



Department for
Communities and
Local Government

Mr Andrew Batterton
Squire Sanders (UK) LLP
Trinity Court
16 John Dalton Street
Manchester
M60 8HS

Our Ref: APP/Y2430/A/13/2191290
Your Ref: AJB17.PEE.054-0001

4 March 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY PEEL WIND FARMS (UKC) LIMITED:
FORMER ASFORDBY MINE/EXISTING ASFORDBY BUSINESS PARK LE14 3JL
APPLICATION REF: 10/00951/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, R W N Grantham BSc(Hons) MRSC MCIWEM, who held a public local inquiry that sat for 10 days between 8 May and 11 November 2013 into your appeal against a decision of Melton Borough Council to refuse planning permission for: a wind farm development consisting of nine turbines, together with associated ancillary infrastructure (access tracks, crane pads, control building, anemometer mast and temporary construction compound); with turbine 1 to have a maximum height to blade tip of 108 metres above ground level and turbines 2-9 to have a maximum height to blade tip of 125 metres above ground level at Former Asfordby Mine, Welby Road, Melton; in accordance with application reference 10/00951/FUL, dated 17 December 2010.
2. On 5 June 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990, because the appeal relates to proposals of major significance for the delivery of the Government's climate change programme and energy policies.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. A copy of the Inspector's

report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The applications for costs (IR1.1) made by your clients, the Council and "STOP" against Network Rail (NR) at the Inquiry are the subjects of decision letters being issued separately by the Secretary of State.
5. In coming to his decision, the Secretary of State has taken into account the Environmental Statement (ES) and the various Supplemental Environmental Information documents (SEIs), including SEI1 which, like the ES, was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Having regard to the Inspector's comments on the ES and SEI1 (IR11-13, 42-45, 57-59, 74, 89, 191, 218 and 224), the Secretary of State is satisfied that they comply with the above regulations and, having also had regard to SEI2, SEI3 and SEI4 which were submitted voluntarily, that sufficient information has been provided for him to assess the environmental impact of the proposals.
6. In December 2013, Renewable UK published new research and a proposed planning condition covering the regulation of Other Amplitude Modulation, with accompanying guidance notes. However this has not yet been reflected in an update to the current good practice guidance that accompanies ETSU-R-97 and, as it has not been endorsed by Government, the Secretary of State has not considered it necessary to seek the views of parties on it.

Policy considerations

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan includes the saved policies from the Melton Local Plan (LP) (1999). The Secretary of State agrees with the Inspector that the policies most relevant to this case are those referred to at IR29. The Secretary of the State also agrees with the Inspector (IR32) that, as the relevant policies of the development plan are out of date on renewable energy, paragraph 14 of the Framework requires that permission should be granted unless any adverse impact would significantly and demonstrably outweigh the benefits.
9. The Secretary of State notes that the emerging Melton Core Strategy was found to be unsound on 11 April 2013 and, as it was subsequently withdrawn on 19 April (IR33), he gives it no weight.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the National Policy Statements for Energy (EN-1) and Renewable Energy (EN-3); and Circular 11/95: The Use of Conditions in Planning Permissions and Planning practice guidance for renewable and low carbon energy. The Secretary of State has also taken into account the Ministerial Written Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government; as well as

'Planning Practice Guidance for Renewable and Low Carbon Energy' (PPGRLCE) published on 29 July 2013 by DCLG.

11. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main issues

13. The Secretary of State agrees with the Inspector that the main issues in this case are those listed by the Inspector at IR51.

Old Dalby Test Track Facility (ODTT)

14. The Secretary of State has carefully considered the Inspector's reasoning and conclusions regarding the ODTT at IR60-73, having particular regard to the objections put forward by NR. The Secretary of State notes that NR's communication systems would not be materially affected (IR64) and that Turbine 9 (T9) is unlikely to cause unacceptable distraction to train drivers or shunting staff (IR63). However, the Secretary of State also agrees with the Inspector that T9 would still be within topple distance of the tracks and associated infrastructure (IR67), and that effective protection could only be achieved through careful design of the turbine's foundations so as to minimise the likelihood of topple, or by siting the turbine more than topple distance away. The Secretary of State agrees with the Inspector that these potential risks could be reduced through either omitting T9 (alternative V1) or reducing the maximum height of the turbine from 125m to 108m and relocating it as far away as possible from the key infrastructure that could be affected (alternative V2) (IR73). The Secretary of State has therefore taken account of the feasibility of implementing one of these two variants in his assessment of the planning merits of the appeal scheme.

Heritage assets

15. In determining this appeal, the Secretary of State has had regard to the potential impacts on listed buildings as referred to in paragraph 12 above, having special regard to the desirability of preserving those buildings or their settings (IR75). He has also noted (IR76) that none of the proposed development would take place within a conservation area, but agrees with the Inspector about the need to pay special attention to the desirability of preserving or enhancing the character of those conservation areas whose settings would be affected by the appeal scheme. The Secretary of State has also taken account of the fact that English Heritage maintains its objection to the appeal proposal on the grounds that, within the setting of the Grade 2* St Bartholomew's Church at Welby (which lies about

400m away from the nearest turbine (T6)). (IR86), it would cause substantial harm to the significance of the Church.

16. In carefully considering the Inspector's assessment of heritage matters at IR74-104, the Secretary of State has done so in the context of the High Court judgment in respect of wind farm development at Barnwell Manor, Sudborough, Northamptonshire of 8 March 2013 (listed by the Inspector as Inquiry document 17.24 on page 79 of the IR); and the subsequent confirmation of that Judgment by the Court of Appeal on 18 February 2014. Whilst accepting that it is a matter of the Inspector's judgment as to whether substantial harm would be caused to the significance of any other heritage asset in addition to St Bartholomew's Church (IR83), the Secretary of State takes the view that the Inspector's conclusion with respect to that building means that, under the terms of S66 of the LB Act and paragraph 133 of the Framework, he must give that matter considerable importance and weight. The Secretary of State agrees with the Inspector (IR87) that the turbines would not combine with the Church or the positive features of its setting to form a harmonious group and, in view of the strong presumption against the granting of planning permission for development which will harm the character and appearance of the building, disagrees with the Inspector's conclusions at IR88-90 and gives substantial weight to the substantial harm to Welby Church.
17. The Secretary of State has also given careful consideration to the Inspector's findings regarding the other designated heritage assets that would be affected by the appeal scheme and which the Inspector considers would suffer from significant but less than substantial harm to their intrinsic value (IR90-104). While the Secretary of State accepts that each of these assets may well suffer from less than substantial harm if considered separately as being the only asset of any significance, he takes the view that, looking at the sum total of the impact on so many and varied assets, the harm caused is arguably greater than the sum of its parts. Overall, therefore, and having regard to the need to weigh this against the public benefits of the appeal scheme in accordance with paragraph 134 of the Framework, the Secretary of State takes the view that, in his overall balancing exercise, the Inspector has placed less weight than appropriate on the harm caused to the significance of these heritage assets.

Landscape character

18. The Secretary of State has carefully considered the Inspector's overall assessment of landscape at IR105-128, having regard to the importance placed on local topography in both PPGR LCE and the WMS on 'Local planning and onshore wind'. In particular, the Secretary of State agrees with the Inspector's findings at IR114-115 about sensitivity and, overall, that, whilst operational, the appeal scheme would have a significant impact on landscape character when considered alone or in combination with other turbine development (IR128).

Temporary nature of consent

19. The Secretary of State notes that the Inspector acknowledges that during the 25 year period of operation, the impact of the turbines on the landscape would be adverse (IR106), but assumes that, after this period, the site would be restored to its former appearance (IR105). However, whilst the Inspector considers that the harm caused would be both temporary and reversible, the Secretary of State has

had regard to the significant length of time over which harm would be experienced which, bearing in mind that the need to allow for construction and dismantling periods, would amount to considerably more than 25 years. The Secretary of State notes that the Inspector concludes in his balancing exercise that the proposal would create a wind farm landscape in the valley where the turbines would be sited (IR203), and he considers that this adverse impact should be given significant weight despite its potentially less than permanent nature.

Recreational amenity

20. Having carefully considered the Inspector's reasoning and conclusions regarding recreational amenity at IR129-141, the Secretary of State sees no reason to disagree with the Inspector's conclusion that people using the sailing club and Holwell Football club are unlikely to be distracted significantly by the sight of the turbines (IR129). However, he also agrees with the Inspector that, within the valley, visual change would be large and the wind farm would dominate the views of walkers and riders (IR132). Overall, he agrees with the Inspector's finding that the development would interfere with people's enjoyment of public rights of way and that, while it is not possible to determine the degree of interference, there are real risks as a result of five of the turbines being within topple distance of rights of way (IR134-139 and 141). Whilst he acknowledges the Inspector's finding that the use of a carefully worded condition would minimise harm to recreational amenity so far as is reasonably practicable (IR140), he considers that the proposal's interference with people's enjoyment of public rights of way should be given some limited weight in the overall planning balance.

Residential amenity

21. The Secretary of State has also considered the Inspector's reasoning and conclusions on living conditions at IR142-178, and he agrees that there would be potential for the proposal to have significant visual impacts on the living conditions of local residents through shadow flicker, interrupted views over the landscape and flashes of light (IR142). The Secretary of State has had regard to the 276 properties that would be located within 1km of the nearest turbine (IR145) and agrees with the Inspector (IR144) that those closest to the proposed development would be the most affected in various ways, including turbines appearing prominently in views from gardens and windows. Overall, the Secretary of State concludes that, due to the sheer number of properties affected and the impact of the proposal on the views from these properties (IR148-154), some weight should be given to the potential deterioration in living conditions in the overall planning balance.
22. Regarding noise and disturbance (IR159-176), the Secretary of State agrees with the Inspector that wind turbine noise would be audible at times (IR163) and noise from construction might be an issue; but that, subject to a suitable condition, construction disturbance could be brought to a minimum (IR175). He has also noted the concerns raised by local residents regarding the possible impact that Amplitude Modulation could have on their living conditions (IR169). Overall, the Secretary of State agrees with the Inspector that residential and recreational amenity would be affected and, although he also agrees with the Inspector that it may well be that amenity would not be unduly harmed, he nevertheless considers

that some harm could be expected to occur, to which he gives limited weight in the planning balance.

Other Matters

23. The Secretary of State agrees with the Inspector's reasoning and conclusions on the low risk of impact on wildlife at IR179-183. However, with regard to human rights (IR214-215), the Secretary of State considers that, given the Inspector's acknowledgement that the appeal scheme, if allowed, could interfere with people's peaceful enjoyment of their property and with their right to respect for home and private life (IR214), this should be given some limited weight in the overall balance.

Conditions and Obligations

24. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed planning conditions (IR48-50) and the conditions themselves as set out in the Schedule to the IR (pages 44-60). He is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of Circular 11/95. However, he does not consider that these overcome his reasons for dismissing the appeal.

Planning balance

25. The Secretary of State agrees with the Inspector that, as the scheme does not qualify as an exception to the LP Policy OS2 presumption against new development in the countryside, it fails to satisfy the development plan's requirements as a whole (IR194). He has therefore gone on to consider whether there are any material considerations to indicate going against the plan which, as indicated in paragraph 8 above, is not up to date and does not include any policies which deal with renewable energy.
26. The Secretary of State agrees with the Inspector that, for the reasons given at IR195-200, the appeal scheme would save approximately 27,000 tonnes of Carbon Dioxide emissions per year; would contribute to UK energy security; and would generate economic growth through the creation of 30 full time equivalent jobs (IR200). Like the Inspector, the Secretary of State gives substantial weight to the benefits of renewable energy in favour of the proposal, and he also gives significant weight to the generation of jobs. Against that, however, he gives substantial weight to the harm to Welby Church and significant weight to the impact on both the landscape and the other affected heritage assets, as well as some weight in the impact on living conditions and limited weight to the impact on recreational amenity and on human rights.

Overall conclusion

27. Overall, therefore, the Secretary of State considers that, in the circumstances of this particular case, the substantial harm to the significance of the setting of St Bartholomew's Church, coupled with the harm by reason of impact on other heritage assets, landscape, residential amenity and recreational amenity, clearly outweigh the need for the proposal and its wider economic benefits. He has also considered the potential alternative variants for dealing with the ODTT issue referred to in paragraph 14 above, but he does not consider that either of these would overcome the overall harm so as to justify permitting the appeal scheme.

Formal decision

28. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal for a wind farm development consisting of nine turbines, together with associated ancillary infrastructure (access tracks, crane pads, control building, anemometer mast and temporary construction compound); with turbine 1 to have a maximum height to blade tip of 108 metres above ground level and turbines 2-9 to have a maximum height to blade tip of 125 metres above ground level; at Former Asfordby Mine, Welby Road, Melton, in accordance with planning application reference 10/00951/FUL.
29. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
31. A copy of this letter has been sent to Melton Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by R W N Grantham BSc(Hons) MRSC MCIWEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 18 December 2013

Town and Country Planning Act 1990

Appeal by Peel Wind Farms (UKC) Limited

Melton Borough Council

Inquiry opened on 8 May 2013

Former Asfordby Mine/Existing Asfordby Business Park LE14 3JL

File Ref(s): APP/Y2430/A/13/2191290

File Ref: APP/Y2430/A/13/2191290

Former Asfordby Mine/Existing Asfordby Business Park LE14 3JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Peel Wind Farms (UKC) Limited against the decision of Melton Borough Council.
- The application Ref 10/00951/FUL, dated 17 December 2010, was refused by notice dated 27 July 2012.
- The development proposed is a wind farm consisting of nine turbines together with associated ancillary infrastructure (access tracks, crane pads, control building, anemometer mast and temporary construction compound). Turbine 1 to have a maximum height to blade tip of 108 metres agl. Turbines 2-9 to have a maximum height to blade tip of 125 metres agl.
- The inquiry sat for 10 days on 8-10, 14-16, 21, 23 May, 19 July and 11 November 2013.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural Matters

1. At the Inquiry, applications for costs were made against Network Rail (NR) by the appellant, by the Council and by a (Rule 6) local residents' group (STOP). These applications are the subject of separate Reports.
2. When the planning application was submitted, the application site included a temporary construction compound. The proposed use of this compound was assessed, as part of the environmental impact assessment (EIA) process, and it formed part of the proposals on which consultees, including any landowners with an interest in the compound land, were invited to comment. However, prior to the Council's refusal to grant permission for the development, the appellant submitted revised drawings to reduce substantially the area of the application site. The temporary construction compound was inadvertently omitted from the area within the red line boundary and the Council's decision was based on those revised drawings.
3. The appellant sought to correct its mistake and, in lodging its appeal, provided substitute drawings which include the construction compound within the site boundary. No objection has been raised to this substitution, either in consultation or at the inquiry, and there would appear to be no reason why anyone would be unduly prejudiced if these latest revisions were to be taken into account. My conclusions are therefore based on these revised drawings, as proposed in the note¹ which accompanied correspondence to the Planning Inspectorate, dated 18 February 2013.
4. On 26 March 2013, I held a pre-inquiry meeting to consider arrangements for the inquiry itself. There was no discussion at that meeting on the merits or otherwise of the appellant's proposals.
5. Another Inspector, Richard McCoy, assisted in my consideration of the evidence on historic heritage assets. He attended the first three days of the inquiry and made visits to the site and its surroundings. Nevertheless, the conclusions and recommendations in this report are mine alone.

¹ CD 22.1

6. I made accompanied and unaccompanied visits to the site and its surroundings on 7, 8, 9, 13 and 22 May 2013.
7. STOP arranged for blimps to be flown during the accompanied site visit on 8 May. These were designed to show the approximate hub height, tip height and location of turbines T2, T5 and T8.
8. On 10 May, the Right Hon. Alan Duncan MP gave evidence² to the inquiry and, on 15 May, an evening session was held to allow evidence³ to be given by members of the public who were unable to attend the daytime sessions. Members of the public, and representatives of local organisations, also attended the daytime sessions to present evidence⁴ and to question the appellant's expert witnesses.
9. NR were consulted on the proposals, at application stage, and raised no objection. Nevertheless, following the appeal and when evidence for the inquiry had been largely prepared, NR raised concerns. Those concerns could not be resolved quickly and, on 21 May, representatives of NR attended the inquiry in order to explain the background to this late change of position, which was the expectation that responsibility for the Old Dalby Test Track (ODTT) facility would soon transfer to NR from the (BRBR) residuary body of the British Railways Board. The ODTT facility is used to test railway rolling stock and is close to the appeal site.
10. At NR's request, I adjourned the inquiry on 23 May so as to allow technical modelling to be undertaken of the effects of the proposed windfarm on NR's operations. A statement of common ground⁵ was prepared and, on 19 July, the inquiry resumed so that I could question the parties on matters relating to that statement. Following those questions, all agreed that there was no need for more evidence to be prepared in relation to NR's interests.
11. The statement identifies conditions which would overcome all of NR's remaining concerns, although the need for these is not entirely accepted by the appellant. NR maintain that particular concerns could only be overcome by removing one of the nine proposed turbines, or by relocating it within the 10m micro-siting tolerance and reducing its height from 125m to 108m. The appellant does not accept that this would be necessary but nevertheless volunteered to provide other supplementary environmental information (SEI 4) so that I, and the SoS, could assess the potential impact of these changes which hereinafter are referred to as variation 1 (or V1) (turbine reduced in height and relocated) and variation 2 (or V2) (turbine removed).
12. The planning application was validated before the 2011 EIA⁶ Regulations came into effect, but after the 2006 amendment to the 1999 Regulations⁷. The application was supported by an environmental statement (ES⁸) and supplementary environmental information (SEI) was produced thereafter. The

² RP/1

³ RP/3 – RP/14

⁴ RP/17 – RP/19

⁵ CD 20.4

⁶ Environmental Impact Assessment

⁷ Town and Country Planning Act (Environmental Impact Assessment)(Amendment) Regulations 2006

⁸ CD 1.2-1.5

Council are satisfied⁹ that the procedural requirements of the 1999 Regulations were met by the approach taken in respect of the ES, SEI 1¹⁰ and SEI 2¹¹.

13. After the appeal had been lodged, SEI 3¹² and SEI 4¹³ were produced. These more recent documents were advertised as though they had been required under Regulation 19 of the 1999 EIA Regulations. Copies were placed on deposit at the Council's offices and those who had been consulted about the environmental statement (ES) and supplementary environmental information (SEI 1, SEI 2 and SEI 3¹⁴) were consulted directly over SEI 4¹⁵. Arrangements were also made to allow the appellant opportunity to comment on any consultation responses received.
14. In the interests of efficiency, and at my invitation, the appellant, the Council and STOP made their provisional closing submissions before the inquiry adjourned on 23 May. Those submissions, which are inquiry documents¹⁶, were based on evidence which had been presented in relation to all matters other than NR's interests. With the parties' (19 July) agreement, I do not report those submissions, but I do provide references to sources of evidence. I also take account of the parties' legal submissions¹⁷.
15. On 5 June, the Secretary of State for Communities and Local Government (SoS) decided to recover the appeal for his own determination. This was because the appeal relates to proposals of major significance for the delivery of the government's climate change programme and energy policies.
16. On 6 June, the SoS issued a written ministerial statement concerning local planning and onshore wind, in which he announced the government's intention to issue new planning practice guidance and to require early consultation with communities, over future wind farm proposals. On 13 June, the Planning Inspectorate wrote to the main parties inviting them to consider whether the statement made any difference to the cases they had already presented to the inquiry. All three parties responded¹⁸.
17. The new planning practice guidance¹⁹ was issued in July, but after the inquiry had adjourned on the 19th. The guidance, which replaces the Companion Guide to PPS22²⁰, provides advice; it is not policy, but is a material consideration in this appeal. The three main parties were invited to comment on the guidance and on other parties' responses to the guidance. Those comments are inquiry documents²¹.
18. Also on 6 June, the Secretary of State for Energy and Climate Change issued a written ministerial statement on Onshore Wind, in which he announced the

⁹ CD 20.1 para 2.12

¹⁰ CD 2.4

¹¹ CD 3.1

¹² CD 3.6

¹³ CD 3.9

¹⁴ CD 3.6

¹⁵ CD 23.3

¹⁶ PE/A12, MC/A6, ST/A5

¹⁷ PE/A18, MC/A4

¹⁸ PE/A14, MC/A7, ST/A6

¹⁹ Planning practice guidance for renewable and low carbon energy, DCLG July 2013

²⁰ Planning for Renewable Energy, A Companion Guide to PPS22

²¹ PE/A17, MC/A8, ST/A7, ST/A8

government's intention to issue best practice guidance to developers, with a view to improving engagement with communities.

19. The inquiry resumed on 11 November to consider the likely consequences of variations (V1 and V2) to the proposals which had been identified as potential ways of overcoming NR's outstanding concerns. Prior to the resumption, the parties provided written answers²² to written questions²³ which I had circulated in October. At the resumed proceedings, all parties confirmed that they saw no need for further evidence to be formally presented and tested through cross-examination and that they were content to rely on their written answers and on oral answers to further questions put to them by me at the 11 November session.
20. In this report, proofs of evidence are listed as inquiry documents. These are in their original form, subject only to specific corrections that were identified at the inquiry. They do not take account of how the evidence evolved during the inquiry.
21. References to amounts of carbon dioxide (CO₂) emissions and savings are references to amounts of greenhouse gases expressed as CO₂ equivalents.

The Site and Surroundings

22. The appeal site is mostly in the countryside, but on land which has been restored following closure of the Asfordby underground coal mine in 1997. The mine was developed during 1984-1993, but it seems that coal production was abandoned after only three years²⁴. Many of the buildings associated with the mine are now used for commercial/industrial purposes on the Asfordby Business Park.
23. The site's elevation ranges from 80m AOD²⁵ to 130m AOD. In broad terms it is 1km north of the village of Asfordby, 1km south of the village of Ab Kettleby and 2km west of Melton Mowbray. Figures 3.1 (Rev 04) and 3.2 (Rev 05) of CD 22.1 show the location of the site and its extent following the (February 2013) proposed revisions referred to in paragraph 3 above.
24. Land associated with the former mine is divided into two parts by a minor ridgeline which runs north to south. To the east of this ridge are large-scale but generally well concealed industrial buildings and chimneys; large areas of hardstanding; and, a substantial area of spoil that sits alongside the Holwell Works. This is not attractive, but topography and ridgetop planting combine to screen the area from most views other than those which follow the line of the valley.
25. Most of the appeal site is to the west of the ridge, in a valley that was used for tipping spoil from the deep mine, but is now fully restored and largely contained by shelterbelt planting along the ridges on either side. The new landform fits reasonably well with the surroundings, but near-field views of it are mostly restricted to those obtained from locations within the valley.

²² PE/A22, NR/2 and MC/A11

²³ CD 23.5

²⁴ ST 1/1 para 24

²⁵ Above Ordnance Datum

26. A (March 2013) statement of common ground²⁶, between the appellant and the Council, suggests that woodland on and around the site includes established and predominantly coniferous shelterbelts (6-10m high) as well as newer (1.5m high) planting associated with the site restoration plan. More mature deciduous trees and hedgerows remain on farmland to the north and on slopes to the east. Immediately to the south of the site, and on elevated ground, is a large conifer plantation at Asfordby Hill rifle range.
27. The site includes some sparsely vegetated made ground and hard standing within the Asfordby Business Park. Most of it, though, is agricultural land used for cattle grazing with some arable fields. It is characterised by large fields with trimmed hedges. Several public rights of way and bridleways cross the site; these are shown on Figure 6.1 of CD 1.3.
28. Agricultural land separates the site from Ab Kettleby, to the north, and Saxelbye to the west. To the east, is an electricity sub-station, beyond which is a deserted medieval village and the Church of St Bartholemew. To the south of these heritage assets is the Asfordby Business Park and, further to the east, the Holwell Works and tip. The Business Park has a mixture of commercial and industrial units (Use Classes B1/B2/B8). The Asfordby Test Centre, for rolling stock, is situated towards the southern end of the Business Park whilst the (ODTT²⁷) test track itself runs from alongside the Centre and around to the south of the appeal site.

Planning Policy

29. Following (12 April 2013) revocation of the East Midlands Regional Strategy, development plan policies for the purposes of determining this appeal are limited to those of the (1999) Melton Local Plan (LP) which have been saved²⁸. Policy C1, of the LP, is generally opposed to development which would result in the loss of the best and most versatile agricultural land, whilst Policies C13-15 seek to protect particular ecological and geological interests. Policy OS2 defines those exceptional types of development which may be permitted in the countryside. Renewable energy development is not identified as a permissible exception; indeed, it seems that none of the saved LP policies deal with renewable energy²⁹.
30. The more up to date (2012) National Planning Policy Framework is therefore an important material consideration whose policies, unlike those of the LP, encourage renewable energy development³⁰. The Framework points out that such proposals should be approved if their impact can be made acceptable³¹. The approach to be adopted³² is set out in the National Policy Statements for Energy (EN-1) and for Renewable Energy Infrastructure (EN-3).
31. EN-3 highlights the importance of time limited consents for on-shore wind farms, when considering the impact on landscape, visual amenity and the setting of heritage assets³³. In deciding whether the benefits of a development would

²⁶ CD 20.1

²⁷ Od Dalby Test Track

²⁸ CD 20.2

²⁹ PE/A2 para 17b

³⁰ Framework paras 7, 93 and 97

³¹ Framework para 98

³² Framework footnote 17

³³ EN-3 para 2.7.17

outweigh any harm to the significance of a designated heritage asset, decision makers are expected to take into account the positive role that large-scale renewable energy projects play in the mitigation of climate change, the delivery of energy security and the urgency of meeting national targets for renewable energy supply and emissions reductions³⁴.

32. Nevertheless, the recent (6 June 2013) ministerial statement confirms that the need for renewable energy does not automatically override environmental protections or the planning concerns of local communities³⁵. The government is keen to ensure that that planning decisions get the environmental balance right, in line with the Framework. The presumption in favour of sustainable development, which is at the heart of the Framework, means that where development plan policies are out of date, as is the case here, permission should be granted for development proposals unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development when assessed against the Framework as a whole³⁶.
33. On 11 April 2013, the emerging Melton Core Strategy was found to be unsound³⁷. It was subsequently (19 April) withdrawn³⁸.

Relevant Planning History

34. Temporary permissions to erect a 50m meteorological mast, on land adjacent to the appeal site, were granted in 2005 and 2010³⁹.
35. During the period since submission of the (December 2010) planning application for the Asfordby wind farm, the Council have granted permissions for a total of 12 turbines to be erected in the surrounding area. These include a single twin bladed turbine (18.4m hub height, 24.9m tip height) at Ashlands, 610m to the north west of the nearest (T1) proposed turbine on the appeal site; two twin bladed turbines (39m hub height, 55.5m tip height) to the north of Welby Grange, about 1km to the east of the appeal site; and nine turbines (79m tip height) on land at Old Dalby, 6.6km to the north west of the site. At the time of the inquiry, only the Ashlands permission had been implemented.
36. Permissions for other, more distant, turbines are not referred to. This is because no objection has been raised on the grounds of cumulative impact, with those turbines, and I find no reason to believe that such an impact would be significant⁴⁰.
37. Outline permission has been granted (15 April 2013) for 31 industrial units to be developed at Holwell Works, 250m to the east of the site. Together, these would provide 35,080 sqm of B1(c)/B2/B8 floorspace.

³⁴ EN-3 para 2.5.34

³⁵ In this respect, ST/A11 also refers to the ministerial forward to the UK Renewable Energy Roadmap Update 2013; to a Daily Telegraph article of 12 October 2013 which reports the views of other ministers; and to appeal decisions issued in October 2013

³⁶ Framework para 14

³⁷ CD 12.12

³⁸ PE/A2 para 17a

³⁹ CD 20.1 para 4.2

⁴⁰ PE/PB/1 para 4.4

The Proposals

38. The Asfordby wind farm would have an installed capacity of up to 18MW. Permission is sought on the basis that it would expire 25 years after the date when electricity is first exported to the local grid.
39. Turbine 1 (T1) would have a maximum tip height of 108m and a maximum hub height of 63m. The maximum tip and hub heights of turbines 2-9 (T2-T9) would be 125m and 80m respectively. The rotor diameter for all nine turbines would be about 90m⁴¹.
40. One turbine (T9) would be sited on the concrete apron of the former pit head. The remainder would be on agricultural land in the valley to the west. Some of that land was restored following the mine's closure. The rest was unaffected by the mining development.⁴²
41. Ancillary infrastructure would include crane pads; a 225 sqm (3m high) control building; vehicular access from the Business Park along the former haul road; almost 5km of 5m wide access tracks within the site; underground electricity cables within the site; an 80m high anemometer mast; and SuDS drainage. Details are provided in the (March 2013) statement of common ground⁴³.

Environmental Information

42. After considering the views of statutory consultees, on the proposals and the ES, the Council asked the applicant for additional environmental information. Supplementary environmental information (SEI 1)⁴⁴ was provided in response to this Regulation 19⁴⁵ request. In March 2012, before the Council refused permission for the wind farm, the applicant provided a further supplement (SEI 2)⁴⁶ which included proposals for a scheme of landscape planting around St Bartholemew's Church, Welby, and for measures to better reveal the significance of the Church and nearby deserted medieval village (DMV).
43. After lodging the appeal, the appellant chose to update (SEI 3) the environmental information by assessing the effects of options to connect the development to the electricity grid network and by recalculating the scale of benefits likely to be achieved⁴⁷. An updated non-technical summary of the environmental impact assessment was also provided⁴⁸.
44. SEI 4 was produced in response to a suggestion, by NR, that T9 should either be removed from the proposed development or should be relocated and reduced in height. SEI 4, and a further update to the non-technical summary⁴⁹, assesses the environmental effects of such changes.
45. I am satisfied that the requirements of the EIA Regulations have been met in the production and advertisement of the ES and SEI. I have taken this

⁴¹ CD 20.1 para 5.8

⁴² ST 1/1 para 45

⁴³ CD 20.1 paras 5.11-5.32

⁴⁴ CD 2.4

⁴⁵ The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

⁴⁶ CD 3.1

⁴⁷ CD 3.6

⁴⁸ CD 21.1

⁴⁹ CD 21.2

environmental information into account in reaching my conclusions and making my recommendations.

Reasons for Refusal

46. The Council refused planning permission for two reasons.

(1) The proposed development would result in substantial harm to the setting of St Bartholomew's Church (Grade II*) Welby arising from the wind farm and turbines 1, 2, 3 and 4 in particular and significant harm to the setting of St James the Greater Ab Kettleby (Grade II*) , St Peter's Church (Kirby Bellars) and to the setting of the Moated Site at Ab Kettleby Garden, Moat and Five Fishponds at Kirby Bellars (which are Scheduled Ancient Monuments). It would also result in a cumulative harmful impact on the setting of a wide range of other heritage assets in the immediate and wider area. It is not considered that the benefits accruing from the development in terms of renewable energy generation, the proposed landscape mitigation measures for St Bartholomew's Church, Welby and the proposed interpretation area for the deserted Welby Medieval Village are sufficient to outweigh these identified sources of harm and as such the development does not meet the criteria set out in the NPPF (paras 133 and 134) and National Policy Statement for Renewable Energy Infrastructure (read in conjunction with the relevant sections of the Overarching National Policy Statement for Energy Infrastructure.)

(2) The proposed wind turbines would, by virtue of their height, distribution in the landscape and movement, introduce a new element into this landscape that would be widely visible. This visibility and presence would exceed that of any existing local features by reason of the height, colour and movement of the proposed turbines. The development would constitute a prominent feature in the open countryside which would fail to protect or enhance its distinctive local character and is not capable of mitigation or adequate compensation. Accordingly the development is contrary to the provisions of Policy OS2 of the adopted Melton Local Plan and the objectives of the East Midlands Regional plan, and the guidance offered in the NPPF (para 109). These impacts are not considered to be outweighed by the benefits of the proposal in terms of the generation of renewable energy.

Written Representations

47. Documents containing those written representations by local residents and other interested persons and parties, which were submitted before the appeal was lodged, are included within the Council's questionnaire papers which travel with the appeal file. Written representations, submitted at appeal stage, are bundled together and listed as an inquiry document⁵⁰.

Conditions and Obligations

48. Following (April 2013) production of a list of possible conditions⁵¹ that were largely, but not entirely⁵², agreed between the appellant and the Council, the appellant produced a further list⁵³ which sought to address STOP's concerns.

⁵⁰ CD 23.2

⁵¹ CD 20.2 Appx 1

⁵² CD 20.2 section 5

⁵³ PE A/7

Disagreements between the appellant, the Council and STOP, over noise conditions, are set out in a draft statement of common ground on noise⁵⁴. During the session on noise, the appellant produced an alternative form of noise condition, and guidance notes, for my consideration⁵⁵.

49. Disagreements remain over the need for, and wording of, various conditions. But these were discussed during the inquiry and it was accepted that I would consider them against the advice in Circular 11/95⁵⁶.

50. The appellant has not entered into any planning obligation.

Conclusions

51. The evidence suggests that the main considerations upon which the SoS is likely to base his decision are as follows.

The effect of a 125m high turbine (T9), sited close to the Asfordby Test Centre, on the safety and effectiveness of operations at the Old Dalby Test Track facility.

The impact of the wind farm, both alone and in combination with other developments, on the setting of heritage assets; on landscape character; and, on recreational and residential amenity, particularly in relation to outlook, noise and shadow flicker.

Whether the proposals satisfy the development plan's requirements.

And, whether the environmental benefits of the scheme would be sufficient to warrant such harm as might be caused, given current planning policy.

52. The Framework declares a general presumption in favour of sustainable development although, as recent guidance⁵⁷ points out, the need for renewable energy does not automatically override environmental protections. In particular, heritage assets should be conserved in a manner appropriate to their significance.

53. The overall planning strategy of the LP is guided by sustainability aims, one of which is to encourage the development of renewable resources. Notwithstanding legal submissions to the effect that this aim is saved, along with saved policies⁵⁸, there is nothing to suggest that the LP contemplates renewable energy development in the countryside. It appears to be silent on the matter and out of date in terms of the Framework (paragraph 215). In the circumstances, planning permission should be granted for the proposed wind farm, unless it can either be demonstrated that the development would cause such harm as to outweigh the benefits significantly, or be shown that there are specific (Framework) policies which indicate that development should be restricted. Such policies include those designed to protect the significance of heritage assets.

54. The appellant is under no obligation to demonstrate the need for new renewable energy generation projects⁵⁹; the need is urgent⁶⁰.

⁵⁴ CD 20.3

⁵⁵ PE A/8

⁵⁶ The Use of Conditions in Planning Permissions

⁵⁷ Planning practice guidance for renewable and low carbon energy (July 2013)

⁵⁸ PE/A13

⁵⁹ Framework para 98

55. My attention has been drawn to appeal decisions⁶¹ which, it is suggested, place little weight on the temporary nature of wind farm development. However those decisions pre-date the (July 2011) publication of EN-3 which points out that, for onshore wind farms, the length of time for which permission is sought is likely to be an important consideration when assessing impacts such as landscape and visual effects and potential effects on the settings of heritage assets⁶². This was acknowledged in a subsequent decision⁶³.
56. The Asfordby wind farm is intended to operate for a period of 25 years. Once that period has elapsed, the turbines and ancillary infrastructure would be removed and any harm to landscape character, to amenity or to the setting of heritage assets, would cease. Relative to the human lifespan, 25 years is a long time. But in terms of landscape character, the age of the heritage assets affected and the period that they can reasonably be expected to endure, it is relatively insignificant.
57. In reaching my conclusions, I have taken into account the temporal and reversible nature of the proposals; the applicant's Environmental Statement (ES); and, other environmental information that was produced in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended.
58. The ES takes account of the (10m) micrositing allowance which the appellant proposes. Supplementary environmental information (SEI 4) has since been produced which considers the environmental impact that would result if one of the turbines (T9) were to be omitted from the development (variation 2), or if that turbine were to be relocated 10m to the west (as allowed for by the micrositing allowance) and reduced in height from 125m (to tip) to 108m (variation 1). These suggested amendments to the proposals result from objections raised by Network Rail (NR). The appellant does not consider such changes to be necessary, but would accept variation 1 (V1) or, failing that, variation 2 (V2) if the SoS were to find it unacceptable to site a 125m turbine at the proposed location⁶⁴.
59. The availability of SEI 4 was advertised in accordance with the approach set out in Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended). Given the publicity, and the principles established by the Wheatcroft judgment⁶⁵, I see no reason to believe that anyone would be unduly prejudiced if the SoS were to consider either the omission of T9, or its reduction in height, as amendments to the proposals. I shall therefore consider these matters before turning to the other main considerations upon which the SoS is likely to base his determination of the appeal.

⁶⁰ CD 11.7 para 3.4.5

⁶¹ MC 3/2 Appx E para 90 and CD 17.18 para 67

⁶² CD 11.8 para 2.7.17

⁶³ CD 17.30 para 64

⁶⁴ CD 20.4 paras 7.23 and 7.30 as clarified at inquiry on 19 July 2013

⁶⁵ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, p37]

Old Dalby Test Track Facility (ODTT)

60. This (ODTT) facility includes the Asfordby Test Centre and the test track itself. It is used to test railway rolling stock. Those with an interest in the Centre, at the time of the appellant's application for planning permission, included the British Rail residuary (BRBR), Transport for London and Serco. The Department for Transport asked Network Rail (NR) to take over responsibility for the facility in 2013⁶⁶. NR therefore liaised with those other bodies to provide a unified view to the inquiry.
61. At the Test Centre, railway tracks with overhead electricity lines lead from the test track into a large shed on the Asfordby Business Park. Power is supplied via a 11kV feeder supply, which NR has recently decided to move⁶⁷, and through 25kV overhead lines, which run close alongside the Business Park boundary before cutting across the Park to an elaborate switch that is situated within the fenced off area of the Test Centre. The 25kV lines, which come to within about 40m of the proposed location for T9, are owned by UK Coal who raise no objection to the development⁶⁸.
62. Key issues of concern to NR⁶⁹ were identified as being the potential impact of the proposed development on communications systems; on key tests undertaken at the Centre; and on the local electricity network. NR were also concerned to ensure that T9 would not distract staff and that the topple distance of this turbine would provide an acceptable margin of safety for their operations.
63. NR have declined to say whether they object to the proposals on the grounds of increased risk of fatalities⁷⁰, but they have now accepted that T9 is unlikely to cause unacceptable distraction to train drivers or shunting staff⁷¹. I see no reason to disagree.
64. Following investigations carried out during an adjournment of the inquiry, it was established that NR's communications systems would not be materially affected if their Yagi antennas were to be moved to avoid interference by the blades of turbine T5⁷². This could be secured by a suitably worded condition. NR also accepted that the turbines' impact on electromagnetic capability (EMC) would not interfere with key tests carried out at the Centre⁷³; and, that the stability of the power supply is not a land use planning matter, but is the responsibility of the District Network Operator⁷⁴.
65. Turning to the risks posed to the integrity of the local electricity network, National Grid policy seeks to ensure that the separation of a turbine from an overhead power line is at least five times the rotor diameter⁷⁵ but, in the absence of any nearby line which forms part of the Grid, this has no relevance to the siting of T9⁷⁶. The operator E-ON seeks a separation of at least topple distance

⁶⁶ CD 20.4 para 1.4

⁶⁷ NR oral evidence 19 July 2013

⁶⁸ CD 1.3 para 7.6.6

⁶⁹ CD 20.4 p3

⁷⁰ Inspector's questions to NR on 19 July 2013

⁷¹ CD 20.4 p21

⁷² CD 20.4 p5-10 and 26

⁷³ CD 20.4 p12

⁷⁴ CD 20.4 p14

⁷⁵ CD 1.3 paras 7.2.6-7.2.8

⁷⁶ PE/A22 and NR/2

- plus 10%⁷⁷, but again this has no direct bearing on the position of T9 as this company neither owns nor operates any lines which pass close to this particular turbine.
66. In any event, the appellant has agreed to bury that section of the 25kV supply, and related control cables, which is within topple distance of T9. This is a matter that can be controlled by a condition. Also, now that NR have decided to move their 11kV lines, they raise no objection in relation to the security of this (11kV) supply.
 67. T9 would however be sited within topple distance of tracks which lead into the Asfordby shed; of the overhead electricity lines above those tracks; and, of the 25kV switch. There would be severe consequences for NR's operations if T9 were to fall and land on this infrastructure and it would be unrealistic to suggest that such infrastructure could be given effective physical protection against the impact of T9 falling⁷⁸. The potential for effective protection could only be achieved through careful design of the turbine's foundations, so as to minimise the likelihood of topple, or by siting the turbine more than topple distance away.
 68. Unlike earlier guidance⁷⁹, recent government advice⁸⁰ gives no indication of the minimum desirable separation between turbines and railways, but I attach no great significance to its silence on this matter⁸¹. Indeed, my attention has been drawn to examples of turbines which been allowed to be erected close to rail infrastructure⁸². More generally, the advice acknowledges that safety may be an issue and points to the potential for mitigating risk through appropriate siting and consultation with affected bodies.
 69. NR's standard requirement is for turbines to be positioned at least a few metres more than topple distance away from their infrastructure. This is not a direct reflection of the law or of ORR⁸³ guidance; nevertheless, the (HMRI) safety regulator considers it good practice⁸⁴.
 70. In this case, NR and the appellant agree that effective protection of the infrastructure could be achieved by removing T9 from the scheme (variation V2), or by reducing its height to no more than 108m and relocating it 10m away from the infrastructure, but within the micrositing allowance (variation V1). I agree because, under the terms of V1, critical infrastructure above ground would be outside the topple zone⁸⁵.
 71. I also accept that, if a full height (125m) T9 were to be erected in the position which was originally proposed, particular care should be taken over the design of its foundations; this could reasonably be expected to reduce the likelihood of topple so far as is practicable. A key consideration is the quality of ground

⁷⁷ CD 1.3 para 7.2.9

⁷⁸ Notwithstanding a condition, agreed between the appellant and the Council, which would provide the switch with a glass reinforced plastic enclosure, NR and the appellant agree that effective protection of the switch would not be a practicable solution - see PE/A22 and NR/2 responses to the Inspector's written questions 4 and 5

⁷⁹ PPS22 Companion Guide

⁸⁰ Planning practice guidance for renewable and low carbon energy (2013)

⁸¹ PE/A17

⁸² CD 20.4 Appx 10

⁸³ Office of Rail Regulation

⁸⁴ CD 20.4 Appx 12

⁸⁵ CD 20.4 Appx 11

investigation material which is gathered to inform the detailed design process⁸⁶ and a condition could be attached which would allow the Council, and thereby NR, to satisfy themselves as to the robustness of the proposed design and construction, before T9 is erected. Nevertheless as NR point out, and bearing in mind that this turbine would be sited on the concrete apron of the former pit head, it has yet to be demonstrated whether it would be possible and affordable to install suitably robust foundations at this location⁸⁷.

72. The appellant maintains that T9, as originally proposed, would be appropriately sited given the advice in the (PPS22) Companion Guide, which was extant at the time of the application, and all other relevant considerations⁸⁸. Nevertheless for the reasons given above, and notwithstanding the fact that NR's objection arose late in the proceedings, I am led to the following conclusions.
73. Turbine T9, as proposed, is not appropriately sited given the risk that it poses to NR's operations at the ODTT facility. That risk could be reduced to a reasonably practicable minimum, through careful design and construction of the turbine's foundations, but the residual risk has not been quantified. The risk could be removed, effectively, through a variation to the proposals which would involve either omitting T9 (variation V2), or reducing the maximum height of this turbine to 108m and relocating it as far away as possible from NR's critical infrastructure, whilst remaining within the agreed (10m) constraints on micro-siting⁸⁹.

Heritage Assets

74. Despite the provision of SEI 1 and SEI 2, English Heritage (EH) have maintained their objection to the proposals. In April 2012 they confirmed their belief that the wind farm development, within the setting of St Bartholomew's Church at Welby, would cause substantial harm to the significance of the Church; and in doing so they indicated that, whilst the SEI 2 proposals were "not unwelcome", substantial harm would still be caused⁹⁰. EH views would not be altered if the development were to proceed according to variations V1 or V2, because their concerns focus on the impact of those turbines (T1-T4)⁹¹ which they have sought to have moved or omitted from the proposed development⁹².
75. The proposals would have no direct impact on the fabric of any designated heritage asset, but the turbines would be visible from, or seen in juxtaposition with various assets. To that extent, the proposals would affect the settings of assets which include, but are not restricted to, the following:

St Bartholomew's Church (grade II*) Welby; Welby Grange (grade II) and Stone Outbuilding (grade II) Welby; Grange Cottage (grade II) Welby; Welby Deserted Medieval Village (undesigned); Potter Hill Farmhouse (grade II); St James the Greater Church (grade II*) Ab Kettleby; Moated Site Scheduled Ancient Monument (SAM) at Ab Kettleby; Ab Kettleby Conservation Area; Wartnaby Conservation Area; (grade II) Church Farm House, Wartnaby; St Peter's Church (grade II*) Saxelbye; Saxelbye Conservation Area; Holwell

⁸⁶ CD 20.4 7.20

⁸⁷ NR oral evidence given on 11.11.13

⁸⁸ CD 20.4 para 7.21

⁸⁹ CD 20.2 condition 3

⁹⁰ CD 6.20

⁹¹ CD 23.4

⁹² CD 6.19

Conservation Area; St Peter's Church (grade I) Kirby Bellars; Kirby Bellars Priory (SAM); Garden, Moat and Fishponds at Kirby Bellars (SAM); and Kirby Park Farm Farmhouse and Pigeoncote (both grade II).

76. In reaching my conclusions, I have had special regard to the desirability of preserving the settings of listed buildings, where those settings would be affected by the proposed development⁹³. Whilst ultimately a matter of law, I am less persuaded by the argument⁹⁴ that Section 72 of the LBCA⁹⁵ is engaged here, as none of the development would take place within a conservation area. Nevertheless, I have considered it prudent to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas whose settings would be affected by the scheme⁹⁶.
77. The Framework⁹⁷ defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral. EH guidance⁹⁸ indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset. Indeed, the guidance notes that the construction of a distant but high building may extend what might previously have been understood to comprise setting.
78. The significance of an asset is defined as its value to this and future generations because of its heritage interest⁹⁹. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. Significance may be harmed by a development, but it is necessary to decide whether such harm is substantial or not.
79. Reference has been made to an appeal decision¹⁰⁰ wherein the Inspector observed that a fair reading of PPS5 Practice Guide (paragraphs 91-95)¹⁰¹ suggests that the author(s) must have considered substantial harm to be something approaching demolition or destruction of the asset. More recent guidance¹⁰² indicates that a wind turbine, within the setting of a heritage asset, may cause substantial harm to the significance of that asset; but, there is nothing to indicate where, on a notional sliding scale, harm to such an asset might become substantial.
80. Parties to the inquiry have described the significance of heritage assets whose settings would be affected by the development, including the contribution made

⁹³ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁹⁴ MC/A4

⁹⁵ Planning (Listed Buildings and Conservation Areas) Act 1990

⁹⁶ PE/A13

⁹⁷ Framework Annex 2

⁹⁸ CD 13.8

⁹⁹ Framework Annex 2

¹⁰⁰ CD 17.4

¹⁰¹ PPS5 Practice Guide

¹⁰² Planning practice guidance for renewable and low carbon energy (2013)

by those assets' settings¹⁰³. They have also assessed the effect on significance which would arise as a result of the impact on settings. This approach is in line with the advice in paragraph 122 of the still extant PPS5 Practice Guide¹⁰⁴ as reflected in Section 4.2 of the English Heritage (EH) guidance '*The Setting of Heritage Assets*'¹⁰⁵ and paragraphs 128-9 of the Framework.

81. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight attaches to the asset's conservation; the more important the asset, the greater that weight should be. Significance can be harmed through development within an asset's setting. Substantial harm to the significance of a grade II listed building should be exceptional. Substantial harm to the significance of designated heritage assets of the highest significance (including SAMs, grade I and II* listed buildings) should be wholly exceptional.
82. The Framework makes it clear that if the development would cause substantial harm (to the significance of a designated heritage asset), then planning permission should not be granted unless it can be demonstrated that an exception is warranted when judged against certain criteria¹⁰⁶. An exception would be justified if the substantial harm is necessary to achieve substantial public benefits that would outweigh the harm. If the development would result in less than substantial harm, this harm should be weighed against the public benefits of the proposal¹⁰⁷. In weighing applications that affect non-designated heritage assets, it is necessary to form a balanced judgement that takes both the degree of harm, and the significance of the asset, into account¹⁰⁸.
83. There is no suggestion, here, that substantial harm would be caused to the significance of any heritage asset other than the (grade II*) St Bartholemew's Church, Welby. This Church, along with Welby Grange and Grange Cottage, was once part of the village of Welby and funding has recently been granted to assist its development as a heritage centre, as well as a place of worship¹⁰⁹. Earthwork remains of the former village still survive in the land that wraps around the Church and in a field to the south, on the opposite side of Welby Lane.
84. This small Church is largely concealed by the undulating landform, in distant views, but it is prominent in the landscape when seen from nearby sections of Welby Lane and from areas of field that lie immediately to the north of the Lane. Even so, that prominence is tempered by the impact of industrial development. The Church is near to an (approximately 35m high) emissions stack, which rises from the Asfordby Business Park on the far side of the small field that contains earthwork remains of the deserted medieval village (DMV)¹¹⁰. The Church is also close to a large spoil heap north of Holwell Works; close to buildings on the Business Park; and, close to an electricity sub-station¹¹¹. As a result, it has a much compromised setting which is particularly apparent when seen from the public footpath which crosses fields between the Church and Ab Kettleby, to the north.

¹⁰³ PE/HK/1 and MC1/1

¹⁰⁴ CD 13.6

¹⁰⁵ Core Document

¹⁰⁶ Framework para 133

¹⁰⁷ Framework para 134

¹⁰⁸ Framework para 135

¹⁰⁹ ST/A11

¹¹⁰ CD 3.1 fig 4a

¹¹¹ CD 3.1 fig 7a

85. Hedged fields within treed ridgelines, to the north of Welby Lane, provide a far more attractive setting¹¹² than the areas of industrial development to the south. Indeed, this rural landscape makes a positive contribution to the significance of the Church. That contribution would be eroded by the backdrop of turbines (T1-T4) rising high above the trees¹¹³. Even so, existing views from and of the Church, within this landscape to the north of the Lane, are already affected by pylons, telegraph poles and cables.
86. When seen from the churchyard, and in views from nearby to the east of the Church¹¹⁴, the turbines would have a powerful visual impact, stretching across the western horizon. At times, the machines would also be audible here. At their closest, the (T6) rotating blades would be about 400m away from this heritage asset and an array of machines would be seen to extend across the field of vision, albeit that they would be screened to differing extents by the topography and intervening vegetation. Views from the churchyard, towards the north east, would not be affected by the appellant's wind farm, but permission has recently been granted for two twin-bladed turbines to be erected nearby at Welby Grange Farm, about a kilometre to the east of the appellant's proposed development. These recently permitted machines would have a rotor diameter of 30m and a maximum tip height of 55.5m. Views from the churchyard, towards the south east, are affected by the nearby stack and, when hedges are not in leaf, by the industrial building which adjoins the stack and by the spoil heap which extends north from Holwell Works¹¹⁵.
87. I agree with English Heritage (EH) that the turbines would not combine with the Church, or the positive features of its setting, to form a harmonious group¹¹⁶. Nevertheless, as guidance¹¹⁷ points out, a proper assessment of the impact on setting takes account of the significance of the asset and the degree to which development would enhance or detract from that significance and the ability to appreciate it.
88. In this case, the setting of St Bartholemew's Church has already been compromised by nearby development. In external appearance, the significance of this asset derives largely from its fabric, architecture and, to some extent, its relationship with the DMV. The most positive contribution that landscape setting makes to the asset's significance comes from fields to the north of the Lane and, to a lesser extent, the area where DMV earthworks remain on the south side of the Lane. Whilst positive aspects of the wider setting would be adversely affected by the wind farm, this would not have a major effect on people's ability to appreciate the asset's significance. The impact would be significant, but less than substantial, irrespective of whether the proposals for T9 are altered in line with V1/V2.
89. Mitigation proposals (SEI 2) would improve appreciation of the significance of the Church and DMV through the provision of an interpretation area and by reducing hedge height to the south of the Lane; but this would not be necessary to overcome any particular objection to the wind farm. The scheme of planting that

¹¹² CD 3.1 fig 5a

¹¹³ CD 3.1 fig 5b without the 4m high feathered oak trees, or 60-80cm high hedgerow transplants

¹¹⁴ CD 3.1 fig 11.44b

¹¹⁵ CD 3.1 fig 4a

¹¹⁶ CD 6.19

¹¹⁷ CD 13.6

has been suggested¹¹⁸ would also be helpful inasmuch as it would screen the electricity sub-station and the industrial development which has taken place to the south east. However planting to the north of the Lane, that is designed to reduce the turbines' impact on the setting of the Church, would separate the building from its rural surroundings and increase the sense of enclosure here¹¹⁹. In planning terms, and notwithstanding the rector's and churchwardens' support¹²⁰ for the mitigation, this would not be a desirable outcome, given the positive contribution that the immediate rural surroundings make to the significance of this asset. Furthermore, the planted trees would persist long after the 25 year lifetime of the wind farm development.

90. The (grade II) assets at Welby Grange and Grange Cottage, whilst being remnants of the DMV, also derive more significance from their ironstone fabric, architecture and near field setting, than from their place within the wider landscape. They too would be set in a landscape that is strongly influenced by wind turbines, bearing in mind permission granted for two twin-bladed turbines to be erected north east of the farm buildings at Welby Grange. The appellant's turbines would dominate the western horizon in views of and from these isolated houses, but the assets' more immediate rural surroundings would be unaffected and it is these elements of their setting that contribute most to their significance. The impact of the appeal scheme would be less than substantial.
91. At Kirby Bellars, there are three closely linked heritage assets of the highest significance. The Priory (SAM) includes the riverside earthworks of a moated religious house which became an Augustinian priory in the 14th century. Now it is mostly a buried archaeological site with little landscape prominence, but of considerable importance to the immediate setting of the (grade I) Church of St Peter, which dates from the 13th century. In views north, out from the churchyard and across the Priory site towards the far side of the Wreake valley, there is a sense of rural tranquillity which survives despite the presence of the Asfordby Business Park and Holwell Works¹²¹. This makes an important contribution to the perceived value of these two assets in their setting. However, the turbines would stand out in views across the valley¹²² and their rotating blades would undermine the peaceful landscape setting of the Church and SAM, which are some 1.6-1.8 km away to the south of the nearest machine. The wind farm would be in stark contrast to these assets and harmful to their significance, particularly when seen alongside the Church in views from the Church path.
92. The 'Garden, Moat and Fishponds' SAM, at Kirby Bellars, consists of a medieval moat and fishponds which were later incorporated into a 17th century formal garden. When walking through this SAM, along the public footpath from the A607, the nearby Church spire is seen as a prominent feature in the landscape with good inter-visibility between these two assets. Again, the turbine array would be seen clearly in this view, albeit at a distance of around 2.4km¹²³.
93. When taken together, and bearing in mind the wider views of and from these three assets, these considerations suggest that the development would cause

¹¹⁸ CD 3.1 Fig 2

¹¹⁹ CD 3.1 fig 5d

¹²⁰ CD 12.13

¹²¹ CD 2.4 fig 11.51a

¹²² CD 2.4 fig 11.51b

¹²³ CD 2.4 fig 11.52b

significant, but less than substantial harm to the assets' value, during the wind farm's 25 year lifetime. I agree with the Council that neither the relocation and lowering of T9 (V1), nor its (V2) removal from the array, would alter the harm more than marginally¹²⁴.

94. Kirby Park Farmhouse and Pigeoncote are of lesser significance and a little further away from the appeal site. Whilst there are views of them, in which the turbines would also be visible, these are limited by trees and any harm to the assets' significance, as a result of the wind farm, would be considerably less than substantial.
95. Turning to the moated SAM and neighbouring (grade II*) Church of St James the Greater at Ab Kettleby, and to the (grade II*) Church of St Michael at Wartnaby, the significance of these assets benefits greatly from their location alongside open countryside and from the views of, and from, the assets in their semi-rural surroundings. Indeed, key views identified on the Conservation Area Appraisal maps for these two settlements include views of the Church at Ab Kettleby, and from the churchyard at Wartnaby.
96. The turbines would come to within about 1.1km of these highly significant assets at Ab Kettleby and would be prominent in key views of the Church¹²⁵ and clearly visible from the SAM here. Variations V2 and V1 would either remove or shorten one distant element of the development¹²⁶. But this would not materially affect the impact of the wind farm which would be less than substantial, given the wider setting which these assets enjoy. Views from other parts of the Conservation Area would be far more restricted.
97. At Wartnaby, the Church is some 1.5km away from the nearest turbine. Rotating blades would be seen rising above trees to the south, in views from the churchyard¹²⁷ and in approaches to it. The magnitude of visual impact would be small and, notwithstanding the (grade II*) listing of the asset, the effect on significance would be considerably less than substantial. Furthermore, the machines would be far less visible from the key view south that is obtained from further to the east within the Conservation Area, on the Friars Well estate.
98. Whilst I accept that the turbines would be seen more clearly from top storey windows in the 3-storey Church House Farm, at Wartnaby, than from outside the Church, this (Church House Farm) asset is grade II listed and I have seen nothing to indicate that it was designed with top storey views in mind. The main contribution to its setting comes from its close proximity to the Church. Also, most views of this impressive listed building, and of the (grade II) dovecote here, would take in little, if anything, of the wind farm. The impact on the significance of these assets would be a lot less than substantial.
99. The Saxelbye Conservation Area and (grade II*) Church of St Peter are in a dip in the landscape to the west of the appeal site and some 1.3–1.5km away from the nearest turbine. Viewed from further to the west, close to Saxelbye Park, it seems that three of the turbines would break the ridgeline beyond the Conservation Area and Church spire; but the impact would be limited by

¹²⁴ MC/A9

¹²⁵ CD 1.4 fig 11.12b

¹²⁶ CD 3.9 figs 11.12a&b (V1 and V2)

¹²⁷ CD 2.1 fig 11.11

intervening topography and trees. In key views out of the Conservation Area, from close to the Church, those limitations would be even more severe. Rotating blades would be visible through the trees, when not in leaf, but the impact on the significance of the assets here would be negligible.

100. The setting of the (grade II) Potter Hill Farmhouse would be adversely affected. In select views from the Nottingham Road, rotating blades would be seen beyond the horizon, above the listed building, at distances of about 1-2km away. Nevertheless, there are wider views of the farmhouse and its setting is already somewhat compromised by the relatively modern farm buildings nearby and by the industrial development further down the valley, in and around the Asfordby Business Park. Harm to the significance of this heritage asset would also be less than substantial.
101. The proposals would have little effect on the significance of the Holwell Conservation Area, given the (2.2km) intervening distance; the many views of, and from, the Area that would be unaffected by the wind farm; and, the visual influence of developments in the vicinity of the Asfordby Business Park.
102. There are many other heritage assets, in the area, which derive some significance from their settings in the landscape. Nevertheless, the appellant's wind turbine array would have no more than a peripheral presence in important views of, and from, these assets and its effect on their significance would therefore be negligible. Indeed, the Council consider that there would be no harm to the significance of the (grade I listed) All Saints Church, Asfordby and St Thomas of Canterbury Church, Frisby on the Wreake; the (grade II* listed) Manor House, Saxelbye; the Burrough on the Hill SAM; or the Conservation Areas at Asfordby, Melton Mowbray and Grimston.¹²⁸
103. In terms of on-site buried archaeology, the ES anticipated no physical impact on any known asset, but some potential for unrecorded assets to be affected. Pursuant to the Regulation 19 request for further information, trenches were dug on parts of the site and the remains of what appears to be a poorly preserved Iron Age settlement were found in the vicinity of turbine T6 and access tracks to the south. These findings were considered by the Principal Planning Archaeologist of Leicestershire County Council who raised no objection to the development, but recommended that further investigations and recording should be carried out during the construction period, according to a previously agreed brief¹²⁹. These are matters that could be addressed through a suitably worded condition.
104. I am led to conclude that there would be less than substantial harm to the significance of heritage assets, as a result of the proposed development. Removal of T9 (V2), or its relocation and reduction in height (V1), would have minimal effect on such harm as would be caused. Any harm is to be weighed against the public benefits that the development is expected to bring. This is a matter that I return to later.

Landscape Character

¹²⁸ CD 20.1

¹²⁹ CD 6.32

105. Permission is sought for a wind farm that could be operational for a period of up to 25 years, after which the site would be restored to its former appearance. This time-linked reversibility is a matter that could be secured by a suitably worded condition.
106. During that 25 year period, and for the purposes of this landscape assessment, it is reasonable to assume that the impact of the turbines would be adverse. This is because the introduction of such large man made structures, with sometimes moving blades, cannot fail to harm the intrinsic character and beauty of the countryside¹³⁰.
107. The countryside in this area is attractive and dotted with church spires. It has been described¹³¹ as a quintessential English landscape. Even so, no part of the appeal site is designated for its landscape value. Indeed, Natural England raise no objection to the proposals on the grounds of landscape impact, because the site does not fall within a protected landscape or within a landscape that can be considered sensitive¹³².
108. The northern part of the site, beyond the restored area, did form part of an Area of Particularly Attractive Countryside that was identified under the terms of the 1999 LP. However, policies related to this local designation have not been saved.
109. In terms of national joint (landscape) character areas (JCA), the site is within the Leicestershire and Nottinghamshire Wolds (JCA 74) and 3km north of the High Leicestershire character area (JCA 93). The JCA74 area is described¹³³ by Natural England as a range of undulating hills, broken by vales and dominated by Jurassic scarp and dip slopes. In general terms, the land use is mostly agricultural and the woodland cover is sparse. From the open ridge tops, there are wide views out to neighbouring character areas. JCA 93 is more wooded; it has broad rolling ridges and a remote, rural, often empty character¹³⁴ although, as the Council acknowledge¹³⁵, its landscape capacity¹³⁶ (for wind farms) increases with proximity to the Wreake valley and, hence, JCA 74.
110. The Leicestershire and Nottinghamshire Wolds provide a remote and rolling rural landscape with open, empty plateaux contrasting with the more intimate sheltered valleys and lower slopes¹³⁷. The protection of tranquillity levels here is seen as an environmental opportunity¹³⁸. Within JCA 74, tranquillity falls from the high Wolds, to the north of the appeal site, down to the Wreake valley to the south¹³⁹. The appeal site is between these two, within the corrugated landform of the dip slope. Levels, within the site, vary by about 45-50m.
111. At a regional level, the site is within the Clay Wolds landscape character type (8A), where broad clay plateaux are surrounded by undulating ridges and valleys. The (8A) area is described as quiet, remote and often empty, with expansive

¹³⁰ This is irrespective of valency ie whether the viewer has an 'in principle' objection to the sight of turbines, or not

¹³¹ Russell-Vick in cross examination

¹³² CD 6.63

¹³³ CD 16.14 p6

¹³⁴ MC 2/1 para 4.7

¹³⁵ MC 2/1 para 5.47

¹³⁶ CD 16.4

¹³⁷ CD 16.14 p6

¹³⁸ CD 16.14 p3

¹³⁹ CD 16.14 p24

views contrasting with the more intimate and intricate areas close to villages¹⁴⁰. At this level, the Wreake Valley is defined as coming within the Floodplain Valleys type (3A) of landscape¹⁴¹. In terms of elevation, the Wreake Valley (3A) area is little more than 10m below the lowest part of the site; whereas, above and to the north of the site, the Wolds continue their gentle rise upwards for about another 40m¹⁴².

112. In terms of local landscape character areas (LCA), the site is mostly within Asfordby Quarry (LCA19), although two of the turbines (T2, T4) would be within Ridge and Valley (LCA6). The Wolds Top (LCA4) and Village Pastures (LCA7) areas are immediately to the north of T1 and T2¹⁴³. The Asfordby Quarry area includes the restored colliery site and the Business Park. However, this local characterisation is too fine grained to be of much value in assessing the impact of the proposed windfarm, given the extent of the appeal site, the size of the turbines and the landscape in which they would be seen to sit.
113. A more helpful characterisation, for these purposes, is provided by the Council; this is the 'Wolds dip slope', where the corrugated topography of minor north-south valleys and intervening ridges drop steadily in height from the 'high Wolds' plateau (which includes LCA4 and elevated parts of LCA7) down to the Wreake Valley¹⁴⁴. This topography would provide some screening of the proposed wind farm in east-west views, but the height of the turbines means that these machines would be visible from dip slope ridgelines and in views between the high Wolds, to the north, and the High Leicestershire JCA to the south.
114. The high Wolds (or 'Wolds Tops') area is not formally defined, but is a convenient description for land that is higher than, and to the north of, the appeal site. As delineated by the Council¹⁴⁵, it includes parts of the Village Pastures and Wolds Top LCAs. Man made elements are not absent from this higher land, but a sense of remoteness and calm can still be found here. On the five point scale set out in the ES¹⁴⁶, its character has a high (rather than medium or very high) sensitivity to wind turbines.
115. Man made influences are stronger in those parts of the Wreake Valley, and of the High Leicestershire JCA, from where the development would be seen easily. The landscapes are medium scale; middle distance views are available from them; and their character has a medium sensitivity to wind farm development.
116. The sensitivity of the dip slope, to wind farm development, is influenced by the corrugations. Open top ridges, with the character of a medium to large scale landscape, separate and conceal secluded valleys where the scale is smaller. The valleys are more sensitive than the ridges to the impact of turbines. Overall, and in terms of the ES five point scale, I regard the sensitivity of this landscape character to wind farm development as medium.

¹⁴⁰ CD 1.3 para 11.4.27

¹⁴¹ MC 2/3 Figure PRV1 and CD 1.3 p11-20

¹⁴² CD 1.3 para 11.4.2

¹⁴³ PE/PB/3 Appx 2

¹⁴⁴ MC 2/3 Figure PRV2

¹⁴⁵ MC 2/3 Figure PRV 2

¹⁴⁶ CD 1.3 Table 11.1

117. In views from within the dip slope, about 5km to the east of the proposed wind farm¹⁴⁷, the turbines would rise above the horizon, but they would appear alongside parts of Melton Mowbray and the development would have little effect on the balance of components within the landscape. At this distance, the (V1) lowering of T9 would be barely noticeable, even though this turbine is on lower ground than any other¹⁴⁸. Removal (V2) of T9 would not result in any material alteration to the development's impact.
118. From nearer (1.8-2.5km) to the east, on the outskirts of the town, the array would stretch across much of the horizon¹⁴⁹. Nevertheless, it would be seen in the context of other man made influences and the individual turbines, as originally proposed, would appear to have reasonably even heights and spacing between them. The (V1) reduction in height of T9 would introduce some inconsistency into the array¹⁵⁰, whilst its (V2) removal would leave T8 appearing as more of an outlier¹⁵¹; but the effect of such changes would be minor. The (78.5m) turbine at Wymeswold (12km away) would not be visible from here and it would be very difficult to discern the tips of the nine permitted (79m) turbines at Dalby, at a distance of more than 9km¹⁵². The consented (55.5m) two-bladed turbines at Welby Grange Farm would be much closer (1.0-1.1km) to this viewpoint, but they would be seen as a distinct pair, clearly separate from the group now proposed¹⁵³; the cumulative effect of this, on the change to the landscape, would be very small in terms set out in the ES¹⁵⁴.
119. When seen from a dip slope viewpoint¹⁵⁵ that is further away from the town, but closer still to the Welby Grange Farm turbines (0.4-0.5km), the Asfordby wind farm would rise above both the horizon and the northern part of the Business Park. The turbines would be sited only 1.3-1.8km away from this viewpoint but, irrespective of any (V1/V2) alteration to the proposals for T9, the magnitude of change to the landscape would not be large, given the machines' close relationship to the commercial/industrial buildings, the (35m) emissions stack, the electricity sub-station and pylons. However, when considered together with the Dalby wind farm and the Welby Grange turbines, there would be a large change under terms set out in the ES¹⁵⁶, regardless of any (V1/V2) variation. This would have a major/moderate impact on landscape character. Nevertheless, turbines would not become the defining characteristic here, given the wide agricultural landscape and development associated with the Business Park. There would not be a windfarm landscape to the east of the minor north-south ridge which divides the site of the former mine.
120. From the edge of Asfordby, at the Wreake Valley's boundary with the dip slope and only 1.2km from the nearest machine, the turbines now proposed would create a powerful visual impression rising above the plantation topped hillside to the north east of the settlement¹⁵⁷. Nevertheless, and irrespective of any V1/V2

¹⁴⁷ CD 1.4 Viewpoint 7

¹⁴⁸ CD 3.9 para 3.7.7

¹⁴⁹ CD 1.4 Viewpoint 6

¹⁵⁰ CD 3.9 fig 11.16b (V1)

¹⁵¹ CD 3.9 fig 11.16b (V2)

¹⁵² PE/PB/3 Appx 1 Viewpoint 6

¹⁵³ PE/PB/3 Appx 1 Viewpoint 6

¹⁵⁴ CD 1.3 Table 11.9

¹⁵⁵ PE/PB/3 Appx 1 Viewpoint A

¹⁵⁶ CD 1.3 Table 11.9

¹⁵⁷ PE/PB/3 Appx 9 Asfordby Parish Hall Viewpoint

variation to the proposals¹⁵⁸, the magnitude of change to the landscape would be no more than medium, given the existing balance of man made and natural elements here.

121. In dip slope views from some 5-6km to the west, the Asfordby turbines would be visible within a gently folding, but largely open landscape¹⁵⁹. However, they would occupy only a small part of a very wide view, with other man made features present and, at this distance, neither V1 nor V2 would have any material effect on the development's minimal impact¹⁶⁰. In closer (1.0-4.1km) views from this direction¹⁶¹, the magnitude of change to the landscape would be moderated by the partial screening provided by trees and hedgerows on the intervening ridges.
122. Thus generally, when considered together with other permitted turbines and irrespective of any (V1/V2) variation, the impact on the character of the Wolds dip slope would be no more than moderate at distances of 1km or more to the west of the proposed wind farm, or 1.3km or more to the east. At distances less than these, and particularly when viewed from within the valley where the Asfordby machines would be sited, the development would result in a wind farm landscape where turbines are the dominant characteristic, regardless of any V1/V2 variation.
123. However, I do not agree with the Council that this new wind farm landscape would extend as far south as the built-up area of Asfordby Road, at Asfordby Hill, given the influence of the buildings here and of the Road itself¹⁶². Furthermore, the turbines' prevalence would be markedly reduced by the (V2) omission of T9, whereas its (V1) reduction in height would appear awkward and visually confusing, from here, given the machine's close (0.9km) proximity¹⁶³. Nor do I accept that the wind farm landscape would extend to Ab Kettleby in the north, where a more open landscape is on that part of the Wolds which is above the corrugations of ridge and valley.
124. Turning to consider the impact on other character areas, it is a feature of the local landscape that the dip slope and Wreake Valley are more apparent in views north, from the High Leicestershire JCA 93, than in views south from the high Wolds. Indeed, when seen from the Wreake Valley¹⁶⁴, or from (JCA 93) rising ground to the south of it, the turbines would be seen above the built up area of Asfordby and alongside the stacks and industrial/commercial development at the Business Park. The turbines would be more prominent than existing structures and this would alter the balance between developed and undeveloped components of the landscape, but only partially¹⁶⁵. Removal (V2) of T9 would allow the array to appear more discrete, in views from due south¹⁶⁶, and would reinforce the distinction between the Wolds and Wreake Valley landscapes in

¹⁵⁸ CD 3.9 additional viewpoint from Asfordby (V1) and (V2)

¹⁵⁹ CD 1.4 Viewpoint 15

¹⁶⁰ CD 3.9 fig 11.25 (V1) and (V2)

¹⁶¹ CD 1.4 Viewpoints 13 & 14. Note - viewpoint 14 is shown (MC 2/3 Figure PRV2) within the 'high Wolds', but its character suggests it might equally well be included within the 'dip slope'

¹⁶² CD 1.4 fig 11.18b, CD 3.9 fig 11.18b (V1) and (V2)

¹⁶³ CD 3.9 fig 11.18b (V1)

¹⁶⁴ CD 1.4 Viewpoints 10, 11, 12, 22

¹⁶⁵ CD 1.3 Table 11.6

¹⁶⁶ CD 3.9 fig 11.22(V2)

views from the A607, to the south west¹⁶⁷. From Melton airfield, to the south east, the (V1) development would appear poorly designed with T9 incongruous¹⁶⁸, whereas with (V2) T9 removed, the development would appear as two separate arrays¹⁶⁹. Furthermore, when seen from the A607 approaches to Melton Mowbray, from the west, the (V1) reduced height of T9 might encourage the impression that, unlike the rest of the array, this turbine is sited in the Wreake Valley, rather than the Wolds¹⁷⁰. Nevertheless, irrespective of any V1/V2 variation, the impact on landscape character would be moderate in terms set out in the ES¹⁷¹.

125. The impression of an unspoilt rural landscape is stronger when viewed from the high Wolds. From footpaths close to Holwell, some 2.3km to the north east of the site, the moving blades of the turbine array would seem incongruous when seen above the lightly treed fields which slope gently down from here towards the Wreake Valley¹⁷². This would detract from the area's tranquillity but, irrespective of any V1/V2 variation¹⁷³, the magnitude of change to the landscape would be limited by the convex topography of the dip slope; by the appearance of the (35m) emissions stack alongside T9; and, by the distant backdrop of development close to the M1 corridor. Whilst there is the potential for cumulative effects to be a consideration here, there is now no prospect of permission being granted pursuant to the application for four proposed¹⁷⁴ turbines at Queniborough (11km to the south west); the 132m turbine at Wanlip would be some 15km away¹⁷⁵; and, the recently permitted (55.5m) turbines at Welby Grange would be seen as distinct from the Asfordby wind farm, with only their 16.5m blades breaking the horizon¹⁷⁶. Any additional impact, as a result of cumulative effects, would therefore be insignificant if the Asfordby wind farm were to be viewed from here, or from higher¹⁷⁷, on this part of the Wolds.
126. Whilst the turbines would not be widely visible from within the core of Ab Kettleby, they would be prominent in views from the public footpath which leads from the village to the church¹⁷⁸. Nevertheless, man made elements already have a significant influence on landscape character here and the magnitude of change would be medium, irrespective of any V1/V2 variation¹⁷⁹. Man's influence is less evident, though not absent, in views from the footpath above the village¹⁸⁰, but the wind farm would also be less prominent.
127. From further west in the high Wolds, the turbines now proposed would be visible from Wartnaby, at a distance of about 1.5-3.2km. The magnitude of their impact on landscape character would be limited by the intervening screening and

¹⁶⁷ CD 3.9 fig 11.21b(V2)

¹⁶⁸ CD 3.9 fig 11.32b(V1)

¹⁶⁹ CD 3.9 fig 11.32b(V2)

¹⁷⁰ CD 3.9 p44 and fig 11.21b(V1)

¹⁷¹ CD 1.3 Table 11.7

¹⁷² CD 1.4 Viewpoint 4 existing view and wireline

¹⁷³ CD 3.9 Viewpoint 4 variations 1 and 2

¹⁷⁴ As described in CD 1.3 para 11.8.3

¹⁷⁵ CD 2.4 section 8.2

¹⁷⁶ PE/PB/3 Appx 1 cumulative wireframe for viewpoint 4

¹⁷⁷ PE/PB/3 Appx 1 cumulative wireframe for viewpoint 3

¹⁷⁸ CD 1.3 Fig 11.12a & b

¹⁷⁹ CD 3.9 fig 11.12b (V1) and (V2)

¹⁸⁰ CD 2.4 Viewpoint C

by the influence of manmade features in the nearfield views¹⁸¹. However, as I saw during an accompanied visit to the area, the impact from a nearby section of road which approaches the village from the east would be far more profound¹⁸². Whilst the turbines would not dominate the wide landscape that is visible from here, they would be seen to dwarf trees in the nearby surroundings. They would be out of scale with the largely unspoilt¹⁸³ landscape, resulting in a substantial alteration to the balance within it. Regardless of any V1/V2 variation, the effect on landscape character in this part of the high Wolds would be major, albeit along only a short stretch of road.

128. These considerations lead me to the following conclusions. During the 25 year period for which permission is sought, the proposed wind farm¹⁸⁴ would have a significant impact on landscape character, when considered alone or in combination with other wind turbine development. The Asfordby turbines would be visible across a wide area, but they would not cause profound harm to landscape character other than within, and close nearby to, the valley where they would be sited. A wind farm landscape would be created within the valley and there would be significant harm to landscape character in the high Wolds just to the east of Wartnaby, and in the Wolds dip slope at distances of up to a kilometre to the west, or 1.3km to the east, of the proposed machines.

Recreational Amenity

129. Some concern has been expressed regarding the wind farm's impact on the use of local recreational clubs. However, I agree with the appellant that people using the sailing club (about 4km away) and Holwell Football club (about 600m away) are unlikely to be distracted significantly from their enjoyment of these facilities, by the sight of the turbines¹⁸⁵, irrespective of any V1/V2 variation.

130. As indicated above, a wind farm landscape would be created in and around the valley where the turbines would be sited. Within the valley are public rights of way¹⁸⁶ that include footpaths, byways, a restricted byway and a permissive bridleway¹⁸⁷. Single track roads, to the east (Welby Lane) and west (Saxelbye Lane) of the valley, have wide verges and allow people to walk or ride horses on circular routes that avoid busy roads and include the valley¹⁸⁸. Saxelbye Lane is part of national cycle network route 48¹⁸⁹.

131. The network of paths and bridleways extends beyond the valley and is seemingly well used and valued by local residents for walking, riding and enjoying the wildlife¹⁹⁰. Whilst I saw little direct evidence of this use during my visit to the site and its surroundings, there is no doubt that such pursuits contribute to the health and well-being of the local community. Indeed, the

¹⁸¹ PE/PB/3 Appx 9

¹⁸² This viewpoint was suggested by STOP, during the accompanied visit, but there is no photographic evidence which relates to it.

¹⁸³ The domestic scale turbine at Ashlands might be visible from here, but this machine is too small for a significant cumulative landscape or visual effect to arise (p9/10 Appx to PE/PB/4)

¹⁸⁴ Irrespective of any V1/V2 variation

¹⁸⁵ PE/MW/1 p53

¹⁸⁶ CD 1.3 Figure 6.1

¹⁸⁷ Evidence (ST 5/3 and Musson evidence in chief) suggests that the permissive path shown on CD Figure 6.1 is a permissive bridleway

¹⁸⁸ ST 7/2

¹⁸⁹ PE/MW/04 Appx 2

¹⁹⁰ ST 1/1 paras 61-69 and ST 1/2

- Framework¹⁹¹ encourages the protection and enhancement of public rights of way.
132. Within the valley visual change, as a result of the turbines, would be very large. These machines would dominate the views of walkers and horse riders. Also, in order to facilitate the development, existing routes through the valley would be hard surfaced, widened and flanked by drainage swales¹⁹²; this would detract from the 'rural' experience which walkers and riders might reasonably expect to enjoy¹⁹³. However, control building A, which was to have been sited immediately to the north of restricted byway 60a, will not now be needed as both options for connecting to the electricity grid would involve the use of control building B¹⁹⁴.
133. If the development were to proceed, some people might choose to enter the valley in order to see and hear the turbines at close quarters. Others might choose to avoid it.
134. There is no statutory minimum separation distance between a turbine and a public right of way, and recent government advice¹⁹⁵ is silent on the matter. Turbines T1, T2 and T4 would be within topple distance of footpaths; and, T6 and T8 would be no more than about 50m from a restricted byway and permissive bridleway respectively¹⁹⁶. For turbines T4, T6 and T8, their separation from Welby Lane would appear to be either marginally less (T4) or marginally more (T6 and T8) than topple distance¹⁹⁷.
135. My attention has been drawn to appeal decisions¹⁹⁸ wherein particular consideration has been given to the concerns of horse riders and to the layout of wind farm development. In this case, though, details have been provided of the design evolution and of the considerations which informed it, including environmental constraints, energy capture and economic viability¹⁹⁹. There is nothing here to show that an alternative layout could be devised which would provide better separation distances, without materially affecting energy generation.
136. Horse riding in the area is popular with recreational riders²⁰⁰ and professional horse trainers²⁰¹. There is evidence to suggest that more horses pass through Saxelbye than motor traffic²⁰². Livery yard businesses are a particular feature of the area and there is a strong hunting tradition here.
137. Whilst T4 might be marginally closer to Welby Lane than topple distance, this small country road carries very little traffic and the (Leicestershire County Council) highways authority raise no objection to this aspect of the proposed

¹⁹¹ Framework para 75

¹⁹² CD 1.3 paras 3.6.16-3.6.27

¹⁹³ ST 1/1 paras 95-100

¹⁹⁴ PE/MW/04 para 4.16 and CD 3.6

¹⁹⁵ Planning practice guidance for renewable and low carbon energy (2013)

¹⁹⁶ CD 6.44, CD 7.2 3.7.5 and ST 1/1 paras 72-85

¹⁹⁷ CD 6.44 and ST 1/1 paras 72-85

¹⁹⁸ CD 17.19, CD 17.9 and ST 7/3

¹⁹⁹ CD 1.3 para 2.4.12 and Table 2.1

²⁰⁰ ST 1/2 Appx 5 and ST 5/1-5/2

²⁰¹ RP/10

²⁰² RP/6

development²⁰³. The Senior Rights of Way Officer (Melton Area), for Leicestershire County Council, maintains her objection on the basis that the development would discourage use of the rights of way²⁰⁴. Even so, for all turbines, the avoidance of oversailing could be controlled by condition together with limits on micro-siting.

138. The British Horse Society suggests a minimum separation of 200m between turbines and bridle paths. Where that cannot be achieved, the Society encourages initiatives, such as familiarisation days, to allow horses to become accustomed to turbines in safety²⁰⁵.
139. Welby Lane is too narrow for a horse to be turned, and it would be dangerous if a horse were to take flight here, given the road's hard and slippery surface²⁰⁶. Nevertheless evidence²⁰⁷ indicates that horses can be ridden safely in close proximity to turbines. In this particular case, given the proximity of turbines to routes used by riders and bearing in mind the general popularity of the area for riding, a familiarisation scheme would be needed. This is likely to involve the use of land that is outside the appellant's control, but I see no reason to believe that such a scheme could not be secured through a negatively worded (Grampian) condition.
140. A condition would also be needed to minimise the impact of any temporary closure/diversion of rights of way during the construction period.
141. These considerations suggest that the development would interfere with people's enjoyment of public rights of way, in the area. The degree of interference cannot be established confidently at this stage but I am satisfied that, subject to the attachment of suitably worded conditions, the harm to recreational amenity would be minimised so far as is reasonably practicable. In this respect, there would be no conflict with the development plan's requirements or with government policy.

Residential amenity

142. The effects of the development on the living conditions of local residents would include the turbines' visual impact; shadow flicker, and flashes of light, from their rotating blades; and noise, which I shall consider separately.
143. Shadow flicker can occur when the sun is behind the blades and shining towards a property that is within 130 degrees either side of north, relative to the turbine²⁰⁸. Here, the potential for properties to be affected has been assessed²⁰⁹ against guidance which suggested that shadow flicker is unlikely to be experienced at distances greater than 900m away from a turbine²¹⁰. That guidance is no longer extant, but it has been agreed that a condition is necessary to shut down turbines when flicker is predicted to occur²¹¹. Flashes of reflected

²⁰³ CD 6.36-6.39

²⁰⁴ CD 6.44-6.45 and CD 23.2

²⁰⁵ ST 1/2 Appx 10 and PE/MW/04 Appx 3

²⁰⁶ RP/10

²⁰⁷ PE/MW/04 Appx 4 & 5

²⁰⁸ No effects on residential properties are expected to occur as a result of T9 – see CD 3.9 para 3.3.12

²⁰⁹ CD 1.3 chapter 7

²¹⁰ The now cancelled Companion Guide to PPS22 advised that flicker effects had been proven to occur only within ten rotor diameters of a turbine

²¹¹ CD 20.2 condition 32

light, from the turbine blades, can be ameliorated by use of a suitable semi-matt finish; again this is a matter than could be controlled by condition.

144. The greatest potential for significant visual impacts exists at properties that are closest to the proposed development. Properties in Saxelbye²¹² and Ab Kettleby²¹³ are more than a kilometre away and, in the case of Saxelbye, are partially shielded by the intervening topography and trees. The following assessment is based on properties that are nearer than this, as this reflects the worst case.
145. The ES notes that there are about 276 residential properties within a kilometre of at least one of the proposed turbines. Approximately 149 of these are in Asfordby Hill and 120 are in The Valley, a small settlement on the main road between Asfordby and Asfordby Hill. The remainder are isolated properties in the countryside, although Potter Hill Farm and Greenacre are positioned close together.²¹⁴
146. The (V2) removal of T9 would reduce the number of residential properties, within one kilometre of the nearest turbine, to about 216²¹⁵. The 60 properties affected by this variation would all be in Asfordby Hill; for them, T8 would become the closest turbine, rather than T9²¹⁶.
147. Properties in The Valley are effectively screened, from the visual impact of the development, by vegetation on the nearby railway embankment. At Asfordby Hill, properties closest to the turbines are on the western side of Welby Road, but it seems²¹⁷ that the properties most affected would be at the western end of the settlement, to the north of Melton Road and in Houghton Close.
148. Turbines and their moving blades would be visible from gardens and windows to the rear of the Melton Road properties²¹⁸, but would be partly screened by trees and other vegetation. Occupants of these houses may have chosen to live here because of the rural views to the north. Yet, if a nine turbine wind farm were to be developed, the nearest machines (T8 and T9) would be some 850m²¹⁹ to 900m away from these properties and visual stacking, with turbines behind T8 and T9, would be evident²²⁰. Removal of T9 (V2) would reduce the stacking and the number of turbines in close proximity and, as such, would be of considerable benefit to these occupants. Even so, a nine turbine array (with or without V1) would not dominate their outlook to such an extent that the machines would be unduly overbearing or oppressive.
149. The turbines would also be prominent in views from Houghton Close, and from upstairs rooms at No 1²²¹. But their impact on residents' outlook would be limited, given the other views available from here and the urban influence of the nearby road and surrounding houses.

²¹² RP/6

²¹³ ST1/2 Appx 5

²¹⁴ CD 1.3 para 11.9.6 and Figure 12.1

²¹⁵ PE/A22 answer to question 7

²¹⁶ CD 3.9 SEI4 Figure 11.34 (V2)

²¹⁷ CD 1.3 Table 11.20 and para 11.9.9

²¹⁸ ST 2.1-2.3, ST 2.5

²¹⁹ Distance derived from p51 SEI 4

²²⁰ PE/PB/5 wireline for 15 Melton Road

²²¹ ST 2.4 and ST 2.2 photos J & K

150. Whilst I was unable to view the site from inside Welby Road properties, the nearest turbine (T9) would be about 600m away and the occupant of No 65 indicates that these large machines would dominate the view from his and neighbours' gardens²²². Moving blades may detract from their enjoyment of these garden areas, but evidence²²³ and the orientation of the houses suggest that the array would not spread across the available field of view and that the machines' impact would be limited by the surrounding tree cover. Reduction (V1) in the height of T9 would reduce this turbine's impact marginally, whereas removal (V2) would result in considerably better living conditions for occupants, in that the nearest turbine (T8) would be 840m away, some 240m more than T9²²⁴. Nevertheless, these dwellings are sited on a ridge, allowing occupants expansive and attractive views across the landscape to the front of the houses. In the circumstances, and irrespective of any V1/V2 variation, the turbines would not be unduly dominant in the outlook available from here.
151. From Welby Grange (0.8km to nearest turbine) and Asfordby Farm (0.6km) moving blades would be seen to rotate above the skyline, but the turbine towers would be rising beyond an intervening ridge, thereby providing a sense of separation²²⁵. The array would nevertheless be prominent, particularly in views to the east from the patio and garden to the side of Asfordby Farm²²⁶; T9 would be seen towards the rear of the array, but T8 would largely occupy views from an upstairs bedroom and bathroom here. Even so, these properties are not orientated solely towards the development and the outlook available to occupants would not be dominated to such an extent that they would become unattractive places in which to live. Shadow flicker could be controlled by condition.
152. Views of the development from low lying Grange Cottage (0.6km) would be limited to those obtained from the garden and drive. Principal rooms here face south and not towards the development²²⁷.
153. From Greenacre, some 970m to the north east of the nearest turbine (T2), the array would not be screened by Potter Hill Farm buildings, but would be visible rising above the treed horizon in views from rooms, conservatory and patio areas at the rear of the house and in approaches down the drive²²⁸. Rotating (T2) blades would be prominent and the more distant (2km) T9 machine would be seen above the (35m) Business Park stack; nevertheless, the central part of the array would be partially screened by the topography and trees. The smaller Welby Grange Farm turbines would also be visible from here, albeit as a distinct development further to the east.
154. Overall, the Asfordby wind farm would be detrimental to the views which occupants of Greenacre currently enjoy, but the turbines, with or without V1/V2, would not be overpowering when seen from here.
155. Particular health concerns cause these occupants to be worried about the potential effects of shadow flicker here²²⁹. The effects should not be significant,

²²² ST 2.6

²²³ CD 1.3 p11-83

²²⁴ CD 3.9 p51

²²⁵ CD 1.3 Table 11.20

²²⁶ PE/PB/5 wireline for Asfordby Lodge Farm (sic)

²²⁷ CD 1.3 Table 11.20

²²⁸ ST 3/1-3/5

²²⁹ ST 3/3

- given the separation distances. This, and the potential effects of reflected light, are matters that could be controlled by condition in any event.
156. Potter Hill Farmhouse is further down in the valley and the development's impact, on the outlook available to occupants, would therefore be considerably less than at Greenacre.
157. The wind farm would be visible from the rear of Ashlands, which is about 0.7km away from the proposed sites for T1 and T3, but considerably further from T9. A tree belt, approximately 150m to the east of this property, would provide some separation. Evidence suggests that, whilst the turbines would result in a prominent change to the existing view, from Ashlands, the turbines would not appear dominant or commanding when seen from here²³⁰.
158. The principal outlook from Glebe Farm (1km to T5) is to the south and not towards the wind farm. It seems that turbines would be visible from minor windows on the eastern side of the building, but that they would have little impact overall²³¹.
159. Turning to the matter of operational noise from the turbines, the ES assessment²³² follows the approach recommended in the ETSU-R-97 report²³³. Baseline noise levels have been measured and limits have been proposed, relative to background, for wind speeds up to 12 m/s. Noise levels, downwind of the turbines, have been predicted using the (ISO 9613) standard propagation model and have been shown to comply with the proposed limits.
160. Compliance is also predicted when consideration is given to the cumulative effects of turbines at Ashlands and Welby Grange, with the Asfordby machines²³⁴.
161. I do not question the validity of these findings, as all data collected for the purpose of the ES assessment were provided to the Council²³⁵, who then commissioned an independent review²³⁶. Nor do I doubt the professionalism of the appellant's expert noise witness who relies, in part, on his own research in order to support his views.
162. The independent review of the ES assessment found it unlikely that the Asfordby turbines would give rise to significant adverse effects on health and quality of life. It concluded that planning permission should not be refused on noise grounds, but argued that noise limits should be set 5dB below those derived from the ETSU-R-97 methodology, so as to mitigate and reduce adverse effects to a minimum. However, there is no justification²³⁷ for controls that are more stringent than is required to overcome a valid reason for refusing planning permission.
163. The turbines would be audible at times, from some residential properties²³⁸, and local residents are concerned both about the impact of this on their living

²³⁰ CD 1.3 Tables 11.6 and 11.20

²³¹ CD 1.3 Table 11.20

²³² CD 1.3 Chapter 9

²³³ The Assessment and Rating of Noise from Wind Farms (1996)

²³⁴ PE/ARMcK/3 Appx B

²³⁵ Re-examination of Dr McKenzie following questions put by Mo Caswell

²³⁶ CD 6.73

²³⁷ When considered against the advice in DoE Circular 11/95: The Use of Conditions in Planning Permissions

²³⁸ CD 6.73

conditions and about use of the ETSU-R-97 methodology²³⁹. They suggest, amongst other things, that the 'ETSU' approach is now outdated, as it is based on a generation of smaller turbines. However, following publication of (IoA) guidance²⁴⁰ that was produced in response to concerns over wind shear and the increasing size of turbines²⁴¹, the government have recently confirmed²⁴² that the 'ETSU' approach remains the appropriate one to use when assessing and rating noise from wind energy development. They have also endorsed the (IoA) guidance as a supplement to ETSU-R-97.

164. The IoA approach was followed during measurements of background noise, for the purposes of the ES²⁴³. Conditions with guidance notes that are consistent with that approach, and with the 'ETSU' recommendations, are included in the schedule attached to this report; the wording of IoA guidance notes 3c and 3d has been amended, slightly, to reflect evidence²⁴⁴ at the inquiry.

165. Subject to consideration of amplitude modulation, which I turn to below, these conditions have been largely agreed²⁴⁵. It is a matter for the developer to decide how to ensure that they would be met. There would be no need for the noise assessment to be updated to reflect the choice of turbine.

166. Whilst residents are concerned about sleep disturbance and some argue for a minimum separation distance, between properties and turbines, I find no cogent reasons to support such a view. Separation and sleep disturbance are just two of the many factors that are taken into account in the 'ETSU' approach. The 'ETSU' limits were formulated to protect against sleep disturbance, but people can be disturbed for many reasons; getting back to sleep can then be made more difficult if, for example, the person is annoyed at being able to hear wind turbines²⁴⁶.

167. Nor am I persuaded by generalised concerns that children's education and/or health would suffer as a result of attending Ab Kettleby school, which is more than a kilometre away from the nearest turbine²⁴⁷. Noise levels here, during the day, are predicted to be below the lowest absolute limit²⁴⁸ contemplated by 'ETSU' and rarely higher than measured background levels²⁴⁹.

168. Expert evidence suggests that modern turbines are not significant sources of vibration, infrasound or low frequency noise²⁵⁰. Nevertheless, people's reaction to turbine noise can be significant; annoyance, in particular, can lead to stress and thereby symptoms such as headaches, dizziness and anxiety²⁵¹.

169. Amplitude modulation (AM), of aerodynamic noise from turbines, has contributed to complaints in parts of the UK and some residents of the area

²³⁹ ST 6/1, RP/8, CD 23.2

²⁴⁰ A good practice guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise, Institute of Acoustics May 2013

²⁴¹ Dr McKenzie evidence in chief

²⁴² Planning practice guidance for renewable and low carbon energy (July 2013)

²⁴³ Dr McKenzie's answer to the Inspector's question and CD 3.9 p15-16

²⁴⁴ PE A/8 and Dr McKenzie's answers to the Inspector's questions

²⁴⁵ CD 20.3 and evidence given by STOP and the Council during the conditions session

²⁴⁶ Dr McKenzie's answer to Mo Caswell's question

²⁴⁷ RP/19 and oral evidence of Mr Boardman

²⁴⁸ $L_{A90,10min}$ of 35dB(A)

²⁴⁹ CD 1.3 Fig 9.14

²⁵⁰ CD 6.73 Section 5, PE/ARMcK/1 8.14-8.16 & 11.2, PE/ARMcK/3 Appx A

²⁵¹ ST 6.5

surrounding the appeal site are concerned about the possible impact that AM could have on their living conditions. Those concerns are material, but the incidence of AM from UK wind farms is low²⁵² and residents' fears of experiencing it are not sufficient, in themselves, to warrant withholding planning permission for the appeal scheme.

170. Peer reviewed research from around the world reports the occurrence and measurement of AM under a variety of conditions²⁵³. However, the causes and mechanisms for its occurrence are still not properly understood²⁵⁴. Renewable UK have commissioned (2010) a study into its cause and control, but the final report has yet to be published²⁵⁵. The standard model for normal AM, or 'blade swish', does not explain the high levels of other AM which can occur at large distances downwind and upwind²⁵⁶. On that basis, it would be unreasonable to adopt the suggestion of CPRE²⁵⁷ and impose a condition worded along the lines of that imposed at Den Brook²⁵⁸, as a means of guarding against this phenomenon; as there is nothing to show that such a control would be effective.
171. STOP accept that there is no prediction method which can reliably demonstrate the degree to which AM may occur at any specific site²⁵⁹ and the appellant would not object to a condition which, following complaints by local residents, required it to develop a scheme for the investigation and, if necessary, control of excess AM²⁶⁰. Indeed, such a condition was imposed by the SoS in 2009²⁶¹. However, current knowledge suggests that 'excess' or 'other' AM cannot be defined in any meaningful way²⁶². In the circumstances, such a condition would be both imprecise and unreasonable.
172. There are mixed views of whether turbines, within the proposed layout, should be realigned in order to minimise the risk of excessive AM being experienced by local residents²⁶³. In any event, the independent review of the ES noise assessment suggests that the risk of excessive AM occurring here is low. In the absence of a clearer understanding of the mechanisms involved, it would therefore be unreasonable to require realignment, as there is no evident understanding of the conditions which act as a precursor to such modulation.
173. 'ETSU' limits take blade swish into account and if, as here, a robust assessment has shown that those limits will be met, it would be reasonable to conclude that little or no weight attaches to adverse noise impacts from the operation of the turbines²⁶⁴. Indeed, recent government guidance confirms that current practice is not to assign a planning condition to deal with AM²⁶⁵.

²⁵² PE/ARMcK/3 Appx A

²⁵³ ST 6/1, ST 6.1-6.4

²⁵⁴ ST 6.1, PE/ARMcK/1 6.5

²⁵⁵ PE/ARMcK/1 6.4

²⁵⁶ PE/ARMcK/3 Appx A5

²⁵⁷ RP/3 submission by Leicestershire Campaign to Protect Rural England

²⁵⁸ CD 17.10

²⁵⁹ CD 20.3

²⁶⁰ CD 20.3

²⁶¹ CD 17.9

²⁶² Dr McKenzie evidence during session on conditions

²⁶³ CD 5.18 and CD 6.73

²⁶⁴ EN-3 2.7.58

²⁶⁵ A good practice guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise para 7.2.1

174. In the absence of such a condition, people who are adversely affected by AM must rely on the statutory nuisance regime; albeit that this is not an ideal solution, as has been noted elsewhere²⁶⁶.
175. In order to protect local residents from undue disturbance, during assembly of the wind farm, construction activity would be limited to 07.30-19.00 hours during the week and 07.00-14.00 on Saturdays²⁶⁷. This could be secured by condition. The times for weekday start and Saturday finish were agreed with the Council during the inquiry²⁶⁸ and are slightly later than had been anticipated by the ES and in evidence²⁶⁹. The later finish on a Saturday would allow for earlier completion of the development than would otherwise be the case. In any event, construction noise is predicted to be significantly below the widely accepted (BS5228²⁷⁰) weekday daytime (65dB L_{Aeq}) and Saturday afternoon (55dB L_{Aeq}) levels²⁷¹.
176. Residential and recreational amenity would therefore be affected, but not unduly harmed, by the proposed development. No conflict with development plan policy is alleged in this respect.
177. Reduction in the height of T9 (V1) would have minimal impact on the noise likely to be experienced at residential properties²⁷². Removal of T9 (V2) would reduce the noise expected at Asfordby Valley properties and at 65 Welby Road, to the north of Asfordby Hill, a reduction of 2.8dB is predicted²⁷³.
178. The pursuit of sustainable development involves seeking improvements to the conditions in which people live, work and take leisure²⁷⁴. This does not mean however that planning permission should be refused for any development that would erode those conditions, irrespective of the degree of harm. As noted above, the Framework's presumption in favour of sustainable development means that in cases such as this, and subject to any specific policy restriction, permission should be granted unless the harm would significantly outweigh the benefits.

Other Matters - Ecology

179. The turbines and associated infrastructure would occupy a limited amount of agricultural land, but I find no persuasive reason to believe that this would conflict with LP Policy (C1). Local residents²⁷⁵ and parish councils²⁷⁶ do however raise concerns about the wind farm's effect on wildlife, particularly now that the restored site of the former mine is beginning to mature. CPRE too are opposed to the proposals on the grounds of ecological impact²⁷⁷. However objections to the proposals, on ecological grounds, did not form part of any Rule 6(6)²⁷⁸

²⁶⁶ CD 17.12

²⁶⁷ CD 1.3 para 9.6.49

²⁶⁸ PE/A22 answer to question 6

²⁶⁹ Than described in the ES (CD 1.3 para 9.6.49) and in Dr McKenzie's proof (PE/ARMcK/1 para 4.27)

²⁷⁰ Code of Practice for Noise and Vibration Control on Construction and Open Sites (2009)

²⁷¹ CD 1.3 paras 9.2.20 and 9.6.44-9.6.55

²⁷² CD 3.9 para 3.5.24

²⁷³ CD 3.9 para 3.5.25 and Appx B

²⁷⁴ Framework para 9

²⁷⁵ CD 23.2

²⁷⁶ CD 6.1 and CD 6.3

²⁷⁷ CD 6.9

²⁷⁸ The Town and Country Planning (Inquiries Procedure)(England) Rules 2000: SI (2000) 1624 and 1625

party's statement of case to the inquiry. At application stage, STOP raised ecology-based objections²⁷⁹ which reflected those made by a member of the local wildlife trust²⁸⁰; at appeal stage, STOP's limited evidence in this respect was provided in writing²⁸¹.

180. During preparation of the ES²⁸², the site was surveyed for its wildlife habitats and hedgerows; studies were carried out to assess its use by birds, badgers, bats, great crested newts, reptiles, water voles, otters and white-clawed crayfish. The studies were informed by existing knowledge of nearby sites and species of nature conservation importance. The closest SSSIs²⁸³ provide suitable habitats for a range of wildlife, but are designated primarily for their vegetation; these national sites are at Holwell Mouth (2.3km), Frisby Marsh (3.9km) and the River Eye (4.1km)²⁸⁴. Non-statutory county level wildlife sites (SNCIs²⁸⁵) include Brown's Hill Quarry, which is about 2.5km to the north of the site and is known to support hibernating bats. Priors Water (c.1.2km to the south) is a nature reserve, managed by wildfowling, but is not designated for nature conservation purposes²⁸⁶. The proposed development would cause no damage to any designated site and there would therefore be no conflict with LP Policy C13.
181. At application stage, STOP argued that elements of NE's (TIN069) guidance were not followed properly, in the (ES) assessment of the wind farm's impact on birds²⁸⁷. However, NE raised no significant concerns in relation to any aspect of the (ES) assessment. NE also noted that the survey had revealed low diversity and that the site was not in an area of particularly sensitive habitat²⁸⁸.
182. During the survey, birds of conservation concern²⁸⁹ were recorded. These included biodiversity action plan species, and one Schedule 1²⁹⁰ species (barn owl) was found to be breeding in a tree on the site. The site was assessed to have a breeding assemblage of local importance²⁹¹ and a wintering bird assemblage of district value.
183. The ES identifies those bird species which are believed to be at risk of collision with the turbines²⁹². Impacts are judged according to the birds' conservation status and the numbers of them which were recorded on the site. Some species are found to be at low risk of collision or low conservation status, or both; other species are at risk, but are rarely seen on the site and so the likelihood of collision is very low²⁹³. These conclusions are not affected by consideration of V1/V2²⁹⁴.

²⁷⁹ CD 7.2

²⁸⁰ CD 6.74

²⁸¹ ST 1.7-1.8

²⁸² CD 1.3 chapter 13

²⁸³ Sites of Special Scientific Interest

²⁸⁴ CD 1.3 para 13.5.4

²⁸⁵ Sites of Nature Conservation Importance

²⁸⁶ PE/PS/2 para 6.10

²⁸⁷ CD 7.2

²⁸⁸ CD 6.63

²⁸⁹ Red and Amber list; Royal Society for the Protection of Birds 2009

²⁹⁰ Wildlife and Countryside Act 1981

²⁹¹ Using Fuller's measure of diversity

²⁹² CD 1.3 Table 13.6

²⁹³ CD 1.3 paras 13.6.56-13.6.69 and PE/PS/2 paras 7.17-7.25

²⁹⁴ CD 3.9 para 3.9.12

184. Minimal displacement of individual birds is anticipated, if the wind farm were to be developed, but conditions would be needed to avoid construction taking place during the nesting season; to replace lost habitat; and to establish a suitable exclusion zone around the barn owl nest²⁹⁵. These controls would be necessary to protect the biodiversity of the site and are endorsed by NE²⁹⁶. However, a requirement to monitor bird collisions is not necessary to overcome any valid²⁹⁷ reason for refusing planning permission.
185. A stream corridor links Brown's Hill Quarry with the appeal site²⁹⁸, thereby offering the potential for bats to pass close to the turbines in late autumn or spring, whilst moving to or from their hibernation roosts. Bats are European protected species (EPS), being protected under international and domestic²⁹⁹ legislation, but are at risk from barotrauma and collision with turbine blades. However the Natterer's, Daubenton's and brown long-eared bats, which are known to use the Quarry, are all considered to be at low risk of collision³⁰⁰. Common and soprano pipistrelle have a medium risk of collision, but at a population level these species are unlikely to be threatened by wind turbines³⁰¹.
186. Other species which were found to use the appeal site for commuting and foraging, during the ES survey³⁰², include Noctule, Leisler's bat and Nathusius' pipistrelle; all of which are at high risk from collision and whose populations face a high level of threat from wind farm development³⁰³. However, the recorded level of on-site activity by these species was very low and local populations would therefore be unlikely to suffer any significant decline as a result of the Asfordby wind farm³⁰⁴.
187. NE accept that no bat roosts would be affected by the development and that common pipistrelle account for most activity on the site³⁰⁵. A site environment management plan would set out measures to be taken in order to protect these mammals, and their habitats, during construction; and, in accordance with (TIN051) guidance, all turbines would be sited at least 50m away from popular foraging habitat. New habitat would be planted; existing hedgerows would be improved; and there would be no lighting, on the site, during construction, operation or decommissioning, other than infra-red warning lights on the turbines. On that basis, NE are content that the development would not have an unacceptable impact on bats³⁰⁶ and I see no reason to believe that there is likely to be a significant threat to the local population of these mammals, irrespective³⁰⁷ of whether T9 were to be included within the scheme.
188. I do not though consider it necessary, as a condition of planning permission, to require post installation monitoring of bat activity and searching for corpses. I recognise that the information gained would improve the general understanding

²⁹⁵ CD 1.3 Table 13.7

²⁹⁶ CD 6.63

²⁹⁷ When considered against the advice in DoE Circular 11/95

²⁹⁸ PE/PS/2 para 7.6

²⁹⁹ Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010

³⁰⁰ PE/PS/2 para 7.6 and Inspector's questions to Dr Shepherd

³⁰¹ CD 15.1

³⁰² CD 1.3 para 13.5.38

³⁰³ CD 15.1

³⁰⁴ PE/PS/2 paras 7.45-7.49

³⁰⁵ CD 6.63

³⁰⁶ CD 6.63

³⁰⁷ PE/A22 answer to question 8

of bats' behaviour, in the vicinity of turbines, but gathering such information is not needed to make the Asfordby proposals acceptable.

189. Badgers are known to use the site and domestic legislation³⁰⁸ seeks to ensure that no damage or disturbance is caused to them or to their setts. Some disturbance to these animals would be inevitable during construction, as a result of noise and vibration, and it is possible that creation of the access tracks would affect two setts; one of which would be reopened after the 18 month construction period. A licence would therefore be required from NE³⁰⁹.
190. Prior to construction, the site would be re-evaluated for the presence of these animals and, during construction, protective fencing would be erected³¹⁰. There would be no work on-site, during hours of darkness, and excavations left open overnight would have a means of escape for any badgers that fall in. These measures could be secured by condition and, whilst there would probably be a residual negative effect on badgers, the significance of this would only be at site level³¹¹. Given these protective controls, and in the absence of evidence to demonstrate a suitable alternative site for the wind farm, there would therefore be no conflict with LP Policy C15.
191. Turning to other protected species, evidence of water voles and great crested newts (GCN) was found in water bodies³¹², towards the southern end of the site, but the survey found no evidence of the site's use by otters, white clawed crayfish or reptiles. The ES outlines exclusion measures to protect the voles and GCN from the effects of construction³¹³ and SEI 1³¹⁴ confirms that an ecologist would oversee excavations at the western end of the directional drilling proposed for the installation of cabling between T8 and T9. Felling of trees, to create a bat buffer for T9, could harm or disturb the GCN; but, this work would be done by hand, in winter when the GCN are hibernating, and the logs would be stacked to create refugia for this EPS. With these mitigation measures in place, I see no reason to believe that the local colony of GCN would suffer and, if T9 were to be removed (V2), those measures would not be needed³¹⁵.
192. Consideration has also been given to ecological effects arising as a result of the Asfordby wind farm in combination with other developments. However, the only significant wind farm that is anticipated within 12km is at the Old Dalby site, which is of limited value for bats and birds³¹⁶. Redevelopment of Holwell Works, to provide 13 industrial units, would be close (200m) to the ponds which support GCN³¹⁷, but the combined impact of these developments is unlikely to be significant, given the minor impact that the wind farm is expected to have.
193. The Council³¹⁸, County Council³¹⁹ and Natural England³²⁰ now raise no objection to the proposals, in terms of ecological impact, subject to suitable

³⁰⁸ Protection of Badgers Act 1992

³⁰⁹ CD 1.3 para 13.7.13

³¹⁰ CD 2.4 p30

³¹¹ CD 1.3 para 13.9.6

³¹² CD 1.3 figs 13.8 and 13.9

³¹³ CD 1.3 paras 13.7.28 & 13.7.30 and Table 13.7

³¹⁴ CD 2.4 p35

³¹⁵ CD 3.9 para 3.9.16

³¹⁶ PE/PS/2 para 8.6

³¹⁷ PE/PS/2 para 8.7

³¹⁸ CD 20.1 para 9.3

³¹⁹ CD 6.35

conditions being attached to any grant of planning permission. Given implementation of the Hedgerow and Plantation Woodland Management Plan, which could be secured by condition, there would be no conflict with LP Policy C14.

Development Plan

194. Development plan policies, for the purposes of determining this appeal, are limited to the saved policies of the LP, although submissions are made to the effect that the LP's aim of encouraging the development of renewable resources is also saved³²¹. Notwithstanding that aim, or the proposals' compliance with policies (C1, C13-15) which are designed to protect wildlife and the best agricultural land, the proposed wind farm does not qualify as an exception to the Policy OS2 presumption against new development in the countryside. On that basis, the proposals fail to satisfy the development plan's requirements as a whole.

Balance of Benefits and Harm

195. Under the terms of the application, each turbine would have a maximum electricity generating capacity of about 2MW. Estimates of the power likely to be generated³²², and of electricity used by the median UK household³²³, have been refined³²⁴ since the ES was produced. Unlike earlier estimates which were based on generic (Renewable UK) formulae, these more recent figures are specific to the appellant's proposals, insofar as is possible³²⁵. I see no reason to doubt their veracity.

196. The nine turbine scheme, that was refused permission by the Council, is now expected to provide a net energy output of 44.43 GWh/year³²⁶; this would be sufficient to meet the annual electricity demand of some 10,167 homes and thereby save nearly 27,000 tonnes of CO₂ emissions a year³²⁷.

197. Turbine T9 would be sited on the lowest ground and, as originally proposed, would be expected to produce the least energy of all nine turbines³²⁸. Reducing its hub height from 78.5m, to some 61.75m (V1), is expected to reduce the overall output from the wind farm by 0.64%.³²⁹ Removing T9 (V2) is now expected to reduce the output by 10.41%³³⁰, whilst the reduction in emissions savings is calculated to be about 11%³³¹.

³²⁰ CD 6.63

³²¹ PE/A18 paras 21-22, PE/A12 para 26 and PE/A21 paras 79-88

³²² PE/NM/6. Capacity factor increased from 25.35% to 28.2% based on parameters which include measured wind speed data, predicted wake effects and assumptions of turbine downtime (for maintenance and shadow flicker curtailment), electrical efficiency, hysteresis loss, blade degradation and icing.

³²³ 2012 assumption of 4,200kW of electricity used each year by median household; prior to this the assumption was 4,700kW

³²⁴ PE/NM/6 and PE/A22 answer to question 11

³²⁵ Appellant's answer to the Inspector's question

³²⁶ Expected to vary by up to 5.2GWh/year over a 20 year period

³²⁷ PE/A22 answer to question 11

³²⁸ PE/NM/7 Appx A

³²⁹ PE/NM/7

³³⁰ PE/A22 answer to question 9

³³¹ PE/MW/8 and PE/A22 answer to question 12

198. A carbon balance that takes account of emissions generated by turbine manufacture, amongst other things, calculates that the development would 'pay back' the embedded carbon within 0.4 years³³². This is irrespective of any V1/V2 variation³³³.
199. The benefits, in terms of slowing the rate of climate change, would therefore be very substantial and, as the Stern report³³⁴ noted in relation to the economics, the benefits of strong early action on climate change considerably outweigh the costs. Even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions³³⁵.
200. The development would also contribute to UK energy security³³⁶ and would generate about 30 FTE³³⁷ jobs, during construction³³⁸.
201. Turning to the adverse impacts, it is clear that turbines sited within the setting of a heritage asset may cause substantial harm to the significance of that asset³³⁹. However, that is not the case here. The harm caused to the significance of local heritage assets would be less than substantial and limited to a period of 25 years, whereas future climate change is likely to be detrimental to the historic environment over the longer term³⁴⁰.
202. As originally proposed, and despite the encouragement offered by early consultation responses, the 125m high T9 would not be appropriately sited in terms set out by recent government guidance³⁴¹, given the risk that toppling poses to Network Rail's operations at the Old Dalby Test Track facility. That risk was not highlighted until late in the inquiry proceedings and could now be limited by taking particular care over the design and construction of the foundations. Any residual risk might be insignificant, but is unknown. The (V1) option of micro-siting the turbine 10m away and reducing its height to 108m would remove the risk to all intents and purposes; as would the (V2) omission of this machine from the scheme.
203. A windfarm landscape would be created within the valley, where the turbines would be sited. Irrespective of whether T9 is removed (V2) or reduced in height (V1), and regardless of whether the development is considered alone or in combination with other permitted wind turbines, there would be significant harm to landscape character in limited areas of the Wolds dip slope, within 1.3km of the nearest machine, and in a small part of the high Wolds that is just to the east of Wartnaby.
204. There would also be harm to the character of the Wreake Valley. This would be no more than moderate, and therefore insignificant in terms set out within the ES, but would be aggravated by reducing the height of T9. Removal of T9 would leave the array looking divided, but only in limited views such as those from

³³² PE/A10

³³³ PE/A22 answer to question 10

³³⁴ CD 11.21 pii

³³⁵ Framework para 98

³³⁶ Planning practice guidance for renewable and low carbon energy

³³⁷ Full time equivalent

³³⁸ PE/MW/1 para 12.14

³³⁹ Planning practice guidance for renewable and low carbon energy

³⁴⁰ CD 13.3 Wind Energy and the Historic Environment (English Heritage, June 2012)

³⁴¹ Planning practice guidance for renewable and low carbon energy (July 2013)

Melton airfield; the (V2) development's impact on the character of the Wreake Valley landscape would not be altered materially.

205. Recreational amenity would suffer for most, if not all, of those who enjoy riding or walking in and around the valley. Although the impact of this could be minimised by the use of suitably worded conditions.
206. Residential amenity too would be harmed, particularly in terms of the outlook available to people living in the northern and western outskirts of Asfordby Hill and at Asfordby Farm. No-one's outlook would be unduly dominated, but removal of T9 would make the development considerably less prominent for residents of Asfordby Hill. People living to the west of Welby Road, at the northern end of this settlement, would also benefit from less noise if T9 were to be removed; although, noise levels are predicted to be acceptable in any event.
207. There is substantial local opposition to the proposals, as evidenced by representations made at application and appeal stage, including those submitted by the MP for Rutland and Melton³⁴². The government is determined to give people the ability to shape the places in which they live³⁴³ and, as recent (July 2013) guidance³⁴⁴ points out, it is important that the planning concerns of local communities are properly heard. Even so, it remains a general principle of the planning system that local opposition is not in itself a ground for refusing planning permission unless it is founded upon valid planning reasons³⁴⁵.
208. Before turning to consider the balance in this particular case, I note that the need for renewable energy development is unconstrained, but the (July 2013) guidance explains that a planning authority need not permit a speculative application for a wind farm if the impact of such development would be unacceptable and if suitable areas, to accommodate wind farms within that authority's area, have already been identified. Here, a (2008) study found that Melton offers very good potential for wind energy generation and it identified five locations, within the Borough, where large turbines might be sited³⁴⁶. However, the development plan process has yet to confirm that any of those locations are suitable for wind energy development.
209. Whilst meeting our energy goals should not be used to justify the wrong development in the wrong location³⁴⁷, planning permission should be granted for a wind farm if it would have an acceptable impact³⁴⁸. Within the East Midlands, Melton Borough ranks highly in terms of its wind resource³⁴⁹ and, according to a (2011) study carried out for Councils in this part of the UK, the appeal site is amongst those areas with the highest potential to accommodate large wind turbines³⁵⁰.
210. Development plan policies that are relevant to determination of this appeal are out of date. In the circumstances, the balance to be drawn here is whether the

³⁴² RP/1

³⁴³ SoS statement to parliament on local planning and onshore wind (6 June 2013)

³⁴⁴ Planning practice guidance for renewable and low carbon energy

³⁴⁵ The Planning System: General Principles (ODPM 2005)

³⁴⁶ CD 12.11 p20

³⁴⁷ Written statement to parliament on local planning and onshore wind (6 June 2013)

³⁴⁸ Framework para 98

³⁴⁹ Ranked 7th out of 39 districts in the East Midlands

³⁵⁰ CD 12.6 Appx 4.5

harm that would be caused by the wind farm would significantly and demonstrably outweigh the benefits of the development when assessed against government policy as set out in the Framework.

211. To my mind, the benefits that the development would bring are very substantial and it has not been demonstrated that these would be significantly outweighed by such harm as might be caused. This is irrespective of whether the development were to proceed, as originally proposed, or whether it were to be varied by either removing T9 (V2) or relocating and lowering it (V1).
212. Nevertheless, the balance weighs most heavily in favour of the V2 proposals, notwithstanding the apparent division of the turbine array, in views from Melton airfield, and the 11% reduction in carbon savings which would result from T9's omission. This is because living conditions for residents of Asfordby Hill would benefit considerably from this change to the scheme design; the wind farm landscape would be less intrusive in views from here; the impact on landscape character would be improved; and, NR's operations would be reliably protected.
213. The V1 variation would have little effect on carbon savings or on living conditions for local residents. It would provide reliable protection for operation of the Old Dalby Test Track facility, but would appear awkward and poorly designed, particularly in views from the south and east, and in approaches to Melton Mowbray from the west, along the A607. On balance, I find it less preferable than the original proposals.

Human Rights

214. Representations³⁵¹ have been made which relate to Article 8 and to Article 1 of the First Protocol of the European Convention on Human Rights. If the appeal were to be allowed, it could interfere with people's peaceful enjoyment of their property and with their right to respect for home and private life. However, this must be balanced against the need for a renewable energy scheme to serve the legitimate interests of the wider community.
215. The potential for such interference would be minimised by making permission, for the scheme, subject to suitable conditions. In the circumstances, and given my conclusions on the main issues above, I am satisfied that if the appeal scheme were to proceed, its effects on local residents would not be disproportionate.

Conditions

216. The following observations, in relation to conditions, are in addition to those raised earlier in the report.
217. If planning permission were to be granted, the appellant would need to complete various studies and discussions with other organisations, before the Council's approval is sought for details submitted pursuant to conditions. Nevertheless, much of that pre-development work could take place concurrently. The circumstances here are not so exceptional as to warrant a departure from the standard three year time-limit for commencement.

³⁵¹ CD 23.2

218. For the avoidance of doubt and in the interests of proper planning, the approved plans would need to be defined. The proposed site layout is shown on Figure 3.2 (Rev 5)³⁵², but if permission were to be granted for a variation to the scheme, the layout would be as shown on the versions of this drawing which are provided within SEI4³⁵³. Furthermore I do not share the view³⁵⁴ that, if permission were to be granted for V1, this variation to the proposals should be carried out in accordance with Figure 3.2 (Variation 1), but "only in so far as it relates to turbine 9 (T9)", as this approach fails to define the layout of the remaining infrastructure. In any event, the Council's approval should be obtained for any micrositing.
219. Micrositing of the infrastructure, to within 10m of its indicated position, would provide flexibility to assist with installation of these large structures without materially affecting the scheme's visual impact. There is no compelling reason to constrain that flexibility by requiring turbines to be no closer to paths or roads, than shown on the application drawings. But, in the interests of recreational amenity, turbine blades should not be allowed to over sail those footpaths or bridleways which currently exist.
220. Infra red lights would need to be fitted to the turbines, in order to protect aviation safety without harming the appearance of the area. Whilst the Ministry of Defence has described the optimised flash pattern that would be required³⁵⁵, they give no indication of whether the lights should be attached to the hub or blade tip.
221. In order to protect the area's appearance, it would be necessary to limit heights of the turbines to no more than was assessed in the ES. But there is no persuasive evidence to show that rotor blades, longer than 45m, are likely to have a material effect on the occurrence of amplitude modulation (AM) or on the collision risk for bats or birds here. The ES assessment did not suggest a minimum hub height or maximum rotor diameter and it would therefore be unreasonable to prevent the developers from taking technological advances into consideration when the choice of turbine is made.
222. Also, in the interests of appearance, details of the turbines, anemometer mast and control building would all need to be agreed; construction activities would need to be carried out according to an approved method statement; all cabling should be installed underground; and, the turbine blades should all rotate in the same direction. Redundant turbines should not be allowed to remain on the site; such machines should be repaired or removed according to an agreed programme of works. The site should be restored after turbines are removed according to an agreed programme of works and, in any event, after 25 years of operation. Furthermore, measures would be needed to ensure that neither highway conditions, nor protected species, would be adversely affected by the decommissioning.
223. A mechanism needs to be in place to ensure that the site would be restored, whatever happens to the owners of the site. The Council do not object to a condition which would require a decommissioning bond, or similar financial

³⁵² CD 3.6

³⁵³ CD 3.9

³⁵⁴ Expressed by the appellant and the Council on 11.11.13

³⁵⁵ CD 6.58

provision, to be put in place. Nevertheless, they evidently do not consider it necessary, bearing in mind that the planning permission would run with the land. Indeed, officers point to enforcement action which could be taken and to the Council's powers to 'step in' and recover the costs³⁵⁶. On that basis, there would be no need for the funding arrangements to be secured by condition.

224. Consistent with commitments made in the ES and SEI, measures would be needed to protect water voles, barn owls, badgers and great crested newts from the potentially adverse effects of construction activity. These measures should include removing vegetation from around working areas, so as to discourage access by water voles. Also, on-site movements should be restricted at night in order to minimise the risk of collisions with badgers.
225. Habitat loss would need mitigation through new planting of trees and hedgerows but, in order to minimise the risk of harm to bats, management measures should maintain a minimum separation of 50m between turbines and any hedge or tree.
226. In order to avoid worsening the risk of flooding, within the valley of the River Wreake, the development should not result in an increase in the rate of surface water run-off from the site.
227. Whilst the (ES) desk study³⁵⁷ revealed little of concern, in relation to soil contamination, it would be necessary to ensure that controlled waters are protected against the risk of pollution during development of the site³⁵⁸.
228. A Construction Method Statement would be needed to protect environmental conditions in and around the site and a separate Traffic Management Plan would be required to ensure that the development does not cause undue conflict with users of the highway network and of the public rights of way which cross the site.
229. In the interests of aviation safety, a Primary Radar Mitigation Scheme would be needed to protect air traffic control from Claxby and East Midlands Airport. The Ministry of Defence (MoD) has withdrawn its objection, in relation to RAF Cottesmore, but requires details to be provided of the construction dates, the height of construction equipment and the positions of the turbines³⁵⁹. This is to plot on flying charts so that military aircraft can avoid the area. In order to ensure that the Council could enforce these requirements, details should be provided to them for ongoing transmission to the MoD.
230. Separately to the measures that are needed to protect NR's infrastructure, near to T9, an 11 kV cable that passes close to the west of turbine T8 would also need to be buried. A commitment to ongoing liaison over the details for this is given in the ES (para 7.7.1).
231. Wind turbines can interfere with communication systems, including those from television (TV), radio and mobile phone transmitters. Most service providers have confirmed that the Asfordby wind farm would have a negligible impact on signals received by residents. Interference with TV signals can be difficult to assess fully before turbines start operating, but the local switch to digital TV is

³⁵⁶ CD 8.3 p78-79

³⁵⁷ CD 1.3 section 14

³⁵⁸ CD 6.21

³⁵⁹ PE/A11

now complete and digital reception is less likely to be affected than its analogue predecessor. Nevertheless, it would be necessary to ensure that if there is any TV interference, attributable to the wind farm, this is remedied. It is also reasonable that this should only apply to those properties which existed, or had planning permission, at the time when permission for the wind farm was granted.

232. In the interests of protecting the safety of people, who pass nearby, measures would be needed to guard against ice throw from the turbine blades.

233. Any oils, fuels or chemicals that might be stored on the site, would need to be kept within a bunded area, to minimise the risk of water pollution. Groundwaters would also need to be protected against the risk of contamination as a result of piling or other penetrative methods of establishing foundations³⁶⁰.

Recommendations

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234. I recommend that the appeal be allowed and that planning permission be granted for the proposals, with or without variation, subject to conditions. If the Secretary of State were to agree that permission should be granted for the development as originally proposed, including the construction compound within the site boundary, that permission should be subject to conditions set out in the attached schedule.

235. If the Secretary of State were to decide that the proposals should be varied, so as to afford greater protection to infrastructure at the Old Dalby Test Track facility, those conditions should be amended as set out in the appendices to the schedule of conditions. Consistent with my preference for this to be achieved by omitting turbine 9 (T9), rather than relocating and lowering it, I recommend that the amendments set out in appendix 2 (variation 2) are to be preferred to the amendments set out in appendix 1 (variation 1).

Rupert Grantham

INSEPECTOR

³⁶⁰ CD 6.21

Schedule of Conditions

Time Limits

1. The development hereby permitted shall begin not later than three years from the date of this permission.

Defining the Permission

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Figure 3.1 (Rev 04) Site Location Plan; Figure 3.2 (Rev 05) Asfordby Wind Farm Development Proposals; Figure 3.3 (Rev 07) Indicative Vegetation Removal Plan; Figure 3.4 (Rev 07) Electrical Connections; Figure 3.5 (Rev 06) Indicative Drainage Plan; Figure 7.2 (Rev 05) Proposed HDD Layout between turbines T8 and T9; Figure 7.3 (Rev 05) Exclusion Zones for Water Voles.
3. The wind turbines, anemometer mast, access tracks and other ancillary infrastructure, within the development hereby permitted, shall be erected at or within 10 metres in any direction of the locations shown in Figure 3.2 of the (December 2010) Environmental Statement and in positions which shall have been first submitted to and approved in writing by the Local Planning Authority. No turbine shall be erected at a location where rotating turbine blades would over sail any public right of way or permissive bridleway which existed at the date of this planning permission.
4. Turbine T1 shall have a maximum height to hub of 63 metres and a maximum height to blade tip of 108 metres, when measured from the base of the turbine. Turbines T2 – T9 shall have a maximum height to hub of 80 metres and a maximum height to blade tip of 125 metres, when measured from the base of the turbine.
5. No development shall take place until details of a scheme to light the turbines have been submitted to and approved in writing by the local planning authority. Those details shall provide for each turbine to be fitted with infra-red lighting, with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration, at the highest practicable point. Development shall be carried out in accordance with the approved details.
6. Within the application site, all cabling between the wind turbines and from the wind turbines to the control building, shall be installed underground.
7. The Local Planning Authority shall be notified in writing of the 'first export date' within 14 days after its occurrence. For the purposes of this condition, the 'first export date' is the date when electricity from the development is first exported to the local electricity grid network, excluding export that is required for testing during commissioning of the connection.
8. This permission, in so far as it authorises operation of the turbines, shall expire no later than 25 years from the 'first export date'. Within twelve months of expiry, of the 25 year operational period, the application site shall be decommissioned and restored in accordance with a scheme that has been first submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- a) a method statement and timetable for the dismantling and removal of all elements of the development above one metre below ground level;
- b) details of measures to survey and protect protected species during decommissioning;
- c) a traffic management plan; and
- d) a timetable for the restoration works.

The scheme shall have been submitted for the written approval of the Local Planning Authority no later than 18 months prior to the expiry of the 25 year operational period.

- 9. If any wind turbine hereby permitted fails to produce electricity for supply to the local electricity grid network for a continuous period of 12 months, then details of a scheme, to repair or remove the turbine, shall be submitted to the Local Planning Authority for its written approval within 3 months of the end of that 12 month period. If repairs to the turbine are required, the details shall include a programme of remedial works. If removal of the turbine is required, the turbine and its associated redundant ancillary equipment shall be removed within 6 months, from the end of that 12 month period, and the land affected by that removal shall be restored. If removal of the turbine is required, the details shall include a method statement and timetable for the dismantling and removal of the turbine and of associated above ground works and foundations to a depth of at least one metre below ground level; measures to survey and protect protected species; a traffic management plan; and, a timetable for restoration works following removal of the turbine. Development shall be carried out in accordance with the approved details.
- 10. The development shall be carried out in accordance with the following provisions of the (December 2010) Environmental Statement (ES) and the (November 2011) Supplement to the Environmental Statement (SEI):
 - a) During construction of the development, the surface water run-off from roads and tracks shall pass through settlement lagoons before being released to any natural watercourse (ES para 13.7.6 & Fig 3.5, and SEI Chapter 7);
 - b) During construction of the development, a 45m exclusion zone shall be established around the known barn owl nest (ES para 13.7.11, and SEI Fig 7.4). Access by construction operatives to, and within, the exclusion zone shall not take place during the nesting period of March to August. No works shall be carried out within 250m of the nest if birds are nesting at the commencement of the construction works at this location;
 - c) Prior to construction of the development, all sections of watercourses with the potential to be affected by construction work, including stream crossings, shall be checked for use by water voles. These checks shall be in addition to surveys carried out during preparation of the ES. Following these checks, sections of watercourse which are known to support water voles, including those sections identified in SEI Fig 7.3, shall be protected by a 5m fenced exclusion zone and vegetation shall be removed to create a 10m buffer around working areas that are situated close to those sections;

- d) Directional drilling shall be used to install cabling between Turbines T8 and T9, in accordance Fig 7.2 (Rev 05) of the SEI. The drilling pits shall be created under the supervision of a professionally qualified ecologist; shall be kept covered at night; shall be examined for the presence of great crested newts each morning; and, any newts found shall be released to those ponds which are shown numbered 5 and 6 in Fig 13.8 of the ES;
- e) Prior to construction of the development, the site shall be re-evaluated for the presence of badgers; this is in addition to the evaluation conducted for the purposes of the ES;
- f) No development shall take place until the results of the re-evaluation conducted pursuant to e), together with details of measures to protect setts during the course of development, have been submitted to and approved in writing by the Local Planning Authority. Those measures shall ensure that setts shall be temporarily or permanently excluded in line with the approach set out in the ES (paras 13.7.13-13.7.18) and in the SEI; that protective fencing shall be installed in accordance with the SEI (p30); and, that trenches which otherwise would be left open overnight, shall be covered or provided with escape routes that would prevent badgers from becoming entrapped; and
- g) During the period from dusk until dawn, no construction work or decommissioning work shall take place and no materials associated with such work shall be transported on the site (ES para 13.7.15).

Prior to commencement of development

11.No development shall take place until details of a surface water drainage scheme, based on the principles of sustainable drainage systems and an assessment of the hydrological and hydro-geological context of the site, have been submitted to and approved in writing by the Local Planning Authority. The details shall include:

- a) Arrangements for the management and maintenance of the scheme, during the lifetime of the development; and
- b) Calculations to show that run-off from the developed site will not exceed run-off from the undeveloped site, for rainfall events with a 1% or greater annual probability of occurrence and with an allowance for climate change during the lifetime of the development.

Development shall be carried out in accordance with the approved details.

12.No development shall take place until details of a scheme to address risks associated with contamination of the site have been submitted to and approved in writing by the Local Planning Authority. Those details shall include:

- a) A preliminary risk assessment which identifies the previous uses of the site; the potential contaminants associated with those uses; a conceptual model of the site which identifies sources, pathways and receptors; and, any potentially unacceptable risks arising from contamination at the site;
- b) Arrangements for intrusive site investigations that are based on the findings of the preliminary risk assessment and are designed to allow a detailed assessment, to be made, of the risk to all receptors that may be affected by the contamination;

- c) The results of the intrusive site investigations and the findings of the detailed risk assessment carried out pursuant to b);
- d) An options appraisal and remediation strategy, based on the results of the investigations and on the findings of the assessment made pursuant to c), which describes and justifies such remediation measures as are to be undertaken;
- e) Arrangements for verifying the effectiveness of the remediation measures;
- f) Arrangements for any longer-term monitoring of pollutant linkages and any longer-term maintenance that may be required; and
- g) Arrangements for contingency action that might need to be taken.

The development and remediation measures shall be carried out in accordance with the approved details unless the Local Planning Authority has given its prior written approval to any variation.

13. No development shall take place until details of investigative archaeological works, to be undertaken on the site, have been submitted to and approved in writing by the Local Planning Authority. Those works shall be carried out as approved and the findings, together with details of any measures designed to protect archaeological remains, shall be reported to the Local Planning Authority within 3 months of completion of the works. No development shall take place until the Local Planning Authority has given its written approval to the report and to any protective measures that it identifies. Protective measures shall be implemented in accordance with the approved details.
14. No development shall take place until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of:
- a) The timetable for works on site;
 - b) The routing of vehicles to and from the site;
 - c) Arrangements for escorting abnormal loads;
 - d) Temporary warning signage;
 - e) Temporary removal and replacement of highway infrastructure, street furniture and other accommodation works;
 - f) Levels and timing of development traffic;
 - g) All loading and unloading areas that will be used for the delivery or despatch of materials related to the development;
 - h) Specific measures which are to be taken to minimise the impact of construction traffic on public rights of way within the application site. Those measures are to minimise the periods of time during which public rights of way need to be temporarily diverted or closed; and
 - i) Vehicle parking facilities within the site for the parking of all vehicles associated with the development.

The development shall be carried out in accordance with the approved Plan, or in accordance with any subsequent variation to that Plan which has previously been submitted to and approved in writing by the Local Planning Authority.

15. No development shall commence until a Hedgerow and Plantation Woodland Management Plan, that accords with Chapter 13 of the (December 2010) Environmental Statement (ES) and the (November 2011) Supplement to the Environmental Statement (SEI), has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide details of:
- a) the onsite access track layout determined pursuant to condition 3;
 - b) locations where gaps in hedgerows are to be created or existing gaps widened;
 - c) arrangements to improve existing hedgerows and plantation woodlands;
 - d) arrangements for new hedgerow and woodland planting (including details of species, quantities and planting plans);
 - e) arrangements for the long-term management of existing and new hedgerows and plantation woodland. These arrangements shall ensure that the distances between the tips of turbine blades and new/existing hedgerows and plantation woodland are no less than 50 metres during the lifetime of the development hereby permitted; and
 - f) arrangements for trees, within 50 metres of turbine T9, to be cut back and stacked as habitat piles over the winter period.

Development shall be carried out in accordance with the approved Plan, or in accordance with any subsequent variation to that Plan which has previously been submitted to and approved in writing by the Local Planning Authority.

16. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The Construction Method Statement shall contain details of:
- a) The temporary construction compound including temporary structures and buildings, welfare facilities, fencing, parking and storage provision to be used in connection with the construction of the development;
 - b) Channel crossing culverts;
 - c) Arrangements for the storage and disposal of materials (including waste materials);
 - d) The deposition, grading and finishing (in relation to local land form and habitat) of soil and other natural materials not removed from the site during construction works;
 - e) The surface treatment and construction of all hard surfaces and tracks;
 - f) A site environment management plan which identifies the measures to be taken, during the construction period, to protect wildlife and habitats including legally protected species;
 - g) Pollution prevention measures to be adopted during the construction phase to ensure that suitable bunding is used around fuel tanks and that

excavation/construction works do not harm local sewerage, ground water supplies, surface water quality or the quality of subsoil;

- h) Emergency procedures and pollution response plans;
- i) Measures to control dust and mud arising from the site including damping down; the provision of wheel washing facilities; and, the sheeting of vehicles used to take spoil or construction materials to or from the site;
- j) Measures to clean and maintain site entrances and the adjacent public highway;
- k) Temporary site illumination including proposed lighting levels together with the specification of any lighting;
- l) Methods to reduce the effects of construction noise in accordance with BS5228;
- m) The phasing of the construction works; and
- n) Arrangements for the removal of temporary structures, buildings and materials from, and reinstatement of, the area of the temporary compound after completion of the construction works.

The CMS shall be implemented in accordance with the approved details or in accordance with any subsequent variation to those details that has previously been submitted to and approved in writing by the Local Planning Authority.

17. No development shall take place until details of a horse familiarisation scheme have been submitted to and approved in writing by the Local Planning Authority. The details shall identify the timing and duration of the scheme and shall include arrangements for local horse riders to be taken on accompanied riding events along tracks, permissive bridleways and bridleways within the site and surrounding area. The scheme shall be implemented as approved.

Prior to the carrying out of specific actions

18. Wind turbines shall not be erected on the application site until details of their make, model, power rating, warranted sound power levels, appearance, design, colour and finish (to be semi-matt) have been submitted to and approved in writing by the Local Planning Authority. No part of any of the wind turbines shall carry any logo or lettering other than that required for health and safety purposes or otherwise required by law. Development shall be carried out in accordance with the approved details.
19. No development shall take place until details of a Primary Radar Mitigation Scheme have been submitted to and approved in writing by the Local Planning Authority. The Scheme shall be designed to mitigate the impact of the development on the Primary Radar Installation at Claxby and on the Primary Surveillance Radar at East Midlands Airport. No wind turbine shall be operated (except for the purposes of testing the implementation of the Primary Radar Mitigation Scheme) until the Primary Radar Mitigation Scheme has been implemented in accordance with the approved details. Development shall be carried out in accordance with the approved details.

20. The developer shall provide written confirmation of the following details to the Council at least 3 months before the development commences:
- a) The dates when construction of the development is due to start and end;
 - b) The maximum height of construction equipment to be used in the development; and
 - c) The latitude and longitude of each turbine.
21. No development shall take place until details of a scheme to protect the private 25kV power cables (as shown on approved plan Figure 3.4 Rev 07), which lie within topple distance of the approved position of Turbine T9, have been submitted to and approved in writing by the Local Planning Authority. Those details shall make provision for that section of the 25kV supply and system control cables, which is within topple distance, to be placed underground. Turbine T9 shall not be erected until the scheme has been implemented in accordance with the approved details.
22. Notwithstanding the terms of condition 32, turbine T9 shall not be erected until arrangements for the investigation of ground conditions in the vicinity of the turbine, and for the design and construction of the turbine's foundations, have been submitted to and approved in writing by the Local Planning Authority. The investigation shall be carried out in accordance with details that have previously been agreed in writing by the Local Planning Authority. Arrangements for the design and construction of the turbine's foundations shall be supported by the results of that investigation and by details of the contractor appointed to erect the turbine and of that contractor's experience in the installation of wind turbines that are more than 100m high. Development shall be carried out in accordance with the approved arrangements.
23. No development shall take place until details of a scheme to bury a section of the existing 11kV overhead power cable that (as shown on the December 2010 Environmental Statement Figure 7.2 Rev 02 Communications Links and Utilities), is located to the west of Turbine T8, have been submitted to and approved in writing by the Local Planning Authority. Turbine T8 shall not be erected until the scheme has been implemented in accordance with the approved details.
24. Turbine T5 shall not be operated until details of a scheme to relocate the existing Yagi Antennas and associated cabling, to a new location on Building F of the Asfordby Business Park, have been submitted to and approved in writing by the Local Planning Authority and the scheme has been implemented in accordance with the approved details. The details shall make provision for verifying both the performance of the relocated Antennas, and the signal strength from the repeater station at Grimston Tunnel to Building F, before Turbine 5 is operated.
25. No wind turbine shall be erected until details of measures to mitigate the risk of ice throw from the turbine have been submitted to and approved in writing by the Local Planning Authority. No electricity shall be exported from the turbine until the measures have been carried out in accordance with the approved details.
26. The anemometer mast hereby permitted shall not be erected until details of its design, dimensions, colour and finish have been submitted to and approved in writing by the Local Planning Authority. The anemometer mast shall be no more than 80m high and it shall be installed in accordance with the approved details.

27. The control building hereby permitted shall not be erected until details of its external appearance and samples of materials to be used on its external elevations have been submitted to and approved in writing by the Local Planning Authority. The building shall be no more than 3m high and it shall have a footprint of no more than 225 m². Development shall be carried out in accordance with the approved details.

Operation of the development

28. All blades, on the wind turbines hereby permitted, shall rotate in the same direction.

29. Within 21 days of the developer being notified of receipt, by the Local Planning Authority, of a complaint which alleges interference to terrestrial television signal reception from the operation of the wind turbines, the developer shall submit to the Local Planning Authority, for its written approval, details of a scheme to secure the investigation and, if necessary, the rectification of the interference. Development shall be carried out in accordance with the approved details and the scheme shall provide for the investigation, by a qualified independent television engineer, of any complaint of interference at a building which lawfully existed or had planning permission at the date of this permission. If the engineer determines that the interference is attributable to the development hereby permitted, no wind turbine shall operate further until remedial measures have been implemented, at the developer's expense, as specified by the engineer.

30. No electricity shall be exported from the development until details of the shadow flicker prediction and turbine shut down facility to be installed on each turbine, in accordance with paragraph 7.2 on pages 7-12 and 7-13 of the (December 2010) Environmental Statement, have been submitted to and approved in writing by the Local Planning Authority. The facility shall be installed in accordance with the approved details prior to the 'first export date' and shall be retained for the life of the development.

31. The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in Tables 1 and 2 attached to this condition and:

A. Within 21 days of receiving a written request by the Local Planning Authority, following a complaint validated by the Authority alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the Authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request by the Local Planning Authority shall specify the property from where the complaint came, and the times corresponding to periods of complaint, and shall include a statement as to whether, in the opinion of the Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component. The wind farm operator shall provide the information relevant to the complaint, logged in accordance with paragraph F, to the Local Planning Authority in the format set out in Guidance Note 1(e).

B. Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to this condition, the wind farm operator shall submit to the Local Planning Authority, for the Authority's written approval, proposed noise limits (selected from those listed in the Tables) to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits for a location (selected from the Tables) which the independent consultant regards as likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the Local Planning Authority shall include a written justification, by the independent consultant, for the choice of the representative background noise environment. The representative background noise environment and proposed noise limits shall be submitted for approval in writing by the Local Planning Authority. The rating level of noise immissions resulting from the combined effects of the wind turbines, when determined in accordance with the attached Guidance Notes, shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.

C. Prior to the commencement of any measurements by the independent consultant, to be undertaken in accordance with this condition, the wind farm operator shall submit to the Local Planning Authority, for the Authority's written approval, the proposed location where measurements for compliance checking purposes shall be undertaken and that location shall have been identified in accordance with the Guidance Notes. Measurements to assess compliance with the noise limits set out in the Tables attached to this condition, or approved by the Local Planning Authority pursuant to paragraph B of this condition, shall be undertaken at the measurement location approved in writing by the Authority.

D. The wind farm operator shall provide, to the Local Planning Authority, the independent consultant's assessment of the rating level of noise immissions, undertaken in accordance with the Guidance Notes. The assessment shall be provided within 2 months of the date of the written request by the Local Planning Authority, made under paragraph A, unless the time limit has been extended in writing by the Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements; such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted, to the Local Planning Authority, together with the independent consultant's assessment of the rating level of noise immissions.

E. Where a further assessment of the rating level of noise immissions from the wind farm is required, pursuant to Guidance Note 4(c), the wind farm operator shall provide the Local Planning Authority with a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph D above, unless the time limit has been extended in writing by the Authority.

F. The wind farm operator shall continuously log, in successive 10 minute periods commencing on the hour, average wind speed and wind direction at the hub height anemometer and vane on the anemometer mast hereby permitted; and,

average power production, nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine. These data shall be retained for the life of the development. Wind speed shall be expressed in metres per second and wind direction and nacelle orientation shall be expressed in degrees from north. The wind farm operator shall provide this information to the Local Planning Authority, on request by the Authority, in the format set out in Guidance Note 1(e), within 14 days of receipt in writing of such a request.

G. Within 21 days of receiving written notification by the Local Planning Authority, that there has been a breach of the noise limits set out in the attached Tables or of the limits approved by the Authority pursuant to paragraph B, the wind farm operator shall provide the Authority with written details of a scheme to prevent any further breach, including a timetable for implementation of the scheme. The scheme shall be submitted for the Local Planning Authority's written approval and it shall be carried out in accordance with the terms of that approval.

H. No electricity shall be exported from the wind farm until a list of independent consultants who may undertake compliance measurements, pursuant to this condition, has been submitted to and approved in writing by the Local Planning Authority. Amendments to the list of approved consultants shall require the prior approval of the Local Planning Authority.

Note: For the purposes of this condition, a "dwelling" is a building within Use Class C3 and C4 of the (1987) Use Classes Order, as amended, which lawfully existed or had planning permission at the date of this permission.

Table 1 - Between 23:00 and 07:00 hours (Noise Level in dB LA90, 10min):

| Location | Standardised 10m-height Wind Speed | | | | | | | | | | | |
|-----------------------|------------------------------------|----|----|----|----|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Asfordby Valley | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Ab Kettleby | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 47 | 54 | 54 | 54 | 54 |
| 65 Welby Road | 43 | 43 | 43 | 43 | 43 | 43 | 44 | 47 | 51 | 51 | 51 | 51 |
| Asfordby (Lodge) Farm | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 48 | 54 | 54 | 54 | 54 |
| Potter Hill Farm | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Ashlands | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 46 | 52 | 52 | 52 | 52 |
| Grange Cottage | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 44 | 44 | 44 | 44 |
| Ashleigh | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 47 | 54 | 54 | 54 | 54 |

Table 2 - At all other times (Noise Level in dB LA90, 10min):

| Location | Standardised 10m-height Wind Speed | | | | | | | | | | | |
|-----------------------|------------------------------------|----|----|----|----|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Asfordby Valley | 39 | 39 | 39 | 39 | 40 | 41 | 42 | 44 | 46 | 48 | 51 | 51 |
| Ab Kettleby | 38 | 38 | 38 | 38 | 39 | 40 | 41 | 43 | 43 | 43 | 43 | 43 |
| 65 Welby Road | 37 | 38 | 40 | 42 | 44 | 46 | 49 | 52 | 56 | 60 | 64 | 64 |
| Asfordby (Lodge) Farm | 37 | 37 | 37 | 38 | 40 | 42 | 44 | 48 | 48 | 48 | 48 | 48 |
| Potter Hill Farm | 43 | 43 | 44 | 44 | 45 | 47 | 48 | 51 | 53 | 56 | 60 | 60 |
| Ashlands | 35 | 35 | 35 | 36 | 37 | 39 | 41 | 43 | 43 | 43 | 43 | 43 |
| Grange Cottage | 35 | 35 | 35 | 37 | 38 | 40 | 42 | 45 | 48 | 51 | 55 | 55 |

| | | | | | | | | | | | | |
|----------|----|----|----|----|----|----|----|----|----|----|----|----|
| Ashleigh | 38 | 38 | 38 | 38 | 39 | 40 | 41 | 43 | 43 | 43 | 43 | 43 |
|----------|----|----|----|----|----|----|----|----|----|----|----|----|

Other matters

- 32.No development shall take place until details of the methods that are to be used to establish foundations for the development, together with predictions of their impact on groundwater quality, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 33.No works shall be carried out to hedgerows, scrub vegetation or trees, during the bird breeding and nesting seasons (March to August inclusive), without the prior written approval of the Local Planning Authority.
- 34.Construction of the development hereby permitted shall only take place on the site between the hours of 07:30 – 19:00 on Monday to Friday inclusive and 07:00 – 14:00 hours on Saturday. No such construction work shall take place on any Sunday or public holiday. Outside these hours, works at the site shall be limited to emergency works and dust suppression. Emergency works shall include works to make safe a turbine that is under construction. The Local Planning Authority shall be informed in writing of any emergency works within one working day of their occurrence.
- 35.Notwithstanding the terms of Condition 34, the delivery of turbine and crane components may take place outside of the hours specified in Condition 34, subject to not less than 24 hours prior notice of such traffic movements being given to the Local Planning Authority and such deliveries first being approved in writing by the Authority.
- 36.Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there are multiple tanks, the compound shall be at least equivalent to the capacity of the largest tank, or the combined capacity of the interconnected tanks, plus 10%. All filling points, vents, gauges, and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land, or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be directed to discharge downwards into the bund.

Guidance Notes for Noise Condition

These notes are to be read with and form part of noise condition 31. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Note 1

- (a) Values of the LA90,10-minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner as to enable a tonal penalty to be applied in accordance with Guidance Note 3 where, in the opinion of the Local Planning Authority as advised to the wind farm operator in its written request under paragraph A of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component.
- (b) The microphone should be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface, except the ground, at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and with operational data logged in accordance with Paragraph F of the noise condition.
- (d) To enable compliance with the condition to be evaluated, hub height wind speed from the anemometer mast, or as average over the nacelle anemometers on each turbine, duly corrected for the presence of the rotating blades, shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at

page 120 using a reference roughness length of 0.05 metres. It is these standardised 10 metre height wind speed data which are correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c).

- (e) Data provided to the Local Planning Authority in accordance with paragraphs A, D, E, and F of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10 minute periods in accordance with the protocol detailed in Note 1(d).

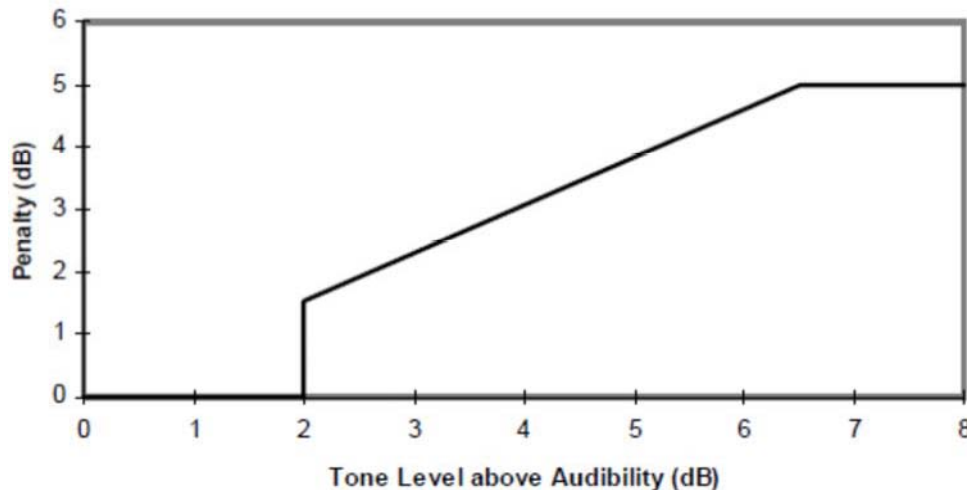
Note 2

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions which correspond to the period(s) of complaint specified by the Local Planning Authority in its written request under paragraph A of the noise condition, but excluding any periods of rainfall measured in accordance with Note 1(f). These conditions shall include the range of wind speeds, wind directions, times of day and meteorological conditions and power generation.
- (c) Values of the LA90,10-minute noise measurements, and corresponding values of the 10-minute wind speed for those data points considered valid in accordance with Note 2(b), shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" polynomial curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and used to define the wind farm noise level at each integer speed.

Note 3

- (a) Where, in the opinion of the Local Planning Authority as advised to the wind farm operator in its written request under paragraph A of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which LA90,10-minute data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2 minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Any such deviations from the standard procedure shall be reported.

- (c) For each of the 2-minute samples, the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.
- (d) The average tone level above audibility shall be calculated for each wind speed bin. In samples for which the tones were below the audibility criterion, or no tone was identified, a value of zero audibility shall be substituted.
- (e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Note 4

- (a) If a tonal penalty is to be applied in accordance with Note 3, the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level, as determined from the best fit curve described in Note 2, and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written request under paragraph A of the noise condition.
- (b) If no tonal penalty is to be applied, then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- (c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise condition, or above the noise limits for a complainant's dwelling that have been approved in accordance with paragraph B of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- (d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L_3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph A of the noise condition.
- ii. The wind farm noise (L_1) at this speed shall then be calculated as follows, where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L_1 at that integer wind speed.

If the rating level, after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above), at any integer wind speed lies at or below the values set out in the Tables attached to the noise condition, or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph B of the noise condition, then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the noise condition, or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph B of the noise condition, then the development fails to comply with the condition.

**Appendix 1 to the Schedule of Conditions
(Variation 1)**

(T9 relocated and reduced in height)

Amend Condition 2 to read:

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Figure 3.1 (Rev 04) Site Location Plan; Figure 3.2 Asfordby Wind Farm Development Proposals (Variation 1); Figure 3.3 (Rev 07) Indicative Vegetation Removal Plan; Figure 3.4 (Rev 07) Electrical Connections; Figure 3.5 (Rev 06) Indicative Drainage Plan; Figure 7.2 (Rev 05) Proposed HDD Layout between turbines T8 and T9; Figure 7.3 (Rev 05) Exclusion Zones for Water Voles.

Amend Condition 4 to read:

4. Turbines T1 and T9 shall have a maximum height to hub of 63 metres and a maximum height to blade tip of 108 metres, when measured from the base of the turbine. Turbines T2 – T8 shall have a maximum height to hub of 80 metres and a maximum height to blade tip of 125 metres, when measured from the base of the turbine.

Delete Condition 22

**Appendix 2 to the Schedule of Conditions
(Variation 2)**
(T9 omitted from development)

Amend Condition 2 to read:

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Figure 3.1 (Rev 04) Site Location Plan; Figure 3.2 Asfordby Wind Farm Development Proposals (Variation 2); Figure 3.3 (Rev 07) Indicative Vegetation Removal Plan; Figure 3.4 (Rev 07) Electrical Connections; Figure 3.5 (Rev 06) Indicative Drainage Plan; Figure 7.2 (Rev 05) Proposed HDD Layout between turbines T8 and T9; Figure 7.3 (Rev 05) Exclusion Zones for Water Voles.

Amend Condition 4 to read:

4. Turbine T1 shall have a maximum height to hub of 63 metres and a maximum height to blade tip of 108 metres, when measured from the base of the turbine. Turbines T2 – T8 shall have a maximum height to hub of 80 metres and a maximum height to blade tip of 125 metres, when measured from the base of the turbine.

Delete Conditions 10d), 15f), 21 and 22

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|---|
| Peter Goatley of counsel | Instructed by Verina Wenham, Solicitor for the Council |
| He called | |
| Philip Grover BA(Hons) BTP DipArchCons MRTPI IHBC | Grover Lewis Associates |
| Philip Russell-Vick DipLA CMLI | Enplan |
| Robert Gillespie BA(Hons) MRTPI | Impact Planning Services Ltd |
| John Scutter | Environmental Health Officer for the Council (conditions session only) |
| Jeremy Flawn | Impact Planning Services Ltd (conditions session only) |

FOR THE APPELLANT:

| | |
|---|--|
| Andrew Newcombe QC | Instructed by Andrew Batterton, Squire Saunders (UK) LLP |
| He called | |
| Helena Kelly BSc MIFA Phillip Black CMLI | RSK Group Limited |
| Mark Worcester BA(Hons) MTP MRTPI | Turley Associates |
| Dr Peter Shepherd | BSG Ecology |
| Dr Andrew McKenzie PhD BSc FIOA | Hayes McKenzie Partnership Limited |
| Peter Given | Mott McDonald |

FOR STOP:

| | |
|--------------------------|--------------------|
| Tina Douglass of counsel | Instructed by STOP |
| She called | |
| Bill Musson | |
| Chas Edgington | |
| Roger Williams | |
| Michael Hatherley | |
| Lyn Cowdell | |

FOR NETWORK RAIL:

Nick Clare
Margaret Lake
Jeremy Wayman
David Cox

INTERESTED PERSONS:

| | |
|-----------------------|--|
| Rt Hon Alan Duncan MP | MP for Rutland and Melton |
| Sir David Sykes | Chairman Ab Kettleby Parish Council |
| Wilson Boardman | Chair of Governors, Ab Kettleby Community School |
| Joe Orson | County Councillor (Asfordby Division) |
| | Melton Borough Councillor (Old Dalby Ward) |
| A J Moore | |
| Peter Finch | Leicester CPRE |
| Alastair Eperon | |
| Gill Musson | |
| Rupert Marsh | |
| Diana Patterson | Parish Councillor Frisby on the Wreake |
| Beverley Blake | |
| Martin Brown | |
| William Bissill | |
| Matthew Thomson | |
| Mo Caswell | |
| Lee Higgins | |
| Dean Wriggall | |

DOCUMENTS

PEEL DOCUMENTS

| | | |
|--------|---|--|
| PE/A1 | - | List of Appearances |
| PE/A2 | - | Opening Statement |
| PE/A3 | - | Addendum to Opening Submissions – outline of legal matters |
| PE/A4 | - | Update on progress with Network Rail (Email dated 13/05/13) |
| PE/A5 | - | Note to inform Inspectorate of discussion with Serco |
| PE/A6 | - | Note to accompany EYA Summary Report |
| PE/A7 | - | Condition list dated 21/05/13 |
| PE/A8 | - | Alternative noise condition and guidance note |
| PE/A9 | - | Jointly agreed statement between Peel and Network Rail 21.05.13 |
| PE/A10 | - | Carbon balance Assessment |
| PE/A11 | - | Email regarding clarification of conditions dated 22.05.13 |
| PE/A12 | - | Closing statement |
| PE/A13 | - | Addendum to submissions – outline of legal matters (update No2) |
| PE/A14 | - | Peel (21/6/13) response to ministerial statement of 6/6/13 |
| PE/A15 | - | Peel (29/5/13) letter to Network Rail |
| PE/A16 | - | Peel (20/6/13) email to Network Rail |
| PE/A17 | - | Peel (30/8/13) response to publication of Planning practice guidance for renewable and low carbon energy |
| PE/A18 | - | Addendum to submissions – outline of legal matters (update No3) |
| PE/A19 | - | Judgment in the case of Bedford BC v SoS and Nuon UK Ltd (26.7.13) |
| PE/A20 | - | (3/11/13) email in support of legal submissions |

- PE/A21 - Judgment in the case of R and Cherkley Campaign Ltd v Mole Valley DC and Longshot Cherkley Court Ltd
- PE/A22 - Appellant's responses to the Inspector's (October 2013) questions
- PE/A23 - Appellant's costs application against Network Rail

P Black

- PE/PB/1 - Proof of Evidence
- PE/PB/2 - Summary Proof of Evidence
- PE/PB/3 - Appendices to Proof of Evidence
- PE/PB/4 - Addendum to Proof of Evidence
- PE/PB/5 - Rebuttal Proof of Evidence

H Kelly

- PE/HK/1 - Proof of Evidence
- PE/HK/2 - Summary Proof of Evidence
- PE/HK/3 - Appendices to Proof of Evidence
- PE/HK/4 - Rebuttal Proof of Evidence Incorporating Appendix

P Shepherd

- PE/PS/1 - Summary Proof of Evidence
- PE/PS/2 - Proof of Evidence
- PE/PS/3 - Appendices to Proof of Evidence

A McKenzie

- PE/ARMcK/1 - Proof of Evidence
- PE/ARMcK/2 - Summary Proof of Evidence
- PE/ARMcK/3 - Appendices to Proof of Evidence

M Worcester

- PE/MW/1 - Proof of Evidence
- PE/MW/2 - Appendices to Proof of Evidence
- PE/MW/3 - Summary Proof of Evidence
- PE/MW/4 - Rebuttal Proof of Evidence Incorporating Appendices
- PE/MW/5 - Corrigendum to proof of evidence and associated appendices
- PE/NM/6 - EYA Summary report for Asfordby Windfarm
- PE/NM/7 - (EYA) Energy Update for Variation A and B
- PE/MW/8 - (October 2013) Planning Balance Assessment

MELTON BOROUGH COUNCIL DOCUMENTS

- MC/A1 - List of Appearances
- MC/A2 - Opening Statement
- MC/A3 - Three Cities Sub-region map
- MC/A4 - Outline Legal Submissions on behalf of Melton Borough Council
- MC/A5 - Judgement of Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) Scotland
- MC/A6 - Provisional Closing Submissions
- MC/A7 - The Council's response to the ministerial statement of 6/6/13

- MC/A8 - The Council's (16/8/13) response to publication of Planning practice guidance for renewable and low carbon energy and to the responses of Peel and STOP to the publication
- MC/A9 - The Council's response to SEI 4
- MC/A10 - The Council's application for a partial award of costs
- MC/A11 - The Council's responses to the Inspector's (October 2013) questions

P Grover

- MC1/1 - Proof of Evidence
- MC1/2 - Appendices to Proof of Evidence
- MC1/3 - Summary Proof of Evidence

P Russell-Vick

- MC2/1 - Proof of Evidence
- MC2/2 - Appendices to Proof of Evidence
- MC2/3 - Figures
- MC2/4 - Summary Proof of Evidence

R Gillespie

- MC3/1 - Proof of Evidence
- MC3/2 - Appendices to Proof of Evidence
- MC3/3 - Summary Proof of Evidence

STOP DOCUMENTS

- ST/A1 - List of Appearances
- ST/A2 - Opening Statement
- ST/A3 - Local Plan (1999) Proposals Map
- ST/A4 - STOP comments on conditions
- ST/A5 - STOP closing submissions
- ST/A6 - STOP (25/6/13) response to ministerial statement of 6/6/13
- ST/A7 - STOP (31/8/13) response to publication of Planning practice guidance for renewable and low carbon energy
- ST/A8 - STOP (13/9/13) comments on Peel's response to publication of Planning practice guidance for renewable and low carbon energy
- ST/A9 - STOP (18/10/13) comments on Appellant's planning balance assessment update dated October 2013
- ST/A10 - STOP's application for a partial award of costs together with schedule of work completed after Network Rail's intervention
- ST/A11 - Addendum to STOP's closing submissions

W Musson

- ST1/1 - Statement 1 - Residential & Recreational Amenity
- ST1/2 - Appendices to Statement 1

C Edgington

- ST2/1 - Statement 2 - Residential Amenity Asfordby Hill
- ST2/2 - Appendices to Statement 2

R Williams

- ST3/1 - Statement 3 - Residential Amenity Potter Hill
- ST3/2 - Appendices to Statement 3
- ST3/3 - Rebuttal Document concerning Philip Black Evidence
- ST3/4 - Appendices to Rebuttal Document (plan and distances of turbines from Greenacre, 11 Potter Hill).
- ST3/5 - Additional Photographs

M Hatherley

- ST4/1 - Statement 4 - Residential Amenity Asfordby Farm
- ST4/2 - Appendices to Statement 4

L Cowdell

- ST5/1 - Statement 5 - Recreational Amenity Equestrian
- ST5/2 - Appendices to Statement 5

C Edgington

- ST6/1 - Statement 6 - Noise Condition
- ST6/2 - Appendices to Statement 6
- ST6/3 - Rebuttal Document concerning residential amenity

Other Rebuttal Documents

- ST7/1 - Rebuttal Document concerning Helena Kelly Evidence
- ST7/2 - Rebuttal Document concerning Mark Worcester Evidence
- ST7/3 - Appendix to Rebuttal Document concerning Mark Worcester Evidence (Appeal decision at Bussey's Loke, Hempnall ref. APP/L2630/A/08/2084443)
- ST7/4 - Rebuttal Document concerning Andrew McKenzie Evidence
- ST7/5 - Rebuttal Document concerning Phillip Black Evidence
- ST7/6 - Combined Conservation Area Map

NETWORK RAIL DOCUMENTS

- NR/1 - Network Rail (24/5/13) letter to Peel
- NR/2 - Network Rail's written response to the Inspector's (October 2013) questions
- NR/3 - Network Rail's written response to the appellant's written costs application

REPRESENTATIONS

- RP/1 - Submission from Rt Hon Alan Duncan MP
- RP/2 - Email R. Isgar 08.05.13
- RP/3 - Peter Finch
- RP/4 - Alastair Eperon
- RP/5 - Gill Musson
- RP/6 - Rupert Marsh

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| RP/7 | - | Diana Patterson |
| RP/8 | - | Beverley Blake |
| RP/9 | - | Martin Brown |
| RP/10 | - | Mr Bissell |
| RP/11 | - | Matthew Thompson |
| RP/12 | - | Mo Caswell |
| RP/13 | - | Leigh Higgins |
| RP/14 | - | Dean Wriggall |
| RP/15 | - | Sandra Simpson (written representations) |
| RP/16 | - | Peter Simpson (written representations) |
| RP/17 | - | Sir D Sykes |
| RP/18 | - | J Orson (notes) |
| RP/19 | - | W Boardman |
| RP/20 | - | letter Gill Musson submitted 30/04/13 |

CORE DOCUMENTS

| CD No. | Document |
|--|---|
| 1. Original Application Documents (December 2010) | |
| 1.1 | Planning Application Forms & Certificates |
| 1.2 | Environmental Statement: Volume 1 - Non-Technical Summary (December 2010) |
| 1.3 | Environmental Statement: Volume 2 - Main Text (December 2010) |
| 1.4 | Environmental Statement: Volume 3 - Graphics & Visualisations (December 2010) |
| 1.5 | Environmental Statement: Volume 4 - Technical Appendices (December 2010) |
| 1.6 | Design and Access Statement prepared by Turley Associates |
| 1.7 | Planning Statement prepared by Turley Associates |
| 1.8 | Statement of Community Involvement prepared by Four Communications |
| 1.9 | Application Covering Letter prepared by Turley Associates (10 th December 2010) |
| Post-Application Submission Material | |
| 2. Regulation 19 Request and SEI Submission | |
| 2.1 | MBC Regulation 19 request for ES additional information on archaeological, ecology, landscape and visual assessment and heritage matters (13 th June 2011) |
| 2.2 | MBC Regulation 19 request for ES additional information on noise matters (2 nd November 2011) |
| 2.3 | Turley Associates cover letter with amended site location plan accompanying SEI submission (4 th November 2011) |

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| 2.4 | RSK Supplement to Environmental Statement (SEI 1) (November 2011) |
| 3. Regulation 22 and SEI Submissions | |
| 3.1 | RSK (SEI 2) supplement to Environmental Statement (March 2012) |
| 3.2 | Covering Letter prepared by Turley Associates (31 st March 2012) |
| 3.3 | Copy of SEI 2 advert placed in Melton Times on 29 th March 2012 |
| 3.4 | Copy of SEI 2 Site Notice (23 rd March 2012) |
| 3.5 | Schedule of location of erection of SEI 2 site notices (23 rd March 2012) |
| 3.6 | Supplementary Environmental Information 3 (SEI 3) (20 th March 2013) |
| 3.7 | Copy of SEI 3 advert placed in Melton Times on 21 st March 2013 |
| 3.8 | Schedule of location of erection of SEI 3 site notices (21 st March 2013) |
| 3.9 | Supplementary Environmental Information 4 (SEI 4) (September 2013) |
| 4. Supplementary Planning Statement | |
| 4.1 | Covering Letter prepared by Turley Associates (25 th April 2012) |
| 4.2 | Supplementary Planning Statement prepared by Turley Associates (20 th April 2012) |
| 5. Post-Application Correspondence from Applicant | |
| 5.1 | Applicant Letter to Members of Leicestershire County Council Planning Committee responding to the contents of the report of the County Planning Officer on the proposed wind farm (15 th February 2011) |
| 5.2 | Applicant Letter to Melton BC responding to a comprehensive range of issues raised by local residents and other consultees (23 rd March 2011) |
| 5.3 | Applicant Letter to Melton BC and accompanying revised site location plan confirming planning application fee (1 st April 2011) |
| 5.4 | Applicant Letter to Melton BC responding to a Draft Regulation 19 request for further Environmental Information (11 th May 2011) |
| 5.5 | Applicant Letter to Melton BC proposing an alternative form of words for a Grampian planning condition to that suggested by the Ministry of Defence to address potential radar impacts (16 th May 2011) |
| 5.6 | Applicant Letter to Melton BC providing an update on efforts to resolve objections by NATS (16 th June 2011) |
| 5.7 | Applicant Letter to Melton BC with accompanying report prepared by Pager Power responding to concerns of Serco (as expressed in their email to the Council dated 18 th July 2011) regarding the potential effects of the wind farm on telecommunications systems within the nearby 'test track' site (8 th August 2011) |

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| 5.8 | Applicant Email to Melton BC proposing minor modifications to the wording of a Grampian planning condition suggested by the Ministry of Defence in their letter of 11 th August 2011 (22 nd August 2011) |
| 5.9 | Applicant Letter to Melton BC responding to objections of the Council for the Protection of Rural England on a variety of issues including landscape and ecological impacts (4 th November 2011) |
| 5.10 | Applicant Letter to Melton BC appraising the implications of the Draft National Planning Policy Framework and the Draft National Policy Statements for Renewable Energy (EN-1 and EN-3) for the proposed development (4 th November 2011) |
| 5.11 | Applicant Letter responding to the comments made by English Heritage (22 nd December 2011) in respect of the SEI and the Applicant's assessment of the potential impact of the development on the setting of designated heritage assets (undated) |
| 5.12 | Applicant Email to Melton BC confirming the withdrawal of the NATS objection (5 th January 2012) |
| 5.13 | Applicant Letter to Melton BC providing a summary of the Applicant's understanding of the status of the application at that time and responding to comments made by consultees in respect of the SEI submission (12 th January 2012) |
| 5.14 | Applicant Letter to Melton BC outlining proposals for a scheme of landscape mitigation and measures to better reveal the significance of the Deserted Medieval Village and its relationship with St Bartholomew's Church (31 st March 2012) |
| 5.15 | Applicant Letter to Melton BC with accompanying note prepared by RSK Group Plc responding to the observations of the Council's appointed landscape consultants (Influence) (30 th May 2012) |
| 5.16 | Applicant Letter to Melton BC highlighting the publication of the report by BIGGAR Economics as a material planning consideration. The BIGGAR report examines the economic impacts / benefits of onshore wind development (31 st May 2012) |
| 5.17 | Applicant Email to Melton BC with accompanying note prepared by Four providing an analysis of consultation responses received (21 st June 2012) |
| 5.18 | Applicant Letter to Melton BC with accompanying report prepared by the Hayes McKenzie Partnership responding to the recommendations presented in the report of the Council's appointed noise consultants, White Young Green Environmental (28 th June 2012) |
| 5.19 | Applicant Letter to Melton BC responding to the detailed objection presented to the Council by the local campaign group "STOP" (28 th June 2012) |
| 5.20 | Applicant Emails to Melton BC proposing, following invitation from Melton BC, a form of words for planning conditions to secure the submission of a Traffic Management Plan and to address the outstanding comments of Serco (11 th July 2012) |
| 5.21 | Applicant Letter to Melton BC confirming the Applicant's response to the proposed planning conditions and seeking a modest number of adjustments (24 th July 2012) |

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| 5.22 | Applicant Letter to Melton BC highlighting the Applicant's concerns with some aspects of the committee report and requesting that these be addressed either in a committee report addendum or verbally at the committee meeting on the 26 th July 2012 (24 th July 2012) |
| 6. Consultee Responses | |
| | |
| | Ab Kettleby Parish Council |
| 6.1 | Objection from Ab Kettleby Parish Council following Open Meeting held on 17 th February 2011 (24 th March 2011) |
| 6.2 | Ab Kettleby Parish Council (13 th December 2011) |
| | Asfordby Parish Council |
| 6.3 | Objection from Asfordby Parish Council (4 th March 2011) |
| 6.4 | Asfordby Parish Council (12 th December 2011) |
| 6.5 | Asfordby Parish Council (23 rd April 2012) |
| | BRB (Residuary) Ltd |
| 6.6 | Objection from BRB (Residuary) Ltd (21 st January 2011) |
| 6.7 | Email from BRB (Residuary) Ltd requesting a condition to enable any outstanding technical matters to be addressed post-permission (9 th July 2012) |
| | British Horse Society |
| 6.8 | Comments from the British Horse Society (1 st February 2011) |
| | Campaign to Protect Rural England |
| 6.9 | Objection from Campaign to Protect Rural England (16 th March 2011) |
| 6.10 | Comments from Campaign to Protect Rural England (20 th December 2011) |
| | Charnwood Borough Council |
| 6.11 | Comments from Neil Thompson, Principal Planning Officer at Charnwood Borough Council (6 th January 2011) |
| | Civil Aviation Authority |
| 6.12 | Comments from Civil Aviation Authority (17 th January 2011) |
| | East Midlands Airport |
| 6.13 | Objection from East Midlands Airport (21 st February 2011) |
| 6.14 | Removal of objection and comments from East Midlands Airport and accompanying proposed mitigation measures report (3 rd June 2011) |
| | English Heritage |
| 6.15 | Comments from English Heritage (4 th April 2011) |
| 6.16 | Comments from English Heritage following submission of additional information by the Applicant on 12 th September 2011 (30 th September 2011) |
| 6.17 | Letter from English Heritage agreeing that comments to be submitted by 6 th January 2012 (7 th December 2011) |
| 6.18 | Comments from English Heritage following submission of amended proposals (undated, received by MBC date stamp 22 nd December 2011) |
| 6.19 | Comments from English Heritage following request from Melton BC for additional information following letter dated 22 nd December 2011 (1 st February 2012) |

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| 6.20 | Comments from English Heritage following submission of the additional SEI (mitigation proposal) (13 th April 2012) |
| | Environment Agency |
| 6.21 | Response from Environment Agency setting out recommended conditions (9 th February 2011) |
| 6.22 | Letter from Environment Agency confirming no further comments following submission of amended proposals (1 st December 2011) |
| | Frisby on the Wreake Parish Council |
| 6.23 | Frisby on the Wreake Parish Council (18 January 2011) |
| 6.24 | Frisby on the Wreake Parish Council (13 December 2011) |
| 6.25 | Frisby on the Wreake Parish Council (3 July 2012) |
| | Grimston, Saxelbye & Shoby Parish Council |
| 6.26 | Comments from Grimston, Saxelbye & Shoby Parish Council (18 th March 2011) |
| 6.27 | Comments from Grimston, Saxelbye & Shoby Parish Council (28 th June 2012) |
| | Highways Agency |
| 6.28 | Email from Highways Agency requesting a swept path analysis of the A1/ A46/ A17 Winthorpe junction (18 th January 2011) |
| 6.29 | Letter from Highways Agency following receipt of swept path analysis (25 th January 2011) |
| 6.30 | Letter from Highways Agency confirming no further comments following submission of amended proposals (8 th December 2011) |
| | Leicestershire County Council - Archaeology |
| 6.31 | Comments from Leicestershire County Council Archaeologist (30 th March 2011) |
| 6.32 | Comments from Leicestershire County Council Archaeologist (22 nd December 2011) |
| | Leicestershire County Council - Ecology |
| 6.33 | Request from Leicestershire County Council Ecologist for additional information (21 st January 2011) |
| 6.34 | Email from Leicestershire County Council Ecologist confirming that earlier comments (21 st January 2011) remain unchanged (6 th December 2011) |
| 6.35 | Email from Leicestershire County Council Ecologist removing holding objection (22 nd December 2011) |
| | Leicestershire County Council - Highways |
| 6.36 | Initial response from Leicestershire County Council Highways (19 th January 2011) |
| 6.37 | Comments from Leicestershire County Council Highways recommending planning conditions (23 rd March 2011) |
| 6.38 | Response from Leicestershire County Council Highways in respect of Mr Musson's comments (on behalf of STOP) on 28 th March 2011 (29 th March 2011) |
| 6.39 | Email from Leicestershire County Council Highways confirming no further comments following submission of amended proposals (1 st December 2011) |
| | Leicestershire County Council - Historic Buildings |
| 6.40 | Comments from Leicestershire County Council Historic Buildings Officer (16 th February 2011) |

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| | Leicestershire County Council - Landscape |
| 6.41 | Comments from Leicestershire County Council Landscape Officer (9 th February 2011) |
| | Leicestershire County Council - Planning |
| 6.42 | Representations from Leicestershire County Council Planning following Cabinet meeting (8 th March 2011) |
| 6.43 | Comments from Leicestershire County Council Planning Officer confirming that the Cabinet's previous response (8 th March 2011) still stands following submission of amended plans (14 th December 2011) |
| | Leicestershire County Council - Public Rights of Way |
| 6.44 | Comments from Leicestershire County Council Public Rights of Way Officer (25 th January 2011) |
| 6.45 | Comments from Leicestershire County Council Rights of Way Officer following submission of amended plan (13 th December 2011) |
| | Melton Borough Council - Conservation |
| 6.46 | Comments from Melton BC Conservation Officer (26 th February 2011) |
| | Melton Borough Council - Environmental Health |
| 6.47 | Comments from Melton BC Environmental Health Officer and recommended conditions (26 th January 2011) |
| 6.48 | Melton Borough Council Environmental Health Officer request for third octave band analysis (12 th October 2011) |
| 6.49 | Comments from Melton Borough Council Environmental Health Officer in response to comments from STOP (12 th October 2011) |
| 6.50 | Email from Melton Borough Council Environmental Health Officer outlining errors in correspondence sent on 26 th January and 12 th October (19 th October 2011) |
| 6.51 | Comments from Melton Borough Council Environmental Health Officer in relation to amplitude modulation (6 th January 2012) |
| 6.52 | Comments from Melton Borough Council Environmental Health Officer in relation to Wind Farm at Rainsworth (9 th January 2012) |
| 6.53 | Comments from Melton Borough Council Environmental Health Officer in response to concerns of toxic air from Holwell Works site (11 th January 2012) |
| 6.54 | Comments from Melton Borough Council Environmental Health Officer in relation to amplitude modulation conditions (17 th January 2012) |
| 6.55 | Comments from Melton Borough Council Environmental Health Officer in relation to noise (29 th February 2012) |
| 6.56 | Comments from Melton Borough Council Environmental Health Officer in relation to noise (1 st May 2012) |
| | Ministry of Defence |
| 6.57 | Request from Ministry of Defence for further information in relation to potential impact on air traffic control radar (20 th January 2011) |
| 6.58 | Letter from Ministry of Defence confirming recommended conditions (8 th December 2011) |

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| | National Trust |
| 6.59 | Response from National Trust confirming that there will be no visual impacts upon the Trust's interests (7 th February 2011) |
| | NATS |
| 6.60 | Objection from NATS (6 th January 2011) |
| 6.61 | Objection from NATS (29 th November 2011) |
| 6.62 | Letter from NATS confirming withdrawal of previous objection (20 th December 2011) |
| | Natural England |
| 6.63 | Comments from Natural England on landscape and ecology (9 th February 2011) |
| 6.64 | Email from Natural England confirming required mitigation measures for Great Crested Newts (9 th June 2011) |
| 6.65 | Email from Natural England confirming previous comments (9 th February 2011) still apply following submission of amended plan (20 th December 2011) |
| | Network Rail |
| 6.66 | Network Rail (18 th January 2011) |
| | RAF Cottesmore |
| 6.67 | RAF Cottesmore (15 th February 2011) |
| | The Ramblers' Association |
| 6.68 | Comments from The Ramblers' Association (Melton Mowbray Group) (12 th December 2011) |
| | Serco |
| 6.69 | Email from Serco outlining objections (17 th January 2011) |
| 6.70 | Comments from Serco following meeting with Peel Energy (16 th March 2011) |
| 6.71 | Objection from Serco (18 th July 2011) |
| 6.72 | Email from Serco confirming previous objection remains (12 th December 2011) |
| | White Young Green Environmental |
| 6.73 | Review of Asfordby Wind Farm Noise Assessment (Supplement to Environmental Statement) prepared by White Young Green Environmental (May 2012) |
| | Leicestershire & Rutland Wildlife Trust |
| 6.74 | Comments from Mariya Limerick, member of Leicestershire and Rutland Wildlife Trust (18 th March 2011) |
| | Melton & District Civic Society |
| 6.75 | Objection from Melton Mowbray & District Civic Society |
| 7. Correspondence from STOP | |
| 7.1 | Letter from STOP to Melton Borough Council in relation to noise nuisance (25 th January 2012) |
| 7.2 | STOP Response to Planning Application by Peel Wind Farms (UKC) Ltd for 9 Wind Turbines and Associated Infrastructure (May 2012) |
| 7.3 | Community Noise Impact from Wind Turbines: ETSU-R-97, BS 4142, The Den Brook Ruling and the Asfordby Wind Farm Application (D W Bingham, 20 th May 2012) |

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| 7.4 | STOP comments on Windfarm Noise Modelling and Comments by WYG (18 th July 2012) |
| 8. Melton Council Committee Reports | |
| 8.1 | Agenda for Melton Borough Council's Development Committee meeting on 26 th July 2012 (13 th July 2012) |
| 8.2 | Programme of Members' Site Inspections and Committee Timetable (26 th July 2012) |
| 8.3 | Report to Melton Borough Council's Development Committee (26 th July 2012) |
| 8.4 | Summary Report to Melton Borough Council's Development Committee (26 th July 2012) |
| 8.5 | Minutes of Melton Borough Council's Development Committee held on 26 th July 2012 |
| 8.6 | Report to Melton Borough Council's Development Committee (20 th February 2013) |
| 8.7 | Appendix A to Report to Melton Borough Council's Development Committee (20 th February 2013) |
| 8.8 | Minutes of Melton Borough Council's Development Committee held on 20 th February 2013 |
| 9. Application Decision Notice | |
| 9.1 | Decision Notice (27 th July 2012) |
| 10. The Development Plan | |
| 10.1 | The 'East Midlands Regional Plan': Regional Spatial Strategy for the East Midlands (adopted March 2009) |
| 10.2 | Melton Local Plan (adopted June 1999) |
| 11. National Planning and Energy Documents | |
| 11.1 | Climate Change: The UK Programme 2006 (HM Government, March 2006) |
| 11.2 | The Energy White Paper 2007: Meeting the Energy Challenge (HM Government, May 2007) |
| 11.3 | The UK Renewable Energy Strategy (HM Government, July 2009) |
| 11.4 | The UK Low Carbon Transition Plan: National Strategy for Climate and Energy (HM Government, July 2009) |
| 11.5 | Annual Energy Statement (Department of Energy and Climate Change, July 2010) |
| 11.6 | Energy Bill 2012-2013 (Bill 100 55/2) (Secretary of State for Energy and Climate Change, November 2012) |
| 11.7 | Overarching National Policy Statement for Energy (EN-1) (Department of Energy and Climate Change, July 2011) |
| 11.8 | National Policy Statement for Renewable Energy Infrastructure (EN-3) (Department of Energy and Climate Change, July 2011) |
| 11.9 | National Planning Policy Framework ("NPPF") (CLG, March 2012) |

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| 11.10 | Planning for Growth Written Ministerial Statement (Mr Greg Clark, The Minister of State for Decentralisation, 23 rd March 2011) |
| 11.11 | The Plan for Growth (HM Treasury, March 2011) |
| 11.12 | Growth and Infrastructure Bill 2012-2013 (HL Bill 72 55/2) (Secretary of State for Department for Communities and Local Government, December 2012) |
| 11.13 | Britain Open for Business - UKTI's Five Year Strategy (UK Trade & Investment, May 2011) |
| 11.14 | Planning for Renewable Energy: A Companion Guide to Planning Policy Statement 22 (Office of the Deputy Prime Minister, December 2004) |
| 11.15 | Planning our Electric Future: a White Paper for Secure, Affordable and Low-Carbon Electricity (Department of Energy & Climate Change, July 2011) |
| 11.16 | UK Renewable Energy Road Map (Department of Energy & Climate Change, July 2011) |
| 11.17 | UK Renewable Energy Road Map Update 2012 (Department of Energy & Climate Change, 27 th December 2012) |
| 11.18 | Renewable Energy Capacity in Regional Spatial Strategies (Final Report) (Ove Arup & Partners Ltd, for DCLG, July 2009) |
| 11.19 | Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998) |
| 11.20 | Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (June 2009) |
| 11.21 | Stern Review on the Economics of Climate Change (HM Treasury, 30 th October 2006) |
| 11.22 | Circular 11/95: Use of conditions in planning permission (ODPM, 20 th July 1995) |
| 11.23 | Letter from Steve Quartermain (CLG Chief Planner) to the Chief Planning Officer in relation to National Policy Statements (9 th November 2009) |
| 11.24 | Public Attitudes Tracking Surveys - Waves 1, 2, 3 & 4 Key Findings (DECC, July 2012 - February 2013) |
| 11.25 | Climate Change Act 2008 |
| 11.26 | Extract PPG15 para 4.14 |
| 12. Other Planning and Energy Documents | |
| 12.1 | Melton Local Development Framework Core Strategy (Publication) Development Plan Document (Melton Borough Council, February 2012) |
| 12.2 | Melton Local Development Framework Core Strategy (Submission) Development Plan Document (Melton Borough Council, September 2012) |
| 12.3 | The East Midlands Energy Challenge (Regional Energy Strategy) (East Midlands Regional Assembly, 2006) |
| 12.4 | Melton Landscape and Historic Urban Character Assessment Report (ADAS UK Ltd, 2006) |

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| 12.5 | Melton Landscape Character Assessment Update 2011 (ADAS UK Ltd, February 2011) |
| 12.6 | Low Carbon Energy Opportunities and Heat Mapping for Local Planning Authorities in the East Midlands (East Midlands Councils, July 2011) |
| 12.7 | East Midlands Regional Targets and Scenarios for Renewable Energy (Best Foot Forward, June 2006) |
| 12.8 | Reviewing Renewable Energy and Energy Efficiency Targets for the East Midlands (Final Report) (Faber Maunsell / Aecom for East Midlands Regional Assembly, June 2009) |
| 12.9 | Revised Draft East Midlands Regional Plan (Partial Review) (East Midlands Regional Assembly, March 2010) |
| 12.10 | Onshore Wind: Direct and Wider Economic Impacts (BiGGAR Economics for DECC and RenewableUK, May 2012) |
| 12.11 | Planning for Climate Change (IT Power for Blaby District Council, Harborough District Council, Hinckley and Bosworth District Council, Melton Borough Council, North West District Council, Oadby and Wigston Borough Council and Rutland County Council, May 2008) |
| 12.12 | Inspector's Preliminary Conclusions on Melton Core Strategy (11 th April 2013) |
| 12.13 | Letter to the Inspector from the Rector and Churchwardens of St Bartholomew's Church, Welby (25 th March 2013) |

13. Heritage Documents

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| 13.1 | Planning (Listed Buildings and Conservation Areas) Act 1990 |
| 13.2 | Ancient Monuments and Archaeological Areas Act 1979 |
| 13.3 | Wind Energy and the Historic Environment (English Heritage, October 2005) |
| 13.4 | Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment (English Heritage, April 2008) |
| 13.5 | Climate Change and the Historic Environment (English Heritage, January 2008) |
| 13.6 | PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide (DCMS, March 2010) |
| 13.7 | Seeing History in the View, a method for assessing heritage significance within views (English Heritage, May 2011) |
| 13.8 | The Setting of Heritage Assets (English Heritage, October 2011) |
| 13.9 | Wartnaby Conservation Area Appraisal and Map |
| 13.10 | Ab Kettleby Conservation Area Appraisal and Map |
| 13.11 | Saxelbye Conservation Area Appraisal and Map |
| 13.12 | Holwell Conservation Area Appraisal and Map |
| 13.13 | Listed Building Description for Potter Hill Farm |
| 13.14 | Listed Building Description for St Bartholomew's Church |
| 13.15 | Listed Building Description for Welby Grange |
| 13.16 | Listed Building Description for Outbuilding at Welby Grange |
| 13.17 | Listed Building Description for Grange Cottage |
| 13.18 | Listed Building Description for Kirby Park Farmhouse |
| 13.19 | Listed Building Description for Pigeoncote at Kirby Park Farmhouse |

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| 13.20 | Scheduling Description for Moated site at Ab Kettleby |
| 13.21 | Scheduling Description for Moat, garden and five fishponds at Kirby Bellars |
| 13.22 | Scheduling Description for Kirby Bellars Priory |
| 14. Noise Documents | |
| 14.1 | Noise Policy Statement for England (Department for Environment, Food and Rural Affairs, March 2010) |
| 14.2 | ETSU-R-97, The Assessment and Rating of Noise from Wind Turbines (Department of Trade and Industry, September 2006) |
| 14.3 | ISO9613-2, Acoustics - Attenuation of Sound During Propagation Outdoors – Part 2: General Method of Calculation (ISO, 1996) |
| 14.4 | Prediction and Assessment of Wind Turbine Noise, Institute of Acoustics (IoA) Acoustics Bulletin Volume 34 Number 2 (Bowdler et al., March / April 2009) |
| 14.5 | Can Expectations Produce Symptoms From Infrasound Associated with Wind Turbines? (Crichton, F. et al., 2013) |
| 14.6 | Spatio-temporal differences in the history of health and noise complaints about Australian wind farms: evidence for the psychogenic, "communicated disease" hypothesis (Pre-Print: submitted for publication) (Simon Chapman, 15 th March 2013) |
| 14.7 | Institute of Acoustics: A Good Practice Guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise. May 2013 |
| 15. Ecology Documents | |
| 15.1 | Technical Information Note TIN051: Bats and Onshore Wind Turbines Interim Guidance (Second Edition) (Natural England, February 2012) |
| 15.2 | Bat Surveys Good Practice Guidelines (Bat Conservation Trust, 2007) |
| 15.3 | Bat Mortality at Wind Turbines in Northwestern Europe (Rydell et al, December 2010) |
| 15.4 | Bat Surveys – Good Practice Guidelines, Chapter 1 - Surveying for Onshore Wind Farms (draft chapter released prior to publication of 2 nd Edition) (Bat Conservation Trust, 2011) |
| 15.5 | Bat Surveys – Good Practice Guidelines (2 nd Edition) (Bat Conservation Trust, 2012) |
| 15.6 | Technical Information Note TIN069 – Assessing the Effects of Onshore Wind Farms on Birds (Natural England, January 2010) |
| 15.7 | Survey Methods for Use in Assessing the Impacts of Onshore Wind Farms on Bird Communities (Scottish Natural Heritage, November 2005, revised December 2010) |
| 15.8 | The Distribution of Breeding Birds Around Upland Wind Farms (Pearce-Higgins et al, 2009) |
| 15.9 | Guidelines for Ecological Impact Assessment in the United Kingdom (IEEM, 2006) |
| 15.10 | Great Crested Newt Mitigation Guidelines (English Nature, 2001) |

| 16. Landscape/ Visual Documents | |
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| 16.1 | Landscape Character Assessment: Guidance for England and Scotland (Scottish Natural Heritage and the Countryside Agency, 2002) |
| 16.2 | Visual Representation of Windfarms: Good Practice Guidance (Horner and MacLennan & Envision, March 2006) |
| 16.3 | Siting and Designing Windfarms in the Landscape (Scottish Natural Heritage, December 2009) |
| 16.4 | Topic Paper 6: Techniques and Criteria for Judging Capacity and Sensitivity (Scottish Natural Heritage and the Countryside Agency, 2002) |
| 16.5 | Assessing the Environmental Capacity for On-Shore Wind Energy Development Consultation on Proposed Approach to Natural England Guidance (Natural England, September 2009) |
| 16.6 | Assessing the Cumulative Impact of Onshore Wind Energy Developments (Scottish Natural Heritage, March 2012) |
| 16.7 | Leicester, Leicestershire and Rutland Landscape and Woodland Strategy (Leicestershire County Council, 2001) |
| 16.8 | East Midlands Regional Landscape Character Assessment (LDA Design Consulting, April 2010) |
| 16.9 | A Green Infrastructure Strategy for Melton Borough (TEP, November 2011) |
| 16.10 | Correspondence in relation to Asfordby Mine Restoration Scheme (2008) |
| 16.11 | Asfordby Mine Rehabilitation Plan (drawing no. 201/D22) (UK Coal, August 2009) |
| 16.12 | Briefing Note to Melton Borough Council explaining the difference between a Landscape Character Assessment (LCA) and a Landscape and Visual Impact Assessment (LVIA) (ADAS, 8 th April 2011) |
| 16.13 | Guidelines for Landscape and Visual Impact Assessment (Third Edition) Consultation Draft (Landscape Institute and IEMA, January 2013) |
| 16.14 | National Character Area Profile 74: Leicestershire and Nottinghamshire Wolds (Natural England, 2012) |
| 16.15 | National Landscape Character Area Description 48: Trent and Belvoir Vales (Natural England, Undated) |
| 16.16 | National Landscape Character Area Description 74: Leicestershire and Nottinghamshire Wolds (Natural England, Undated) |
| 16.17 | National Landscape Character Area Description 93: High Leicestershire (Natural England, Undated) |
| 16.18 | Review of Landscape and Visual Impact Assessment by Influence on behalf of Melton Borough Council (March 2012) |
| 16.19 | Leicestershire, Leicester and Rutland Historic Landscape Characterisation Project (Leicestershire County Council, 2010) |
| 16.20 | Visual Assessment of Wind Farms: Best Practice (Scottish Natural Heritage, 2002) |
| 16.21 | Extracts from Guidelines for Landscape and Visual Impact Assessment 2 nd Edition |

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| 16.21a | Extracts from Guidelines for Landscape and Visual Impact Assessment 2nd Edition |
| 17. Relevant SoS / Inspector / High Court Decisions | |
| 17.1 | Appeal Decision in respect of Land to the north and west of Winwick Warren, Cold Ashby Road, Winwick, Northamptonshire, NN6 7NS (APP/Y2810/A/11/2156527) (13 th July 2012) |
| 17.2 | Appeal Decision in respect of Land west of Enifer Downs Farm and east of Archers Court Road and Little Pineham Farm, Langdon (APP/X2220/A/08/2071880) (16 th March 2009) |
| 17.3 | Appeal Decision in respect of Land at Newlands Farm, Cumwhinton, Carlisle (APP/E0915/A/09/2101659) (15 th March 2010) |
| 17.4 | Appeal Decision in respect of Earls Hall Farm, St John's Road, Clacton-on-Sea, CO16 8BP (APP/P1560/A/08/2088548) (19 th November 2009) |
| 17.5 | Appeal Decision in respect of Six Hundred Farm, Six Hundred Drove, East Heckington, Lincolnshire (DPI/R2520/12/8) (8 th February 2013) |
| 17.6 | Appeal Decision in respect of Land north of Catshead Woods, Brigstock Road, Sudborough, Northants (APP/G2815/A/11/2156757) (12 th March 2012) |
| 17.7 | Appeal Decision in respect of Land to the south of the 14 and north of Haselbech, Kelmarsh (APP/Y2810/A/11/2154375) (19 th December 2011) |
| 17.8 | Appeal Decision in respect of Land adjacent to Watford Lodge Farm, West Haddon Road, Watford, NN6 7UN (APP/Y2810/A/11/2153242) (21 st December 2011) |
| 17.9 | Call-In Decision in respect of Land to the north east of Swinford (APP/F2415/A/09/2096369/NWF) (3 rd December 2009) |
| 17.10 | Appeal Decision in respect of Land to the south east of North Tawton and the south west of Bow (APP/Q1153/A/06/2017162) (11 th December 2009) |
| 17.11 | Appeal Decision in respect of Land at Spaldington Airfield, Spaldington, near Howden, East Riding of Yorkshire, DN14 7NG (APP/E2001/A/10/2137617) and Land north west of Ivy House Farm, Holme Road, Spaldington, East Riding of Yorkshire, DN14 7NB (APP/E2001/A/10/2139965) (29 th September 2011) |
| 17.12 | Appeal Decision in respect of Land at Batsworthy Cross, Knowstone, North Devon, EX36 4RZ (APP/X1118/A/11/2162070 and APP/X1118/A/12/2171005) (22 nd October 2012) |
| 17.13 | Appeal Decision in respect of Land at Masters Pit, Puddletown Road, near Wareham, Dorset, BH20 4PP (APP/B1225/A/11/2161905) (6 th July 2012) |
| 17.14 | Appeal Decision in respect of Land at Airfield Farm, Podington (APP/K0235/A/09/2108506) (13 th August 2012) |
| 17.15 | Appeal Decision in respect of Land at Standle Farm, bounded by the M5 and A38, Stinchcombe, Gloucestershire, GL13 9HD (APP/C1625/11/2155923) (28 th November 2012) |

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| 17.16 | Appeal Decision in respect of Land between West Bourton and Whistley Farm, Silton, Gillingham, Dorset (APP/N1215/A/11/2160839) (8 th November 2012) |
| 17.17 | Appeal Decision in respect of Land at Truthan Barton Farm, St Erme, Truro, Cornwall, TR4 9BB (APP/D0840/A/11/2163691) (23 rd August 2012) |
| 17.18 | Appeal Decision in respect of Site at Palmers Hollow (Field No. 2700) Main Street, Normanton, Bottesford, Leics, NG13 0EP (APP/Y2430/A/09/2108595) (8 th July 2010) |
| 17.19 | Call-In Decision in respect of Land at Crook Hill, Todmorden Moor, Reaps Moss and South of the A681 between Clough Foot and Sharney Ford (APP/P4225/A/08/2065277; APP/A4710/A/08/2065274; APP/P4225/A/08/2091045; APP/A4710/A/08/209144; APP/A4710/A/08/2062366; APP/B2355/A/08/2067355; APP/A4710/A/08/2062365) (12 th October 2009) |
| 17.20 | Appeal Decision in respect of Hockley Farm, Hockley Lane, Bradwell on Sea, Essex (APP/X1545/A/06/2023805) (10 th September 2007) |
| 17.21 | Appeal Decision in respect of Hockley Farm, Hockley Lane, Bradwell on Sea, Essex (APP/X1545/A/06/2023805) (25 th January 2010) |
| 17.22 | Summary of Bradwell on Sea High Court Decisions and transcript of 4 th March 2011 decision |
| 17.23 | Regina v Rochdale Metropolitan Borough Council Ex Parte Milne high court decision (31 st July 2000) |
| 17.24 | East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another company high court decision in respect of wind farm development at Barnwell Manor, Sudborough, Northamptonshire (8 th March 2013) |
| 17.25 | Appeal Decision in respect of Land to the east of Walkern Road and North of High Elms Lane, Benington, Hertfordshire (APP/J1915/A/12/2175064) (26 th November 2012) |
| 17.26 | Appeal Decision in respect of Newlands Farm, Carleton, Carlisle, CA4 0AE (APP/E0915/A/2168121) (28 th June 2012) |
| 17.27 | Appeal Decision in respect of Sparrow Lodge, Pincet Lane, North Kilworth, Lutterworth, Leicestershire, LE17 6NE (APP/F2415/A/12/2174873) (5 th December 2012) |
| 17.28 | Appeal Decision in respect of Land at New House Farm, Brineton, Shifnal, South Staffordshire, TF11 8NF (APP/C3430/A/11/2162189) (31 st May 2012) |
| 17.29 | Appeal Decision in respect of Land east of Hill Lane, Oldbury on Severn, Thornbury, South Gloucestershire (APP/P0119/A/11/2154175) (23 rd January 2012) |
| 17.30 | Appeal Decision in respect of Land at Carlton Grange, Thacker Bank, Near Louth, LN11 7TX (APP/D2510/A/12/2176754) (5 th April 2013) |
| 17.31 | Appeal Decision in respect of Agricultural Land to the east of Grove, Retford, Notts (APP/A3010/A/06/2017850) (20 th June 2007) |

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| 17.32 | South Northamptonshire Council and another v Secretary of State for Communities and Local Government and another, high court decision by Judge Mackie QC (16 th January 2013) |
| 18. EIA Scoping | |
| 18.1 | Scoping Report (RSK Group Plc, November 2009) |
| 18.2 | Melton Borough Council's Formal Scoping Opinion (8 th January 2010) |
| 18.3 | English Heritage Scoping Response (29 th September 2009) |
| 18.4 | Email from Natural England in relation to scope of bat survey work (16 th June 2009) |
| 18.5 | Email from Leicestershire County Council Ecologist confirming survey scope for hedgerows and trees (14 th October 2009) |
| 18.6 | Email from Natural England in relation to scope of bird survey work (19 th October 2009) |
| 18.7 | Email from Natural England in relation to scope of bird survey work (2 nd December 2009) |
| 18.8 | Email from Natural England in relation to scope of bird survey work (24 th February 2010) |
| 18.9 | Email from Natural England in relation to scope of bird survey work (10 th May 2010) |
| 18.10 | Email from Natural England confirming scope of bat survey work (12 th May 2010) |
| 19. Statutory Instruments | |
| 19.1 | Statutory Instrument 2011 No. 243 - The Promotion of the Use of Energy from Renewable Sources Regulations 2011 |
| 19.2 | Statutory Instrument 2011 No. 1824 - The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 |
| 19.3 | Statutory Instrument 2013 No. 629 – The Regional Strategy for the East Midlands (Revocation) Order 2013 |
| 19.4 | Statutory Instrument 2002 No. 914 – The Renewables Obligation Order 2002 |
| 20. Statement of Common Ground | |
| 20.1 | Agreed Statement of Common Ground between the Appellant and the Council (19 th March 2013) |
| 20.2 | Agreed Supplementary Statement of Common Ground between the Appellant and the Council (19 th April 2013) |
| 20.3 | Joint Statement on Noise Issues (1 st May 2013) |
| 20.4 | Statement of Common Ground between the Appellant and Network Rail (8 July 2013) |
| 21. Updated Environmental Statement Non-Technical Summary | |
| 21.1 | Updated Environmental Statement Non-Technical Summary (March 2013) |

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| 21.2 | Updated Environmental Statement Non-Technical Summary (September 2013) |
| 22. Proposed Correction to Application Site Boundary | |
| 22.1 | Applicant letter to PINS proposed minor correction to application site boundary (18 th February 2013) |
| 23. Inquiry Documents | |
| 23.1 | Site visit revised map (P Russell-Vick) |
| 23.2 | Bundle (red file) of written representations received in response to the lodging of the appeal. |
| 23.3 | List of consultees for SEI 4 |
| 23.4 | English Heritage response (20 September 2013) to SEI 4 |
| 23.5 | Inspector's written questions for 11.11.13 |



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.