



Department for
Communities and
Local Government

Mr Roddy MacDonald
Eversheds LLP
Bridgewater Place
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Leeds
LS11 5DR

Our Ref: APP/E2001/A/13/2190363
Your Ref: 170678.000059

21 May 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY WIND PROSPECT DEVELOPMENTS LTD:
THORNHOLME FIELDS, RUDSTON ROAD, BURTON AGNES
APPLICATION REF: DC/11/03999/STPLFE/STRAT PP-01552442**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul Griffiths BSc(Hons) BArch IHBC, who held a public local inquiry between 23 July and 30 July 2013 into your appeal against a decision of East Riding of Yorkshire Council to refuse planning permission for: a wind farm development originally consisting of nine (9) 110 metre to tip wind turbines, a 70 metre anemometry mast and associated infrastructure, but reduced before the inquiry opened to a wind farm development consisting of one (1) 110 metre to tip wind turbines, five (5) 100 metre to tip wind turbines, a 70 metre anemometry mast and associated infrastructure, in accordance with application reference DC/11/03999/STPLFE/STRAT PP-01552442, dated 25 August 2011.
2. On 12 March 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 be 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. In coming to his decision, the Secretary of State has taken into account the Environmental Statement (ES), the addendum to the ES, and the Supplemental Environmental Information (SEI) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the Inspector's comments on these documents (IR2.2, 2.4, 2.7, 10.33 and 10.35). The Secretary of State is satisfied that the ES, the addendum to the ES, and the SEI comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.
5. 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 (IR10.131), 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.
6. The Secretary of State wrote on 18 March to the main inquiry parties, inviting comment on the implications of the recent Court of Appeal decision in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and others* [2014] EWCA Civ 137 for this case; and on the Planning Guidance which was published on 6 March 2014. The responses received were circulated to the main parties for further comment on 7 April. Copies of the representations received are not attached to this letter, but can be made available to interested parties on written request to the address at the foot of the first page of this letter. A list of the representations received is set out in the Annex to this letter. The Secretary of State has carefully considered all the representations received. He is satisfied that they do not raise any new material considerations which are sufficient to affect the decision in this case.

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 of the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire, adopted 2005, and the saved policies of the East Yorkshire Borough Wide Local Plan, 1997 (IR4.1). The Secretary of the State agrees with the Inspector that the relevant policies of the development plan are not consistent with the approach of the Framework (IR10.8). He agrees with the Inspector that this does not obviate the need to assess the proposal against the development plan, but that the Framework and paragraph 14 in particular carries more weight as a material consideration; and that for decision making this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (IR10.9).

9. The Secretary of State notes that the Council's Proposed Submission Strategy Document, together with all the comments received, has been submitted to him, and that a planning inspector has been appointed to undertake an Examination in Public. He considers that this Document should be afforded only limited weight at this stage.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and the associated Planning Guidance; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); and the Community Infrastructure Levy (CIL) Regulations 2010 as amended. The Secretary of State has also taken into account the Written Ministerial Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government and the Written Ministerial Statement on renewable energy published by the Secretary of State for Communities and Local Government in April 2014.
11. 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 LB Act.

Main issues

12. The Secretary of State agrees with the Inspector that the main issues in this case are those listed by the Inspector at IR10.4.

Benefits

13. The Secretary of State agrees with the Inspector's assessment of the renewable energy benefits of the scheme at IR10.10-10.16. He agrees that the appeal scheme would have a maximum rated generating capacity of 12 Megawatts of electricity (IR10.11) and that it would save approximately 16,000 tonnes of Carbon Dioxide emissions (IR10.12). In addition, he agrees that the construction, operation and ongoing maintenance of the proposal would generate a relatively significant amount of economic activity in the local area and the region, and would produce an income for the landowners that would improve the ongoing viability of the farms concerned (IR10.16). He also agrees that the renewable energy and economic activity that the scheme would generate attracts significant weight in its favour (IR10.15-10.16).

Landscape

14. The Secretary of State has carefully considered the Inspector's overall assessment of landscape at IR10.17-10.41. The Planning Guidance on Renewable and Low Carbon Energy states at paragraph 007 that in considering applications it is important to be clear that local topography is an important factor in assessing whether wind turbines could have a damaging effect on landscape and recognise that the impact can be as great in predominantly flat landscapes as hilly or mountainous areas (IR10.25). The Written Ministerial Statement (WMS) 'Local

planning and onshore wind' of June 2013 also states that local topography is a factor in this assessment. The Secretary of State acknowledges that the essential qualities of Landscape Character Type (LCT)13 (Open High Rolling Farmland) (IR10.27) are the very qualities that the East Riding Landscape Character Assessment uses to suggest that LCT13 is particularly sensitive to wind turbine development (IR10.28). The Inspector disagrees with this view and states that far from making the landscape more sensitive, these qualities, and in particular the grand scale of the landscape, and the long-distance views, dominated by the sky, would serve to allow a relatively comfortable absorption of the proposal (IR10.28). The Secretary of State, in his planning judgment, disagrees with the Inspector's assessment and considers that the landscape is particularly sensitive to wind turbine development as suggested by the East Riding Landscape Character Assessment. He therefore concludes that the landscape would suffer harm through its sensitivity to wind turbine development.

15. The Inspector reports that the harm the proposal would cause to the landscape, considered in isolation, or in concert with other schemes operational and consented, would be limited (IR10.40). He goes on to say that, nevertheless, there would be some harm as a result of the proposal, which renders it contrary to policies in the development plan, and the replacement policies in the emerging plan. The Secretary of State agrees with the Inspector that the appeal scheme would conflict with policies in the development plan and those in the emerging plan. However, although he agrees with the Inspector's finding that the proposal would not protect or enhance this valued landscape (IR10.41), he does not agree with the Inspector's conclusion in his planning balance that the proposal would only cause a limited degree of harm to the landscape (IR10.108). Whilst the Inspector considers that the harm caused would be both temporary and reversible (IR10.39), the Secretary of State has regard to the significant length of time over which harm would be experienced and highlights that under cross-examination at the inquiry even the appellant agreed that the 25 year duration proposed is long-term (IR5.3). Due to the reasons outlined above, and bearing in mind the finding that the site of the proposal is particularly sensitive to wind farm development and the finding that the scheme would not protect or enhance the landscape, the Secretary of State considers that the proposal would cause unacceptable harm to the local landscape and that this adverse impact should be given significant weight.

Heritage assets

16. In determining this appeal, the Secretary of State has had regard to the potential impacts on listed buildings, having special regard to the desirability of preserving those buildings or their settings, as required by section 66(1) of the LB Act. He has also had regard to paragraph 007 of the Planning Guidance on Renewable and Low Carbon Energy which states that great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting and paragraph 019 of the same guidance, which states that, depending on their scale, design and prominence, a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset. Bearing this in mind, the Secretary of State has carefully considered and paid particular attention to the Inspector's assessment of heritage matters at IR10.42-10.84, in addition to the evidence put to the inquiry in this respect. He has given careful consideration to the Inspector's assessment of impacts on the wide range of heritage assets,

which include Scheduled Ancient Monuments on the Woldgate Ridge to the north, listed buildings (including several that are Grade 1 listed), conservation areas and other recorded archaeological remains and hedgerows of historic importance. The Secretary of State also notes that English Heritage¹ considers that the proposal, both singularly and cumulatively, when taken with the existing scheme at Lisset and the consented scheme at Carnaby, would have a harmful impact on the significance of heritage assets, including Burton Agnes Hall and Conservation Area, and the archaeological monuments in the Woldgate-Rudston area.

17. The Secretary of State has paid special attention to the desirability of preserving and enhancing the character and appearance of the Burton Agnes conservation area in accordance with section 72(1). He agrees with the Inspector that the wind farm proposed would have a detrimental impact on the significance of that conservation area (IR10.74) and the Secretary of State has placed considerable weight and importance on the harm caused.
18. The Secretary of State notes that the Inspector's consideration of heritage assets included an assessment of case law (as it was then) with respect to the section 66 duty. However, in accordance with the recent Court of Appeal decision in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and others* [2014] EWCA Civ 137, the Secretary of State attaches considerable weight and importance to the harm caused to designated heritage assets in the planning balance. Although he agrees with the Inspector's finding that the significance of designated heritage assets would suffer 'less than substantial' harm (IR10.83), he disagrees that the harm caused to the setting of heritage assets, particularly in relation to Burton Agnes Hall, is 'limited' (IR10.108). This is because the turbines would be 'a distracting modern, discordant presence in views' from Burton Agnes Hall (IR10.70) and would be clearly visible from the gardens and some rooms at the Hall (IR10.66). The Secretary of State shares English Heritage's view that the proposal would cause harm to the setting of many heritage assets, including the Rudston Beacon and nearby associated barrows, single barrows at South Side Mount, Sands Wood, the site of the Rudston Cursus 'A', Woldgate itself, which follows the course of a Roman Road that is believed to have followed the line of an earlier, prehistoric ridgeway, as well as the designated heritage assets in and around Burton Agnes (IR10.43, 10.56-10.57 and 10.75). The Secretary of State notes that English Heritage initially attached a substantial level of harm to each heritage asset but reduced this assessment to less than substantial after the number of wind turbines in the appeal scheme was reduced from nine to six (IR10.109). Nevertheless, in line with the authority of the East Northamptonshire Court of Appeal decision, the Secretary of State attaches considerable weight and importance to the harm to the setting of heritage assets in this case.
19. In this case, where the harm is 'less than substantial' as set out in paragraph 134 of the NPPF, the harm to heritage assets needs to be weighed against the benefits of the proposal, including securing its optimum viable use. The Secretary of State concludes that the Inspector has placed less weight on the issue of harm in his overall balancing exercise than is required and the harm should be afforded considerable importance and weight.

¹ In its letter to East Riding of Yorkshire Council dated 4 October 2012

Living conditions

20. The Secretary of State has given careful consideration to the Inspector's assessment of the impact on living conditions of local residents at IR10.85-10.98. After careful consideration, he disagrees with the Inspector's reasoning and conclusions on living conditions and considers that more weight should be given to the potential deterioration in residential amenity at these properties. Paragraph 007 of the Guidance states that protecting local amenity is an important consideration which should be given proper weight in planning decisions. The Secretary of State agrees with the Inspector that the turbines would not be uncomfortably close, overwhelming or oppressive (IR10.90). However, due to the land rising to the north and the bases of the turbines being between 30 and 65m Above Ordnance Datum, the Secretary of State considers that the turbines would appear more prominent than if there was no change in land level. For this reason, although he notes the Inspector's conclusion that the proposal, considered alone or in combination with other wind farms, built or permitted, would have no significant impact on the living conditions of local residents through visual impact (IR10.94), he considers that more weight should be given to the potential deterioration in living conditions at these properties.
21. Regarding cumulative impact, the Secretary of State acknowledges the Inspector's conclusion that there would be no cumulative visual impact of any significance (IR10.91) and that the appeal scheme can be secured without undue harm to the landscape and living conditions (IR10.108). However, he is of the view that the Inspector plays down the cumulative effect, and that more weight should be given to the harm caused to residential amenity because multiple wind farm sites would be able to be seen from dwellings in the area (IR10.35 and 10.91). Furthermore, he notes the Inspector's recognition of the main concern put forward by the Council and several local residents in relation to the visual impact of the proposal (IR10.85) and the Inspector's view that, given the relative separation distances, they would not be pervasive, and there would be no reasonable sense of residents and visitors being surrounded, or hemmed in, by wind turbines (IR10.93). The Secretary of State disagrees with the Inspector because he is of the view that multiple wind farm sites would be seen from dwellings in the area. Having also considered illustrations and predicted views of the wind farm, he considers that the cumulative impact of the wind farms would have an adverse impact on local amenity. The Inspector notes that the WMS and subsequent guidance state that decisions should take into account the cumulative impact of wind turbines and properly reflect the increasing impact on local amenity as the number of turbines in the area increases (IR10.92). The Secretary of State has therefore given more weight to the harm caused to living conditions by the proposed development than given by the Inspector.

Other Matters

22. The Secretary of State agrees with the Inspector's reasoning and conclusions on the concerns surrounding the consultation process at IR10.99-10.100, flooding and light pollution at IR10.102-10.103, highway issues at IR10.104, and other considerations including safety on the rights of way, ecology and the potential for expansion of the site (IR10.105-10.107). However, he does not agree with the Inspector's conclusions regarding tourism because the Inspector has not considered the cumulative impact on tourism of the current scheme (IR10.101)

along with the permitted wind farms at Fraisthorpe and Carnaby, and the operational windfarm at Lissett. Therefore, in view of the potential impacts of the proposal, the Secretary of State has given some weight to the potential for adverse effects on tourism that needs to be considered in the balance.

Conditions

23. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed planning conditions (IR10.111-10.136). He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework. However, he does not consider that these conditions overcome his reasons for dismissing the appeal.

Planning balance and overall conclusion

24. The Secretary of State has given very careful consideration to the Inspector's balancing exercise and consideration of policy matters at IR10.108-10.110, and his overall recommendation at IR11.1. He agrees with the Inspector that the proposals would bring significant benefits through the generation of renewable energy, general economic activity and the improved viability of the farms concerned (IR10.108). He also agrees with the Inspector (IR10.108) that the proposal fails to accord with Joint Structure Plan Policies SP4, SP5 and ENV6 and Local Plan Policies EN2, EN3 and EN20 and their successors in the Draft Strategy Document and has attached weight to this. The Secretary of State agrees with the Inspector's reasoning and conclusions on the concerns surrounding the consultation process, flooding and light pollution, highway issues, and other considerations including safety on the rights of way, ecology and the potential for expansion of the site. In addition, he considers that the appeal scheme would cause harm through impact on the landscape, heritage assets and living conditions, as well as some harm to tourism in the area. He has placed considerable importance and weight on the harm caused to heritage assets and the conservation area. He considers that by reason of visual impact, impact on residential amenity and the harm that could be caused to tourism, coupled with the failure of the scheme to preserve the setting of Burton Agnes Hall and other heritage assets, that together these factors clearly outweigh the need for the proposal and its wider economic benefits.

25. The Secretary of State agrees with the Inspector that the main consideration is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. He considers it to be a matter of judgement and disagrees with the Inspector that the harmful impacts of the appeal scheme would be far outweighed by the benefits. He considers that the Inspector has placed too much weight on the benefits and not enough weight on the harm that would be caused. Taking into account paragraph 98 of the Framework, the Secretary of State considers that the impacts of the proposal are such that no condition imposed could make them acceptable. Taken together, he considers that the harm significantly and demonstrably outweighs the benefits when assessed against the policies in the Framework.

Formal decision

26. 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 one (1) 110 metre to tip wind turbines, five (5) 100 metre to tip wind turbines, a 70 metre anemometry mast and associated infrastructure, at Thornholme Fields, Rudston Road, Burton Agnes, in accordance with planning application reference DC/11/03999/STPLFE/STRAT PP-01552442.

Right to challenge the decision

27. 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.

28. A copy of this letter has been sent to East Riding of Yorkshire Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Lindsay Speed

Authorised by Secretary of State to sign in that behalf

Annex

List of representations received in response to reference back to parties

Correspondent	Date
Peter Atkinson – East Riding of Yorkshire Council	26 March 2014
Mrs S E Burt – No to Wolds Wind Farms	31 March, 6 and 14 April 2014
Roddy MacDonald - Eversheds	1 and 14 April 2014

Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date: 21 November 2013

The Town and Country Planning Act 1990

Appeal by

Wind Prospect Developments Ltd

Against the decision of

East Riding of Yorkshire Council

Inquiry held between 23 July and 30 July 2013

Thornholme Fields, Rudston Road, Burton Agnes

File Ref: APP/E2001/A/13/2190363

Appeal Ref: APP/E2001/A/13/2190363
Thornholme Fields, Rudston Road, Burton Agnes

- 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 Wind Prospect Developments Ltd against the decision of East Riding of Yorkshire Council.
- The application Ref.DC/11/03999/STPLFE/STRAT PP-01552442, dated 25 August 2011, was refused by notice dated 19 December 2012.
- The development proposed was originally described as nine (9) 110 metre to tip wind turbines, a 70 metre anemometry mast and associated infrastructure.

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

1. Procedural Matters

- 1.1 The Inquiry opened on 23 July 2013 and sat on the following three days before closing on 30 July 2013. I first visited the site after the Pre-Inquiry Meeting which was held in May 2013 but carried out a series of accompanied site visits in accordance with a schedule prepared by the parties¹ on 31 July 2013. I returned the following day to undertake a series of unaccompanied visits that took in the area more generally, as well as a number of viewpoints highlighted and visited during the course of the accompanied site visits.
- 1.2 Throughout the report, I have referred to the submitted documents through the use of footnotes. References thus [--] cross-refer to other paragraphs in the report.

2. The Proposal

- 2.1 As set out above, the proposal was initially promulgated as a nine 110 metre high, turbine wind farm, with an anemometry mast, and associated infrastructure. This proposal constituted EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and, as such, the original application was accompanied by an Environmental Statement².
- 2.2 As more fully set out in the Statement of Common Ground³, the scheme underwent a number of changes during the application and appeal processes and more and modified information was submitted linked to those changes. This brought forth a need for, amongst other things, Supplementary Environmental Information⁴ in relation to archaeological and cultural heritage matters in February 2012. In response to concerns raised by English Heritage and the Council, the appellant omitted 3 turbines and reduced the height of two of the remaining turbines. This required an addendum to the ES which was submitted in August 2012⁵. This was the scheme considered and refused planning permission by the Council⁶.

¹ ID16

² Referred to hereafter as ES CD10.2

³ CD10.11 paragraphs 2.1-2.13 Referred to hereafter as SoCG

⁴ Referred to hereafter as SEI 2012 CD10.3

⁵ Referred to hereafter as ES Addendum CD10.4

⁶ CD10.7

- 2.3 The first reason for refusal highlighted issues around unacceptable interference with radar at RAF Staxton Wold, in accordance with the recommendation of Council Officers⁷. Members of the Council added two further reasons for refusal relating to the impact on the surrounding landscape, living conditions, and the setting of a complex of designated heritage assets at Burton Agnes Hall.
- 2.4 The appeal was lodged in January 2013 but given the time that had elapsed since the original application the cumulative landscape and visual baseline had obviously changed. As a consequence the appellant produced, submitted and advertised further SEI⁸, as part of the appeal process, in May 2013.
- 2.5 Also in May 2013, the appellant found, following discussions with the Distribution Network Operator, that a change was required to the voltage of the grid connection. This necessitated a larger switchgear building and changes to the associated compound. Revised details were submitted to PINS as part of the appeal process.
- 2.6 Clearly the scheme has undergone much change since originally submitted. However, these changes had all been properly publicised and made available for consultation well before the Inquiry opened. On that basis, notwithstanding the misgivings expressed by some local residents, I took the view that no-one would be prejudiced if the Inquiry proceeded on the basis of the proposals, as revised, up to May 2013, that is, including the changes to the switchgear building and compound. On that basis, and as agreed in the SoCG, what was considered at the Inquiry, and is to be considered through this appeal, is the erection of 6 no. wind turbines (1 no. 110m to tip, 5 no. 100m to tip), a 70 metre anemometry mast, and associated infrastructure⁹. The plans pertaining to the revised scheme are set out in Annex C to this report.
- 2.7 There has been no suggestion that the ES, as amended and supplemented, fails to meet the requirements of the relevant regulations. On my analysis, it does, and should be taken fully into account in dealing with the appeal.

3. Site and Surroundings

- 3.1 As set out in the SoCG¹⁰, the appeal site covers 265 hectares of agricultural land to the north of the A614 and to the south of Woldgate. It lies on an undulating slope that faces south-east with an elevation of 83 metres AOD along Woldgate, down to 17 metres AOD along the A614. The junction of this slope with the A614 defines the southern edge of the Yorkshire Wolds.
- 3.2 The closest settlements are Thornholme, which lies about 1 kilometre south of the site of the wind turbines proposed, Haisthorpe around 1.4 kilometres east-south east, Burton Agnes, 1.4 kilometres south-south west, Rudston 2.1 kilometres north-north west, Carnaby 2.9 kilometres east, and Boynton about 3 kilometres north-east. The nearest towns to the site are Bridlington, which is 4.8 kilometres east-north east, and Driffield which is nearly 10 kilometres to the south-west.

⁷ CD10.6

⁸ Referred to as SEI 2013 CD10.5

⁹ CD10.11 Paragraph 1.2 refers

¹⁰ CD10.11 Paragraphs 4.4-4.8 refers

- 3.3 Amongst other leisure facilities of the sort referred to, two public routes run through the appeal site, one of which is part of the East Riding Heritage Trail. The Sustrans National Cycle Route (NCR1) runs along Woldgate and the 'Rudston Roam', and a National Byway, pass relatively close to the site too. The Bridlington Scenic Drive runs to the west of the appeal site.

4. Planning Policy

- 4.1 The SoCG¹¹ sets out that the statutory development plan for the area includes the saved policies of the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire¹², adopted in June 2005, and the saved policies of the East Yorkshire Borough Wide Local Plan¹³, of June 1997. The main parties have accurately outlined the most pertinent policies¹⁴.
- 4.2 JSP Policy SP1 sets out, of relevance, that the settings of settlements will be protected and enhanced with special consideration given to important skylines, views, edges and settings. JSP Policy SP4 maintains that the distinctive character of the Yorkshire Wolds Regional Landscape Character Area should be protected and development should protect and where necessary enhance or restore distinctive landscape character.
- 4.3 JSP Policy ENV6 stipulates that the setting of parks, gardens and estates of historic landscape or architectural interest, listed buildings, and conservation areas should be protected and, where appropriate, enhanced. Amongst JSP policies not referred to directly in the SoCG, JSP Policy ENV7 seeks to physically preserve nationally important archaeological remains and their settings and outlines that development likely to have an adverse effect on them should not be permitted.
- 4.4 JSP Policy SP5 requires development proposals to attain a high standard of design that, amongst other things, respects local landscape character; integrates visually and physically with its surroundings; and harnesses local heritage and landscape distinctiveness. JSP Policies ENV2, ENV3 and ENV4 deal with issues around nature conservation.
- 4.5 LP Policy EN2 is permissive of proposals acceptable in open countryside under other plan policies where in terms of siting, layout, design and landscaping, of relevance, they do not harm the character of the surrounding area or the landscape setting of settlements, and safeguard sites and features considered important for their landscape, amenity or historical value and nature conservation interests.
- 4.6 LP Policy EN3 sets out that proposals, otherwise acceptable in the open countryside, will only be permitted in the Wolds Area of Landscape Protection¹⁵, within which the appeal site lies, where they will not be prominent in or harm the quality of the landscape and, in terms of design, materials, colour and landscape treatment, they are of a high standard, in scale and character with their surroundings.

¹¹ CD10.11 para 5.1

¹² Referred to hereafter as JSP CD1.1

¹³ Referred to hereafter as LP CD1.2

¹⁴ CD10.11 Paragraphs 5.3 and 5.4

¹⁵ Referred to hereafter as WALP

- 4.7 In terms of renewable energy, LP Policy EN25 is supportive of proposals that do not unduly harm the appearance of the landscape, nature conservation interests, residential amenity, or sites of archaeological interest. Paragraph 3.111 of the reasoned justification that feeds into LP Policy EN25 says that proposals in the WALP will need to be assessed against LP Policy EN3 and proposals of a commercial scale or nature are unlikely to be acceptable.
- 4.8 LP Policy EN20 only allows proposals affecting listed buildings to go forward where the character appearance and setting of the building and its curtilage will be retained. Other LP policies not outlined by the SoCG include, LP Policy EN19 that refers to development in conservation areas, LP Policies TM4 and TM5 that deal with highway and transport matters, LP Policies EN16, EN17 and EN18 that cover drainage, flood risk and ground water protection, and LP Policies EN8 and EN11 that do likewise for protected species and nature conservation sites¹⁶.
- 4.9 In terms of emerging policy, the Council published for public consultation in January 2013 a Draft Strategy Document¹⁷. The most relevant policies are set out in the SoCG¹⁸.
- 4.10 While these policies are at a very early stage in the process towards adoption and, as such, can attract very little weight, it is relevant to note that alongside a range of policies that seek to protect the landscape, heritage assets and living conditions, DSD Policy EC6¹⁹ continues the general approach of LP Policy EN25, supporting the energy sector where any significant adverse impacts are avoided. DSD Policy ENV2²⁰ seeks to take forward the existing WALP designation, and LP Policy EN3, in another guise. This approach is designed to underline the strategy set out in DSD Policies S1 and S2²¹ that, with reference to the National Planning Policy Framework²², presume in favour of sustainable development with a view to supporting a reduction in greenhouse gas emissions and adapting to the expected impacts of climate change.
- 4.11 Brief reference has also been made to Planning for Renewable Energy Developments, an Interim Planning Document published by the Council in April 2009²³, Planning for Renewable Energy Targets in Yorkshire and Humber that dates from 2004²⁴, and Low Carbon and Renewable Energy Capacity in Yorkshire and Humber of April 2011²⁵.
- 4.12 The SoCG sets out what the main parties agree to be the most relevant parts of the Framework²⁶. Put very simply, the Framework says that planning should follow 12 core land-use planning principles²⁷.

¹⁶ CD1.2

¹⁷ Referred to hereafter as DSD CD2.4

¹⁸ CD10.11 Paragraph 5.6

¹⁹ CD2.4 Page 105

²⁰ CD2.4 Page 119

²¹ CD2.4 Pages 36 and 37

²² Referred to hereafter as the Framework CD3.2

²³ CD2.3 Referred to hereafter as IPD

²⁴ CD2.1

²⁵ CD2.2

²⁶ CD10.11 Paragraphs 5.7-5.10

²⁷ Paragraph 17

- 4.13 These include securing high quality design and a good standard of amenity for all existing occupants of land and buildings; recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it; conserving heritage assets in a manner appropriate to their significance; and supporting the transition to a low carbon future in a changing climate by, amongst other things, encouraging the use of renewable resources (for example, by the development of renewable energy).
- 4.14 The SoCG also covers national energy policy in some detail²⁸. In the light of that detailed summary it is necessary to highlight but a few matters. The UK Renewable Energy Roadmap²⁹ issued by DECC³⁰ in July 2011 explains that the goal is to ensure that 15% of UK energy demand is met from renewable sources by 2020 but making it clear that the ambition extends beyond 2020 with reference to advice from the Committee on Climate Change that there is scope for renewable energy to meet 30-45% of all our energy consumed in the UK by 2030.
- 4.15 The Government has produced National Policy Statements: EN-1: The Overarching National Policy Statement for Energy³¹; and EN-3: The National Policy Statement for Renewable Energy Infrastructure³². The Framework³³ says that the approach set out in these documents should be followed when dealing with applications for wind energy development. In essence, that approach is to approve applications³⁴ if their impacts are (or can be made) acceptable.
- 4.16 On 6 June 2013, the Secretary of State issued a Written Ministerial Statement on Local Planning and Onshore Wind³⁵. This says that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities; decisions should take into account the cumulative impact of wind turbines and properly reflect the increasing impact on (a) the landscape and (b) local amenity, as the number of turbines in the area increases; local topography should be a factor in assessing whether wind turbines have a damaging impact on the landscape (that is, recognise that the impact on predominantly flat landscapes can be as great or greater than as on hilly or mountainous ones); and great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting.
- 4.17 As presaged by the WMS, Planning Practice Guidance for Renewable and Low Carbon Energy was published on 29 July 2013³⁶. It follows much the same general path as the WMS but, importantly, in paragraph 34, confirms that depending on scale, design and prominence, a wind turbine within the setting

²⁸ CD10.11 Paragraphs 5.12-5.18 and Agreed Statement in Appendix 1

²⁹ CD6.14

³⁰ The Department of Energy and Climate Change

³¹ CD6.8

³² CD6.9

³³ Paragraph 97 and Footnote 17

³⁴ Unless material considerations indicate otherwise

³⁵ Referred to hereafter as WMS CD10.15

³⁶ ID17 Referred to hereafter as the subsequent guidance

of a (designated) heritage asset may cause substantial harm to the significance of the asset concerned.

- 4.18 In that light, and given the developing situation in the Courts³⁷, it is important to note the requirements of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990³⁸. This provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural and historic interest which it possesses.
- 4.19 The first two cases dealt with in the Courts were discussed in some detail at the Inquiry. The judgement in the third³⁹, *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin), was published after the Inquiry closed and, given its importance, I approached both main parties for their views upon it⁴⁰. I address the implications of the judgement in my conclusions below.

5. The Case for the Council

- 5.1 The Council's case is fully set out in their Opening and Closing Statements to the Inquiry⁴¹. It can be summarised under a series of headings:

Landscape Impact

- 5.2 The Council accepts that almost all commercial scale, wind energy developments will bring about significant landscape impacts, and that it is necessary to consider whether those impacts have been minimised. However, all that does not give a wind farm developer licence to create significant landscape impacts whatever their scale and extent. Notwithstanding the various design iterations which the scheme has gone through in arriving at the six turbine proposal under consideration, it is necessary to test whether the landscape impact of that scheme is acceptable.
- 5.3 The Council also accepts that wind energy development is temporary and reversible. However, the appellant agreed⁴² that the 25 year duration proposed is long-term. Such a period encompasses a period from birth to early adulthood, or the entirety of a person's retirement. Moreover, the appellant accepted⁴³ that if an application was made towards the end of the twenty five year period to retain or replace the wind turbines, then its existing presence would be a material consideration of significant weight. It is not necessarily the

³⁷ CD4.1: *East Northamptonshire and others v Secretary of State for Communities and Local Government and another* [2013] EWHC 473 (Admin), CD4.2: *Coleman v Secretary of State for Communities and Local Government and others* [2013] EWHC 1138 (Admin) and ID23: *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin)

³⁸ CD8.1

³⁹ ID23

⁴⁰ ID24 and ID25

⁴¹ ID2 and ID21

⁴² Hawkins x-e

⁴³ Frampton in-c and x-e

case then that the wind farm would be decommissioned after twenty five years, and the land reinstated to its former condition.

- 5.4 Despite initial confusion, it has become clear that the landscape assessments carried out by the appellant and the Council are properly comparable⁴⁴. Some other points about general matters of method need to be made though. First, the general location of the viewpoints in the ES and its additions were agreed between the appellant and the Council but precise positions were not. The photomontages need to be considered with that in mind.
- 5.5 Second, the appellant treats the sensitivity of recreational walkers differently, depending on the status of the route they might be following. This is not appropriate⁴⁵. Third, although the appellant does not use the same definitions of magnitude of change for landscape character and visual effects as the Council, it was accepted that the Council's approach was not incorrect⁴⁶.
- 5.6 Fourth, the appellant's matrix for assessing magnitude of visual change⁴⁷ is much more complex than the Council's⁴⁸ and gives rise to difficulties in appreciating the judgements formed. Fifth, it is agreed between the main parties that both landscape character and visual effects should be treated as adverse⁴⁹ so the concept of 'valency' need not be addressed. Sixth, the ES⁵⁰ accepts that appreciation of the landscape can be influenced by cultural and historical dimensions but then considers these entirely separately under the heading of cultural heritage⁵¹. An important matter is thus omitted.
- 5.7 Seventh, when dealing with cumulative landscape effects, the ES⁵² assesses those effects against adopted thresholds of acceptable change only to abandon that in favour of professional judgement⁵³. It is far more effective to utilise published guidance⁵⁴. Last, the appellant's landscape analysis seeks to assess the acceptability of the proposal. That is not the task of a landscape assessor. Acceptability is the province of the decision-maker in balancing positive and negative impacts.
- 5.8 Against that overall background, the Council acknowledges that their LVIA Team raised no objection to the proposal⁵⁵. However, Members were free to reject their analysis and the Council's evidence to the Inquiry shows that they were correct to do so.
- 5.9 The Council also accepts that the AECOM study⁵⁶ is too strategic a document to inform a detailed appraisal of the landscape sensitivity of the appeal site

⁴⁴ Hawkins and Steele x-e feeding into ID5

⁴⁵ As confirmed by CD7.2 Paragraphs 6.33 and 6.34

⁴⁶ Hawkins x-e and C1 Paragraph 2.6.11 with reference to CD7.1

⁴⁷ CD10.2 Appendix 9.2 Table A9.2 (Page 24)

⁴⁸ C1 Page 16

⁴⁹ Hawkins x-e

⁵⁰ CD10.2 Appendix 9.2 paragraph 9.2.117 (Page 26)

⁵¹ Hawkins x-e

⁵² CD10.2 Main Text Para 9.2.12 (Page 138)

⁵³ CD10.2 Main Text Para 9.2.13 (Page 138)

⁵⁴ CD7.7 Paragraphs 96-99

⁵⁵ CD7.14

⁵⁶ CD2.2

and its surroundings. However, the East Riding Landscape Character Assessment⁵⁷ offers greater assistance.

- 5.10 LCT13: Open, High Rolling Farmland, where the appeal site lies, has its key characteristics helpfully summarised⁵⁸ and it is described subsequently as '*attractive with few skyline features that draw the eye*'. The LCT is stated to have high quality and to be sensitive to change⁵⁹. With specific reference to wind energy development, the assessment sets out that '*this character type has high sensitivity to wind farm development as a result of its openness and attractiveness. Wind turbines would potentially be seen from great distances and would add to the detrimental impact of the few communications masts and pylons that already impact on the landscape. Vertical skyline features are not characteristic and would be a detractor in the rolling, open, agricultural landscape*'. The strategy for the LCT⁶⁰ sets out that '*wind turbines and other vertical infrastructure that adds vertical features that will be prominent should be avoided*'.
- 5.11 The Council accepts that, as the appellant points out, the East Riding Landscape Character Assessment contains no analysis of capacity for wind energy development. However, it does provide very clear guidance on landscape quality and its sensitivity to wind energy development.
- 5.12 Further, the appellant describes a site selection process that included choosing a site on a south-east facing slope at the southern edge of the Wolds so that the proposal would be largely screened in views from the majority of the Wolds, to the north⁶¹. The Council takes the view that there would be extensive views of the proposal from the north and this is confirmed in the ES⁶². Moreover, the analysis of the final 6 turbine scheme in the ES Addendum states clearly that the landscape character effects would be the same as those of the previous 9 turbine scheme⁶³. It is accepted that LCA13D: North Wolds Plateau Farmland⁶⁴ would suffer significant landscape effects in an area between Woldgate and the A614 north-south, and from Harpham Lane to Carnaby Field, west-east. This is an area 2.5 kilometres by 6 kilometres.
- 5.13 The appellant's assessment is opaque, never setting out the sensitivity of LCA13D. It cannot be understood whether the analysis of the East Riding Landscape Character Assessment is accepted or not and neither is magnitude of change, or significance of effect, graded. The assessment is limited to identifying an area where effects crossing the threshold of significance occur. That is less than helpful because the whole point of the analysis is to judge landscape impact knowing that some significant effect are inevitable with wind energy development. The precise effects of a scheme need to be understood to inform an evaluation of the extent and severity of those effects.

⁵⁷ CD7.10

⁵⁸ CD7.10 Page 167 Text Box

⁵⁹ CD7.10 Page 175

⁶⁰ CD7.10 Page 175

⁶¹ A2 Paragraph 4.8

⁶² CD10.2 Figures ZTV figures 9.6 and 9.7 and Viewpoints 11 and 18

⁶³ CD10.4 Main Text Paragraphs 9.7.1 and 9.7.2

⁶⁴ CD10.2 Main Text Paragraphs 9.7.18-9.7.19

- 5.14 The Council's evidence is much to be preferred. It describes the importance of the Woldgate Ridge in the landscape and the abrupt change in character that occurs at the break of slope of the southern slope down from it. The change in landscape character is sharply defined.
- 5.15 To the south of the spring line, broadly contiguous with the line of the A614, there is a flat plain of clay-based soils. To the north of that, is a chalk slope. The openness of the landscape differs between the two as does the species and frequency of trees. Wind turbines are not uncommon on the plain. To locate them on the Woldgate ridge would undermine the contrast in character between the Wolds and the plain.
- 5.16 The appellant's assessment of the landscape character effects in LCA 19C: Holderness Open Farmland⁶⁵ suffers from the same defects as the assessment of LCA 13D. There is no discussion of sensitivity, magnitude or the gradation of significance of effects. The Council does not accept that no significant indirect effects would occur in LCA19C. In some views looking north⁶⁶ towards the wind farm proposed, it would appear to be located on the plain.
- 5.17 Similarly, the appellant takes the view that there would be no significant effects on LCA15A: Gypsy Race Corridor, Rudston to Bridlington⁶⁷. Again the Council's assessment is to be preferred. Despite the topography, views of the wind farm would be obtained from some south-facing slopes and the tops of ridges⁶⁸. Wind turbines would become a characteristic of views and therefore there would be a significant indirect effect and a landscape with wind farms character sub-type created.
- 5.18 It might be said in response to these criticisms that they are met by the appellant's assessment of whether a 'wind farm landscape' or 'landscape with wind turbines' would occur. However, they are not because the appellant does not acknowledge anywhere that a wind farm landscape, that is one *where the turbines would override many of the other key characteristics of the landscape such that the turbines would become one of the defining characteristics of the landscape and a new landscape area or type could be defined*⁶⁹, would be created. The appellant accepted that such a wind farm landscape would occur on the appeal site itself, and only a modest distance beyond that⁷⁰. Given the definition set out, that contention is unsound for two reasons.
- 5.19 First, the wind turbines would only have to override many, not all, key characteristics, and would only have to become one of, not the, defining characteristic. Proper application of the definition shows that a wind farm landscape would extend well beyond the limits accepted by the appellant. The Council assessment is much to be preferred⁷¹.

⁶⁵ CD10.2 Main Text Paragraph 9.7.20

⁶⁶ CD10.2 Figures: Viewpoint 17 for example

⁶⁷ CD10.2 Main Text Paragraph 9.7.21

⁶⁸ CD10.4 Figures: Figures 9.6 and 9.7 and Viewpoints 11 and 18

⁶⁹ CD10.2 Appendix 9.2 Paragraph 9.2.133 refers

⁷⁰ Hawkins x-e

⁷¹ C2 Figure 1

- 5.20 For the second reason an analysis of the appellant's evidence is telling⁷². Here, a number of features are set out, such as large scale open views, large rectilinear fields, fragmented hedgerows, few trees, sparse settlement, power lines and telecommunications masts, that are said to make the landscape suitable for accommodating wind turbines.
- 5.21 It is nowhere acknowledged that these aspects of landscape character are the very aspects the East Riding Landscape Character Assessment cites as increasing its value and sensitivity to wind energy development⁷³.
- 5.22 The appeal site lies within the WALP. Although there are no objectives set out for the designation, these can reasonably be inferred from the policy and from reading across to the objectives for the same type of designation in the neighbouring, Ryedale district. The appellant accepts⁷⁴ that these areas have the same character, value and sensitivity. The appellant claims that long range views of the proposal where the turbines would be seen in their entirety are from elevated locations on the undulating dip slope south-west and north-east of the appeal site⁷⁵. Partial views ought to be considered too⁷⁶.
- 5.23 The Council's landscape reason for refusal⁷⁷ cites LP Policy EN2 and includes reference to criterion (v) that refers to the settings of settlements. This is ignored in the various iterations of the ES and in the appellant's evidence. It matters not that LP Policy EN2 provides no detailed guidance because the extent and nature of the setting of a settlement can be assessed on a case-by-case basis, as is the case with a heritage asset.
- 5.24 Burton Agnes, Haisthorpe and Thornholme were built along the spring line, close to sources of water. They had the advantage of different soils and terrain on either side of them. There remains a very clear and readable relationship between the settlements and the surrounding landscape which reveals the origins and development of the settlements. The settlements are clearly the product of their history and to impose a wind farm upon them, in such close proximity, would undermine the clear relationship between the settlements and the surrounding landscape.
- 5.25 For all these reasons, the landscape character effects of the proposal would be more extensive and more substantial than the appellant contends.
- 5.26 There is little to be added in terms of cumulative landscape effects and considerable agreement about the extent of significant visual effects for the proposal itself and in conjunction with other schemes. It is useful to consider the Council's evidence⁷⁸ in relation to the acceptance by the appellant⁷⁹ that wherever there would be a clear view of the proposal by a high-sensitivity receptor within 7.5 kilometres of it, significant adverse effects would occur.

⁷² A2 Paragraph 8.7

⁷³ CD7.10 Pages 174-175

⁷⁴ Hawkins x-e

⁷⁵ A2 Paragraph 6.37

⁷⁶ CD10.4 Figures: Viewpoints 11, 18, 22, 27, 29 and 31

⁷⁷ CD10.7

⁷⁸ C1 Pages 44 to 47

⁷⁹ Hawkins x-e

The Council judges that significant adverse effects would occur at points where the appellant does not⁸⁰.

- 5.27 In assessing visual effects, it is also important to note the prominent role that Burton Agnes Hall, and the adjoining settlement play in the local recreational route network⁸¹.
- 5.28 There are five routes for a combination of pedestrians, cyclists, equestrians and motorists passing through Burton Agnes and in some cases, the appeal site. The site of the proposal is not some quiet backwater but a focus of activity for local people and visitors. The wind turbines would be an important element of the experience of a visitor to Burton Agnes itself, but also on the way to and from the settlement.
- 5.29 Overall, the appellant's witnesses fell into the trap of starting from the proposition that a commercial scale wind farm will inevitably create significant effects and then assuming that those significant effects are therefore acceptable.

The Settings of Designated Heritage Assets

- 5.30 There is considerable agreement between the main parties about the nature, extent and significance of effects of the proposal in cultural heritage terms.
- 5.31 There would be no significant impact on the significance of the Church of St Martin, at Burton Agnes, and the Burton Agnes Conservation Area as a result of the proposals. The focus of the Council's concern is the complex of designated heritage assets at Burton Agnes Hall.
- 5.32 The Council has provided a clear assessment of the significance of the assets at Burton Agnes Hall and the contribution that setting makes to that significance⁸².
- 5.33 In particular, the gatehouse and south garden create a dramatic entrance to the Hall; the gardens as a whole provide an attractive and sympathetic setting for the Hall and allow it to be appreciated as a grand architectural statement; public rooms in the Hall were designed to provide elevated views out from the building; the ha-ha at the western end of the garden extended the influence of the Hall into the wider landscape whilst also channelling views towards the hall from the east; and the woodland walk from the Hall provides an attractive and sheltered environment from which the surrounding countryside can be appreciated, contributing to the artistic interest of the Hall. None of this has been disputed by the appellant.
- 5.34 The appellant's view of the impacts of the proposal on Burton Agnes Hall has to be seen in the light of an apparent feeling that the previous, 9 turbine scheme was acceptable in cultural heritage terms⁸³. It can be inferred that the reduction to 6 turbines was seen as a way of resolving concerns expressed by English Heritage and the Council.

⁸⁰ CD10.4 Figures: Viewpoints 13, 14, 18, 22, 23 and 29

⁸¹ CD10.2 Figures: Figure 9.5 demonstrates

⁸² C4 and C5

⁸³ Hawkins x-e

- 5.35 The presence of the wind turbines in views from within and around Burton Agnes Hall would be a distraction, competing with the Hall for the viewer's attention. This would only be an impact of slight magnitude but the high importance of the group of assets means that these impacts would be of moderate significance. That level of magnitude and significance applies whether the impact of the proposal is considered in isolation or cumulatively with other schemes, consented and built, although the magnitude and significance would increase with the number of turbines in each scenario.
- 5.36 It is agreed that these impacts would lead to less than substantial harm to the significance of the designated heritage assets. However, that is still harm which must be weighed in the overall balance. The Council accepted that on its own, this harm would not outweigh the benefits of the proposal⁸⁴. However, there is a need for one overall balance that takes in other forms of harm too. Further, the appellant agreed that less than substantial and substantial levels of harm do not equate to acceptable and unacceptable levels respectively⁸⁵.
- 5.37 The statutory duty in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act has to be grappled with in accordance with the interpretation in *East Northamptonshire and others v Secretary of State for Communities and Local Government and another* [2013] EWHC 473 (Admin)⁸⁶. This decision may well be heading to the Court of Appeal but regardless of that, it is binding on the decision-maker unless and until it is overturned.
- 5.38 The key point to note from the judgement is that section 66(1) deals with an issue which requires a particular weight to be given to any harmful effect of a proposal on the setting of a listed building. Paragraph 39 of the judgement of Lang J makes that clear: *'In my judgement, in order to give effect to the statutory duty under s.66(1), a decision-maker should accord considerable importance and weight to the desirability of preserving the setting of listed buildings when weighing this factor in the balance with other material considerations which have not been given this special statutory status. Thus, where the s.66(1) duty is in play, it is necessary to qualify Lord Hoffman's statement in Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at 780F-H, that the weight to be given to a material consideration was a question of planning judgement for the planning authority'*.
- 5.39 Parker J in *Coleman v Secretary of State for Communities and Local Government and others* [2013] EWHC 1138 (Admin)⁸⁷ did not disagree with that formulation. In relation to *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin)⁸⁸, the Council acknowledges that Jay J declined to follow Lang J's approach to Section 66(1) but submits that a definitive statement of the law will have to come from the Court of Appeal in due course.

⁸⁴ Lancaster x-e

⁸⁵ Hawkins x-e and Frampton x-e

⁸⁶ CD4.1

⁸⁷ CD4.2

⁸⁸ ID23

Radar

- 5.40 This matter has been resolved with the MoD⁸⁹ and the main parties have agreed that an appropriate Grampian condition can be imposed.

Living Conditions

- 5.41 The Council takes no issue in relation to noise or shadow flicker. These matters can be properly addressed through conditions⁹⁰. However, there is a serious issue in relation to visual impact.
- 5.42 There is often reference in this context to the 'Lavender test'. However, that particular Inspector's decisions do not contain any test as such⁹¹. They contain examples of an Inspector forming judgements on the merits of a particular case as to whether or not there would be an unacceptable effect on living conditions. Dealing with that must take account of, but does not solely depend on, the distance between the wind turbines proposed and the affected property. The number, horizontal spread, and relative elevation will also be relevant, as will the nature of the property affected.
- 5.43 The appellant seeks to determine whether the wind turbines would be oppressive or overbearing⁹² terms defined based on an assessment that is no more than supposition, having not visited the actual properties concerned. The Council adds to that the question of whether the visual impact is pervasive.
- 5.44 The Council's approach⁹³ is to be commended because the conclusions are based on having actually visited the properties affected. The appellant relies on representative views from publicly accessible places in the vicinity of the properties. The Council's conclusions are that there would be significant adverse impacts on the living conditions of some local residents because of the visual impact of the proposals. This adds to the other harm that has to be weighed in the planning balance.

Whether the harm is outweighed by benefits

- 5.45 Analysis under this heading incorporates two matters, first the benefits and second, the balancing exercise. The Council fully recognises the benefits of renewable energy in terms of tackling climate change; meeting national and international targets for reducing carbon emissions, to that end; the role that the region and the local planning authority should play in providing onshore wind energy; the importance of increasing security of supply; the Government's efforts in promoting renewable energy; and the significance of the benefits of wind energy development in general, or of the scheme in particular, both environmental and economic.
- 5.46 It is, however, relevant to note that the reduction in the number and height of the wind turbines proposed means that the overall extent of the benefits has been reduced, since the application was made, by at least a third.

⁸⁹ CD10.14 refers and ID18

⁹⁰ ID18

⁹¹ CD5.26

⁹² A2 Section 7

⁹³ C1 The Table on Page 51 in particular

- 5.47 This assessment of the benefits as set out by the Council⁹⁴ was not challenged by the appellant at all. It must follow that the appellant accepts that the Council has identified all the benefits and afforded them appropriate weight in their own right. In turn, it must be the case that the issue between the main parties must come down to the weight to be afforded to the adverse impacts of the proposals and, as a consequence, the striking of the planning balance.
- 5.48 The Council explained in evidence⁹⁵ that the development plan is accepted to be out of date and the decision-making test set out in paragraph 14 of the Framework applies. However, the development plan is hardly irrelevant.
- 5.49 It remains the starting point for decision-making and elements of the policies referred to by the Council highlight material considerations to be taken into account in a Framework compliant balancing exercise.
- 5.50 The appellant has identified LP Policy EN25 as the dominant policy and the Council considers that reasonable. A consensus emerged⁹⁶ that the policy was flexible and contained a balancing exercise because it refers to whether a proposal would unduly harm interests listed within it. The Council accepts that the cross-reference in paragraph 3.111 of the supporting text⁹⁷ to LP Policy EN3 does not undermine LP Policy EN25 but simply means that LP Policy EN3 has to be read in the light of LP Policy EN25⁹⁸. LP Policy EN3 can be applied in the light of the 2005 Landscape Assessment – it is of no importance that the assessment followed the policy – the two can be read alongside one another.
- 5.51 LP Policy EN2 needs to be read with LP Policy EN25 when a renewable energy project is under consideration so a reference to undue harm needs to be read into criteria 2 and 5. Criterion 3 does not add to criterion 2 because that is of relevance to designated heritage assets and, on the Council's case, to the role played by the Woldgate ridge in the local landscape. Finally, criterion 5 raises the central issue of the landscape setting of settlements.
- 5.52 The Council accepts that SP Policies SP1 and SP4 are out of date. However, the reference in SP Policy SP1 to important skylines and views draws attention to a material issue. The policy does not need to specify every important skyline and view because while the contribution to character that skylines and views can make in a generally flat area is set out, the list of skylines is inclusive, not exhaustive⁹⁹. The appellant accepts that contention¹⁰⁰.
- 5.53 The Council also accepts the point made by the appellant¹⁰¹ that SP Policy SP4 functions as a criteria-based policy. It sets out decision-making criteria in relation to landscapes, including the Wolds, providing landscape protection commensurate with status. To that extent, the policy accords with paragraph

⁹⁴ C7 Paragraph 3.1

⁹⁵ C7 Section 2.4 onwards and 3.7 onwards and Lancaster x-e

⁹⁶ Lancaster x-e

⁹⁷ CD1.2

⁹⁸ Lancaster x-e

⁹⁹ CD1.1 Page 122 Table 9.1

¹⁰⁰ Frampton x-e

¹⁰¹ Frampton x-e

- 113 of the Framework. The Council accepts that the policy should be applied so as to incorporate consideration of undue, rather than any harm¹⁰².
- 5.54 The Council accepts that SP Policy ENV6¹⁰³ is out of date because it does not incorporate reference to the significance of a designated heritage asset or the contribution setting makes to that significance, as set out in the Framework¹⁰⁴.
- 5.55 The combination of SP Policy SP4 and LP Policy EN3 show that the appeal site lies in a landscape that is demonstrably of value, as set out in the Framework¹⁰⁵. It does not rely on being valued by local people; the value is recognised by the development plan.
- 5.56 The DSD attracts limited¹⁰⁶ or very limited¹⁰⁷ weight and the policies therein count for little in decision-making terms at this time.
- 5.57 Both the Council and the appellant have conducted their own planning balance. Plainly the Secretary of State will need to form a view on the benefits and adverse impacts. When it comes to the balancing exercise, the Council accepts that the appeal should not be dismissed unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits¹⁰⁸.
- 5.58 The Council submits that the adverse impacts are not simply those to which any and all commercial wind energy schemes would bring. The appeal proposal would bring about particular harm to the character of a landscape valued through the 2005 LCA and the development plan. It would harm the landscape setting of settlements and bring about significant visual effects eroding living conditions for a large number of local residents. It would bring about less than substantial but still significant harm to the setting and thereby the significance of designated heritage assets at Burton Agnes Hall. The accumulation of these harmful impacts would significantly and demonstrably outweigh the benefits.
- 5.59 While the Council agrees that the WMS¹⁰⁹ and the subsequent guidance¹¹⁰ introduce no new policy, it is not an empty gesture. As the nature of the debate on the WMS in the House of Commons¹¹¹ demonstrates, it is a reminder of the balance to be struck in cases like that at issue and the care with which such a task needs to be approached. The Council is entitled to expect the Secretary of State to act in accordance with the WMS and the guidance when arriving at a decision.

Conclusion

- 5.60 The Council submits that the appeal should be dismissed.

6. The Case for Local Residents

¹⁰² Lancaster x-e

¹⁰³ CD1.2 Page 142

¹⁰⁴ Lancaster x-e

¹⁰⁵ Paragraph 109

¹⁰⁶ Lancaster x-e

¹⁰⁷ Frampton x-e

¹⁰⁸ As per Paragraph 14 of the Framework

¹⁰⁹ CD10.15

¹¹⁰ ID17

¹¹¹ ID4

- 6.1 Local residents decided not to seek Rule 6 status. However, having expressed concern about the order in which evidence would be given, and the possibility that once local residents had given evidence they would not be able to respond to the appellant's evidence, I gave them the opportunity to make a closing statement. This was put in and delivered by Mrs Sue Burt¹¹² as local residents' joint position on the proposals, and forms the basis for this summary.
- 6.2 Local residents welcome the WMS¹¹³ and the subsequent guidance¹¹⁴ and believe that these mark a significant change in emphasis when the planning balance falls to be considered, giving comfort to local communities who have felt pressured into accepting wind farms.
- 6.3 This proposal is clearly in the wrong place as evidenced by the LCA¹¹⁵ and the AECOM¹¹⁶ study. The community has genuine and deeply felt concerns about a range of matters which can be dealt with under a range of headings.

Landscape and Visual Amenity

- 6.4 There is no current policy or strategy document published by the Council that assesses the area proposed for this development as one suitable for commercial wind farm development. The value of the Wolds is clearly set out in the LCA¹¹⁷. In the DSD¹¹⁸, currently under consultation, this value has been carried forward and the Wolds continue to be classed as an important landscape. Paragraph 216 of the Framework acknowledges that there will be a transition period as new plans are brought forward but accepts that they must be apportioned weight. The DSD ought to attract weight given that it is a clear indicator of future direction. The recent guidance¹¹⁹ confirms that Councils should not have to grant permission for onshore wind schemes outside areas considered suitable, when they judge the impact to be unacceptable. The appeal proposal is such a scheme.
- 6.5 Local residents feel strongly that just because a scheme has been 'mitigated', it does not automatically become acceptable. It follows that the appellant's claim that the issue is not whether the appeal proposal would result in significant effects on landscape character, but the extent to which those significant effects have been minimised¹²⁰, is refuted. Irrespective of previous iterations, the harm that the 6 turbine scheme now proposed would cause must be considered entirely in terms of the impact it would have.
- 6.6 Six 100 metre high and more moving, industrial structures on the dip slope of the Wolds will introduce unacceptably intrusive structures into a landscape designated as particularly sensitive to such development.

¹¹² ID20

¹¹³ CD10.15

¹¹⁴ ID17

¹¹⁵ CD7.10

¹¹⁶ CD2.2

¹¹⁷ CD7.10

¹¹⁸ CD2.4

¹¹⁹ ID17

¹²⁰ A2 Paragraph 8.6

Residential Amenity

- 6.7 It emerged during the Inquiry¹²¹ that the appellant formed their conclusions on residential amenity without visiting any of the affected properties. It further emerged that the appellant's planning witness felt able to verify the assessments without visiting the affected properties or all the viewpoints that were used in the assessment either¹²². In the case of one of the potentially worst affected properties, all that took place was a slow drive-past. The evidence presented must be treated with caution, therefore. From residents' points of view, it is appalling that such an important matter can be treated with such contempt. It is welcomed that the Council's assessment, for the purposes of the Inquiry, included visits to the various properties, and came to a conclusion diametrically opposed to that of the appellant.
- 6.8 Most of the homes assessed in the three villages around the site will suffer visual detriment and for some, the level will be severe. The visual impact of six 100 metre and more moving structures, on an upward slope behind these properties, which will make the wind turbines appear half as high again, would be oppressive and the harmful effect that would have on the living conditions of the residents warrants the dismissal of the appeal.
- 6.9 Local residents also contend that insufficient consideration has been given by the appellant to the wider impact of the wind turbines proposed on residents. Not only will the wind turbines be visible from within their properties and their gardens, but residents and their visitors will see them every time they leave or approach their village, and several times on any journey in and around the area. The proposal would fundamentally change the look and feel of the landscape and the rural living environment.
- 6.10 There has been much esoteric debate about 'landscapes with wind farms' versus 'wind farm landscapes' and the various characteristics of each. However defined, given the wind farms built and consented locally, what it boils down to is that residents of Burton Agnes, Thornholme, and Haisthorpe will find it impossible to travel in any direction from their houses without being confronted by massive wind turbines. It will be like living in the middle of one huge wind farm. That cannot be right.

Recreational and Heritage Matters

- 6.11 Local residents wish to draw the attention of the Secretary of State to the response of English Heritage in respect of the 6 turbine scheme¹²³. Whilst acknowledging the removal of the worst offending turbines from the original scheme in an attempt to mitigate the significant harm the original scheme would have caused to the setting of Burton Agnes Hall, English Heritage stated that '*The application [for six turbines] should be refused unless it can be clearly demonstrated that the harm will be outweighed by the public benefits of the proposals*'.

¹²¹ Hawkins x-e

¹²² Frampton x-e

¹²³ CD8.8

- 6.12 The appellant has by using national average as opposed to regional figures exaggerated the likely generation of renewable energy by some 13% and, by failing to adopt the DTI recommended methodology for assessing fossil fuel generation, exaggerated the carbon dioxide savings by some 30%.
- 6.13 Given that the benefits of the proposal have already been reduced by more than 33%, through the deletion of three turbines from the scheme, the balance of harm versus benefit must have moved significantly in the direction of the protection of the designated heritage assets which stand to suffer harm. English Heritage clearly perceived harm that was just below substantial. Local residents believe that the reduction of claimed benefits tips the argument back towards dismissal of the appeal.
- 6.14 The appeal site is close to many amenities which are well-used and highly valued by local people and tourists alike: the Hockney Trail, the Scenic Motor Route, and walking and cycling routes advertised by the Council under the 'big skies' banner. These would all be significantly damaged by the proposal.

Cumulative Impact

- 6.15 The cumulative effect of this wind farm along with others built, consented, and in the planning process, would be adverse and overpowering. The wind farms are completely out of scale and overwhelm local villages and their amenities. The doubling in size of the switchgear building and compound at this site, while simultaneously reducing the number of wind turbines, suggests that the current proposal may be the tip of the iceberg.

Other Matters

- 6.16 Local residents are concerned that the consultation process did not comply with the guidance extant at the time of the application or the Framework. It should be noted that the Framework states that one of its aims is to strengthen local decision-making. The 'golden thread' favouring sustainable development is recognised but, the Framework does not give carte blanche for development to occur at any cost. It contains protections against unsuitable form of development and provisions for consideration of the local perspective.
- 6.17 From the outset, the local view has been overwhelmingly against the proposal. All the surrounding Parish Councils, Bridlington Town Council, our elected Ward Councillors¹²⁴, the Council's Planning Committee, our MP and our MEP, have repeatedly voiced their opposition. The world-renowned local artist, David Hockney, whose paintings have shown and immortalised our landscape to the world, has also opposed this desecration of the Wolds.
- 6.18 Finally, the deep damage this experience has done to the community should not be under-estimated. It has been split from top to bottom. This is being replicated across the country. Local residents wish to draw to the attention of the Secretary of State that, particularly in rural England, it is the fabric of communities like ours that form the basis for the so-called 'Big Society'. Those communities need to be bolstered, not broken.

¹²⁴ ID6, ID14 and ID15

Conclusion

6.19 For all those reasons, the appeal should be dismissed.

7. The Case for the Appellant

7.1 The case for the appellant is fully set out in their Opening and Closing Statement to the Inquiry¹²⁵. It can be summarised under a series of headings:

Introduction

7.2 The main issues to be considered are the effect of the proposal on (1) the character and appearance of the area, including the WALP; (2) the setting and thereby the significance of the designated heritage assets at Burton Agnes Hall; and (3) the living conditions of local residents through visual impact.

7.3 All that needs to be considered in the prevailing policy context and any harmful effects set against the acknowledged benefits of the proposal.

7.4 As a precursor to that analysis, it is correct to note that very few matters were raised in evidence beyond those main issues. A number of local residents gave well-considered evidence to the Inquiry that went beyond those main issues such as the potential impact on biodiversity, birds, and tourism. However, none of these observations weigh heavily against the proposal.

7.5 In terms of the WMS¹²⁶ and the subsequent guidance¹²⁷, it was made abundantly clear in the House of Commons debate¹²⁸ that there is no new policy. Rather, the objective is to ensure that decisions reflect the environmental balance outlined in the Framework and, in particular, that any adverse impact from a wind farm is addressed satisfactorily¹²⁹.

7.6 In essence, the impacts of the proposal at issue were acceptable at the time of the originating application or have been made acceptable through subsequent amendments.

7.7 The appellant has addressed the bullet points set out in the WMS and repeated in the guidance¹³⁰. First of all, it has never been claimed by the appellant that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. The decision to be made can take into account the cumulative impact of built, permitted and proposed wind turbines on the basis of the evidence presented. Whether local topography is predominantly flat or undulating is a matter of judgement. However, local topography has been a key factor in the design of the proposal. Great care has been taken to ensure that heritage assets are properly conserved. As a result of concerns expressed by English Heritage¹³¹ and the

¹²⁵ ID1 and ID22

¹²⁶ CD10.15

¹²⁷ ID17

¹²⁸ ID4

¹²⁹ Paragraph 98 of the Framework refers

¹³⁰ Hawkins and Frampton in-c and x-e

¹³¹ CD8.7

Council¹³², three wind turbines were deleted from the original scheme and two others reduced in height.

- 7.8 Completing analysis of the WMS and succeeding guidance, it is important to note that the appellant conducted a very thorough pre-application consultation process with the local community¹³³. It is also fair to consider that while the meeting called by Rudston Parish Council was only open to those residents in the Parish, their consultation¹³⁴ does not show that the majority who gave their views were against wind turbine development in general. It cannot be concluded that there is overwhelming public opposition to the proposal.

Policy Matters

- 7.9 While the development plan retains its status, the key policy driver is the Framework and, in particular, paragraph 215. The Council has acknowledged¹³⁵ that the development plan is out of date so that the decision making procedure in paragraph 14 of the Framework is engaged.
- 7.10 Planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The appellant interprets 'significantly and demonstrably' as meaning, in this context, that there would need to be 'clear blue water' between the adverse impacts and the benefits, before a refusal of planning permission could be justified.
- 7.11 In terms of the Framework, paragraphs 93 to 98 are central and especially the latter which states that development of the sort proposed should be approved if impacts are (or can be made) acceptable, unless of course, material considerations indicate otherwise. It is also important to acknowledge that footnote 17 to paragraph 97 of the Framework sets out that for onshore wind energy development, planning authorities should follow the approach set out in EN-3¹³⁶ when read together with EN-1¹³⁷. Only for wind energy are the National Policy Statements brought directly into play by the Framework.
- 7.12 Of particular note, paragraph 5.9.18 of EN-1 advises on landscape and visual effects of energy development and paragraphs 2.7.46 to 2.7.51 of EN-3 deal with the landscape and visual effects of onshore wind projects. Paragraph 2.7.43 of EN3 is also important, advising that a time limit on a grant of permission is a material consideration when considering impacts on the historic environment. This advice is equally applicable to landscape and visual effects.
- 7.13 Notwithstanding paragraph 215 of the Framework, policies in the development plan remain material considerations to which some weight may be given. The dominant policy is LP Policy EN25. Given that the test of 'undue harm' it refers to brings a planning balance into play, it complies with the approach of the Framework. Having said that, the reasoned justification, concerning the WALP,

¹³² CD8.6

¹³³ Reflected in the Statement of Community Involvement CD10.1

¹³⁴ CD11.1

¹³⁵ ID2, ID21 Lancaster x-e

¹³⁶ CD6.9

¹³⁷ CD6.8

clearly does not. In terms of LP Policies EN2 and EN3, the assessment of development against harm is more rigorous.

- 7.14 The Council readily acknowledged¹³⁸ that for these policies to operate properly, the correct test should be that of no undue harm, as set out in LP Policy EN25.
- 7.15 LP Policy EN2 is of little assistance in terms of wind energy development being clearly aimed at new buildings, not wind turbines. However LP Policy EN3 does raise important issues. If it is read on the basis that it seeks to prevent undue harm, as the Council accepts¹³⁹, then it has substance.
- 7.16 However, there is a wider issue in the lack of any landscape character assessment to justify the designation of the WALP. The Council argues that the Landscape Character Assessment 2005¹⁴⁰ retrospectively underpins the designation and LP Policy EN3. The appellant does not see this as an appropriate approach¹⁴¹. Policies must be justified at the time of adoption, not later. The Landscape Character Assessment 2005 was published in order to inform the new Local Plan, not the old one.
- 7.17 The Council also sought to argue that it would be reasonable to assume that the values of the Ryedale Wolds Area of High Landscape Value can be applied to the area of the appeal site, which is within another local authority area. That, again, is an inappropriate approach. It is not possible to borrow policy from another local planning authority.
- 7.18 In any event, the reasoned justification for LP Policy EN3 is aimed at tourism and recreation¹⁴². That is not to suggest the policy is not applicable but given the unavoidable prominence of wind turbines, it needs to be approached with caution. Moreover, EN-3¹⁴³ makes it clear that local landscape designations should not be used in themselves to refuse consent, as this may unduly restrict acceptable developments.
- 7.19 JSP Policy SP1 refers to the character and distinctiveness of settlements, and their settings, and as set out in one of the Councils reasons for refusal¹⁴⁴, important skylines and views. As was made clear in evidence¹⁴⁵, it would be almost impossible for a wind farm in this area to fail to break the skyline.
- 7.20 In the context of wind energy development, this aspect of JSP Policy SP1 is not helpful. In relation to important views, Table 9.1 that appears below JSP Policy SP1¹⁴⁶ gives examples of such, as well as skylines. However, whatever construction the Council might place upon it¹⁴⁷, Table 9.1 focuses itself on particularly important views. No mention is made in Table 9.1 or the policy itself, of views generally.

¹³⁸ Lancaster x-e

¹³⁹ Lancaster x-e

¹⁴⁰ CD7.10

¹⁴¹ Frampton x-e

¹⁴² CD1.2 Paragraphs 3.18 and 3.19

¹⁴³ CD6.9 Paragraph 5.9.14

¹⁴⁴ CD10.7

¹⁴⁵ Lancaster x-e, Frampton and Hawkins in-c

¹⁴⁶ CD1.1 Page 122

¹⁴⁷ Lancaster in-c and x-e, Frampton x-e

- 7.21 Table 9.1 also assists in the interpretation of what JSP Policy SP1 means by its reference to important edges and settings to settlements. It seems clear that the policy seeks to identify and protect settlements where edges and setting play an important part. This does not stretch to all settlements.
- 7.22 In terms of JSP Policy SP4, and the way it approaches the Yorkshire Wolds Regional Landscape Character Area, the appellant takes no issue so long as the test is understood to be that no undue harm is occasioned, as the Council readily accepts¹⁴⁸. Like LP Policy EN20, JSP Policy ENV6 is, as accepted by the Council¹⁴⁹, out of date because it fails to include any sort of balancing exercise.
- 7.23 Considering the development plan as a whole, the Council acknowledges that it is out of date¹⁵⁰. LP Policy EN25 is the dominant policy and, while dated, accords with the approach of the Framework.
- 7.24 In terms of other policy documents, it is common ground¹⁵¹ that the DSD attracts little weight because of the stage of preparation it has reached.
- 7.25 The Interim Guidance on Wind Energy Development¹⁵² also carries little weight¹⁵³. With regard to the AECOM report¹⁵⁴, all agree that it is a strategic document¹⁵⁵. It is not a capacity study and even as a sensitivity analysis, it provides little assistance. Neither is there any real analysis of capacity in the 2005 Landscape Character Assessment.

Landscape Impacts

- 7.26 The appellant accepts that their material and evidence on landscape matters can be compared directly to that put forward by the Council. Some points of clarification are needed, however. Both the appellant and the Council, in their evidence, adopt an incremental approach to cumulative assessment. The appellant is correct to look at the purpose of recreational use, and of those using them¹⁵⁶.
- 7.27 In terms of the approach of the Council to vertical scale comparators, such criticisms could be made about wind energy development anywhere in lowland England. Such criticism is therefore unwarranted and contrary to the intentions of the Framework, EN1 and EN3. The Council also relies on advice in *Siting and Designing Wind Farms in the Landscape*¹⁵⁷ for its point that the proposed wind turbines being greater than a third of the height of the landform on which they are proposed.
- 7.28 Again, this would be the case anywhere in lowland England and, as with the previous point, it betrays the danger of applying advice on development in

¹⁴⁸ Lancaster x-e

¹⁴⁹ Lancaster and Carter x-e

¹⁵⁰ ID2, ID21 and Lancaster x-e

¹⁵¹ Frampton in-c and Lancaster x-e

¹⁵² CD2.3

¹⁵³ As found by the Inspector in the Fraisthorpe decision CD5.33 Paragraph 11 refers

¹⁵⁴ CD2.2

¹⁵⁵ A2 Paragraphs 5.8-5.25

¹⁵⁶ CD7.1 Paragraph 7.31 justifies that approach

¹⁵⁷ CD7.3

Scottish landscapes to lowland England. In relation to public attitude surveys, and the concept of valency, the appellant has adopted a precautionary approach and assumed landscape impacts to be adverse.

- 7.29 As a starting point, the detailed work of the Council's LVIA Team, and the advice it provided, to Officers and Members of the Council, requires careful analysis. It does not deserve the faint praise offered by the Council in evidence to the Inquiry¹⁵⁸. In relation to landscape sensitivity, there is information in the LCA¹⁵⁹ but this is not detailed enough to be used to analyse a specific proposal. There is no landscape capacity study.
- 7.30 The Council made much of the impact of the proposal on the setting of settlements but, notwithstanding what JSP Policy SP1 and LP Policy EN2 have to say on this matter, this is a consideration that attracts little weight. That is emphasised by the Council's use of relationships with the agricultural landscape, topography and geology in an attempt to demonstrate the importance to settlements of their physical surroundings¹⁶⁰. The same could be said of any English village and there is nothing out of the ordinary about the settlements at issue here.
- 7.31 In terms of landscape character impacts, it is plain, first of all, that suggesting that wind farms are not presently a characteristic of LCA 13D is too narrow a view. The landscape will inevitably be influenced by the permitted Fraisthorpe and Carnaby developments, albeit that they are in another LCA. Wind farms will be a clear characteristic of the general area of the appeal site.
- 7.32 In terms of LCA 15A, the Council agreed that views out were not a key characteristic¹⁶¹. As demonstrated by Viewpoints 11 and 18¹⁶², there will be no significant effects on the landscape character of this area. While the wind farm would be visible, it would be perceived as part of a different landscape area.
- 7.33 In terms of LCA 19C, there will be no significant landscape character effects¹⁶³ noting that the described sensitivity of the area to wind energy development is to development within that particular LCA. The Council acknowledged¹⁶⁴ that at most, the impact would be that of a landscape with wind farm, not a wind farm landscape¹⁶⁵.
- 7.34 The reasons behind the designation of the WALP are unclear. There would be significant changes in views of the WALP out to approximately 2.5 kilometres¹⁶⁶. However, the appeal site is on the southern boundary, and occupies but a very small part, of the WALP. The Council does not claim that the phrase 'valued landscape' in paragraph 109 of the Framework extends to any landscape that might be subjectively valued but accepts that the phrase

¹⁵⁸ CD7.14 C1 Paragraphs 3.1.1 to 3.1.6

¹⁵⁹ CD7.10

¹⁶⁰ C1 Paragraph 3.4.5

¹⁶¹ Steele x-e

¹⁶² CD 10.4 Figures

¹⁶³ A2 Paragraph 6.30

¹⁶⁴ Steele x-e

¹⁶⁵ C1 Paragraph 3.2.16 as corrected

¹⁶⁶ Hawkins x-e

refers to landscapes whose value is explicitly recognised through designation¹⁶⁷.

- 7.35 In order to interpret the differences between the appellant and the Council's evidence, a comparison table was produced¹⁶⁸. This shows agreement that significant visual effect would be experienced out to just over 7 kilometres from any of the wind turbines. Although the appellant and the Council disagree on the significance of visual effects from some viewpoints, in terms of the closer viewpoints, the conclusions are broadly the same.
- 7.36 The appellant makes no claim that the inevitability of significant landscape and visual effects from commercial wind energy development makes such effects acceptable¹⁶⁹. However, the inevitability of significant impacts means that there would have to be something more than the mere presence of significant impacts to overturn the presumption in favour set out in paragraph 14 of the Framework.
- 7.37 The Council confirmed that it took no issue with the design and layout of the proposal¹⁷⁰ and there is no evidence that the appellant has failed to minimise its impact. The issue is purely one of location.
- 7.38 However, there is no evidence of any key views of particular importance, that the landscape is small scale, any sense of wildness. Notwithstanding the WALP designation, there is nothing that elevates the sensitivity of the landscape to a level above that which might be expected. Against that, the wind turbines proposed are not the largest that might be proposed¹⁷¹, and the number of wind turbines proposed has been reduced pre- and post-application.
- 7.39 On top of that, the time limited nature of the permission sought is a material consideration¹⁷². The Council accepted¹⁷³ that wind energy development is reversible in landscape terms.

Living Conditions

- 7.40 Derived from a sequence of appeal decisions¹⁷⁴, the correct 'test' to apply to such matters is familiar and has been endorsed by the Secretary of State¹⁷⁵. No process for the evaluation of visual impacts is required, what is needed is a planning judgement.
- 7.41 As to the way in which the appellant assessed impacts, it is a counsel of perfection to suggest that each property must be visited. The appellant and their consultants are in a difficult position in attempting to gain access to properties of those who may object quite strongly to proposals. Ultimately, it

¹⁶⁷ Lancaster x-e

¹⁶⁸ ID5

¹⁶⁹ Noting CD6.8 Paragraph 5.9 and CD 6.9 Paragraph 2.7.48

¹⁷⁰ Lancaster x-e

¹⁷¹ As at Fraisthorpe for example CD5.33 refers

¹⁷² CD6.9 Paragraph 2.7.43 refers

¹⁷³ Steele x-e

¹⁷⁴ CD5.26 in particular

¹⁷⁵ CD5.7 Paragraph 10 of SoS Decision Letter

matters little because, armed with the evidence, site visits take place as part of the Inquiry process.

- 7.42 The separation distance between the wind turbines and a property is not the only relevant factor¹⁷⁶. However, it is a guide to the possibility of any adverse visual impact and the consequent effect on living conditions. Other appeal decisions¹⁷⁷ are instructive in this regard and at a minimum separation distance of 960 metres, notwithstanding topography, it would be surprising if any significant issue with visual impact was identified. There would be no failure of the required 'test'.

Cultural Heritage

- 7.43 Again, as confirmed by the Council¹⁷⁸, there are no differences in methodology that prevent proper comparison of the appellant and the Council's evidence. The appellant's evidence on archaeology was not contested¹⁷⁹. There was much agreement between the appellant and the Council in relation to the impact on the setting and thereby the significance of the designated heritage assets at Burton Agnes Hall. The joint position is that some harm would be caused but that it would be less than substantial and, following the approach of the Framework, would need to be balanced against the obvious public benefits of the proposal.
- 7.44 The Council accepted that, on its own, the harm to the setting and thereby the significance of the designated heritage assets at Burton Agnes Hall would be outweighed by the acknowledged public benefits of the proposal¹⁸⁰.
- 7.45 The question of how Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 should be applied is of central importance. Notwithstanding the conclusion in the Barnwell Manor Case¹⁸¹, now in the Court of Appeal, the appellant is of the view, consistent with the more recent Coleman judgement¹⁸², that the duty to have special regard can be properly discharged by a careful and detailed assessment of the impact of a proposal on the setting of the listed buildings at issue. By approaching matters in the manner set out in paragraphs 131 to 134 of the Framework, and making it plain that there has been special regard, the statutory duty will be discharged.
- 7.46 That conclusion has been underlined by the recent judgement in *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin) which highlights that special regard, as required by Section 66(1), and special weight, are incongruent concepts¹⁸³.

¹⁷⁶ As confirmed in CD10.4 and Hawkins x-e

¹⁷⁷ CD5.1-CD5.41

¹⁷⁸ Carter x-e

¹⁷⁹ A7

¹⁸⁰ Lancaster x-e

¹⁸¹ CD4.1

¹⁸² CD4.2 Paragraph 68

¹⁸³ ID23 and ID25

Conclusions

- 7.47 As set out, the Council and the appellant agree that the test of acceptability in terms of all the policies put forward is that there should be no undue harm, as set out in LP Policy EN25. It is also common ground that the development plan is out of date meaning that the test of acceptability, overall, is that set out in the final bullet point of paragraph 14 of the Framework. In that context, there would have to be 'clear blue water' between the adverse impacts of the proposal and the benefits to justify dismissal of the appeal. The benefits of the proposal are acknowledged to be significant. Against that, the only areas of dispute between the main parties relate to the impact on the landscape and living conditions. There is agreement as to the extent of the impact in cultural heritage terms.
- 7.48 The very fact that there are no issues that remain in relation to aviation, national landscape designations, nature conservation, noise, shadow flicker or anything else weigh in favour.
- 7.49 With all that in mind, and having regard to the Framework, and paragraphs 14, 98 and 187 in particular, there is the clearest of cases that the appeal should be allowed and planning permission should be granted for the proposal.

8. Interested Persons

- 8.1 A number of interested persons spoke at the Inquiry and most submitted a transcript, all of which are attached as Inquiry Documents for further perusal. In that context, and given that local residents views have been put forward and reported collectively through their Closing Statement, I have but briefly summarised the submission of each contributor.
- 8.2 **Councillor Andy Burton**¹⁸⁴ represents the Wolds Weighton Ward, sits on the Strategic Planning Committee of the Council and maintains that the appeal should be dismissed on the basis of the damage the proposal would cause, by itself, and in association with other schemes, to the landscape of the Wolds, and the setting of Burton Agnes Hall.
- 8.3 **Garry Burt**¹⁸⁵, a resident of Burton Agnes, and a retired post-graduate Chartered Engineer with experience of power generation for grid stability purposes, objects to the proposal principally on the basis of the effect on the surrounding landscape, and of the visual impact on living conditions of local residents, magnified by the position of the proposed wind turbines on a slope, raised well above properties in Thornholme and Haisthorpe.
- 8.4 Concern was also expressed about cumulative impact, traffic generation, the reliability of photo-montages, the financial motives of the appellant, and the efficacy of the figures put forward by the appellant relating to the capacity factor and carbon dioxide savings. The final conclusion put to the Inquiry was that if the recent political debate around the WMS was to be believed, and count for anything, the appeal should be dismissed.

¹⁸⁴ ID6

¹⁸⁵ ID7

- 8.5 In the discussion that took place on conditions, Mr Burt raised concerns about the potential for excess amplitude modulation to have a detrimental impact on living conditions of Thornholme residents, in particular, given the prevailing wind direction. It was suggested that a condition of the sort applied at Den Brook ought to be applied.
- 8.6 **Mrs Sue Burt**¹⁸⁶, a resident of Burton Agnes, objects to the proposal, raising a series of issues. First, the difficulties for local residents in following the vast quantity of material produced by the appellant were highlighted. Second, the WMS, and the recognition within it of the differing emphasis to be placed on proposals like that at issue, was welcomed.
- 8.7 The agreement between the appellant, the MoD and the Council over a Grampian condition to deal with radar concerns was noted but the Secretary of State was asked to consider how the uncertainty this would bring to whether the proposal would proceed would play with local residents' well-being. The visual impact of the wind turbines proposed was covered and, in particular, doubts were raised about the conclusion about it arrived at by the appellant and Council Officers. The impact on the landscape was also a source of concern and the extent of local opposition was made clear.
- 8.8 **George Hornsey**¹⁸⁷, a resident of Haisthorpe, objects to the proposal on a number of grounds notably the visual impact of the wind turbines proposed, on their own and cumulatively with others, on local residents and the surrounding landscape; the effect on the setting and thereby the significance of Burton Agnes Hall; archaeological matters; and the threat to wildlife, and birds in particular. Concern was also expressed about noise, the efficacy of the planning process, and flooding.
- 8.9 **John Daniels**¹⁸⁸, a Parish Councillor for Carnaby, which also covers Haisthorpe, objects to the proposed wind farm, drawing attention to the extent of local opposition in the context of the WMS. Concerns were also expressed about the potential impact on the health and well-being of local residents through ultrasound and infrasound, the need for a minimum separation distance between wind turbines and dwellings to be specified, and tourism.
- 8.10 **Kylie Daniels**¹⁸⁹, a resident of Carnaby expressed opposition to the proposal principally on the basis of the likely impact on tourism and, as a result, the local economy.
- 8.11 **Gerry Smith**¹⁹⁰, a local resident, put forward a comprehensive objection centred around the visual impact of the proposals and the manner in which this aspect has been dealt with in appeal decisions, with reference to the so-called 'Lavender test'. Issues were also raised about cumulative impact, tourism, the nature of the planning balance, whether 25 years could be viewed as temporary, and the development of the scheme and, in particular, the reduction in the number of wind turbines. Points were also made about

¹⁸⁶ ID8

¹⁸⁷ ID9

¹⁸⁸ ID10

¹⁸⁹ ID11

¹⁹⁰ ID12

whether bringing schemes like this forward is an urgent necessity given the number of wind farms operational, consented, and in the planning pipeline.

- 8.12 **Dr Chris Shipley** a resident of Thornholme, spoke in support of the proposal as the son of one of the landowners involved outlining that it is very easy to say that such schemes are a money-making vehicle for generators and wealthy landowners. In this case, the landowner that Dr Shipley spoke of operates a small dairy farm which has been under financial pressure for more than 10 years. It has continued operating because of tradition and the importance of the employment it secures. If financial pressures resulted in a move away from dairy to arable, there would be a loss of jobs.
- 8.13 The proposal would generate income that would assist three local family-owned farms and give security of employment for them and others. As a resident, Dr Shipley observed that he has no issue with the potential presence of wind turbines – they would be important in energy terms, neither offensive nor oppressive, and ought to be approved.
- 8.14 **William Dyson**, a local resident, observed that on 26 July 2013, when he was travelling to the Inquiry, the wind turbines at the Lisset wind farm were stationary.
- 8.15 **Peter Ayling**¹⁹¹ representing the Ramblers' Association, put in his submission to the Inquiry but because of the length of time other submissions took, had to leave before getting the opportunity to speak to it. In the interests of fairness, the submission merits recording, and reporting. It raises objection to the scheme on the basis of landscape impact and safety concerns because of the degree of separation between the wind turbines and the two Green Lanes that cross the site.
- 8.16 **Hilary Giles** who lives opposite the proposed entrance to the site, expressed concern about surface water run-off and the potential for flooding as well as lighting and visual impact.
- 8.17 **Cherie Blenkin** a resident of Roos, near Withernsea, asked that I visit Roos to gain an appreciation of the impact of the wind farms around the village, and in particular, the Tedder Hill cluster¹⁹², on the landscape, the setting of designated heritage assets, and local residents¹⁹³. Concern was also raised about the use of the minor material amendment procedure to amend proposals post-approval, and the difficulties this causes for local residents who can find that what is built is rather different to what they thought had been approved.
- 8.18 **Steve and Julia Hey** of the No to Wolds Wind Farms Group, took part in the discussion on conditions and raised issues around the potential for interference with mobile telephone networks and the need for a decommissioning bond to ensure that the wind farm will be removed, without difficulty, as the end of the life of the permission.

¹⁹¹ ID13

¹⁹² CD5.15 reproduces my decision on that case

¹⁹³ I undertook to do that but in a private, albeit professional, capacity as the situation around Roos has little or no bearing on the proposal at issue here. I visited Roos and its surroundings on the morning of 2 August 2013.

9. Conditions

- 9.1 A list of conditions agreed between the appellant and the Council was submitted to the Inquiry¹⁹⁴. These deal with time limits and site restoration (nos.1 to 4), issues around construction and associated traffic (nos.5 to 8), design and appearance (nos.9 to 13), ecology (nos.14 to 15), shadow flicker (no.16), potential interference with televisions (no.17), archaeology (no.18), the approved plans (no.19), highway matters (nos.20-21), community liaison (no.22), aviation safeguarding (nos.23-24), including the Air Defence Radar Mitigation Scheme, and noise (no.25). There is also a series of guidance notes that provide information relating to the noise condition.
- 9.2 I have analysed these conditions, and others suggested by local residents, as part of my conclusions below.

10. Inspector's Conclusions

- 10.1 The proposal was recovered for determination by the Secretary of State on 12 March 2013 because the appeal involves proposals which raise important or novel issues of development control, and/or legal difficulties.
- 10.2 The MoD originally objected to the proposal on the basis that it would have an unacceptable impact upon the Air Defence radar at Staxton Wold. However, following discussions with the appellant, the Defence Infrastructure Organisation wrote to PINS on 20 May 2013¹⁹⁵, withdrawing the objection, provided that a suitable Grampian condition to secure an Air Defence Radar Mitigation Scheme was imposed on any grant of planning permission. As a consequence, the Council did not pursue their first reason for refusal and there is clearly no good reason why, subject to that condition, which I deal with below, concerns about Air Defence radar should weigh against the proposal. **[2.3, 5.40, 7.48 & 8.7]**
- 10.3 However, the Council maintained its position that while the proposal at issue would bring benefits, it would have unacceptable landscape, cultural heritage,

¹⁹⁴ ID18

¹⁹⁵ CD10.14

and living conditions impacts. Local residents raised a number of other reasons why the scheme should be resisted too. **[5.58]**

- 10.4 Against that overall background, the main issue to be considered in this case is whether any benefits of the proposal are sufficient to outweigh any harmful impacts on the character and appearance of the surrounding landscape, the setting and thereby the significance of designated heritage assets, the living conditions of local residents, through visual impact, noise, and shadow flicker, in particular, and various other matters. **[7.2]**

The Policy Background

- 10.5 In terms of the development plan, the Council agrees with the appellant that LP Policy EN25 is overarching and that all other development plan policies need to be read in the light of the reference therein to renewable energy projects being acceptable provided that they do not cause undue harm to the landscape and living conditions, amongst other things. **[5.48-5.54, 7.9-7.23]**
- 10.6 However, while LP Policy EN25 is clearly aimed at proposals for renewable energy, like wind farms, it is just one policy of the development plan. It does not stand above other LP or SP policies and those policies need to be addressed on the basis of what they actually say, not what the parties consider they ought perhaps to say. The reference in paragraph 3.111 to how LP Policy EN25 ought to be applied, in the light of EN Policy EN3, adds weight to that conclusion. **[4.7, 5.50 & 7.13]**
- 10.7 While LP Policy EN25, read in isolation, might be said to be Framework compliant in some ways, it does not contain any explicit mechanism to balance benefits against harm. Neither, importantly, does it make any reference to how harmful impacts on the settings of listed buildings or other designated heritage assets ought to be addressed. The other relevant SP and LP policies contain no explicit or implicit means to carry out a balancing exercise that the Framework requires. **[4.1-4.8]**
- 10.8 It is correct to observe that the development plan is of some vintage but that, on its own, does not render it out of date. The DSD has yet to be examined and is, therefore, at too early a stage to be afforded anything more than minimal weight. Of more relevance, the relevant policies of the development plan are not consistent with the approach of the Framework. On that basis, having regard to paragraph 215 of the Framework, the relevant policies of the development plan must be considered to be out of date¹⁹⁶. **[4.9-4.10, 5.48, 5.56, 6.4, & 7.23-7.24]**
- 10.9 Obviously, this does not obviate the need to assess the proposal against the development plan. However, it does mean that the Framework and paragraph 14 in particular, carries more weight as a material consideration. For decision-taking¹⁹⁷ this means, of relevance, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The main issue needs to be considered in that light. **[5.48, 5.57 & 7.47]**

¹⁹⁶ CD4.2 Paragraph 7 sets out the Courts' view on the matter

¹⁹⁷ Unless, of course, material considerations indicate otherwise

Benefits

- 10.10 One of the core planning principles of the Framework is that planning should support the transition to a low carbon future in a changing climate and encourage the use of renewable resources (for example, by the development of renewable energy). Reflective of wider Government energy policy¹⁹⁸, paragraph 93 of the Framework explains that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, and minimising vulnerability, and providing resilience, to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. Paragraph 98 says that applicants for energy development are not required to demonstrate the overall need for renewable or low carbon energy. Moreover, it must be recognised that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. **[4.13]**
- 10.11 As set out in the SoCG¹⁹⁹, each of the 6 wind turbines proposed would have a maximum rated generating capacity of 2MW. On that basis, the wind farm would have a maximum rated generating capacity of 12MW. The original DAS²⁰⁰ set out that on the basis of the original maximum rated generated capacity of 18MW the proposal would generate, on average, as much electricity as is used by approximately 10,000 local households in a year, and save about 24,000 tonnes of Carbon Dioxide emissions.
- 10.12 Clearly the reduction from 9 wind turbines as originally proposed to the 6 at issue in this appeal, will reduce those figures to about 6,600 local households and 16,000 tonnes of Carbon Dioxide. Even if these figures are further reduced in accordance with the criticisms made by local residents, reducing the number of households by 13%, and the carbon dioxide emissions saved by 30%, they remain significant nonetheless. **[5.46, 6.13 & 8.4]**
- 10.13 The UK Renewable Energy Roadmap Update 2012²⁰¹ confirms that the UK is legally committed to delivering 15% of its energy demand from renewable sources by 2020 contributing to our energy security and decarbonisation objectives. The UK appears to be on track to meet that target and some local residents have said that weighs against the proposal. However, the figure of 15% is not a ceiling and Government energy policy clearly expects renewable energy schemes to have a pivotal role to play in the UK energy mix in the decades beyond that²⁰². **[8.11]**
- 10.14 The Climate Change Act requires the UK to reduce greenhouse gas emissions by at least 80% below 1990 levels by 2050²⁰³. On that overall basis, EN-1 states that it is necessary to bring forward new renewable energy generating projects as soon as possible and the need for new renewable energy generation projects is therefore urgent²⁰⁴. While there are other ways in which

¹⁹⁸ CD6.8 and 6.9 in particular and as outlined in CD10.11 (SoCG)

¹⁹⁹ CD 10.11 Paragraph 4.1

²⁰⁰ Design and Access Statement (Appeal Documents) CD10.1

²⁰¹ CD6.14 Paragraph 1.1

²⁰² CD6.14 Ministerial Foreword

²⁰³ CD6.14 Paragraph 1.3

²⁰⁴ CD6.8 Paragraph 3.4.5

renewable energy can be generated, EN-1 is clear that onshore wind is the most well-established and currently the most economically viable source for renewable electricity available for future large-scale deployment in the UK²⁰⁵.

- 10.15 While the capacity factor of 12MW is less than that originally proposed and the figures for households served and carbon dioxide emissions saved, need to be downgraded accordingly, bearing in mind the approach of the Framework, reflective of wider Government energy policy, the renewable energy that the scheme would generate attracts significant weight in its favour. Paragraph 38 of the recent guidance indicates that the capacity factor can be useful information in considering the energy contribution to be made by a proposal, particularly when a decision is finely balanced. **[10.12]**
- 10.16 As set out in the appellant's evidence²⁰⁶, and not directly disputed, the construction, operation and ongoing maintenance of the proposal will generate a relatively significant amount of economic activity in the local area and the region. Paragraph 18 of the Framework makes plain the Government's commitment to securing economic growth in order to create jobs and prosperity. In that context, the economic activity the proposal would generate attracts significant weight on the positive side of the balance. On top of that, the proposal would also produce an income for the landowners that would improve the ongoing viability of the farms concerned. Paragraph 28 of the Framework strongly supports the development and diversification of agricultural and other land-based rural businesses in order to support a prosperous rural economy. This is an added benefit of the proposal. **[8.12]**

Landscape

- 10.17 The appeal site lies within the Yorkshire Wolds in Landscape Character Type 13: Open High Rolling Farmland²⁰⁷ as set out in the East Riding Landscape Character Assessment of 2005.
- 10.18 The relevant key characteristics of this landscape character type are helpfully set out as being: the elevated rolling landform of the Yorkshire Wolds dip slope falling east; a large scale open landscape with long distance views and dominated by the sky; large and very large rectilinear arable fields; fragmented hedgerows that are severely clipped; and very few trees resulting in an open landscape²⁰⁸.
- 10.19 LCT13 is described as attractive with few skyline features that draw the eye and sensitive to change. In dealing with sensitivity and capacity, the study makes the point that adding structures such as wind turbines would add uncharacteristic features to the Wolds and the land form would facilitate long distance views of them, thus extending the potential visual impact. However, the point is also made that there are extensive views across the landscape which is relatively featureless and the suggestion that wind turbines will be

²⁰⁵ CD6.8 Paragraph 3.4.3

²⁰⁶ A6 Paragraph 5.1(2)

²⁰⁷ Referred to hereafter as LCT13

²⁰⁸ CD7.10 Page 167

prominent and vertical features to be avoided has to be seen in that light²⁰⁹.
[5.10]

- 10.20 The appeal site also lies within the WALP. Paragraph 3.20 of the reasoned justification to LP Policy EN3 states that commercial wind farms are likely to be an incongruous element in the landscape, conflicting with the object of the landscape designation. However, it is not altogether clear what the objective of the designation was, at the point when it was made. [4.6]
- 10.21 It is simply untenable to attempt to import the objectives articulated by a neighbouring planning authority for a similar designation. Moreover, LP Policies EN3 and EN25, and the reasoned justification in paragraphs 3.20 and 3.111, date back to 1997. The Landscape Character Assessment followed in 2005. The latter was clearly written in full cognisance of the former. It is very difficult to see the Landscape Character Assessment as an objective assessment in that light because its conclusions had been largely pre-determined by the policy position in relation to wind energy proposals already adopted. The weight that can be attached to its conclusions about sensitivity and capacity need to be approached with caution, therefore. [5.22, 7.16-7.17 & 7.34]
- 10.22 It is also correct to note that EN-1, the relevance of which is emphasised by paragraph 5.9.14 of the Framework and footnote 17 advises against using local landscape designations in such a prescriptive way. Nevertheless, the Council, in closing, and others, argue that because of the designation, which is intended to be taken forward in the DSD, this is a 'valued' landscape for the purposes of paragraph 109 of the Framework that should be protected and enhanced. [5.55, 6.4, 7.18 & 7.34]
- 10.23 Six character sub-areas have been identified within LCT13. The appeal site is within Character Area (LCA) 13D: North Wolds Plateau Farmland. It is accepted that this sub-area would suffer significant direct landscape effects in an area between Woldgate and the A614 north-south, and from Harpham Lane to Carnaby Field, west-east and my site visits bore that out. This is an area 2.5 kilometres by 6 kilometres. The appellant accepts that there would be significant adverse impacts for high-sensitivity receptors beyond that. [5.12-5.13, 6.6 & 7.35]
- 10.24 However, as EN-1 and EN-3²¹⁰ make clear, energy developments, and in particular, commercial-scale wind turbines, are inevitably going to lead to significant landscape and visual effects for a number of kilometres around a site. While opinions about wind turbines might vary, bearing in mind that the Framework tells us that we should recognise the intrinsic character and beauty of the countryside, the precautionary approach adopted, of assuming those effects to be harmful, is correct. In that context, the central task of the decision-maker is to assess the degree of harm that would be caused in landscape terms. [4.15, 5.2, 5.6, 7.12 & 7.28]
- 10.25 As a background to that assessment, the WMS and subsequent guidance set out that local topography should be a factor in assessing whether wind turbines have a damaging impact on the landscape (recognising that the

²⁰⁹ CD7.10 Page 175

²¹⁰ CD6.8 Paragraph 5.9.18 and CD6.9 Paragraph 2.7.48

impact on predominantly flat landscapes can be as great or greater than on hilly or mountainous ones). **[4.16]**

- 10.26 The wind turbines proposed would be relatively significant in height, breaking the skyline, and their moving presence in the landscape would be readily apparent for a significant distance around the site. The anemometry mast and the sub-station compound would also be visible but the former would be lower in height than the wind turbines and, subject to its detailed design that could be secured by condition, a matter addressed below, less conspicuous because of the lattice nature of the structure. The sub-station compound would be largely screened by existing hedgerows from the right of way that would pass next to it and carefully designed, again something that could be controlled by condition, it would not figure prominently in longer-range views.
- 10.27 However, the essential qualities of LCT13: the elevated rolling landform; its large scale open nature, underlined by extensive rectilinear arable fields, clipped hedgerows and lack of trees; and the long distance views dominated by the sky, mean that the wind turbines and associated infrastructure proposed, while prominent relative to scale indicators, and elevated above the Woldgate ridge, would not appear altogether incongruous or out of scale, in their landscape setting.
- 10.28 I recognise that these are the very qualities that the East Riding Landscape Character Assessment uses to suggest that LCT13 is particularly sensitive to wind turbine development. I disagree; far from making the landscape more sensitive, these qualities, and in particular the grand scale of the landscape, and the long-distance views, dominated by the sky, would serve to allow a relatively comfortable absorption of the proposal. It is instructive to note that the Council's LVIA Team took a broadly similar view in considering the original application. **[5.8, 5.10, 5.20-5.21, 7.29 & 8.7]**
- 10.29 Dealing with more specific points, the Woldgate ridge is an important landscape feature and the abrupt change in topography and landscape character that occurs where the dip slope meets the A614 does lead to a sharp definition of the boundary of LCA13D with the adjoining landscape character area, LCA19C: North Holderness Open Farmland, that runs into LCA 20C: Bridlington to Hornsea Coast. **[5.14-5.15]**
- 10.30 Commercial scale wind turbines are a characteristic of the coastal plain and that impression will be heightened if and when the wind farms at Fraisthorpe and Carnaby are constructed. However, the significant contrast between the landscape characters of the dip slope that the wind turbines proposed would be set upon, and the coastal plain, and the sharp definition of the boundary between them, highlighted by the Council, means that the proposal would not serve to undermine the contrast in character between the two in any significant way. The appeal site would not appear to be part of the coastal plain if the proposal at issue was implemented because the obvious contrast in landscape characters, and the sharp boundary between them, would remain largely intact. **[5.16 & 7.31]**
- 10.31 There would be views of the wind turbines proposed from south-facing slopes and ridges in particular within the neighbouring LCA15A: Gypsy Race Corridor,

Rudston to Bridlington. However, as viewpoint 11²¹¹ readily demonstrates, the wind turbines would be readily visible but clearly perceived as located on the other side of the Woldgate ridge, and not part of the immediate surroundings of any viewer within LCA15A. [5.17 & 7.32]

- 10.32 The development plan stresses the importance of the setting of settlements. While the same point could be made about historic settlements anywhere in the UK, to varying degrees, the reasons why Burton Agnes, Haisthorpe and Thornholme grew up in the locations they did can be very clearly understood from the surrounding landscape. However, the wind farm proposed would not alter those qualities of the landscape, like the soils, the terrain, and sources of water, that allow the relationship to be appreciated. As such, while the proposal would be clearly visible from them, it would not harm the setting of these settlements in the landscape. [5.23-5.24 & 7.30]
- 10.33 In terms of cumulative impact on the landscape, the WMS and subsequent guidance make clear that decisions should take into account the cumulative impact of wind turbines and properly reflect the increasing impact on the landscape as the number of turbines in an area increases. The SEI of May 2013²¹² gives details of wind turbines operational, under construction, consented, and in planning, within 30km of the appeal site and it is fair to say that the area is one that is clearly an attractive one for wind energy development, from commercial wind farms, like that at issue, down to single, much smaller, turbines.
- 10.34 The baseline for an assessment of cumulative impact is important to identify as a starting point. In my view, it needs to take account of operational wind farms and turbines, obviously, and assume that those under construction, and consented, will come forward. Those in planning should attract little weight in the assessment because there is no certainty that they will be permitted and therefore come to fruition. The cumulative impact of this proposal on the landscape therefore needs to be assessed chiefly, in the light of the nine, 130m high wind turbines recently permitted at Fraisthorpe, about 5km south-east of the appeal site, the two, 125m high wind turbines at Carnaby, about 5km east, and the operational wind farm at Lissett, about 7km south.
- 10.35 If the proposal was implemented, and the wind farms at Fraisthorpe and Carnaby are built, there are places where the proposal would be readily visible in concert with other wind farms. Viewpoint 1 of the May 2013 SEI²¹³ gives a good indication of one view from Woldgate. Walking in a south-easterly direction along the rights of way across the appeal site, a viewer would pass through the proposed array, with Lissett visible directly ahead, and Fraisthorpe and Carnaby off to the left.
- 10.36 However, the distance between the groupings of wind turbines is such that they would be readily perceived as being separate from each other. The grand scale of the landscape and the open views across it, means that the form of the landscape would retain visual dominance and there would be no sense of it

²¹¹ CD10.4 Figures

²¹² CD10.5 Figures: Figure 9.1

²¹³ CD10.5 Figures

being overwhelmed by wind energy development. On that basis, the cumulative impact on the landscape would not be significant. **[5.26 & 6.15]**

- 10.37 Clearly there are lots of leisure experiences available in the area ranging from Burton Agnes Hall, walking and cycling routes, and a Scenic Drive. Wind turbines are already a characteristic of all of them and from what I saw at my site visits, have no significant detrimental impact upon them. The proposal would add to the number of wind turbines that bear on the leisure experiences but given that the form of the landscape would retain visual dominance that addition would not lead to any particular devaluation of those experiences. **[5.28 & 6.14]**
- 10.38 Another factor to consider is the temporal nature of what is proposed and the fact that it is reversible. As the proposal is promulgated, it would be in place for twenty five years then it would be decommissioned and the landscape restored to its former condition. It was suggested that if planning permission is granted for the proposal, it would be very likely that the appellant would seek permission to replace the wind turbines during the twenty five year period, or when it came to an end, meaning that the wind turbines would persist for longer. That may be so, but much was made of the fact that twenty five years is a long time in terms of the human lifespan too. That is inescapable but it is a long time in terms of human advancement too.
- 10.39 At present, as EN-1 reflects, wind turbines are the most well-established and economically viable source for renewable electricity and the benefits that provides in combating climate change and improving energy security. It is simply not possible to say with any degree of certainty that the situation will be the same in 2040, or thereabouts. It may well be that by then, other ways of generating renewable or low-carbon electricity will have become established. In that light, the temporary and reversible nature of the proposal must be highly material to consideration of landscape, and some other impacts. **[5.3, 7.39 & 8.11]**
- 10.40 Drawing all these points together, it is my conclusion that for the reasons set out, the harm the proposal would cause to the landscape, considered in isolation, or in concert with other schemes operational and consented, would be limited. Moreover, the harm that would be caused would be both temporary and reversible.
- 10.41 Nevertheless, that there would be some harm as a result of it renders the proposal contrary to JSP Policies SP4 and SP5 and LP Policies EN2 and EN3 and their replacement policies in the DSD. With reference to paragraph 109 of the Framework, the proposal would not protect or enhance this valued landscape. However, it is not correct to choose one element of the Framework, like paragraph 109, and use it to suggest that the failure of a proposal to accord with that, means that it fails to accord with the Framework overall. The correct place to carry out that exercise is when balancing all the disparate considerations that come to bear. I return to that below. **[4.2-4.6, 5.29 & 7.38]**

Heritage Assets

- 10.42 The appeal site is surrounded by a wide range of heritage assets. These include Scheduled Ancient Monuments²¹⁴, listed buildings, conservation areas and other recorded archaeological remains and hedgerows of historic importance. These are set out in detail in the ES²¹⁵ and in the Council's evidence²¹⁶.
- 10.43 Notwithstanding the plethora of assets in the area, the Council has concentrated its case on the complex of designated heritage assets in and around Burton Agnes, considering that these are the only heritage assets that will suffer harmful impacts on their settings as a result of the proposal. English Heritage shares those concerns but also refers to the impact on a series of what are termed archaeological monuments in the Woldgate to Rudston area²¹⁷. Haisthorpe Hall, which lies to the east of the proposal, also needs to be considered given the representations of the occupier²¹⁸. **[5.30 & 7.43]**
- 10.44 The approach of the development plan policies specific to designated heritage assets is to inhibit any harm to the assets themselves, or their settings. However, all accept that these policies are out of date because this does not reflect the rather different approach to considering impacts on heritage assets, designated, or otherwise, set out in the Framework. **[4.3 & 4.8]**
- 10.45 However, before embarking on the Framework approach to listed buildings, it is necessary to consider Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 having regard to recent developments in the Courts which were referred to by the main parties at the Inquiry. These are *East Northamptonshire and others v Secretary of State for Communities and Local Government and another* [2013] EWHC 473 (Admin)²¹⁹ and *Coleman v Secretary of State for Communities and Local Government and others* [2013] EWHC 1138 (Admin)²²⁰. The more recent judgement in *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin), was the subject of post-Inquiry submissions by the main parties^{221 222}.
- 10.46 The Council suggested at the Inquiry that the decision of Lang J does not run a different course to that of Parker J and on that basis, pending the consideration of the Court of Appeal, the decision maker must follow the course it sets in terms of the weight to be given to any finding of harm to the setting of a listed building. However, I do not agree with that assessment and there is an obvious difference between those two. **[5.38-5.39 & 7.45-7.46]**

²¹⁴ Referred to hereafter as SAMs

²¹⁵ CD10.2 Chapter 10

²¹⁶ C4 and C5

²¹⁷ CD8.10

²¹⁸ CD10.1 (Third Party Letters)

²¹⁹ CD4.1

²²⁰ CD4.2

²²¹ It should be noted that the Inspector reporting on the current appeal conducted those in East Northamptonshire and Bedford as referred to in this paragraph.

²²² ID23, ID24 & ID25

- 10.47 Essentially, the former considers that paying ‘special regard’, as required by Section 66(1) means attaching considerable importance or ‘special weight’ to any harm to a listed building, or its setting, as a material consideration²²³. In line with that conclusion, the Inspector was criticised for treating harm to the setting of a listed building and the wider benefit of the wind farm proposal as if those two factors were of equal importance. This analysis appears to suggest that the approach espoused by paragraphs 133 and 134 of the Framework that I rehearse below, is flawed.
- 10.48 The second case²²⁴ takes a different course. The judgement concludes that the Inspector did give ‘special regard’ in terms of Section 66(1) and did so by carrying out a careful and detailed assessment of the impacts on the setting of the listed buildings in question, evaluating those impacts, and then weighing those impacts against the benefits of the proposal, in accordance with the approach of the Framework. In simple terms, the second judgement found that following the path set out in the Framework is analogous with paying ‘special regard’ as required by Section 66(1). In *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin)²²⁵ Jay J accepted that ‘special regard’ and ‘special weight’ are incongruent concepts and declined to follow Lang J on this point.
- 10.49 The judgement of Lang J treads a very different path to those that followed and it may be that this point about ‘special regard’ and ‘special weight’, along with I am sure, others, is considered by the Court of Appeal in due course. It is my view that as settled law, the judgements of Parker J and Jay J are to be preferred and contrary to the point put by the Council in closing, this is, in effect, the view of their cultural heritage witness too²²⁶. On that basis, a Framework compliant approach to the impact of the proposal on the setting of the listed buildings affected complies with the statutory requirement to have ‘special regard’. [7.45]
- 10.50 Paragraph 132 of the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. It goes on to note that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and notes that substantial harm to or loss of a Grade II listed building should be exceptional, and designated heritage assets of the highest significance, like SAMs or Grade II* registered parks and gardens, wholly exceptional.
- 10.51 Paragraph 133 goes on to note, of relevance, that where a proposed development would lead to substantial harm to or total loss of significance of a designated heritage asset, consent²²⁷ should be refused unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss. Paragraph 134 says that where a proposed development will lead to less than substantial harm to

²²³ CD4.1 Paragraph 46

²²⁴ CD4.2 Paragraph 68

²²⁵ ID23 Paragraphs 36 and 40

²²⁶ C5 1.18

²²⁷ I take that term to include permission

the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

- 10.52 The WMS confirms that great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact on views important to their settings. The subsequent guidance says that a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset. [4.16-4.17]
- 10.53 The Framework defines the setting of a heritage asset as the surroundings in which it is experienced. Its 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 guidance²²⁸ is that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Significance is defined as the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance, we are told, derives not only from a heritage asset's physical presence, but also from its setting.
- 10.54 As set out in the Council's evidence²²⁹, there are 20 designated heritage assets in the village of Burton Agnes. All lie within the Burton Agnes Conservation Area which is also a designated heritage asset. The Council has dealt with most of these as a single, composite Burton Agnes Hall asset. The principal buildings in the composition are Burton Agnes Hall (listed Grade I), the associated Gatehouse (listed Grade I), and the preceding Manor House (listed Grade I and a SAM). There are also ancillary buildings including stables and a coach house (listed Grade II) and the remains of a treadmill for raising water (listed Grade I). The buildings are surrounded by walls (listed Grade II) and there is also a walled garden (listed Grade II). The east and south gardens to the hall contain 6 statues (listed Grade II), and a sundial (listed Grade II).
- 10.55 Other listed buildings within Burton Agnes are the medieval Church of St Martin (listed Grade I) and its rectory (listed Grade II), a former Methodist Church (listed Grade II) and three farm houses and cottages (listed Grade II).
- 10.56 The archaeological monuments referred to by English Heritage include the Rudston Beacon (a SAM and a listed building) and nearby associated barrows, single barrows at South Side Mount (a SAM), and Sands Wood (a SAM), and the site of the Rudston Cursus 'A' (a SAM). Details are included in the appellant's evidence²³⁰.
- 10.57 Reference is also made to Woldgate itself, which follows the course of a Roman Road which is believed to have followed the line of an earlier, prehistoric ridgeway.
- 10.58 Dealing with the impact of the proposal on these assets, the Methodist Church, farm houses and cottages in the village of Burton Agnes are only appreciated

²²⁸ CD8.4 Paragraph 2.2

²²⁹ C4 and C5

²³⁰ A7

close up and the contribution setting makes to their significance is therefore limited to their immediate surroundings. Given the relationship of the proposed wind farm, and others built and permitted in the surrounding area, to these assets, and the degree of separation involved, it would have no impact on their setting, or the contribution setting makes to their significance, whether considered in isolation, or in concert with other built and permitted wind turbines.

- 10.59 The Church of St Martin and associated Rectory lie to the immediate west of Burton Agnes Manor House. The area around the Church contributes to significance in two ways. The immediate setting, adjacent to the medieval manor and the later Burton Agnes Hall makes plain the historic connections between them and the nearby presence of the Rectory adds to that.
- 10.60 The wider setting is also important. More recent changes, notably the growth of trees in the village and the woodland to the north, mean that the Church does not have the prominence in the landscape it would have had in the past. However, the tower remains visible, and acts as a marker for, or focal point of, the village in some views from the north, including the Rudston Road, and from the south-west, around Harpham.
- 10.61 The wind farm proposed would be located around 1.5km to the north-east of the Church. Screening from trees means that the wind turbines would not be visible from the immediate surroundings of the Church and that part of its setting, and the setting of the Rectory, and the contribution those settings make to significance, would be unaffected by the proposal.
- 10.62 Combined views of the Church and the wind turbines would be possible from the vicinity of Harpham²³¹ about 1.5km to the south-west of Burton Agnes. However, in these views, the tower of the Church is not prominent on the skyline because of the backdrop of the trees to the north. While the wind turbines would compete for attention with the tower of the Church, its position as a marker for the village would not be undermined to any significant degree. As a consequence, the harmful impact on the setting of the Church, and the contribution that setting makes to significance, would be very limited. Again that conclusion holds true whether the proposal is considered in isolation or cumulatively with other wind farms built and permitted in the area.
- 10.63 The setting of the Burton Agnes Hall asset contributes to the significance of the individual assets within it in a series of ways. First, the arrangement of the Gatehouse and the garden to the south of the Hall, punctuated with statuary, creates a dramatic approach to the imposing south façade of the Hall. The gardens as a whole provide a most attractive milieu for the hall and associated buildings that allow visitors to appreciate the ensemble as the grand architectural statement it was intended to be. [5.33]
- 10.64 Several rooms in the hall, and in particular the long gallery, have been designed to provide views out, from the interior, over the grounds, and into the surrounding countryside. The ha-ha at the eastern extremity of the garden, overlooking parkland with avenues of trees, all serve to extend the

²³¹ CD10.4 Figures: Viewpoint 16

influence of the Hall out into the wider landscape, encouraging views out.
[5.33]

- 10.65 The avenues also create channelled views towards the Hall, including that from the 400th Anniversary Wood. The woodland walk to the north of the Hall encourages visitors to wander further away from the hall, and possibly pause (there are benches to sit on), and gain glimpses of the wider landscape through the tree cover. [5.33]
- 10.66 The wind farm proposed would sit roughly 1.5km to the north-east of Burton Agnes Hall itself and about 1.1km from the north end of the woodland walk. Visibility of the wind turbines proposed from within the Burton Agnes Hall asset has been illustrated through a series of viewpoints²³² and other means²³³. Up to six turbines would be visible from parts of the east and south gardens, most prominently from the ha-ha, illustrated by Viewpoint 6. Figure 758_1460 (revised) predicts that up to three wind turbines would be visible to the right of the designed view of the south façade of the hall approaching from the Gatehouse. Viewpoint 7 suggests that notwithstanding screening from trees, views of the turbines might well be possible from east facing windows of the hall, particularly in the Winter months.
- 10.67 There would be views of the wind turbines here proposed from the woodland walk, most prominently in Winter, and Viewpoint 8 shows that blade tips would be visible behind the walled garden in views of the Gatehouse from the public car park and picnic area. There would also be potential for the wind turbines to be visible in the background of longer-distance views of the asset from the south and south-west.
- 10.68 It is correct to note too that there are already groups of wind turbines visible from the complex²³⁴. Most prominent is the Lissett wind farm, about 6km to the south, which sits in the background to the Gatehouse when it is viewed from the Long Gallery of the Hall. The wind farm permitted on appeal at Fraisthorpe (about 5.5km to the east) and the pair of wind turbines permitted by the Council at Carnaby (about 5.5km to the east, but north of Fraisthorpe), will, if built, be visible from various points in and around the Hall and gardens.
- 10.69 Visibility of the wind farm from and in juxtaposition with the Burton Agnes Hall asset means that there will be an impact on the settings of the individual assets within, and on the contribution those settings make to significance. This would manifest itself in a number of ways.
- 10.70 First, the wind turbines would be a distracting, modern, discordant presence in views of the Hall from the south and east, competing for the viewer's attention on the very important axial approach through the Gatehouse towards the Hall.
- 10.71 The visual presence of the wind turbines in views out from the east facing windows would have a similar impact on an appreciation of the interior of the Hall. The prominent presence of the wind turbines in views out from the ha-ha

²³² CD10.5 Figures: Viewpoints 6, 7, and 8, and CD10.4 Figures Viewpoints 38 and 39

²³³ CD10.4 Figures: Figures 758_1459 (revised) and 758_1460 (revised)

²³⁴ CD10.5 Figures: Figures 9.89a, 9.89b, 9.89c, 9.90a, 9.90b and 9.90c give an indication of scale using wireframes

and from the woodland walk would detract from the existing relationship between the asset and its rural surroundings. **[5.35]**

- 10.72 As a consequence of all that, the impact on the settings of the individual assets within the Burton Agnes Hall asset, and on the contribution those settings make to significance of the individual assets would be harmful and would compound the harmful impacts already occasioned, for much the same reasons, by the operational wind farm at Lissett and those permitted at Fraisthorpe and Carnaby.
- 10.73 The significance of the Burton Agnes Conservation Area is centred on the buildings, ranging from Burton Agnes Hall itself down to those of humbler origins within, and the spaces between them. The contribution that setting makes to the significance of the Burton Agnes Hall asset has been covered above but for the southern part of the village, the key contribution is the open views from the edges of the conservation area out into the surroundings and vice versa that allows the position of the village in the landscape to be readily understood.
- 10.74 The harmful impact of the wind farm proposed on the setting and thereby the significance of the Burton Agnes Hall asset has also been referred to above. That would also have a detrimental impact on the significance of the conservation area. In relation to the southern part of the village, there may be views of the wind turbines proposed from around the mere, and on the various approaches to the village, sometimes as a single group, sometimes in concert with groups of wind turbines. However, given the separation distance involved, the presence of the wind turbines at issue in this case, would not undermine an appreciation of the position of the village in the landscape, viewed in isolation, or in a cumulative fashion.
- 10.75 While the Council raises no issue in this regard, English Heritage has expressed concern (in its correspondence dated 4 October 2012 to the local planning authority,) about a series of SAMs, and Woldgate itself. Essentially, the concern raised is that the Woldgate ridge serves as a significant focus for the complex of prehistoric monuments. Moreover, that topographical landscape setting, despite agricultural practices and settlement patterns, remains readable²³⁵ and is a significant contributor to the significance of these assets.
- 10.76 While the wind farm proposed would introduce another man-made element into the landscape, as set out in my consideration of landscape impacts above, the topographical form of the landscape will not be changed. As a consequence, it will be no more difficult to read as a result of the proposal, whether viewed alone, or in juxtaposition with groups of wind turbines built or permitted and that might be built, further away.
- 10.77 As such the contribution that setting makes to the significance of these designated and non-designated heritage assets will not be undermined to any discernible degree. There would be no failure to comply with JSP Policy ENV7. **[4.3]**

²³⁵ The term used by English Heritage (which did not attend the inquiry) in CD8.10

- 10.78 Neither the Council nor English Heritage has raised any concerns about Haisthorpe Hall, a Grade II listed building on High Lane, about 1.4km to the east of the wind farm proposed. My site visit to the vicinity of Haisthorpe Hall demonstrated that it is surrounded by an extensive screen of mature trees which serve to confine its setting to the area immediately around it. As such, any inter-visibility between the hall and the wind turbines would be very limited indeed. As such the proposal would have little or no impact on the setting of Haisthorpe Hall, and no impact on the contribution that setting makes to its significance.
- 10.79 Drawing these points together, the proposal would cause a degree of harm to the setting, and thereby the significance of the Church of St Martin, and also to the setting and thereby the significance of the Burton Agnes Hall asset, and the Burton Agnes Conservation Area. This means that Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is engaged by the proposals and that there would be some harm means that the proposal fails to accord with JSP Policy ENV6 and LP Policy EN20. However, in terms of paragraphs 133 and 134 of the Framework, there is a need to assess whether the harm caused to the significance of the designated heritage assets affected would be substantial or less than substantial. **[4.3 & 4.8]**
- 10.80 The appellant, the Council and English Heritage all agree that the harm that would be caused to the setting and thereby the significance of the designated heritage assets affected would be less than substantial²³⁶. While the Framework offers no explanation of the difference between substantial and less than substantial harm, the Council's evidence²³⁷, with reference to paragraphs 91-95 of the PPS5 Practice Guide²³⁸, is that substantial harm applies to irreversible demolition and destruction and in that context, notes that it is difficult to envisage a case where an impact on the setting of a designated heritage asset could lead to substantial harm because the majority of the significance attaching to such an asset would lie in its unaffected fabric. **[5.36 & 7.43]**
- 10.81 Notwithstanding that assessment, paragraph 34 of the recent guidance confirms that a wind turbine within the setting of a (designated) heritage asset may cause substantial harm to the significance of the asset. There is no fundamental contradiction however. Designated heritage assets take on a wide variety of forms. It is fair to observe that most will have the majority of their significance locked in their fabric, rather than their setting, but there are others, like follies or eye-catchers, for example, where a much greater degree of significance might derive from setting. Clearly, a wind turbine that seriously intruded into the setting of a designated heritage asset of that nature could all but destroy its significance and, as a result, cause substantial harm. **[4.17]**
- 10.82 Turning back to specifics, while the Church of St Martin, the buildings that make up the Burton Agnes Hall asset, and the Burton Agnes Conservation Area derive a degree of significance from their settings, in the case of the listed buildings and SAM, that derives mainly from their fabric, and in the case of the conservation area, from the buildings and spaces that it contains.

²³⁶ English Heritage in their letter of 4 October 2012 CD8.10

²³⁷ C5 Appendix 1 Paragraphs 1.14 and 1.15

²³⁸ CD3.4

- 10.83 None of these would be directly affected by the proposals. On that basis, the only reasonable conclusion is that the harm that would be caused to the setting, and thereby the significance, of these designated heritage assets would be less than substantial. As the main parties and EH acknowledge²³⁹, this means that the harm needs to be weighed against the public benefits of the proposal. **[5.36, 6.11 & 7.43]**
- 10.84 As I have referred to in considering landscape effects, there is another factor that must be fed into that balancing exercise too. The proposal is promulgated on the basis that it would be in place for 25 years. As set out above, it would be temporary and reversible. Government advice in paragraph 2.7.17 of EN-3 is that duration is likely to be an important consideration in assessing impacts of onshore wind farms (albeit larger ones) on the setting of heritage assets. This is also acknowledged by EH²⁴⁰. **[5.3, 7.39 & 8.11]**

Living Conditions

- 10.85 The main concern put forward by the Council and several local residents relates to the visual impact of the proposal. The appellant was criticised for not having visited any of the affected properties. However, I do not believe that fatally undermines the conclusion drawn. It is not beyond the wit of a planning or landscape professional to gauge visual impact through a visit to the vicinity of a dwelling, rather than the dwelling itself. Moreover, if representatives of the appellant had sought to arrange such visits, there is every chance that they would have been criticised for being intrusive and presumptive. In any event, I was able to visit the properties said to be worst affected during my site visits, and was able to take in those adjacent while doing so. I have formed my conclusions primarily on the basis of those visits, informed by the evidence of the main parties and local residents. **[5.44, 6.7 & 7.41]**
- 10.86 Points were made about the basis on which an assessment of visual impact should be made with reference by the Council and local residents to the so-called 'Lavender Test'²⁴¹. This states '*However, when turbines are present in such number, size, and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is every likelihood that the property concerned would come to be widely regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. It is not in the public interest to create such living conditions where they did not exist before*'. The appellant pointed to an iteration that was accepted by the Secretary of State in allowing a proposal for a wind farm²⁴² in August 2011. Paragraph 10 of the decision letter sets out that the Secretary of State agrees that when assessing the effect on visual outlook, it is helpful to pose the question '*would the proposal affect the outlook of these residents to such an extent, i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?*'. In essence, there is little difference between the two. **[5.42, 7.40, 8.3, 8.8 & 8.11]**

²³⁹ CD8.10

²⁴⁰ CD8.2

²⁴¹ Set out in Paragraph 66 of CD5.26

²⁴² CD5.7

- 10.87 Holly Bungalow²⁴³, which sits on the northern side of the A614 as it passes through Thornholme, would be the closest individual property to the proposal with the nearest wind turbine (T7) about 960 metres away, and the furthest (T3) nearly 2km distant. Like the adjacent houses at Twist Cottage, Beech View, Rudston House, and Rosebank Cottage, Holly Bungalow is orientated roughly north-south which means that the wind turbine array would be readily visible from north facing windows and from the rear garden, occupying about 34 degrees of the horizontal view. All these properties sit at around 18m AOD.
- 10.88 Safety Cottage lies on the south side of the A614, at about 17m AOD, towards the western extremity of Thornholme, and as a result, a little further away from the array than the dwellings referred to above. Again the wind turbines would be readily visible from north facing windows, especially those at first floor level, and from the side garden.
- 10.89 Home Farm lies to the east of the appeal site on the western side of Haisthorpe at about 28m AOD, and is orientated west-east. The nearest wind turbine (T5) would be about 1.35km distant and the furthest (T1) about 1.9km. The array would occupy about 47 degrees of the view.
- 10.90 The land rises to the north and the bases of the wind turbines would be located between 30 and 65m AOD. This would make them more prominent than they would be if there was no change in level. Nevertheless, the separation distances are of such an order that the wind turbines, while readily visible from these properties, would not be uncomfortably close, overwhelming or oppressive. It is also fair to observe that the wind turbines, at a height of 100 and 110 metres, are not the tallest available or that might be proposed²⁴⁴. **[5.42-5.43, 6.8 & 7.42]**
- 10.91 I observed that the existing wind farm at Lissett (around 6km away) is visible from Holly Bungalow and Home Farm, which I visited, and may well be visible from the other properties set out too. The wind turbines permitted at Fraisthorpe and Carnaby (around 4km away) will, if built, in all likelihood have a visual impact too. However, all these are so distant, that their visual impact is, or would be, limited. There would be no cumulative visual impact of any significance therefore.
- 10.92 Points were also made about the experience of residents of villages around the appeal site and the sense of being surrounded by wind farms. The WMS and subsequent guidance make clear that decisions should take into account the cumulative impact of wind turbines and properly reflect the increasing impact on local amenity as the number of turbines in the area increases. **[4.16]**
- 10.93 However, as set out above, the landscape is grand in scale and there are wide, open vistas looking out from dwellings in, and the edges of, the villages concerned. On that basis, and given the relatively significant separation distances, the wind turbines at issue here, coupled with others built and permitted, would not be pervasive, and there would be no reasonable sense of residents and visitors being surrounded, or hemmed in, by wind turbines. **[5.43 & 6.9-6.10]**

²⁴³ Also referred to in the Council's evidence as Holly Cottage

²⁴⁴ Those permitted at Fraisthorpe, for example, are 130 metres in height CD5.33 refers

- 10.94 Essentially what would happen in this case is that views out from properties, and villages, would change. It is a long-established planning principle that views are not inviolable. None of the properties concerned, or the villages generally, would become unattractive or unsatisfactory places to live and there would be no significant impact on living conditions as a result of the visual impact of the proposal considered in isolation or in concert with other wind farms built or permitted.
- 10.95 As the recent guidance following the WMS sets out, ETSU-R-97²⁴⁵ should be used by local planning authorities²⁴⁶ when assessing and rating noise from wind energy developments. Having regard to that guidance, the Council has raised no issue in terms of noise being satisfied that living conditions of local residents can be protected from any undue effects through the imposition of suitably worded conditions. Notwithstanding some issues raised by local residents that I deal with below in discussing conditions, there is no good reason to differ from that analysis. **[5.41, 8.5, 8.8 and 8.9]**
- 10.96 Shadow flicker is a matter raised by some local residents rather than the Council. The analysis in the ES Addendum²⁴⁷ suggests that, on the basis that shadow flicker can only occur within ten rotor diameters of a wind turbine, there is no real prospect of shadow flicker affecting any dwellings. Again, there is no good reason to differ from that analysis. Nevertheless, a condition to deal with the matter has been suggested and I deal with that below. **[5.41]**
- 10.97 It is important to note that one of the core planning principles of the Framework is to secure a good standard of amenity for all existing and future occupants of land and buildings. Notwithstanding references made by local residents to minimum separation distances, the recent guidance makes it plain²⁴⁸ that local planning authorities should not rule out otherwise acceptable renewable energy developments through inflexible rules on buffer zones or separation distances. **[8.9]**
- 10.98 Bringing all those points together, the proposal, considered alone or in combination with other wind farms, built or permitted, would have no significant impact on the living conditions of local residents through visual impact, or subject to suitable conditions, noise, or shadow flicker. On that basis, the proposal does not fall foul of LP Policy EN25 in this regard. **[4.7]**

Other Matters

- 10.99 Concern has been voiced by local residents about the nature of the consultation carried out by the appellant on the proposal. However, as the Statement of Community Involvement²⁴⁹ shows, the appellant was not remiss in this regard. The difficulty here is the conflation of consultation about the nature of the proposal, with having the final say over whether it goes ahead. In the first instance, it is correct to note that not all local residents object to the proposal.

²⁴⁵ ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms*

²⁴⁶ And I read that as including the Secretary of State or those acting on his or her behalf

²⁴⁷ CD10.4 Figures: Figure 12.1 (Revised)

²⁴⁸ ID17 Paragraph 16

²⁴⁹ CD10.1

- 10.100 More importantly, while the way these documents have been reported in elements of the press may have given the impression that local residents would have the power of veto over wind energy development, there is nothing in the WMS, or the subsequent guidance, to give effect to that. The WMS and the subsequent guidance are material considerations, obviously, but planning applications for wind energy development still have to be considered on their merits in the light of the development plan, and other material considerations, notably the Framework, and wider Government energy policy. **[4.16, 6.16-6.18, 7.5, 7.8, 8.4 & 8.12]**
- 10.101 Issues have been raised by local residents, but not, importantly, the Council, about the impact of the proposal on tourism. The area is clearly very attractive to visitors and there are lots of opportunities for recreation and other activities. Tourism is clearly a very important facet of the local economy. Nevertheless, as my colleague found in dealing with the appeal relating to the wind farm at Fraisthorpe²⁵⁰, and in the appellant's evidence²⁵¹ there is no good evidence to suggest that the number of visitors to the area will be adversely affected by this proposal. Neither is there any good evidence that visitor numbers in other areas of the UK attractive to tourists have been adversely affected by the presence of wind farms. **[8.10]**
- 10.102 Safety Cottage lies to the south-west of the existing access proposed for use as the main site entrance. Surface water run-off through the existing access and flooding has been an issue in the past and the occupier of Safety Cottage expressed concern that the proposal would exacerbate those problems. However, the existing access will need to be altered as part of the development and this provides an opportunity for surface water run-off to be dealt with effectively, through a condition, ensuring that these difficulties do not persist, or worsen. As a consequence, the proposal does not fall foul of LP Policies EN16, EN17 and EN18. **[4.8 & 8.16]**
- 10.103 The potential for light pollution from the proposal has also been a source of anxiety but general lighting can be strictly controlled by condition and the infra-red aviation safety lighting that would be fitted to the wind turbines is not visible to the human eye. **[8.16]**
- 10.104 Clearly the construction process, and the delivery of wind turbine components, to the site, could cause disruption for local residents and users of the highway. However, the same is true, albeit to varying degrees, of any development. Subject to suitable conditions, that are dealt with below, any disruption can be kept within reasonable bounds and highway safety would not be compromised. In that way the proposal complies with LP Policies TM4 and TM5. **[4.8 & 8.4]**
- 10.105 Issues have been raised about safety given that two existing public rights of way cross the site and would pass through the wind turbine array. There is no good reason to suspect that a wind turbine, properly erected, would topple but in any event those proposed would be situated well beyond the fall-over distance plus 10% recommended in the recent guidance²⁵² as a safe separation distance from buildings. **[8.15]**

²⁵⁰ CD5.33 Paragraphs 49-52

²⁵¹ A6 Pages 48-50

²⁵² ID17 Paragraph 31

10.106 In terms of ecology, there is no good evidence that the proposal would have any significant impact on flora or fauna, protected or otherwise, provided suitable conditions are attached to deal with the Outline Habitat Management Plan²⁵³ and to prevent any disruption to nesting birds. As a consequence, the proposal complies with JSP Policies ENV2, ENV3 and ENV4, LP Policies EN8 and EN11 and, in this regard, the Framework. **[4.4, 4.8, 7.48, & 8.8]**

10.107 Points were also made about the increased size of the substation being a precursor to further wind turbine development in the area. That may or may not be the case but any such proposals would need to be considered, on their merits, at the appropriate time. **[6.15]**

The Balancing Exercise

10.108 The proposal would cause a limited degree of harm to the landscape and to the setting and thereby less than substantial harm to the significance of designated heritage assets. On that basis, the proposal fails to accord with JSP Policies SP4, SP5 and ENV6 and LP Policies EN2, EN3 and EN20, and their successors in the DSD. Against that, the proposals would bring significant benefits through the generation of renewable energy, general economic activity, and in terms of the improved viability of the farms concerned. Given that those benefits could be secured without undue harm to the landscape, living conditions, ecology or archaeology, the proposal complies with LP Policy EN25, said by the main parties to be overarching. However, it is the approach of paragraph 14 of the Framework to decision-taking that is the most important consideration. **[5.48 & 7.47]**

10.109 Prior to that assessment, there is one final point to address. It was put to the Inquiry that the reduction from 9 wind turbines and 18MW to 6 turbines and 12 MW must reduce the benefits of the scheme. That is axiomatic but the reduction in the number of wind turbines proposed has also reduced the degree of harm that would be caused. That applies to the landscape and living conditions impacts first of all, but also designated heritage assets. English Heritage considered the harm to their significance to be less than substantial in relation to the scheme at issue but substantial in terms of the previous scheme. All that demonstrates how the appellant has, in modifying the proposals, affected both sides of the balance. **[5.34, 5.46, 6.11 & 7.6-7.7]**

10.110 Returning to paragraph 14 of the Framework, this sets out that where the relevant policies of the development plan are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. While the WMS is clear that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities, in my judgement, the harm that would be caused by the proposal would not come close to that and the benefits the proposal would bring would far outweigh the harmful impacts. Paragraph 98 of the Framework says that a proposal such as this should be approved²⁵⁴ if its impacts are, or can be made, acceptable. That is very clearly the case here. **[5.58-5.60, 6.19 & 7.47-7.49]**

²⁵³ ID19

²⁵⁴ Unless, of course, material considerations indicate otherwise

Conditions

- 10.111 As indicated, agreed conditions were submitted to the Inquiry by the appellant and the Council²⁵⁵. These, and others suggested by local residents, were discussed in some detail at the Inquiry, in the light of advice in Circular 11/95²⁵⁶, and paragraph 206 of the Framework. **[9.1-9.2]**
- 10.112 In terms of the commencement condition, given issues that may arise around procurement, and the need to agree a series of important matters pre-commencement, not least the Air Defence Radar Mitigation Scheme, it is reasonable to allow five years rather than the normal three. Local residents have referred to how the Grampian condition, in particular, and the uncertainty around whether the scheme would proceed, will affect them. Evidently, extending the period for commencement might lengthen that period of uncertainty but given my conclusion that the benefits of the proposal clearly outweigh the harm it would cause, the appellant needs to be given the best opportunity to bring it forward without the need for, potentially, a further planning application, and all the uncertainty that too would bring. **[8.7]**
- 10.113 The agreed commencement condition also makes provision for the local planning authority to be informed when development has commenced. That is not typical but given the volume of matters that need to be resolved before a start could be made, and the role the Council would play in overseeing conditions governing how the construction of the wind farm would be carried out, not unreasonable.
- 10.114 The proposal is intended to be in place for twenty five years. Conditions are necessary to first of all, provide for that time limit, and second, deal with decommissioning and site restoration. A condition is also necessary to deal with the situation where one or more of the wind turbines fail to operate for a continuous period of 12 months so that any that prove or become defunct can be removed before the twenty five year period of the planning permission expires. However, facility needs to be provided within the condition for any dysfunctional wind turbine to be repaired. It would be pointless to require removal of a wind turbine, and the benefits in terms of the generation of renewable energy it brings, in those circumstances. I have removed the phrase 'unless otherwise approved in writing by the local planning authority' from the suggested condition because it is imprecise and would appear to allow the appellant and the Council to agree something informally outside the ambit of the condition..
- 10.115 The construction of a wind farm has the potential to cause disruption to the road network and local residents. To minimise disruption, a series of conditions are necessary to provide for the submission to, and approval by the Council of, a Construction Traffic Management Plan and a Construction Method Statement. Conditions are also necessary to set out the times when construction work and deliveries can take place. While those put forward may appear generous to some, no works are permitted on Sundays or public holidays, and the longer that works are allowed to take place on a given day, the quicker the scheme will be completed, overall.

²⁵⁵ ID18

²⁵⁶ Circular 11/95: *The Use of Conditions in Planning Permissions*

- 10.116 Notwithstanding that, the condition needs to allow for emergency work to take place, and, given the complex logistics involved, for deliveries, outside the set hours. **[8.4]**
- 10.117 To prevent undue visual interference, a condition is necessary to ensure the wind turbines all rotate in the same direction and to limit the total height of wind turbines nos. 1, 2, 3, 5 and 7 to 100 metres and wind turbine no. 4 to 110 metres. A condition has been put forward to secure details of the colour and finish of the wind turbines and to limit the application of signage. All that is necessary but while a drawing of the 100 metre wind turbine proposed was submitted during the application process, nothing was forthcoming in relation to the 110 metre wind turbine. In that context, the condition needs to be amended to take in details of the design of the 110 metre wind turbine, and the anemometer mast, of which there is no detail in the plans, beyond siting, either. A similar condition is required in relation to the substation compound, switchgear building and associated development.
- 10.118 Conditions are also necessary to ensure that all cabling is buried and to limit illumination on the site (other than that required for aviation purposes that is dealt with elsewhere). The latter control ought to ensure that there is no undue light pollution once the scheme is operational. **[8.16]**
- 10.119 In terms of ecology, conditions are required to secure the habitat management measures described in the Outline Habitat Management Plan²⁵⁷ and to prevent any disruption to nesting birds. **[8.8]**
- 10.120 As set out above, on the basis of the ES Addendum, there is no prospect of shadow flicker affecting any dwellings. However, the margins in relation to the dwellings on the northern side of the A614 in Thornholme is relatively tight and while a micro-siting condition has not been suggested, there is potential for wind turbines to be moved through the pursuit of minor material amendments. In that context, to protect the living conditions of local residents from any potential for shadow flicker, a condition is necessary to set out a protocol for dealing with any complaints about it. Again, I have removed the phrase 'unless the local planning authority gives its prior written consent to any variations' from the suggested condition because it is imprecise. If amendments are required to the protocol, once it has been approved, then it could be resubmitted to the Council for approval through the vehicle of the condition. It is generally accepted that wind turbines have the potential to interfere with terrestrial television so it is reasonable to apply a condition to secure a protocol to deal with any that might occur. **[5.41, 7.48 & 8.17]**
- 10.121 It was suggested that a similar condition ought to be applied in order to protect against any interference with mobile telephone networks with rural businesses that rely on an uninterrupted signal particularly in mind. However, unlike with terrestrial television signals, there is no evidence that interference with mobile telephone networks might occur. Indeed, mobile telephone operators have confirmed that they have no objections to the proposal²⁵⁸. **[8.18]**

²⁵⁷ ID19

²⁵⁸ CD10.1

- 10.122 On the basis of the appellant's archaeological evidence, uncontested by the Council, there is justification for a condition to secure a programme of works pre-commencement.
- 10.123 Notwithstanding concerns expressed about the way the facility is used, Government guidance is that, in order to facilitate any subsequent application for a minor material amendment, a condition should be applied to set out the approved plans. With proper consultation on any such application, I see no good reasons why local residents might be prejudiced by the ability of the developer to pursue such a course. **[8.17]**
- 10.124 In order to ensure that access to the site is provided without detriment to highway safety, and deals with any potential problems with surface water run-off, conditions are necessary to ensure that, firstly, the design of the site access is approved by the Council, and completed in accordance with the approved details before any other development takes place, and secondly, necessary works to the surrounding highway network have been completed. The suggested condition to deal with the latter needs adjustment to include facility for a timetable. **[8.16]**
- 10.125 A condition has been put forward to set up a point of contact for local residents during the construction, decommissioning and operational phases of the development. While unusual, given the nature of the proposal, I am satisfied that such a condition satisfies the tests of reasonableness and necessity. However, several local residents pointed out that the provisions in the suggested condition for publicising the contact details might be better. I agree and I have adjusted the condition to provide for details of how this is to be properly facilitated (a website was suggested) to be approved by the Council and to deal with timetabling and retention.
- 10.126 In order to address the concerns of the MoD, a condition is required to secure an Air Defence Radar Mitigation Scheme and ensure that any adverse impact on RAF Staxton Wold is properly mitigated. There is clearly a reasonable prospect that such a scheme can be arrived at and as such, a Grampian condition of the type promulgated is reasonable. **[2.3, 5.40, 7.48 & 8.7]**
- 10.127 For aviation safety purposes, a condition is also required to ensure that the wind turbines are fitted with infra-red warning lights and that this is operated for the duration of the permission. Some concern was expressed about the light pollution that might be caused but infra-red warning lights, of the type proposed, are not visible to the human eye. **[8.16]**
- 10.128 A noise condition, along with a series of notes to guide application, has been put forward, setting limits that the wind farm would have to operate within. This is clearly necessary in order to protect local residents from any difficulties that might arise in this respect. **[5.41, 7.48, 8.5, 8.8 & 8.9]**
- 10.129 On top of that, local it was suggested that a condition be applied to deal with what was termed excess amplitude modulation. The condition proposed would take the form of that applied by the Inspector dealing with the Den Brook Wind Farm²⁵⁹. **[8.5]**

²⁵⁹ APP/Q1153/A/06/2017162 (redetermination)

- 10.130 The relevant appeal decision does not appear in the documentation supplied by the parties for the Inquiry but the condition suggested takes the form: *At the request of the local planning authority following the receipt of a complaint the wind farm operator shall, at its expense, employ a consultant approved by the local planning authority, to assess whether noise immissions at the complainant's dwelling are characterised by greater than expected amplitude modulation. Amplitude modulation is the modulation of the level of broadband noise emitted by a turbine at blade passing frequency. These will be deemed greater than expected if the following characteristics apply: a) A change in the measured $L_{Aeq, 125 \text{ milliseconds}}$ turbine noise level of more than 3 dB (represented as a rise and fall in sound energy levels each of more than 3 dB) occurring within a 2 second period. b) The change identified in (a) above shall not occur less than 5 times in any one minute period provided the $L_{Aeq, 1 \text{ minute}}$ turbine sound energy level for that minute is not below 28 dB. c) The changes identified in (a) and (b) above shall not occur for fewer than 6 minutes in any hour. Noise immissions at the complainant's dwelling shall be measured not further than 35m from the relevant building, and not closer than within 3.5m of any reflective building or surface, or within 1.2m of the ground.*
- 10.131 There are two issues with this. First, there is no good evidence that excess amplitude modulation will occur in this case. In any event, ETSU-R-97 makes no suggestion that it might be an issue demanding attention and the Framework and the recent Guidance²⁶⁰ set out clearly that ETSU-R-97 must form the basis for noise assessment.
- 10.132 On that basis, application of the suggested condition would have no policy basis, and it could only be precautionary. It cannot be said to be reasonable or necessary, therefore.
- 10.133 Additionally, since that condition was imposed I am conscious that there has been much debate at appeal about its precision, such that I am not satisfied that it could be enforced. If any difficulties were experienced that go beyond what can properly be dealt with through the noise condition suggested, and agreed between the appellant and the Council, the more effective route would be an action in Statutory Nuisance.
- 10.134 Points were also raised about the potential for a condition designed to secure a decommissioning bond thereby ensuring that when the permission reaches the end of its life, there is financial provision set aside to ensure that the wind turbines and associated infrastructure are properly removed.
- 10.135 First of all, such a mechanism requires a payment to be made and this cannot be required by condition. It could be facilitated through an Agreement or Unilateral Undertaking but no such vehicle has been put forward. That matters not because it is difficult to envisage a situation where, at the end of the life of the permission, there is no operator or landowner for the Council to enforce compliance with the decommissioning condition (no.3) against. **[8.18]**
- 10.136 Moreover, I would observe that it is difficult to square suggestions that decommissioning might prove so difficult that a bond is required, with

²⁶⁰ ID17 Paragraph 30

arguments put forward that wind turbines are very likely to endure for more than the 25 years applied for. [5.3 & 8.11]

11. Recommendation

11.1 I recommend that the appeal be allowed, and planning permission granted subject to the conditions as set out in Annex D.

Paul Griffiths

INSPECTOR

Annex A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter of Counsel	Instructed by Mr Peter Atkinson, Solicitor to the Council
He called	
Mr Mark Steele	Mark Steele Consultants Ltd
BA DipLD CMLI	
Dr Stephen Carter	Senior Consultant, Headland Archaeology (UK)
BSc PhD MifA FSAScot	Ltd
Mrs Emma Lancaster	Team Leader, Strategic Development
BA(Hons) MA MRTPI	Management Team, East Riding of Yorkshire Council

FOR THE APPELLANT:

Marcus Trinick QC	Partner in Eversheds LLP
He called	
Ms Kay Hawkins	Director, Hawkins Bell Associated Ltd
BSc(Hons) BLD	
(Landscape Design)	
DipPA CMLI	
Mr Peter James	Director, Framptons Town Planning Ltd
Frampton	
BSc(Hons) TP MRICS	
MRTPI	

INTERESTED PERSONS:

Councillor Andy Burton	Wolds Weighton Ward, East Riding of Yorkshire Council
Garry Burt MSc CEng MIMechE	Resident of Burton Agnes
Sue E Burt	Resident of Burton Agnes
George Hornsey	Resident of Haisthorpe
John Daniels	Parish Councillor for Carnaby
Kylie Daniels	Resident of Caranaby
Gerry Smith	Local Resident
Dr Chris Shipley	Resident of Thornholme
William Dyson	Local Resident
Hilary Giles	Local Resident
Julia Hey	Secretary of the No to Wolds Wind Farms Group (took part in the discussion on conditions)
Steve Hey	Chairman of the No to Wolds Wind Farms Group (took part in the discussion on conditions)
Cherie Blenkin	Resident of Roos

Annex B: DOCUMENTS

East Riding of Yorkshire Council

- C1 Summary and Proof of Evidence of Mark Steele and Appendices
- C2 Appendix D to proof of Evidence of Mark Steele (Figures)
- C3 Summary Proof of Evidence of Stephen Carter
- C4 Proof of Evidence of Stephen Carter
- C5 Appendices to Proof of Evidence of Stephen Carter
- C6 Summary Proof of Evidence of Emma Lancaster
- C7 Proof of Evidence of Emma Lancaster

Wind Prospect Developments Ltd

- A1 Summary Proof of Evidence of Kay Hawkins (Landscape and Visual Amenity)
- A2 Proof of Evidence of Kay Hawkins (Landscape and Visual Amenity)
- A3 Summary Proof of Evidence of Kay Hawkins (Listed Buildings and Conservation Areas)
- A4 Proof of Evidence and Appendix of Kay Hawkins (Listed Buildings and Conservation Areas)
- A5 Summary Proof of Evidence of Peter Frampton
- A6 Proof of Evidence of Peter Frampton
- A7 Appeal Statement on Archaeology of Peter Cardwell BA FSA MIFA

Core Documents

- CD1.1 Saved Policies of the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire of 2005 (relevant policy extracts)
- CD1.2 Saved Policies of the East Yorkshire Borough Wide Local Plan of 1997 (relevant policy extracts)
- CD2.1 Planning for Renewable Energy Targets in Yorkshire and Humber Final Report: Volumes 1-3 (Produced by AEA Technology and Gillespies for the Government Office for Yorkshire and the Humber and the Humber Assembly in December 2004)
- CD2.2 Low Carbon and Renewable Energy Capacity in Yorkshire and the Humber (AECOM April 2011)
- CD2.3 East Riding of Yorkshire Council Interim Planning Document: Planning for Renewable Energy Developments of April 2009
- CD2.4 Draft Strategy Document of January 2013
- CD3.1 Letter from the Secretary of State for Communities and Local Government to all Chief Planning Officers of 6 July 2010
- CD3.2 The National Planning Policy Framework of March 2012
- CD3.3 Planning for Renewable Energy: A Companion Guide to PPS22 (now cancelled)
- CD3.4 PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide
- CD4.1 *East Northamptonshire and others v Secretary of State for Communities and Local Government and another* [2013] EWHC 473 (Admin)

- CD4.2 *Coleman v Secretary of State for Communities and Local Government and others* [2013] EWHC 1138 (Admin)
- CD5.1 APP/X1545/A/06/2023805 (Bradwell) (2007 and 2010)
- CD5.2 Appeal Decision: APP/P4225/A/08/2065277 (Crook Hill)
- CD5.3 Appeal Decision: APP/E2001/A/09/2101421 (Sober Hill)
- CD5.4 Appeal Decision: APP/Y2810/A/11/2154375 (Kelmarsh)
- CD5.5 Appeal Decision: APP/K1128/A/08/2072150 (Beech Tree Farm, Goveton)
- CD5.6 Appeal Decision: APP/E2001/A/09/2101851 (Sixpenny Wood)
- CD5.7 Appeal Decision: APP/D0515/A/10/2123739 & 2131194 (Burnthouse Farm) (Secretary of State Decision Letter and Inspector's Report)
- CD5.8 Appeal Decision: APP/D0840/A/09/2103026 (Carland Cross)
- CD5.9 Appeal Decision: APP/E2001/A/10/2137617 and 2139965 (Spaldington)
- CD5.10 Appeal Decision: APP/P1045/A/07/2054080 (Carsington Pastures)
- CD5.11 Appeal Decision: APP/Y2810/A/10/2120332 (Yelvertoft)
- CD5.12 Appeal Decision: APP/Q3305/A/05/1181087 (Shooters Bottom)
- CD5.13 Appeal Decision: APP/P1560/A/08/2088548 (Earls Hall)
- CD5.14 Appeal Decision: APP/E2734/A/04/1161332 (Knabs Ridge)
- CD5.15 Appeal Decision: APP/E2001/A/09/2097720 (Tedder Hill)
- CD5.16 Appeal Decision: APP/E2001/A/09/2130670 (Monkwith)
- CD5.17 Appeal Decision: APP/W0530/A/07/2059471 (Wardlow) (Secretary of State Decision Letter and Inspector's Report)
- CD5.18 Appeal Decision: APP/E2001/A/09/2113076 (Roos)
- CD5.19 Appeal Decision: APP/E2001/A/07/2050015 (Routh) (Secretary of State Decision Letter and Inspector's Report)
- CD5.20 Appeal Decision: APP/E2001/A/05/2088796 (Withernwick)
- CD5.21 Appeal Decision: APP/N2739/A/12/2172629 (Cleek Hall)
- CD5.22 Appeal Decision: APP/Y2810/A/11/2153242 (Watford Lodge)
- CD5.23 Appeal Decision: APP/H0520/A/11/2158702 (Woolley Hill)
- CD5.24 Appeal Decision: APP/V2635/A/11/2154590 & 2158966 (Jack's Lane and Chiplow)
- CD5.25 Appeal Decision: APP/V3310/A/06/2031158 (Burnham-on-Sea)
- CD5.26 Appeal Decision: APP/X2220/A/08/2071880 (Enifer Downs Farm)
- CD5.27 Appeal Decision: APP/B1225/A/11/2161905 (Masters Pit)
- CD5.28 Appeal Decision: APP/K0325/A/11/2160077 & 2160078 (Chelveston)
- CD5.29 Appeal Decision: APP/Y2810/A/11/2164759 (Lilbourne)
- CD5.30 Appeal Decision: APP/Z2830/A/11/2165035 (Spring Farm Ridge) and High Court Judgement
- CD5.31 Appeal Decision: APP/Y2810/A/11/2156527 (Winwick)
- CD5.32 Decision Letter: ELEC/2005/2004-GDBC/001/00245C and Inspector's Conclusions (Middlemoor)
- CD5.33 Appeal Decision: APP/E2001/A/12/2179233 (Fraisthorpe)
- CD5.34 Appeal Decision: APP/D2510/A/12/2176754 (Carlton Grange)
- CD5.35 Appeal Decision: APP/C1625/A/11/2155923 (Standle Farm, Stinchcombe)
- CD5.36 Appeal Decision: APP/X1118/A/11/2162070 (Batsworthy Cross) and High Court Judgement
- CD5.37 Appeal Decision: APP/E0915/A/09/2101659 (Newlands Farm)
- CD5.38 Appeal Decision: APP/Y2430/A/09/2108595 (Palmers Hollow)
- CD5.39 Report to Scottish Ministers (Spittal Hill)
- CD5.40 Appeal Decision: APP/G2815/A/11/2156757 (Barnwell Manor) and High Court Judgement

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- CD5.41 Appeal Decision: APP/H0520/A/12/2188648 (Common Barn)
 - CD6.1 Relevant Extracts from DTI Energy White Paper 'Meeting the Energy Challenge' (2007)
 - CD6.2 The UK Renewable Energy Strategy (DECC) (2009)
 - CD6.3 Executive Summary of the UK Low Carbon Transition Plan White Paper (DECCO (2009))
 - CD6.4 Annual Energy Statement July 2010 (DECC)
 - CD6.5 Relevant Extracts from The Coalition: Our Strategy for Government
 - CD6.6 National Renewable Energy Action Plan for the UK (DECC) (July 2010)
 - CD6.7 Letter to Lord Turner re 'Increasing the Target for Energy from Renewable Sources' dated 29 July 2010 and Letter to Chris Huhne 'The Level of Renewable Energy Ambition to 2020' dated 9 September 2010
 - CD6.8 EN-1: Overarching National Policy Statement for Energy (19 July 2011)
 - CD6.9 EN-3: National Policy Statement for Renewable Energy Infrastructure (19 July 2011)
 - CD6.10 Statement to the House of Commons by the Secretary of State for Energy and Climate Change on 18 October 2010
 - CD6.11 Government Response to the Consultation on the Draft National Policy Statements for Energy Infrastructure
 - CD6.12 Committee on Climate Change: Renewable Energy Review (May 2011)
 - CD6.13 Statement by the Department for Communities and Local Government about the Presumption in Favour of Sustainable Development, 15 June 2011
 - CD6.14 UK Renewable Energy Roadmap (DECC July 2011)
 - CD6.15 Planning Our Electric Future - a White Paper for Secure, Affordable and Low Carbon Electricity (July 2011)
 - CD6.16 Relevant Extracts from 'Consultation on Proposals for the level of Banded Support under the Renewables Obligation for the Period 2013-2017 and the Renewables Obligation Order' (DECC October 2011)
 - CD6.17 Blank
 - CD6.18 Making Space for Renewable Energy (Natural England 2010)
 - CD6.19 Sustainable Energy Policy (Natural England 2008)
 - CD6.20 Position on Wind Energy (Natural England March 2009)
 - CD6.21 All Landscapes Matter (Natural England 2010)
 - CD6.22 Climate Change Policy (Natural England (2008))
 - CD6.23 Blank
 - CD6.24 Renewable and Low-Carbon Energy Capacity Methodology: Methodology for the English Regions (DECC January 2010)
 - CD7.1 Guidelines for Landscape and Visual Impact Assessment Second Edition by the Landscape Institute, Institute of Environmental Management and Assessment (2002)
 - CD7.2 Guidelines for Landscape and Visual Impact Assessment Third Edition by the Landscape Institute, Institute of Environmental Management and Assessment (2013)
 - CD7.3 Siting and Designing Wind Farms in the Landscape Version 1 (Scottish Natural Heritage December 2009)
 - CD7.4 Landscape Character Assessment: Guidance for England and Scotland produced for the Countryside Agency and Scottish Natural Heritage (Swanwick C and LUC 2002)
 - CD7.5 Landscape Character Assessment Series: Topic Paper 9 Climate Change and Natural Forces – the Consequences for Landscape Character produced for the Countryside Agency and Scottish Natural Heritage

- (Entec UK Ltd 2003)
- CD7.6 Visual Representation of Wind Farms – Good Practice Guidance (Horner & MacLennan SNH Report FO3 AA 308/2 2006)
- CD7.7 Assessing the Cumulative Impact of Onshore Wind Energy Developments (Scottish Natural Heritage March 2012)
- CD7.8 Photography and Photomontage in Landscape and Visual Impact Assessment (Landscape Institute Advice Note 01-11)
- CD7.9 European Landscape Convention (Council of Europe 2000)
- CD7.10 Relevant Extracts from Detailed 1:10,000 Landscape Character Assessment (East Riding of Yorkshire Council 2005)
- CD7.11 Consultation Response from Countryside Access Officer (15 September 2011)
- CD7.12 Consultation Response from Natural England (17 October 2011)
- CD7.13 Consultation Response from Council's Trees and Landscape Officer (25 October 2011)
- CD7.14 Consultation Response from Council's LVIA Team (28 October 2011)
- CD7.15 Consultation Response from Countryside Access Officer (10 September 2012)
- CD7.16 Consultation Response from Natural England (21 September 2012)
- CD7.17 Consultation Response from Council's LVIA Team (1 October 2012)
- CD8.1 The Planning (Listed Buildings and Conservation Areas) Act 1990
- CD8.2 Wind Energy and the Historic Environment (English Heritage 2005)
- CD8.3 Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment (English Heritage 2008)
- CD8.4 The Setting of Heritage Assets (English Heritage 2011)
- CD8.5 Letter from Humber Archaeology Partnership to the Council of 14 September 2011
- CD8.6 Consultation Responses from Council's Conservation Officer of 26 October and 18 November 2011 including request for two extra visualisations from the gardens of Burton Agnes Hall
- CD8.7 Letter from English Heritage to the Council of 16 December 2011
- CD8.8 Letter from English Heritage to the Council of 22 May 2012
- CD8.9 Letter from Humber Archaeology Partnership to the Council of 2 October 2012
- CD8.10 Letter from English Heritage to the Council of 4 October 2012
- CD8.11 Letter from Council's Conservation Officer of 26 October 2012
- CD8.12 Thornholme Fields Wind Farm, Burton Agnes, East Riding of Yorkshire: Geophysical Surveys (Archaeological Services Durham University Report 2701) (2011)
- CD8.13 Burton Agnes Conservation Area Appraisal (East Riding of Yorkshire Council 2009)
- CD9.1 ETSU-R-97: The Assessment and Rating of Noise from Wind Farms (September 1996)
- CD9.2 Prediction and Assessment of Wind Turbine Noise – Agreement about Relevant Factors for Noise Assessment from Wind Energy Projects (D Bowdler, AJ Bullmore, RA Davis, MD Hayes, M Jiggins, G Leventhall, AR McKenzie) (Institute of Acoustics Bulletin Volume 34 No.2 March/April 2009)
- CD10.1 Planning Application and Supporting Documents
- CD10.2 Environmental Statement of August 2011
- CD10.3 Supplementary Environmental Information of February 2012
- CD10.4 Addendum to the Environmental Statement of August 2012

- CD10.5 Supplementary Environmental Information of May 2013
- CD10.6 Council Officers' Report to Committee of 6 December 2012
- CD10.7 Council's decision notice of 19 December 2012
- CD10.8 Grounds of Appeal
- CD10.9 Appellant's Statement of Case
- CD10.10 Council's Statement of Case
- CD10.11 Statement of Common Ground
- CD10.12 Letter from Council to Eversheds LLP of 16 May 2013
- CD10.13 Minutes of Council Planning Committee of 6 December 2012
- CD10.14 Letter from Defence Estates (MoD) to PINS
- CD10.15 Written Ministerial Statement: *Local Planning and Onshore Wind* (6 June 2013)
- CD11.1 Letter from Rudston Parish Council of 27 June 2013 and wind turbine consultation results

Inquiry Documents

- ID1 Appellant's Opening Statement
- ID2 Council's Opening Statement
- ID3 Council's Notification Letters
- ID4 Extract from Hansard 6 June 2013 Onshore Wind (Planning Policy)
- ID5 Briefing Note on Mark Steele's Evidence (put in by appellant)
- ID6 Representation of Councillor Andy Burton
- ID7 Representation of Garry Burt
- ID8 Representation of Sue Burt
- ID9 Representation of George Hornsey
- ID10 Representation of John Daniels
- ID11 Representation of Kylie Daniels
- ID12 Representation of Gerry Smith
- ID13 Representation of Peter Ayling (on behalf of the Ramblers' Association)
- ID14 Copy of Letter Submitted by Councillors Jonathan Owen and Jane Evison (Ward Members for East Wolds and Coastal)
- ID15 Copy of e-mail from the Right Honourable Greg Knight MP to Mrs Julia Hey (put in by George Hornsey)
- ID16 Site Visit Itinerary
- ID17 Copy of Planning Practice Guidance for Renewable and Low Carbon Energy (29 July 2013)
- ID18 Conditions as agreed between Appellant and Council
- ID19 Outline Habitat Management Plan by MacArthur Green Ltd of 24 May 2013
- ID20 Local Residents' Closing Statement
- ID21 Council's Closing Statement
- ID22 Appellant's Closing Statement
- ID23 Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd [2012] EWHC 4344 (Admin)
- ID24 Comments of the Council on ID23
- ID25 Comments of the Appellant on ID23 and ID24
- ID26 List of Submitted Drawings

Annex C: PLANS

- A WPENGd3497 Rev B: Location Plan Sheet 1
- B WPENGd3498 Rev C: Location Plan Sheet 2
- C WPENGd3507 Rev A: Detailed Plan on Turbine 1
- D WPENGd3508 Rev A: Detailed Plan on Turbine 2
- E WPENGd3509 Rev A: Detailed Plan on Turbine 3
- F WPENGd3510 Rev A: Detailed Plan on Turbine 4
- G WPENGd3511 Rev A: Detailed Plan on Turbine 5
- H WPENGd3513 Rev A: Detailed Plan on Turbine 7
- I WPENGd3516 Rev A: Detailed Plan on Met Mast
- J WPENGd3517 Rev B: Detailed Plan on Substation Compound and Construction Compound
- K WPENGd3315 Rev C: Hedge Removal Drawing
- L WPENGd3340 Rev B: Hedge Removal Site Entrance
- M WPENGd3341 Rev C: Hedge Removal Construction Compound/SGB
- N WPENGd3343 Rev B: Hedge Removal Junction to Turbine 5
- O WPENGd3344 Rev B: Hedge Removal Access to Turbine 3
- P WPENGd3345 Rev B: Hedge Removal Access to Turbines 4 and 7
- Q WPENGd3346 Rev B: Hedge Removal Junction to Turbines 1, 4 and 7
- R WPENGd3347 Rev B: Hedge Removal Junction to Turbine 1
- S WPENGd3348 Rev B: Hedge Removal Site Tracks to Turbine 2
- T Un-numbered: Proposed 100m High Turbine Drawing dated September 2011

Annex D: SUGGESTED CONDITIONS

- 1) The development hereby permitted shall begin not later than five years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority no later than 14 days after the event.
- 2) The development hereby permitted shall be removed in accordance with condition 3 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("the First Export Date"). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.
- 3) Not later than 12 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and for the removal of the turbine foundations and substation compound foundations to a depth of at least 1 metre below the ground. The scheme shall also include the

management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown areas, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and details of site restoration measures. The scheme, as approved, shall be fully implemented within 18 months of the expiry of this permission.

- 4) If any wind turbine hereby permitted ceases to export electricity to the grid for a continuous period of 12 months then a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of that wind turbine. The scheme shall include either a programme of remedial works where repairs to the relevant wind turbine are required or a programme for removal of the relevant wind turbine and associated above ground works approved under this permission and for site restoration measures following the removal of the relevant wind turbine. The scheme shall be implemented in accordance with the approved details and timetable.
- 5) No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, the management of junctions to and crossings of the public highway and other public rights of way, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, reinstatement of any signs, verges or other items displaced by construction traffic, and banksman/escort details. The scheme shall be implemented in accordance with the approved CTMP.
- 6) No development shall commence until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall be adhered to throughout the construction, post construction and restoration period and shall include details of:
 - a) The temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
 - b) The proposed storage of materials and disposal of surplus materials;
 - c) Activities such as earth moving, onsite aggregate mixing, crushing, screening, piling etc;
 - d) Dust management;
 - e) Restrictions on the open burning of any waste material within the site;
 - f) Pollution control, the protection of the water environment, bunding of fuel storage areas, surface water drainage, protection of water mains, sewage disposal and discharge of foul drainage;
 - g) Temporary site illumination during the construction period including proposed lighting levels and the specification of any lighting;
 - h) The phasing of construction works;
 - i) Surface treatments and the construction of all hard surfaces and tracks;

- j) Emergency procedures and pollution response plans;
 - k) Siting and details of wheel washing facilities;
 - l) Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;
 - m) A site environmental management plan including measures to be taken during the construction period to protect wildlife and habitats;
 - n) Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles including vehicles for construction site operatives and visitors;
 - o) Post construction restoration and reinstatement of the temporary working areas and the construction compound, including a timetable;
 - p) Working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities shall be as set out in British Standard 5228 Part 1: 2009.
- 7) Construction work shall only take place between the hours of 0730–1830 hours Monday to Friday inclusive and 0730–1330 hours on Saturdays with no such work on a Sunday or Public Holiday. Exceptions for work outside these hours may be carried out with the prior written approval of the local planning authority. Emergency works including wind turbine erection works delayed due to the weather or other technical reasons may be carried out at any time provided that the operator retrospectively notifies the local planning authority in writing of the emergency and works undertaken within 24 hours.
- 8) Deliveries to and from the site and the loading or unloading of raw materials during the construction phase of the development shall be restricted to the hours of 0800–1800 hours Monday to Friday and 0800–1300 hours on Saturdays with no deliveries on Sundays or Bank Holidays. Exceptions for deliveries outside these hours may only be made with the prior written approval of the local planning authority.
- 9) The blades of all wind turbines shall rotate in the same direction. The overall height of wind turbine nos.1, 2, 3, 5 and 7 shall not exceed 100m and wind turbine no.4 shall not exceed 110m to the tip of the blades when the turbine is in the vertical position as measured from natural ground level immediately adjacent to the wind turbine base.
- 10) Prior to the erection of any of the 100 metre wind turbines, details of the colour and finish of the towers, nacelles and blades and any external transformer units shall be submitted to and approved in writing by the local planning authority. Prior to the erection of the 110 metre wind turbines, details of the design, colour and finish of the tower, nacelle and blades and any external transformer unit(s) shall be submitted to and approved in writing by the local planning authority. Prior to its erection, details of the design, colour and finish of the anemometry mast shall be submitted to and approved in writing by the local planning authority. No name, sign, or logo shall be displayed on any external surfaces of the wind turbines or any external transformer units, or the anemometry mast, other than those required to meet statutory health and safety requirements.

- Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 11) Prior to commencement of the construction of the electricity substation compound and switchgear building details of the design and the external appearance, dimensions and materials for the building and associated compound, parking area, access roads and associated fencing and details of surface and foul water drainage from the switchgear building shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 12) All electrical cabling between the individual wind turbines and between the wind turbines and the on site electricity substation shall be installed underground.
 - 13) There shall be no permanent illumination on the site other than lighting on the wind turbines as provided for in condition 24, lighting required during the construction period (as approved through the CMS referred to in condition 6), lighting required during planned or unplanned maintenance, or emergency lighting, and a movement sensor-operated external door light for the electricity switchgear building door to allow safe access.
 - 14) Prior to the commencement of development an Ecological Habitat Enhancement Plan (EHEP), substantially in the form of the Outline Habitat Management Plan prepared by MacArthur Green Limited, dated 24 May 2013, shall be submitted for the written approval of the local planning authority. The EHEP shall include but not be limited to a programme for enhancement of field margins and hedgerow restoration within the site and details of proposed landscaping to the substation compound. The EHEP shall be implemented in accordance with the approved details.
 - 15) No development shall commence until a specification for checking surveys for nests of breeding birds on the site to be carried out by a suitably qualified ecologist has been submitted to and approved in writing by the local planning authority. The specification shall include the methodology for the surveys, and a timetable for the surveys and submission of a report detailing the results of the surveys. The report shall also identify any mitigation measures required as a result of the surveys for any construction works or clearance of vegetation between 1 March and 31 August. The specification and mitigation measures shall be implemented as approved.
 - 16) Prior to the construction of the final (sixth) wind turbine a written scheme shall be submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority that the local planning authority determines should be investigated from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved protocol.
 - 17) Prior to the First Export Date a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to

terrestrial television caused by the operation of the wind turbines shall be submitted to and approved in writing by the local planning authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint to the local planning authority that the local planning authority determines should be investigated of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the operator by the local planning authority within 12 months of the First Export Date. Where impairment is determined by the qualified television engineer to be attributable to the development, mitigation works shall be carried out in accordance with the scheme and timetable therein which has been approved in writing by the local planning authority.

- 18) No development shall commence until the wind farm operator has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the operator to and approved in writing by the local planning authority. This written scheme shall include an assessment of significance and research questions together with: (i) a programme and methodology of site investigation and recording; (ii) a programme for the post-excavation assessment of the results of the on-site investigation; (iii) provision for further analysis following the post-excavation assessment where the results justify this; (iv) provision for publication and dissemination of the analysis and records of the site investigation where the results justify this; and (v) full provision for archive deposition of the analysis and records of the site investigation.
- 19) The development shall be constructed in accordance with the following approved plans:
- a) WPENGd3497 Rev B: Location Plan Sheet 1
 - b) WPENGd3498 Rev C: Location Plan Sheet 2
 - c) WPENGd3507 Rev A: Detailed Plan on Turbine 1
 - d) WPENGd3508 Rev A: Detailed Plan on Turbine 2
 - e) WPENGd3509 Rev A: Detailed Plan on Turbine 3
 - f) WPENGd3510 Rev A: Detailed Plan on Turbine 4
 - g) WPENDd3511 Rev A: Detailed Plan on Turbine 5
 - h) WPENGd3513 Rev A: Detailed Plan on Turbine 7
 - i) WPENGd3516 Rev A: Detailed Plan on Met Mast
 - j) WPENGd3517 Rev B: Detailed Plan on Substation Compound & Construction Compound
 - k) WPENGd3315 Rev C: Hedge Removal Drawing
 - l) WPENGd3340 Rev B: Hedge Removal Site Entrance
 - m) WPENGd3341 Rev C: Hedge Removal Construction Compound/SGB
 - n) WPENGd3343 Rev B: Hedge Removal Junction to Turbine 5
 - o) WPENGd3344 Rev B: Hedge Removal Access to Turbine 3
 - p) WPENGd3345 Rev B: Hedge Removal Access to Turbines 4 and 7
 - q) WPENGd3346 Rev B: Hedge Removal Junction to Turbines 1, 4 and 7

- r) WPENGd3347 Rev B: Hedge Removal Junction to Turbine 1
 - s) WPENGd3348 Rev B: Hedge Removal Site Tracks to Turbine 2
 - t) Un-numbered: Proposed 100m High Turbine Drawing dated September 2011
- 20) No development shall commence until details of the design and layout of the site access from the public highway have been submitted to and approved in writing by the local planning authority. No other part of the development shall commence until the access has been constructed in accordance with the approved details.
- 21) No development shall commence until details of any temporary or permanent improvements to the adjacent public highway network, including a timetable for implementation, have been submitted and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 22) No development shall place notice until details of a point of contact responsible for dealing with any complaints including noise, shadow flicker, dust, traffic etc made during the construction, operation and decommissioning of the development and as a point of liaison for the local planning authority have been submitted and approved in writing by the local planning authority. The point of contact shall be retained, in accordance with the approved details, for the duration of this permission.
- 23) No development shall commence unless and until an Air Defence Radar Mitigation Scheme (ADRMS) has been submitted to and approved in writing by the local planning authority. The ADRMS means a detailed scheme to mitigate the adverse impacts of the development on the air defence radar at Staxton Wold and the air surveillance and control operations of the MoD (so far as such impacts are to be mitigated at the air defence radar at Staxton Wold). The scheme shall set out the appropriate measures to be implemented to that end. No turbines shall become operational until: (a) the mitigation measures which the approved scheme requires to be implemented prior to the operation of the turbines have been implemented; (b) any performance criteria specified in the approved scheme and which the approved scheme requires to have been satisfied; and (c) that implementation and satisfaction of the performance criteria have been approved by the Local Planning Authority. The operator shall thereafter comply with all other obligations contained within the ADRMS.
- 24) The operator shall install infra-red warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point on all wind turbines. The wind turbines shall be erected with this lighting installed and the lighting will remain operational throughout the duration of this permission.
- 25) 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 or derived from Tables 1 and 2 attached to these conditions and:
- (A) Prior to the First Export Date of electricity on the development to the grid the wind farm operator shall submit to the local planning

authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority.

- (B) Within 21 days from receipt of a written request of the local planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning 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 from the local planning authority shall set out at least the date, time and location that the complaint relates to and an opinion as to whether the noise giving rise to the complaint contains a tonal component. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).
- (C) 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 these conditions, the wind farm operator shall submit to the local planning authority for 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 selected from the Tables specified for a listed location which the independent consultant considers as being 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 of the choice of the representative background noise environment provided by the independent consultant. 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.
- (D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this

condition shall be undertaken at the measurement location approved in writing by the local planning authority.

- (E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol setting out the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the local planning authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority.

- (F) 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 within 2 months of the date of the written request of the local planning authority made under paragraph (B) of this condition unless the time limit is extended in writing by the local planning 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 with the independent consultant's assessment of the rating level of noise immissions.
- (G) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.
- (H) The wind farm operator shall continuously log nacelle height wind speed and direction, alongside a record of nacelle orientation and power generation, of each turbine erected in accordance with this permission, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine shall be retained for a period of not less than 24 months. The wind farm

operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the local planning authority on its request within 14 days of receipt in writing of such a request.

Note: For the purposes of this condition, a “dwelling” is a building within Use Class C1 C3 or C4 of the Use Classes Order which lawfully exists or had an extant planning permission at the date of this permission.

Table 1 - Between 07:00 and 23:00 - Noise level dB L_{A90}, 10-minute

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	L _{A90} Decibel Levels											
Manor House Farm (509720 466821)	35	35	35	35	35	36	38	39	41	41	41	41
Haisthorpe Hall (512565 465244)	40	40	41	42	43	45	47	49	52	52	52	52
West Backside (512618 464904)	39	40	41	42	43	44	44	45	45	45	45	45
Thornholme (511553 463941)	45	47	48	49	49	49	50	51	53	53	53	53
Burton Agnes (510780 463309)	40	41	43	43	44	45	47	49	52	52	52	52

Table 2 - Between 23:00 and 07:00 - Noise level dB L_{A90}, 10-minute

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	L _{A90} Decibel Levels											
Manor House Farm (509720 466821)	43	43	43	43	43	43	43	43	43	43	43	43
Haisthorpe Hall (512565 465244)	43	43	43	43	43	43	43	47	52	52	52	52
West Backside (512618 464904)	43	43	43	43	43	43	43	43	43	43	43	43
Thornholme (511553 463941)	43	43	43	43	43	43	43	43	49	49	49	49
Burton Agnes (510780 463309)	43	43	43	43	43	43	43	43	49	49	49	49

Note to Tables 1 & 2: The geographical coordinates references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The standardised wind speed at 10 metres height within the site refers to wind speed at 10 metres height derived from those measured at hub height, calculated in accordance with the method given in the Guidance Notes.

Guidance Notes for Noise Condition

These notes are to be read with and form part of the noise condition. 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 with any necessary correction for residual background noise levels in accordance with Note 4. 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 $L_{A90,10\text{-minute}}$ noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), 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 before and after each set of measurements, using a calibrator meeting IEC 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3 if required.
- (b) The microphone shall 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 and be not more than 35 metres from it. Measurements should be made in "free field" conditions. To achieve this, the microphone shall 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 $L_{A90,10\text{-minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean nacelle wind speed (duly corrected for the presence of the rotating blades) arithmetic mean nacelle orientation, nacelle wind direction and arithmetic mean power generated during each successive 10-minute periods for each wind turbine on the site. The nacelle height wind speeds recorded from the nacelle anemometers or as calculated from the power output of each turbine shall be supplemented by standardised ten metre height wind speed data calculated for each 10-minute period from those measured at nacelle height assuming a reference roughness length of 0.05 metres and using the equation given on page 120 of ETSU-R-97. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. Standardised 10 metre height wind speed data shall be 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 (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.

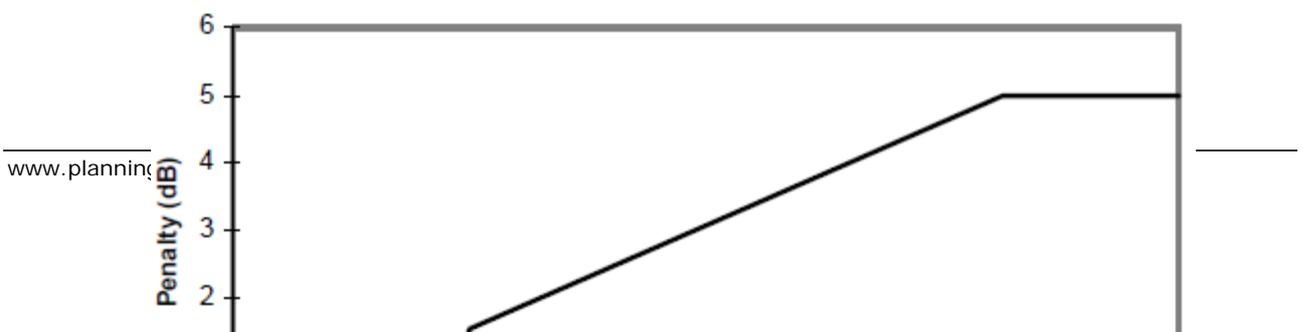
- (f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with 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 set out in the assessment protocol approved by the local planning authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the $L_{A90,10\text{-minute}}$ noise measurements and corresponding values of the 10-minute standardised ten metre height 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" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) 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 $L_{A90,10\text{-minute}}$ 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"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. 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 integer wind speed bin. 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 derived from the average tone level above audibility for each integer wind speed.



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 set out in the approved assessment protocol under paragraph (E) 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) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) 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 comprising 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 set out in the approved noise assessment protocol under paragraph (E) of this 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.

- iv. 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 conditions or at or below the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph (C) 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 conditions or the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.



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.