2km) Stonehaven (5.2km), Glenbervie (5.85km), Arbuthnott (7.7km), Auchenblae (9.8km) and Inverbervie (10.2km)

3. **The application for planning permission** proposes 4 wind turbines and associated works as described above. Each turbine would have a rated capacity of 1.3MW. The turbines would have a maximum tip height to blade top of 76m, approximately 62m rotor diameter and hub height of 45m. They would be closely placed

within about 300- 500m of each other. A high voltage transmission line would be place. The power produced would enter directly into the distribution network and would be consumed locally. The construction access would be from the port of Aberdeen to the site via the A90. The principle construction phase is anticipated to take about 3 months and the wind farm would be serviced and maintained throughout its life span of 25 years after which time it would be de-commissioned, unless a renewal permission had been granted.

4. **Planning permission was refused** because in the opinion of the council, the proposal would give rise to electro-magnetic interference to the radar and air traffic control systems of National Air Traffic Systems (NATS) and the British Aviation Authority (BAA) responsible for Aberdeen Airport. Consequently, the proposal would impact adversely on the safety of the present or possible future operations of Aberdeen Airport, which is scheduled for expansion. The development would thus be contrary to structure plan policy 5: Renewable Energy Facilities of Aberdeen, and local plan policies Inf7: Renewable Energy Facilities – Wind Energy, and Inf11: Airports and Airfields of the Aberdeenshire Local Plan.

Summary of Cases

5. **Your client** stated that the proposed wind farm at Clochnahill would be a development to harness renewable energy sources for the generation of electricity. It would have an installed capacity of 5.2MW displacing the need for generation through the combustion of fossil fuels in line with the advice of paragraph 54 of SPP6. Taking all energy policy considerations into account, an overriding need for delivery of renewable energy developments was demonstrated in this case. A further 2.4 GW of renewable energy capacity was still required to be installed to meet the new 2011 target.

Aviation

6. The potential impact of interference on the radar and air traffic control systems of Aberdeen Airport formed the basis for the sole reason for refusal by the council. The objection from BAA was belatedly withdrawn together with the council's objection on which it depended. The following factors are also important to the consideration of this case: -

- At the time of preparation of the Environmental Statement, the proposed development was located on the edge of the 30 km consultation zone. The zone was extended during the determination process.
- Following the refusal of planning permission, your client subsequently commissioned a detailed report from QinetiQ in June 2007, which considered the potential effects of the wind farm on the radar. The results of the modelling were that two of the four turbines (T1 and T2) would partially be in the line of sight to the radar. Despite the turbines being predominantly out of line-of-sight, the propagation analysis demonstrated that they would be likely to be detected by the radar. The plot analysis, completed as part of the QinetiQ study showed that the turbines were likely to add a small area of clutter to the Perwinnes Air Traffic Control (ATC) display at the position of the wind farm. Expected plot levels were likely to be in the order of one plot per scan of the radar (every six seconds). Assuming, a worst case analysis (depending on aircraft speed), the report concluded that there was potential for the loss of approximately five aircraft plots when an aircraft traversed the wind farm.

- However, with a sufficient history of radar plots on the display, an Air Traffic Control Operator is unlikely to lose track of an aircraft or encounter a reduction in situational awareness.
- The tracking of aircraft away from the wind farm and flying directly over-head would be unaffected by the false plots from the wind farm.
- Whilst it was accepted that there would be minor effects for the Perwinnes ATC radar caused by the proposed development, the overall effect to ATC operations at Aberdeen Airport would be minimal.

7. The evidence submitted to the council and BAA demonstrated that there were no valid reasons relating to impact on radar that would justify the refusal of planning permission. BAA and the council have now expressly accepted this much.

8. At the time of determination, the council accepted that the proposed development would be in compliance with all national, regional, strategic and local development plan policies and its own adopted supplementary planning guidance with the exception of structure plan policy 5 and local plan policies Inf7 and Inf11 in so far as they related to electro-magnetic interference to the radar and air traffic control systems for Aberdeen Airport. The change in position in relation to aviation issues has been dealt with above. There have been no material changes in circumstances since determination that would justify the council or the decision maker now reaching a different conclusion on any development plan issue.

Landscape and visual impact

9. The proposed development would be acceptable in terms of any likely significant effects, individually or cumulatively, on landscape character and visual amenity. In particular: -

- from a number of viewpoints, the proposed development would be generally in tune with the character of the local area, which is capable of accommodating the proposed development;
- the turbine foundations have been designed and would be constructed to have the minimum impact on the surrounding area;
- the extension to the access would be designed and constructed to have the minimum impact on the local environment;
- aggregate materials for the access tracks would be sourced from existing land gathering stone storage areas within your client's landholding;
- cabling will be laid at a depth below ground level where it would not be disrupted by future agricultural activities;
- the design of the substation is in keeping with the traditional character of the area;
- artificial vertical elements, most notably pylons, already exist in the local area; and
- unacceptable shadow flicker would not occur.

10. The proposed development would not harm any element of built or cultural heritage within the appeal site or relative to it.

11. The noise assessment was comprehensive and carried out pursuant to the methodology advocated in ETSU-R-97, which the council agreed to be the appropriate guidance. When operational, the proposed development would meet the criteria for

noise set out in ETSU-R-97 and meet the requirements of PAN 56. The council raised no objection on the basis of Infrasound, Low Frequency Noise (LFN) or noise during construction and decommissioning.

Television reception, telecommunications, radio and EMI

12. The relevant operators are satisfied that the proposed development would be unlikely to have any significant adverse effect on television reception.

13. Subject in some instances to conditions, the proposal would have no adverse impact on any of the following: -

- the local highway network, including construction traffic routing and locally designated recreational routes,
- tourism,
- horse and pony riding,
- hydrology and private water supplies for both humans and livestock,
- existing pipeline wayleaves,
- agricultural land, or
- Human Rights under Article 8 and Article 1 of the First Protocol to the ECHR and the Human Rights Act 1998, including diminution in the value of residential property.

14. The **council** offered no evidence to support its case other than to rely on the consultation advice received during the application process.

Consultation responses and representations

15. The following consultation responses and representations were made: -

- **Historic Scotland** – raised no objections.
- **Natural Heritage Team** – raised no objections.
- **Archaeologist** – raised no objections.
- **Scottish Environment Protection Agency** – raised no objections.
- **Health and Safety Executive** – offered no comment.
- **National Grid, Gas Enquiries** – indicated unaffected pipelines.
- **Defence Estates** - raised no objections provided the wind turbine heights were as described in the application.
- **BT Cellnet** – raised no objections.
- **BT** – raised no objections.
- **STV** – raised no objections.
- **Stonehaven and District Community Council** – raised no objections.
- **Catterline, Kinneff and Dunnottar Rural Community Council** – voted in favour although noting the possible impact on the Robert Burns monument, its high visibility, visibility from listed buildings, effect on TV receivership, etc.
- **Arbuthnott Community Council** – raised no specific objections, but was concerned about cumulative effect.
- **Scottish Natural Heritage** – no specific impact was noted.
- **Scottish Water** – had assets that may be affected, but these could be addressed if planning permission were granted.
- **Scottish and Southern Energy Ltd** - raised no objections but requested the siting and location of pylons 1.5 x falling distance away from o/h power lines.

- **BP** asked for the access track to be upgraded and reinforced where it passed over BP forties pipeline.
- **Environmental Health Team** – advised that proposals met with necessary standards on noise and shadow flicker.
- **Transportation and Infrastructure** - required comments from the Trunk Roads Authority.
- **Civil Aviation Authority** – raised issues of airport proximity.
- **BAA** – originally objected in the terms of the reasons for refusal, i.e. the site was within 29.7km south-southwest of the Aerodrome Reference Point for Aberdeen Airport. The turbines would cause false returns on the Air Traffic Controllers' screens, thus causing the re-routing of aircraft and more track miles with a consequential detrimental effect on the capacity of the airport. Subsequently, and after operational results, Mackie wind farm (22km northwest of the airport) showed that while those turbines were visible to the Aberdeen radar, the impacts were proving to be manageable/acceptable. Thereafter, BAA withdrew its objections to this scheme.
- **National Air Traffic Services (NATS)** – noted the likely impact on electronic infrastructure, but had no safeguarding objection.
- **Arquiva/Channel 5** – noted that the proposal is unlikely to have any effect on their UHF Re-broadcast feeds.
- **Orange, T-Mobile, O2, Vodafone and Hutchison 3G, Cable and Wireless** – raised no objections.
- **JMP (for Transport Scotland)** - recognised the minimal environmental impact of the proposal.

CONCLUSIONS

16. Section 25 of the Act requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

Development Plan

17. The development covering the appeal site is the **North East Structure Plan (NEST)** 2001-2016, and the **Aberdeenshire Local Plan** adopted in 2006.

Structure Plan

18. A number of policies have been cited of which the most important for my consideration is **5: Renewable Energy Facilities**, which provides broad support for the development of renewable energy facilities, subject to ecological, transportation, landscape and amenity considerations as set out in local plans. It also requires local plans to outline acceptable operating standards and resoration and aftercare requirements. Wind farm proposals are also subject to an additional requirement for a 'sequential exploration of tiered planning designations', cross-referenced in policy 26.

Local Plan

19. A number of policies have been cited of which the most important for my consideration are: -

- **Inf7: Renewable Energy Facilities-Wind energy** – addresses wind energy proposals and takes forward the structure plan policy 5 defining the various

considerations set out above, and reiterating the 4-tier sequential approach referred to in structure plan policies 5 and 26. It also provides detailed tests for the assessment of wind energy proposals.

- **Inf11: Airports and Airfields** – aims to prevent unnecessary danger to low flying aircraft and to safeguard presently unused airfields from development that could prejudice their re-use for air traffic.

Other material considerations

National policy/guidance

20. The following documents represent government policy and guidance that are particularly relevant to this case, and as such can be given significant weight: -

- **SPP6: Renewable Energy** - Paragraph 4 recognises that an increase is seen as a vital part of the response to sustainable development and climate change imperatives. Paragraph 23 confirms that onshore wind power is likely to make the most substantial contribution towards meeting renewable targets. It also recognises that Scotland has considerable potential to accommodate this technology in the landscape. The intention is to facilitate successful achievement of the 2020 target, ahead of schedule if possible, and that this figure should not be viewed as a cap. In particular, paragraph 17 requires the planning system to make positive provision for renewable energy development. The focus of planning policy is on facilitating early progress towards national targets in an environmentally acceptable way, whilst at the same time, recognising that new distribution and transmission networks need to be developed to harness Scotland's renewable potential. Paragraph 54 makes clear that developments with individually modest outputs have the potential to make a significant contribution cumulatively, providing that any unacceptable impacts can be satisfactorily mitigated. In summary, planning policy recognises there remains a significant need for more renewable energy developments to meet national energy policy aims.
- **SPP15: Planning for Rural Development** – aims to take a proactive stance to development in rural areas, provided they are carefully planned to respect that rural character.
- **PAN45: Renewable Energy Technologies** – provides detailed advice on the issues involved in renewable energy developments. It identifies a number of issues associated with on-shore wind farms including potential interference with communications systems, aircraft flight paths and airport radar, and the capacity of landscapes to absorb wind farm developments.
- **PAN56: Planning and Noise** – gives detailed guidance on, among other things, noise assessment and on methods of mitigating the adverse effects of noise.

21. The **White Paper on Energy 'Meeting the Energy Challenge'** published in May 2007 represents an up to date expression of UK central government thinking on energy policy, including renewable energy generation.

22. The Scottish Government's strategy for renewable energy is set out in **Securing a Renewable Future: Scotland's Renewable Energy**. This document set out the targets on renewable energy production for Scotland, which exceed the targets for the rest of the UK. The targets set out in this document were: 18% of electricity generated in Scotland coming from renewable sources by 2010, rising to 40% by 2020. On 27th November 2007, the Energy Minister announced an increase in the 2020 target to 50% with an interim target of 31% by 2011. This latter target was quantified at 5000MW.

23. In 2005, the Scottish Executive published '**Scotland's Renewable Energy Potential: Realising the 2020 Target**' recognising that hydro and onshore wind were then making the most significant contribution.

Determining Issues

24. I consider, based on the evidence presented to the public inquiry, my inspection of the appeal site and the written submissions, that the issues to be determined are whether the proposal is consistent with the relevant provisions of the development plan and, if not, whether an exception to these provisions is justified by other material considerations. In particular, I will consider the effect of the proposals on the safety and efficiency of the Aberdeen Airport and its operation.

Reasoning

25. The proposed development is the outcome of a thorough process of determination including pre-application discussions between the appellant and the council, formal scoping, amendment of an original proposal for taller turbines, submission of supplementary environmental information, further consultation and discussions. The only issue arising out of the reasons for refusal was in connection with the potential interference of the wind turbines with radar at Aberdeen Airport. BAA as originator of the objection that led to the refusal, has withdrawn its objection because information gleaned from another wind farm at Mackie some 22km northwest of the airport, which has been operational since July 2007, has shown that while the turbines were visible to the Aberdeen radar, the impacts were proving to be manageable/acceptable. Since BAA could no longer sustain its objection, the council also withdrew its objection and presented no case. Having reviewed the considerable amount of evidence presented to the inquiry, I find no reason to gainsay the expert evidence put forward, and in the absence of any substantive evidence from BAA or the council, I conclude on this issue that there would be no significant effect on the safety or efficiency of the Aberdeen Airport and its operation, compliant with the development plan policies set out in paragraphs 18-19 above.

26. On other matters, I am satisfied that the effect of the wind farm on the landscape, both individually and collectively, would be minimal and therefore acceptable. I am also satisfied that there would be no harm to the setting of listed buildings in the area. Other technical compliance would be achieved, subject to conditions, in line with local plan policy Inf/7 and national policy/guidance. I have considered the conditions put forward by the council and while they have some merit there are many instances of redundancy and in general I prefer those proposed by your client. Nevertheless, I have reworded some and structured them to suit the proposal. In addition, and because of the likely site conditions, I have added a requirement for further environmental control in the way of dust and noise management during construction phases.

27. In exercise of the powers delegated to me I therefore **allow** your appeal and **grant planning permission** for the 4 wind turbines, associated tracks, transformers and infrastructure at Clochnahill, Stonehaven, Kinkardineshire (application ref: APP/2006/1744 dated 8 May 2006), subject to the following conditions: -

- (1) The development hereby permitted shall be commenced on or before the expiration of five years from the date of this planning permission.

Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.

DPEA as issued to parties



- (2) The planning permission hereby granted shall endure for a period of 25 years from the date of commissioning of the development (i.e. the date when commercial electricity is generated). Written confirmation of the date of commissioning of the development shall be provided to the Planning Authority within 1 month of the commissioning of the development.

Reason: In recognition of the expected lifespan of the wind farm and in the interests of safety and amenity once the plant is redundant.

- (3) Unless a further permission is granted, at least 12 months before the end of the period of this permission, a decommissioning, site restoration and after-care scheme shall be submitted to and approved in writing by the Planning Authority, and the approved scheme shall be fully implemented within 24 months of the end of the period of the permission.

Reason: In the interests of visual amenity and landscape protection and in the interests of safety and amenity once the plant is redundant.

- (4) If any of the turbines hereby permitted ceases to produce electricity on a commercial basis for a continuous period of 12 months (unless such cessation is due to the turbine being under repair or replacement) then, unless otherwise agreed in writing by the Planning Authority, a scheme for the decommissioning and removal of the turbine and any other ancillary equipment and structures relating solely to that turbine, shall be submitted to and approved in writing by the Planning Authority within 3 months of the end of the cessation period. The scheme shall be implemented within 12 months of the date of its approval by the Planning Authority.

Reason: In the interests of safety, amenity and environmental protection of the plant becoming redundant during or at the end of its lifespan.

- (5) Prior to commencement of development, full details of the layout, type and design of the turbines and transformers (including the make, model, power rating, sound power levels, illustrations and technical specifications) shall be submitted to and approved in writing by the Planning Authority. Unless otherwise agreed in writing with the Planning Authority, the turbine towers shall be of a solid tapered appearance with three-bladed rotors, finished in a pale grey semi-matt finish. The development hereby permitted shall be implemented in accordance with those approved details. However, in the event that the turbine(s) or ancillary equipment fail and that a direct replacement cannot be obtained, details of a replacement will be submitted to and approved in writing by the Planning Authority prior to installation.

Reason: In the interests of visual amenity, noise control and landscape protection.

- (6) No construction of the concrete foundations shall be within 20m of any drain or water course. Prior to the commencement of development details of any new access track drainage shall be submitted to and approved in writing by the Planning Authority.

Reason: To ensure the provision of an acceptable drainage system in the interests of the amenity of the area.

- (7) Prior to the commencement of development a Construction Method Statement shall be submitted to and approved in writing by the Planning Authority. The approved methods shall thereafter be implemented in full. The construction method statement shall include the following: -

- a) Surface water run-off: including measures to prevent erosion, sedimentation or discolouration of controlled waters should be provided, along with monitoring proposals and contingency plans.
- b) Timing of works: heavy construction should be staged to avoid periods of high rainfall if possible.
- c) Fuel and chemical storage: measures to ensure any fuel or chemicals from plant do not cause pollution.
- d) Waste: identification of all waste streams associated with works.
- e) Environmental management: identification of mechanisms to ensure awareness of relevant environmental issues during construction and details of emergency procedures/pollution response plans.
- f) Track construction: including the laying of underground cables alongside tracks, materials proposed and track reinstatement.
- g) Stockpiles of materials: details for the use of existing materials on site and the removal of extraenous materials on completion of the development.
- h) Construction vehicle wheel washing, noise and dust management.

Reason: for highway safety, the avoidance of pollution, environmental control and the visual amenity of the area.

- (8) Prior to the commencement of development, details of construction of the construction compound, temporary storage area, portable cabins, fencing and control building to be used during the construction period and their subsequent removal, shall be submitted to and approved in writing by the Planning Authority. Within 12 months of the commissioning of the wind farm, all such temporary structures, together with soil and materials stockpiles shall be removed from the site and the ground fully reinstated in accordance with the submitted details.

Reason: In the interests of road safety and landscape protection.

- (9) Prior to commencement of development, details of the following matters shall be submitted to and approved in writing by the Planning Authority and thereafter implemented in full: -
 - (a) route access report for all abnormal loads from either their place of manufacture or the arrival port to the site.
 - (b) a condition survey of the access route identified in the route access report. This shall include details of all required road widenings, passing places, bridge strengthening and any improved site access junction. All necessary improvements shall be carried out prior to commencement of development.
 - (c) management of construction traffic, any temporary works and subsequent reinstatement works. All temporary works shall be removed and the land reinstated within six months of the commissioning of the wind farm.

Reason: In the interests of road safety.

- (10) No advertisements other than safety or information notices shall be displayed anywhere on the turbine structure and the turbine blades shall all rotate in the same direction.

Reason: In the interest of visual amenity.

- (11) Unless otherwise approved in writing by the Planning Authority no large goods vehicles or plant associated with the construction of the development, other than receipt of turbine blades, nacelles and towers, shall enter or leave the site on any Sunday or Bank Holiday nor on any other day except between the following times: -

Mondays to Fridays: 7.00am to 7.00pm

Saturdays: 7.00am to 1.00pm

Reason: In the interests of local residential amenity.

- (12) Unless otherwise agreed in writing by the Planning Authority, each turbine hereby approved shall be no more than 76m in height from a predetermined base datum level agreed with the Planning Authority to the tip of the blade at the highest point, and shall be located at the following grid references: -

- NO (3)8167 (7)8289 (Turbine 1)
- NO (3)8181 (7)8315 (Turbine 2)
- NO (3)8148 (7)8312 (Turbine 3)
- NO (3)8161 (7)8337 (Turbine 4)

Reason: In order to meet the requirements of the Defence Estates.

- (13) (a) At the reasonable request of, and following a complaint to, the Planning Authority, the operator of the development shall measure and assess at its expense the level of noise emissions from the turbines following the procedures described in "The Assessment and Rating of Noise from Wind Farms, ETSU-R-97" published by ETSU for the Department of Trade and Industry: -

- At Wind Speeds not exceeding 12m/s as measured or calculated at a height of 10m above ground level at the wind farm, at any dwelling, the level of noise emissions from the combined effects of the turbines on the wind farm when measured in accordance with section A of the guidance shall not exceed: -

(i) During Night Hours, 38dB LA90, 10min or the predetermined Night Hours LA90 Background Noise Level plus 5 dB(A), whichever is the greater.

(ii) During Daytime Hours, 38 dB LA90, 10min or the predetermined Daytime Hours LA90 Background Noise Level plus 5 dB(A), whichever is the greater.

(iii) Where the occupants of a noise sensitive property are financial beneficiaries of the Windfarm, noise limits may be increased at all times to 45dB LA90, or predetermined daytime or night hours background noise level plus 5dB(A), whichever is the greater.

(b) Tonal noise shall be measured by the operator of the development at its expense at the request of, and following a complaint to, the Planning Authority in accordance with the procedure described in Section B of the guidance notes.

- If at any dwelling lawfully existing at the time of this consent, the tonal noise from the combined effect of the turbines exceeds the threshold of audibility: -
 - (i) by more than 2.0 dB but less than 6.5dB a penalty of $((5/6.5) \times \text{Audibility})\text{dB}$ shall be added to the noise level derived for that property in accordance with section A for the guidance notes.

(ii) by more than 6.5 dB a penalty of 5dB shall be added to the noise level derived for that property in accordance with section A of the guidance notes.

(c) The wind farm operator shall log wind speed and wind direction at a location to be submitted and approved in writing by the Planning Authority to enable compliance with (a) and (b) above to be monitored. This wind data shall include the wind speed in metres per second (ms^{-1}) and the wind direction in degrees from north for each 10 minute period. At the reasonable request of the Planning Authority the recorded data relating to 10m height above ground level shall be made available to them.

- Where wind speed is measured at a height other than 10m, the wind speed data shall be converted to 10 m height, accounting for wind shear by a method whose details shall also be provided to the Planning Authority.

Reason: In the interests of retaining a level of control over any changes in the noise from the wind farm, or any differences in the actual noise from the projected noise from the site.

28. I have taken account of all the other matters raised but find none that outweigh the considerations on which my reasoning is based.

29. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

30. A copy of this letter has been sent to **Aberdeenshire Council, BAA, NATS, and the local community councils.**

Yours faithfully

This is the version issued to parties 17 January 2008

ROGER WILSON
Reporter