



Department for
Communities and
Local Government

Ms S Grange
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70 Great Bridgewater Street
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Our Ref: APP/Y2736/A/13/2201109

27 May 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 79)
APPEAL BY RWE NPOWER RENEWABLES LTD:
LAND AT EAST HESLERTON WOLD, EAST HESLERTON, RYEDALE, NORTH
YORKSHIRE
APPLICATION REF: 11/00270/MFULE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul Jackson B Arch (Hons) RIBA, who held a public local inquiry between 19 and 22 November into your client's appeal against a decision of Ryedale District Council to refuse planning permission for: erection of 10 no. wind turbines with a maximum height of 126m to blade tip to include micro-siting and associated infrastructure including access tracks, 1 no. sub-station and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings, construction compound, 2 no. new and 2 no. upgraded site access points and 1 no. 80m high permanent meteorological mast, in accordance with application ref 11/00270/MFULE dated 18 March 2011.
2. On 11 October 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, dismisses the appeal and refuses planning permission. 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 reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) and Supplementary Environmental Information (SEI) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR3). The Secretary of State considers that the ES and SEI along with Further Environmental Information submitted in September 2013 (IR4) comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.

Matters arising after the close of the inquiry

5. Following the close of the inquiry, on 18 March 2014 the Secretary of State wrote to the main parties to seek their views on the planning practice guidance which was published on 6 March 2014 and on a recent Court of Appeal judgment relating to proposals affecting the protection of heritage assets under section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990¹.
6. Responses were received from Mr P Stephens dated 20 March, from the Council dated 27 March and from yourself on behalf of the appellant dated 2 April. The Secretary of State has taken account of these responses in his consideration of the appeal before him. As the responses were copied to the main parties, he does not consider it necessary to summarise their responses here or attach them to this letter. Copies of the correspondence can be obtained upon request to the address at the bottom of the first page of this letter.

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 consists of the Ryedale Local Plan Strategy (LPS) adopted on 5 September 2013 and saved policies in the Yorkshire and Humber Plan and Ryedale Local Plan 2002 (IR13). The Secretary of State considers that the policies identified in IR15-21 are the most relevant policies to this appeal.
9. Other material considerations which the Secretary of State has taken into account are those outlined in IR22-28. The Secretary of State has also taken into account the planning practice guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); and Ministerial Written Statements on renewable energy published in June 2013 by the Secretary of State for Energy and Climate Change and by the Secretary of State for Communities and Local Government.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme and their settings.

¹ Barnwell Manor Wind Energy Ltd v East North Hants DC, national Trust and SSCLG [2014] EWCA Civ 138, 18 Feb 2014

Main Issues

Renewable energy and other benefits

11. The Secretary of State agrees with the Inspector's assessment of the renewable energy, economic and other benefits of the scheme at IR228-230. He agrees that there is no dispute that the proposal would make a very significant and useful contribution to renewable energy in Ryedale. He also agrees that the contribution it would make to renewable energy production and CO² savings attract very significant weight in favour of the proposal (IR229).

Landscape and visual impact

Yorkshire Wolds Area of High Landscape Value and the Vale of Pickering

12. The Secretary of State has given careful consideration to the Inspector's assessment at IR185-190 of impacts on the Wolds Area of High Landscape Value and the Vale of Pickering. He agrees that beyond 3-3.5 km of the development the effect on the Wolds would be moderate/minor, declining with distance (IR187). However, given that the Wolds is a highly valued landscape and that the area along the farmed crest, which forms a conspicuous skyline, has high landscape sensitivity (IR185), he places significant weight on the high magnitude of landscape change leading to a moderate adverse effect within about 3.5 km of the development (IR187).

13. Though none of the turbines would be on the highest ground on the crest of the Wolds scarp, all of the turbines would be visible to varying degrees from within the Vale of Pickering, depending on distance. The Secretary of State accepts that the turbines would affect only a small part of the scarp and, in the context of the Vale as a whole, would be of only medium landscape significance (IR188). However partial views of revolving turbine blades would appear as a distracting element above the horizon from many parts of the Vale (IR188) and he places moderate weight on this impact.

North Yorkshire Moors National Park

14. The National Planning Policy Framework states that great weight should be given to conserving landscape and scenic beauty in National Parks. The planning practice guidance advises that renewable energy proposals in areas close to National Parks where there could be an adverse impact on the protected area will need careful consideration.

15. When viewed from parts of the South-Eastern edge of the North York Moors National Park almost all of the turbine hubs and blades would be visible above the crest of the Wolds scarp, albeit they would be sufficiently far back from the crest to avoid being seen at full height from any location in the National Park. Nevertheless they would be a distracting element on the horizon visible from areas of the National Park that extend southwards at Hutton Buscel and Thornton-le-Dale (IR191). The Secretary of State has had regard to the facts that the turbines would be at least 9 km away from the Park, the angle of view occupied by them would be small and there are no specifically identified special qualities of the National Park which comprise distant views toward the Wolds specifically (IR191-192). However he agrees with the assessment of the Director of Planning at the North York Moors National Park that, whilst not constituting part

of the setting of the National Park, the Wolds escarpment forms an important visual backdrop to the extensive deeply rural views which characterise the southern vista from the southern fringe of the Park. The Secretary of State also agrees with the Director that the relationship between the landscape character areas of the Vale of Pickering and the Wolds and the southern dip slopes of the North York Moors is an important one where the lack of significant man made features and the linear character of the immediate and longer distance views are fundamental to the public enjoyment of the special qualities of the National Park (IR159). Despite the distance from the Park boundary, the Secretary of State agrees with the Director that the proposal would introduce a highly intrusive form of development which owing to its scale, vertical emphasis, the number of turbines, their elevated siting, movement and prominence on the horizon would seriously undermine these landscape features. Though there are no specifically identified special qualities of the National Park which comprise distant views towards the Wolds, the Secretary of State accepts the Director's view that the relationship between the various component parts of the wider landscape is such that the proposal would impact adversely upon the public enjoyment of the special qualities of the National Park within its south-eastern edge area (IR160). The Secretary of State attaches significant weight to the adverse impact on public enjoyment of the Park.

Cumulative landscape impacts

16. For the reasons at IR203 the Secretary of State agrees that there would be no significant cumulative landscape or visual impacts arising from the current proposal in combination with other consented or operative wind farms. However this does not diminish his concern about the impacts identified above.

Conflict with policy on protecting landscape

17. Given the adverse landscape impacts identified by the Inspector and the particular harms on which the Secretary of State places weight, he agrees with the Inspector that the development would conflict with the clearly expressed aims of LPS Policy SP13 (IR190).

Visual amenity and recreational users

18. For the reasons given at IR193-196, the Secretary of State agrees with the Inspector that the proposal would not have any significant impacts on the visual amenity of residents in nearby farms and villages.

19. For the reasons given at IR197 and 202, the Secretary of State considers that the visual impact on the byway open to all traffic that crosses the site in a north-south direction would be substantial and the turbines would diminish the enjoyment of users of this route. He attaches some weight to this.

20. For the reasons at IR198-199 the Secretary of State agrees with the Inspector that equine based objections do not weigh heavily against the proposal.

21. Turning to the Yorkshire Wolds Way, for the reasons given at IR200 the Secretary of State agrees with the Inspector's conclusion at IR202 that the proposal would not seriously diminish the public enjoyment of this national trail as a whole. However, given that there would be a moderate adverse visual effect within 3.5 km of the proposal (IR187) and that a section of the Way crosses this area, the Secretary of State places some weight on the intrusive impact experienced by

those walkers on this section of the Way who do not find turbines attractive or interesting.

Cultural heritage

22. The Secretary of State has given careful consideration to the Inspector's assessment of impacts on listed buildings and other cultural heritage features at IR212-216, as well as representations on this matter in response to his letter of 18 March.
23. For the reasons given at IR212-214, the Secretary of State agrees that heritage assets within the Vale of Pickering would not be significantly affected by this scheme any more than they are by existing modern developments (IR214).
24. The Secretary of state has carefully considered the Inspector's reasoning and conclusions at IR215-216 about the degree of harm to the setting of the Grade I listed church of St Andrew's in East Heslerton. He agrees that the development would influence the way the asset is interpreted and understood because partial views of moving blades on a significant part of the conspicuous crest of the escarpment on the main approach to, and from within the churchyard would be a distracting element in this quiet rural setting, which apart from a few 20th century dwellings to the west is unaffected by modern development. Though the view up to the crest is not a 'designed' view, he notes that it is prominent in the experience of visiting the church. He agrees that the harm caused to the setting would not be so severe as to amount to 'substantial harm' in the terms of paragraph 133 of the NPPF, but that the impact would be adverse (IR216). Given that the view up to the crest is prominent in the experience of visiting the church and that partial views of moving blades would be a distracting element in this rural setting, the Secretary of State considers that the Inspector's description of harm to the church's setting as 'minor' (IR232) underplays the degree of harm. The Secretary of State considers that the development would conflict with LPS Policy SP18 due to the adverse impact on historical interests (IR18).
25. In view his duty under s66 of the LBCA, the Secretary of State attaches considerable importance and weight to the desirability of preserving the setting of St Andrew's Church and to the finding that the impact on this would be adverse.

Other Matters

26. The Secretary of State agrees with the Inspector's reasoning and conclusions on noise at IR209-210, ecological concerns at IR211 and aviation at IR217-225.

Conditions

27. The Secretary of State has considered the Inspector's comments at IR240-251 on the proposed planning conditions and the edited conditions he recommends in Annex 2 of the IR. The Secretary of State is satisfied that the conditions in the Annex are reasonable and necessary and would meet the tests at paragraph 206 of the National Planning Policy Framework. However, he does not consider that the conditions would overcome his reasons for dismissing the appeal.

Planning balance and overall conclusions

28. The Secretary of State has given careful consideration to the Inspector's overall balancing exercise at IR226-238. The Secretary of State agrees that the contribution the development would make to renewable energy production and CO₂ savings attracts very significant weight (IR229). He also gives some weight to the economic benefits from construction and the benefit through the improvement and reinstatement of hedging (IR230).
29. However, he places significant weight on the high magnitude of change and the moderate adverse effect on the highly valued Wolds landscape within about 3 km of the development. He also places moderate weight on the distracting view of parts of turbines above the horizon when viewed from many parts of the Vale of Pickering. Those views extend to the south-eastern edge area of the North York National Park and he places significant weight on the harm to public enjoyment of the special qualities of the National Park within this part of it. Overall, he ascribes very significant weight to the sum of harm to the landscape (IR187 – 188), the corresponding conflict with LPS Policy SP13 (IR190) and the harm to public enjoyment of the North York Moors National Park (IR160).
30. The Secretary of State places some weight on the intrusive impact that would be experienced by users of the byway open to all traffic that crosses the site and users of the Yorkshire Wolds Way where this passes the development.
31. The development would lead to an adverse impact on the setting of St Andrew's Church at East Heslerton (IR216) and consequently would conflict with LPS Policy SP18. The Secretary of State attaches considerable importance and weight to the desirability of preserving the setting of St Andrew's Church and to the finding that the impact on this setting would be adverse.
32. The proposal conflicts with the development plan and, having had particular regard to paragraph 98 of the Framework, the Secretary of State considers that the sum of environmental impacts of the proposal are not and cannot be made acceptable.

Formal decision

33. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for erection of 10 no. wind turbines with a maximum height of 126m to blade tip to include micro-siting and associated infrastructure including access tracks, 1 no. sub-station and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings, construction compound, 2 no. new and 2 no. upgraded site access points and 1 no. 80m high permanent meteorological mast, in accordance with application ref 11/00270/MFULE dated 18 March 2011.
34. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

35. 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.

36. A copy of this letter has been sent to Ryedale District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Paul Jackson B Arch (Hons) RIBA

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

Date: 12 February 2014

Town and Country Planning Act 1990

Ryedale District Council

Appeal by

RWE Npower Renewables Ltd

Inquiry opened on 19 November 2013

Land at East Heselton Wold, East Heselton, Ryedale, North Yorkshire

File Ref: APP/Y2736/A/13/2201109

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Land at East Heselton Wold, East Heselton, Ryedale, North Yorkshire

- The application was recovered for decision by the Secretary of State by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 11 October 2013.
- The application is made by RWE Npower Renewables Ltd to Ryedale District Council.
- The application Ref 11/00270/MFULE is dated 18 March 2011.
- The development proposed is erection of 10 no. wind turbines with a maximum height of 126m to blade tip to include micrositing and associated infrastructure including access tracks, 1 no. sub-station and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings, construction compound, 2 no. new and 2 no. upgraded site access points and 1 no. 80m high permanent meteorological mast.
- The reason given for making the direction was that the appeal involves a renewable energy development.

Summary of Recommendation: That the appeal is allowed, and planning permission granted subject to conditions.

Procedural Matters

1. The Inquiry sat for 4 days and closed on 22 November 2013. An accompanied site visit was carried out on 26 November 2013. Unaccompanied visits were carried out on 22 and 23 August (before and after the pre-Inquiry meeting) and on 25 November 2013.
2. The proposal has been considered on the basis of revised layout drawing No. PA002a submitted on 13 April 2012, updated on 28 August 2013 to correct an error in the proposed route in the access track for the meteorological mast¹.
3. The planning application was accompanied by an Environmental Statement (ES) prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended. Following the applications and after discussions with the Councils' officers, Supplementary Environmental Information (SEI) was submitted in March 2012 following consultation responses. The application was refused by the Council on 16 May 2013.
4. In order to ensure that studies within the ES and SEI remain up to date, Further Environmental Information (FEI) was submitted in September 2013, comprising figures and technical appendices intended to reflect the latest position on planned and consented wind energy in the area, up to date ecological and ornithological information and the most recent technical advice on noise. The FEI also includes an updated visualisation including the approximate locations of transformer units as requested at the pre-inquiry meeting². I have taken the FEI into account.
5. The turbines are described as T1-T10 in this report.

¹ See Statement of Common Ground CD11.15 para 2.4

² As requested by the Inspector. See FEI Fig 2.5

The site and its surroundings

6. The following description is based on the statement of common ground³.
7. The proposed development would be located on arable agricultural land approximately 2 kilometres (km) south of the village of East Heslerton and approximately 12km east of Malton in the Ryedale District of North Yorkshire. The appeal site is bounded by Newlands Lane to the south west and White Gate Road crosses the eastern portion of the appeal site. A plan identifying the location of the appeal site is at Appendix 2b of the ES.
8. The nearest settlements to the appeal site are East Heslerton and West Heslerton which are located on the A64 approximately 2.1 and 1.7 km to the north from the appeal site. The small villages of West Lutton, East Lutton and Weaverthorpe lie directly to the south at a distance of about 4 km. A number of other settlements lie within 10 km of the site, together with individual properties and farmsteads.
9. Public rights of way within the appeal site and its surrounding area include bridleways, footpaths and byways. A byway crosses the appeal site in a northerly direction between the proposed wind turbines, across East Heslerton Wold. There is also a bridleway which runs from the boundary of the appeal site in a south easterly direction towards Moor Farm. Another bridleway runs west from Whin Moor and south of Ling Farm. The Wolds Way National Trail extends over 127 km from Hessle, Humberside to Filey, south of Scarborough and is routed approximately 300 metres (m) north of the boundary of the appeal site. It passes along the northern escarpment of the Wolds which defines the southern edge of the Vale of Pickering, and benefits from extensive views to the north. The Centenary Way (a regional route) and the Chalkland Way (a 64 km circular walk) coincide with the Wolds Way National Trail for some sections within the 35 km radius study area⁴.
10. There are two nationally designated landscapes within the study area, the North York Moors National Park which lies approximately 9km to the north, and the Howardian Hills Area of Outstanding Natural Beauty (AONB) which lies to the west at a distance of between 15-35 km. The Flamborough Headland and North Yorkshire and Cleveland Heritage Coastlines, although not benefiting from statutory protection, are located to the east of the appeal site at distances of between 20 and 35 km. As regards local landscape designations, the appeal site is located within the Yorkshire Wolds Area of High Landscape Value (AHLV). The edge of the Fringe of the North York Moors AHLV is located to the north of a more detailed 10 km study area⁵.
11. There are no European (Ramsar, SAC or Special Protection Area) statutory designations within 5km of the appeal site, but there are four Sites of Special Scientific Interest (SSSIs) within this distance, the closest being East Heslerton Brow SSSI and Ladyhills SSSI, located approximately 0.5 km north and 0.5 km south west respectively of the appeal site. There are two non-statutory Sites of

³ Doc 11.15

⁴ Public Rights of Way shown on Figure 13.1 in Vol II of ES

⁵ Figures 6.7-6.10 in Vol II of ES

Importance for Nature Conservation (SINCs), West Heselton Links and West Heselton Brow Road Cutting, located within 2km of the appeal site⁶.

The proposal

12. The 10 turbines would be spread between Sherburn Wold and West Heselton Wold on undulating land, south of the crest of the long escarpment that describes the southern edge of the Vale of Pickering. Turbines T1-T6 would be between East Heselton Wold Farm and Ling Hall Farm. Turbines T7-T10 would be in an approximate east-west row to the north. The overall group would be relatively compact, being contained within an area of about 1.9 km between T1 and T10 and 0.9 km between T3 and T7. The anemometer mast would lie about 200 m south of T2 on the southern edge of the group. The substation building would be situated between T7 and T8 on an existing bridleway and each turbine would be accompanied by a small transformer 'kiosk' building at its base.

Planning policy

13. For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the development plan consists of the Ryedale District Council Ryedale Plan-Local Plan Strategy (LPS)⁷ adopted on 5 September 2013. Whilst some saved policies of the strategic Yorkshire and Humber Plan remain extant together with saved policies of the Ryedale Local Plan of 2002, none of these are relevant to the determination of this appeal. Ryedale Local Plan policies referred to in the reasons for refusal have been superseded by policies of the LPS.
14. However the Proposals Map of the 2002 Plan is saved and forms part of the LPS. This is relevant because it identifies AHLVs including the Yorkshire Wolds AHLV within which the site is situated. The AHLVs are also referred to in LPS policies.
15. The first arm of LPS policy SP13 seeks to protect and enhance the quality, character and value of Ryedale's diverse landscapes by a) encouraging new development and land management practises (sic) which reinforce the distinctive elements of landscape character within the district's broad landscape character areas of the Vale of Pickering and the Yorkshire Wolds, amongst other areas; and b) protecting the special qualities and natural beauty of the Howardian Hills AONB and its setting and the setting of the North York Moors National Park. There is no dispute that the setting of the Howardian Hills AONB would not be affected by the proposal.
16. The second arm of the policy advises that development proposals should contribute to the protection and enhancement of distinctive elements of landscape character that are the result of historical and cultural influences, natural features and aesthetic qualities including:

⁶ Ecological designations shown on Figure 7.1 in Vol II of ES

⁷ CD 1.1

- The distribution and form of settlements and buildings in their landscape setting
 - The character of individual settlements, including building styles and materials
 - The pattern and presence of distinctive landscape features and natural elements (including field boundaries, woodland, habitat types, landforms, topography and watercourses)
 - Visually sensitive skylines, hill and valley sides
 - The ambience of the area, including nocturnal character, level and type of activity and tranquillity, sense of enclosure/exposure.
17. Insofar as relevant to the appeal proposal, the last part of policy SP13 says that outside of those landscapes protected by national landscapes designations, the Council will carefully consider the impact of development proposals on the following broad areas of landscape which are valued locally:
- The Wolds Area of High Landscape Value
 - The Fringe of the Moors Area of High Landscape Value
 - The Vale of Pickering

It goes on to say that the Yorkshire Wolds and Fringe of the Moors are valued locally for their natural beauty and scenic qualities. As well as protecting the distinctive elements of landscape character in each of these areas, there are particular visual sensitivities given their topography and resulting long distance skyline views within Ryedale and further afield. The Vale of Pickering, the Wolds and the Fringe of the Moors are of significant historic landscape value and loss or degradation of the elements that are integral to their historic landscape character make these landscapes particularly sensitive to change.

18. LPS policy SP18 concerns renewable and low carbon energy. Developments that generate renewable and/or low carbon sources of energy will be supported providing that individually and cumulatively, proposals:
- Can be satisfactorily assimilated into the landscape or built environment, especially in respect of the setting of the North York Moors National Park..... the Wolds and the Vale of Pickering;
 - Would not impact adversely on the local community, economy, or historical interests;
 - Would not have an adverse impact on nature conservation, in particular in relation to any sites of international biodiversity importance, unless their impact can be acceptably mitigated; and
 - Would not have an adverse impact on air quality, soil and water resources in Policy SP17, unless their impact can be acceptably mitigated.
19. The preamble to the policy advises that opportunities for large scale energy generation are limited in Ryedale because of its high quality landscape, historic environment and significant biodiversity. The text says that Ryedale also has some potential for wind farms due to its topography and high wind speeds, going on to remark that Ryedale's high quality landscape is one of its key assets

and a balance needs to be struck between delivering renewable energy generation and protecting the character of the district for those who live there and visit it. The Renewable and Low Carbon Energy Study for Yorkshire and Humber (2011)⁸ (sic) took the high quality landscape of Ryedale into account when identifying its wind energy potential of 10MW, though this figure is gathered from opportunities in the Vale of York, which is not a high value landscape.

20. Other relevant LPS policies include SP12 which advises that Ryedale's historic environment will be conserved and where appropriate, enhanced. It advises that proposals which would result in less than substantial harm will only be agreed where the public benefit of the proposal is considered to outweigh the harm and the extent of harm to the asset. This is consistent with the relevant objectives of the 2012 National Planning Policy Framework (NPPF). Policy SP14 seeks to conserve, restore and enhance biodiversity in Ryedale. Policy SP15 advises that a network of green open spaces and natural features will be created and managed across Ryedale to support biodiversity and environmental systems to enhance the attractiveness of places and to support healthy lifestyles by providing opportunities for activity and relaxation. This will be achieved by protecting and enhancing the quality and integrity of areas of regional or sub-regional significance within Ryedale including the North York Moors National Park and the Yorkshire Wolds; and by protecting, enhancing, creating and connecting wider elements of green infrastructure including public rights of way and open access land.
21. Policies SP16 and SP20 concern design and development management. Policy SP20 advises that new development will respect the character and context of the immediate locality and the wider landscape/townscape character in terms of physical features and the type and variety of existing uses; proposed uses and activity will be compatible with the existing ambience of the immediate locality and the surrounding area and with neighbouring land uses and would not prejudice the continued operation of existing neighbouring land uses. The cumulative impact of new development on the character of an area will also be considered.

National policy

22. As a result of EU Directive 2009/28/EC, the UK is committed to a legally binding target to achieve 15% of all energy generated from renewable resources, including electricity, heat and transport, by 2020. The 2006 Energy Review has an aspiration of 20% of electricity to be from renewable resources by 2020. The Climate Change Act of 2008 sets a target of at least an 80% cut in greenhouse gas emissions by 2050. The overarching strategy to reduce carbon emissions to meet the requirements of the EU Directive and the Climate Change Act is contained in the 2009 UK Renewable Energy Strategy and the UK Low Carbon Transition Plan; the lead scenario is that 30% of electricity is to be derived from renewable resources by 2020, though this is not binding. The UK Renewable Energy Roadmap (the Roadmap) was published in 2011 and focuses on 8 technologies which are considered to offer the greatest potential to deliver the infrastructure to meet the target, including onshore wind energy. An update to

⁸ CD 3.5 Low Carbon and Renewable Energy Capacity in Yorkshire and Humber, p190 (appendices)

the Roadmap was published in November 2013⁹ which confirms that to the end of June 2013, there was a total of installed onshore wind capacity of 7.0 Gigawatts (GW). A total of over 19.5 GW of onshore wind capacity was in operation, under construction or had entered the formal planning system, including the East Heselton scheme.

23. The Digest of United Kingdom Energy Statistics (DUKES)¹⁰ indicates that using the methodology set out in the 2009 EU Directive, provisional calculations show that 4.1% of UK energy consumption came from renewable sources in 2012. This is an improvement against the 3.8% recorded in 2011. The average of 3.94% between 2011 and 2012 is within the margin of error around the target of 4.04% set out in the Directive, though this has to be seen in the context of the revised aspiration of 20% by 2020 in the 2006 Energy Review.
24. Not all of the developments anticipated in the Roadmap will be consented and not everything will be built, but the majority of the new schemes will be in Scotland. There is no cap on capacity. The Roadmap advises that onshore wind, as one of the most cost effective and proven renewable energy technologies, has an important part to play in a responsible and balanced UK energy policy. The Government will continue to provide a stable long term investment framework for the sector.
25. The 2013 Update states that the Government recognises that some people have concerns about onshore wind developments, and it remains committed to ensuring that projects are built in the right places, with the support of local communities; and that they deliver real local economic benefits. New proposals are needed to meet the 2020 ambition and longer term decarbonisation.
26. The NPPF of 2012 replaced the previous Planning Policy Statements (PPSs) and Planning Policy Guidance Notes, though the PPS5 Planning for the Historic Environment Practice Guide (PPS5PG) remains extant. The NPPF says at paragraph 98 that applicants for energy development should not have to demonstrate the overall need for renewable or low carbon energy. Applications should be approved¹¹ if their impacts are (or can be made) acceptable. The NPPF advises that decision makers should follow the approach set out in the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3), read with the Overarching NPS for Energy (EN-1), both dated 2011.
27. The advice needs to be read as a whole. Particularly relevant to this case is paragraph 5.9.18 of EN-1 which advises that all proposed energy infrastructure is likely to have visual effects for many receptors around proposed areas and that a judgement has to be made on whether the visual effects on sensitive receptors, such as local residents and visitors to the area, outweigh the benefits of the project. EN-3 states at paragraph 2.7.6 that appropriate distances should be maintained between wind turbines and sensitive receptors to protect amenity, the two main impact issues being visual amenity and noise. Paragraphs 2.7.48/49 say that commercial wind farms are large structures and that there will always be significant landscape and visual effects for a number of kilometres around a site; the arrangement of turbines should be carefully designed to

⁹ Doc RWE 6.37

¹⁰ Doc 6.33 (July 2013)

¹¹ Unless material considerations indicate otherwise

- minimise effects on the landscape and visual amenity whilst meeting technical and operational siting requirements and other constraints. Paragraphs 2.7.52-62 concern noise impacts and indicate that ETSU¹² should be used to assess and rate noise from wind energy development, taking account of the latest industry good practice.
28. The NPPF has a core principle at paragraph 17 that specifically supports the transition to a low carbon future in a changing climate and encourages the use of renewable resources (for example, by the development of renewable energy). Another core principle is that a good standard of amenity should always be sought for existing and future occupants of buildings.
29. The Ministerial Statement of 6 June 2013 draws attention to some local communities' genuine concerns that insufficient weight is being given to environmental considerations like landscape, heritage and local amenity. In order to get the balance right in line with the NPPF, the subsequent guidance in the Planning Practice Guidance for Renewable Energy (PPGRE) of July 2013 is intended to help decision makers on 4 points:
- 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 (i.e. recognise that the impact on predominantly flat landscapes can be as great or greater than as on hilly or mountainous ones);
 - 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.
30. The PPGRE also recommends the use of ETSU.
31. In accordance with the duty set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), special regard needs to be paid to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess. Special attention must also be given to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the LBCA.

Draft National Planning Practice Guidance

32. This online resource is a material consideration. At the current time, it carries only limited weight.

The case for RWE Npower Renewables Ltd

¹² ETSU-R-97: The Assessment and Rating of Noise from Wind Farms, Doc RWE 8.1

The main points are:

33. Before dealing with the main issues, the following matters are concerns of local residents.

Aviation

34. Objections were raised in response to the application, by National Air Traffic Service (NATS), the Ministry of Defence (MoD), Mr. Peacock in relation to impacts on Eddsfield Airstrip and by Mr. Stephens in relation to Moor Farm Airstrip.
35. A detailed statement from David Jones, Aviation Solutions Manager for RWE summarises the objections raised by the MoD and NATS, and explains the reasons which have enabled their objections to be removed. Conditions have been proposed and agreed with NATS and the MoD which will deliver the necessary technical mitigation to address their concerns.¹³
36. Eddsfield is a private airstrip approximately 8.4 km from the proposed wind farm. Traffic using the airfield should not pass closer than 3.5 km to the nearest turbine, and at that distance CAP 764 guidance¹⁴ states that it is not anticipated that the project will have any impact. The matter was also independently considered by consultants employed by the Council who concluded that the proposals would have no adverse impact on the operation of the airfield.
37. Mr. Stephens has raised a number of concerns throughout the application and appeal process relating to impacts on his private airstrip at Moor Farm. In summary, these concerns relate to the impact of the turbines on take off, landing and circuit flying, and the potential for the turbines to cause a safety hazard due to turbulence. Moor Farm airstrip is unlicensed and has not been registered to safeguard it with the Council, as advised by guidance in CAP 793¹⁵. It is not marked on any official aeronautical maps and is ostensibly for private use. Pilots will be operating under rules which mean that flying is only permitted during daylight hours and in good visibility. This basically means that the airstrip can only operate where pilots are able to see and avoid obstacles and other aircraft.
38. Safeguarding would have identified those particular areas which Mr Stephens considered important. In the absence of that information, the appellant's aviation witness took a precautionary approach and treated the airstrip as if it were licensed thereby applying a stricter regulatory regime to it. Following receipt of Mr. Stephens' initial objections, he carried out a safety assessment in accordance with CAP 760¹⁶ which demonstrated that there was no need for aircraft using the airstrip to overfly the wind farm, that separation distances for aircraft taking off and landing vastly exceed minimum recommendations, and that if circuit flying is deemed to be necessary, it is possible to re-design the circuit around the wind farm. The Council's independent aviation consultants

¹³ Set out in Mr. Arden's appendix

¹⁴ CD 10.1 chapter 5, section 1.2

¹⁵ CD10.2

¹⁶ CD 10.7

agreed, and therefore all the professional evidence points to those impacts being acceptable.

39. With regard to Mr. Stephens' concerns about the impact of wake turbulence, the appellant's evidence demonstrates that those concerns are also unfounded. It is a legal requirement to report any incidence of turbulence relating to wind turbines. CAP 764¹⁷ itself advises that there are no aircraft accident reports related to wind turbines in the UK and having undertaken an assessment in accordance with CAP 168¹⁸ as advised by CAP 764, it is demonstrated that the turbines would not fall within the obstacle protected area. Consequently, and in accordance with the guidance in CAP 764, it is concluded that turbulence will not present a safety hazard. These conclusions have not been substantively challenged by Mr. Stephens. It is fully understood why he would be concerned but the impacts would be acceptable.

Noise

40. National Policy Statement EN-3 makes it clear that where an assessment has been undertaken in accordance with ETSU and such guidance, and the impacts shown to be within the limits advised, that decision makers should give little weight to any impacts arising from noise. The assessment complies. It is common ground between the main parties that the wind farm can be operated in accordance with the limits advised by ETSU, and conditions are largely agreed which will ensure that the appropriate limits are adhered to. Consequently, any noise impact would be acceptable.

Cultural heritage

41. The Statement of Common Ground makes it clear that the Council do not object to the proposals on cultural heritage grounds. Nevertheless, English Heritage (EH) did raise some concerns regarding impacts on the historic landscape of the Vale of Pickering, and on the setting of the Churches of St. Andrew in East Heslerton and St. Hilda in Sherburn. EH helpfully noted that in their view any impacts amounted to less than substantial harm and accordingly should be weighed against the public benefits of the scheme in accordance with the advice contained in paragraph 134 of the NPPF. With the exception of one relating to the setting of Wykeham Abbey, no other concerns were raised by members of the public regarding heritage assets.
42. In relation to the Church of St. Andrew, in the key views of the Church the turbines would not be seen in close proximity with its spire which would remain the dominant element of East Heslerton village. The impact on the significance of the asset would be negligible. The turbines will be located over 3 kilometres from the Church of St. Hilda in Sherburn, and the majority of views towards the turbines are screened by the buildings of the village. Any views of the turbines from and in conjunction with the Church are very limited and consequently the impact on the significance of that asset would be negligible. Wykeham Abbey lies 8km from the wind farm and at that distance, the limited views which might be available would have no impact on its significance.

¹⁷ CD 10.1 Chapter 2 para 8.4

¹⁸ CD 10.3 Chapter 4 section 2

43. Applying the balancing exercise required by paragraph 134 of the NPPF which is also inherent in policy SP12 of the LPS, one can logically conclude that the level of impacts identified are clearly outweighed by the public benefits of the scheme. Turning to section 66 of the LBCA which requires decision makers to “have special regard to the desirability of preserving a Listed Building or its settings”, the statutory requirement simply directs the decision maker to paying particular attention to any impacts on the setting of a listed building which may arise. The point was raised and addressed in the case of *Colman v Secretary of State for Communities and Local Government, North Devon District Council and RWE Npower Renewables Limited*¹⁹. The duty was considered by the Judge at paragraph 68 as follows: “In my view, the Inspector did give in this case “special regard” to the consideration referred to in Section 66 (1) of the LBCA. He did so by carrying out a careful and detailed assessment of the impact on the setting of the Listed Buildings in question. In all instances but one there was no such impact or the impact was such that it could in effect be discounted in the decision making. The Inspector did have real concern about one Listed Building and found that the impact was significant. However, he was then required, first to evaluate the extent of that impact and to weigh the negative impact against the substantial benefits of the development in accordance with the NPPF. The impact on the one building was less than substantial, and even if special weight were attached to the impact, the overall negative effects were limited and could not outweigh the benefits of the development”.
44. That recommendation, which is largely to follow the NPPF approach, is precisely the approach which is commended in this case. Given the level of impacts identified, there should be no difficulty in concluding that the setting of the assets is preserved and that those impacts are acceptable. Nevertheless, there is contrary authority set out in *East Northamptonshire District Council (1) English Heritage (2) National Trust (3) v Secretary of State for Communities and Local Government (1) Barnwell Manor Wind Energy Limited (2)*²⁰ which indicates that the section 66 test requires additional weight to be applied to any impacts identified in the planning balance. That approach has since been criticised in *Bedford Borough Council v Secretary of State for Communities and Local Government and Nuon UK Limited* which prefers the Colman approach. The decision in East Northamptonshire has been appealed and is due to be heard early in the New Year. However, even if it transpires that the East Northamptonshire approach is the one to be followed, at the level of impact identified by the appellant, any additional weight to those impacts arising as a result of the Section 66 approach can only be very limited, and certainly not sufficient to alter the conclusion that the impacts would be acceptable.

Equine matters

45. Concerns were raised by Mrs Stephens-Grandy relating to impacts on safety of horses and riders, the potential sterilisation of riding routes due to a perception of harm, and impacts on her equine related business at Moor Farm. Dealing first with the first two concerns together, there is nothing in law, regulation, planning policy or guidance which requires a separation distance between a turbine and any bridleway. In this case all the turbines lie at least

¹⁹ CD 4.8

²⁰ CD 4.7

200m from any Public Right of Way (PROW) or bridleway and would therefore satisfy the minimum separation distance recommended by the British Horse Society²¹. Notwithstanding that, it is evident from the plan annotated by Mrs Stephens-Grandy there is a vast array of alternative bridleways in the area should she not wish to use the Byway Open to All Traffic (BOAT) running through the site (which in itself is a dead end).

46. A very high percentage of operational wind farms are in rural locations in which horse riding can and does take place and there is no reliable empirical evidence to demonstrate that commercial wind turbines are unsafe for horses and riders. Nor is there any credible evidence regarding the degree to which, if any, wind turbines deter horse riders from using proximate bridleways or riding routes.
47. In respect of the impact on the equine related business, national policy in EN-1²² advises that that there would need to be clear and demonstrable empirical evidence of likely harm to local equine related businesses before it came close to warranting refusal of planning permission. No such evidence has been presented in this case. The Moor Farm property is some distance from the proposed wind farm and a considerable choice of routes in the local area would remain. The equine business is also located at Fosters Wold Farm 3km from the appeal site. Mr Stephens did not challenge this point. Accordingly, the Appellant does not accept that the turbines would cause any actual unacceptable risk to horses or staff at the farm.

The main issues

48. The Ryedale LPS was adopted by the Council on 5th September 2013. It post-dates the issue of the NPPF, the PPGRE, and the Ministerial Statement of 6th June 2013. It is therefore to be regarded as "up to date" for the purposes of the NPPF, as all parties agree. Whilst elements of the LPS are subject to a legal challenge, it is accepted that any potential consequences will not affect the policies which are relevant to this case.
49. Full weight must therefore be given to the relevant LPS policies and the appellant does not seek to argue that any of them do not accord with the NPPF. Nevertheless, that does not mean that the NPPF can simply be sidelined. It is crucial in explaining how those policies are to be applied. If they are interpreted in such a way as to be inconsistent with the NPPF then they are not up to date at all and such an approach cannot be supported. The potential risk was noted by the Inspector examining the LPS in relation to policy SP13, when he commented that it should not be interpreted to preclude development within areas of high landscape value but merely that careful consideration be given to the effects of any development within those areas as set out in the policy.
50. The starting point within the LPS for considering any renewable energy development must be policy SP18. It directs that permission should be granted where (inter alia) proposals individually and cumulatively can be satisfactorily assimilated into the landscape, especially in respect of the setting of the North York Moors National Park, the Howardian Hills AONB (and its setting) the Wolds

²¹ CD 6.35

²² CD 6.3 para 5.12.7

and the Vale of Pickering; and where proposals would not adversely impact on the local community. SP18 clearly contemplates that it is possible to satisfactorily assimilate renewable development into the AHLV, otherwise it would have expressly prohibited it. In order to judge whether a proposal can be satisfactorily assimilated, regard needs to be had to policy SP13. The Council's planning witness agreed that if policy SP13 were satisfied then the proposals would be satisfactorily assimilated and the first reason for refusal would have been overcome.

51. However, that interpretation falls squarely within the concern highlighted by the Local Plan Inspector. The Council's evidence is littered with references to the need for any development to both protect and enhance the landscape. In the light of the advice at paragraph 2.7.48 of EN-3²³ (as footnote 17 to paragraph 97 of the NPPF advises should be followed in the determination of individual applications) states that "there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around the site". It is inconceivable that onshore turbines or indeed the majority of any other form of development (since it all will adversely impact upon the landscape in some way) could ever satisfy such a stringent test.
52. SP13 does not require every proposal to protect and enhance the landscape. Instead it explains how the overall aim of protection and enhancement is to be achieved and how the protection of the locally valued AHLV is to be secured as envisaged by paragraph 109 of the NPPF. Since the development plan is up to date, the protection accorded to the local value is secured through the policy. It identifies why the AHLV and the Vale of Pickering are valued and why elements of their character should be protected. Accordingly, there is no basis for attaching any additional weight to identified impacts simply because they occur in the AHLV. One simply has to ask whether the policy is satisfied.
53. Those parts of SP13 which are engaged are whether the development would contribute to the protection and enhancement of the distinctive elements of landscape character by a consideration of the following: whether the development would detract from the natural beauty and special qualities of the Howardian Hills AONB or North York Moors National Park or their settings; whether the distinctive elements of landscape character of the Wolds will be protected having regard to visual sensitivities arising from topography and long distance views; and whether the elements of historic landscape character of the Vale of Pickering and the Wolds are lost or degraded. With those factors in mind, the statement of common ground is particularly useful in framing the concerns of the Council. Specifically, the following impacts are stated to be acceptable: cumulative impacts with other wind farms; and impacts on the Vale of Pickering; impacts on visual amenity from all locations and on all receptors apart from on users of the Wolds Way National Trail between Knapton Woods and Sherburn Brow. In cross-examination, Mr Weir narrowed this further by confirming that he was only concerned about impacts between viewpoints 5 and 13 within Mr Denney's appendix 3 (between West Heselton Brow and the lane to the north of Crowdsdale Wood). Mr Weir also confirmed in cross-examination that impacts on the AONB and its setting are acceptable.

²³ CD 6.4

54. The North York Moors National Park lies at a distance of approximately 9km from the project. It is common ground between the appellant and the Council that there will not be any significant landscape and visual effects affecting the National Park. The National Park Authority themselves repeat on numerous occasions in their consultation responses that the proposals lie outside the setting of the park, a point confirmed again by Mr France²⁴ when he appeared at the Inquiry. The appellant agrees with this analysis, the Council do not dispute it, and it forms no part of their case (or indeed the reasons for refusal) that the turbines lie within the setting of the National Park or are harmful to it. It is clear that all parties agree that the turbines, where they are capable of being seen from the southern edge of the National Park, will be seen as a component of the wider landscape. In such views, the turbines would be seen as a relatively small component of the panorama, at a distance of no less than 9km.
55. In defining the setting of a National Park, it is important to understand its special qualities, as the extent of its setting will, in large part, relate to the maintenance of them. There are no special qualities of this National Park, which are identified as comprising distant views towards the Yorkshire Wolds and consequently, the proposed development will not give rise to any harm to the identified special qualities. The Council confirms that it does not consider these views to be significant. It must follow therefore, that no matter what may fall to be considered in the overall planning balance, there will not be any unacceptable impact on the National Park.
56. The appellant concludes that there will be no visibility from the important recreational routes and that the proposals will be experienced as a small part of the wider visual experience from a few locations on the edge of the park and that as such its special qualities, and the public's ability to enjoy them, will not be harmed. Golders, who independently reviewed the ES on behalf of the Council agreed.²⁵
57. EN-1 requires developments outside nationally designated landscapes to avoid compromising their purpose of designation, noting that views of a project from a National Park should not in itself be a reason for refusal. Given the evidence referred to above, and Mr France's acknowledgment that the National Park's objection was "in principle" without engaging with the detailed assessment set out in the SEI, there should have been no difficulty in recommending that the development would not detract from the natural beauty and special qualities of the National Park or its setting and therefore the requirements of policies SP18 and SP13 are satisfied in that regard.
58. Turning to impacts on the Vale of Pickering, it is clear from policy SP13 that the LPS is specifically seeking to protect those elements of it which are integral to its historic landscape character. It is common ground that the development will not result in the loss of or damage to any unseen or intangible archaeological elements of the historic landscape of the Vale, nor will the development harm any elements of the historic landscape which contribute to its significance. There is no indication that views towards the proposal are integral to the historic landscape character of the Vale and the impacts on

²⁴ NYM NPA Director of Planning

²⁵ CD 7.19 page 39

contemporary landscape character arising from such views are not significant and not unacceptable. The impacts have been mitigated by siting the turbines beyond the ridge on the southern side of the Vale.

59. The inescapable conclusion must be that the proposals are satisfactorily assimilated into the landscape in so far as the AONB, the National Park and the Vale of Pickering are concerned. The Council sought to argue that it was the totality of this basket of non-significant and individually acceptable effects on the Vale of Pickering and the National Park in combination with the effects on the Wolds which were unacceptable. The appellant was criticised for compartmentalising effects on each of those areas. That demonstrates a lack of engagement with the requirements of policy SP18 and indeed policy SP13. Both policies themselves compartmentalise the different areas and demand that the decision maker ask themselves whether impacts on each particular area satisfy the policy requirements. On the Council's own landscape evidence the answer to that question in respect of the Vale of Pickering, the National Park and the AONB must be "yes".
60. EN-3 acknowledges that significant landscape and visual effects are a "given" in commercial scale wind farm development. That should mean that where careful site selection and design, as encouraged by policy and guidance at every level, have lead to such effects being less than significant, then they should not weigh heavily against a proposal.
61. The only remaining question on landscape character is whether the proposals are satisfactorily assimilated into the landscape of the Wolds having regard to the factors to be considered under SP13 highlighted above. As became clear from the evidence, the difference of opinion between the opposing landscape professionals on the extent of significant effects on character, was in practice very limited. The appellant defined that extent as 3km to the west and south, 1.5km to the north and 2.5km to the east. The Council said that was an under-estimation, but when pressed in cross-examination to identify locations other than those in the immediate vicinity of the site was notably unable to do so. If anything, the Council's highlighted area of concern is even more restricted than that identified by the appellant. The point was also corroborated by Golders²⁶ in their review of the ES which noted that the effects were comparatively localised.
62. As required by policies SP18 and SP13, the appellant identifies the distinctive elements of landscape character within defined landscape character types which cover the sections of the Yorkshire Wolds encapsulated in the Council's first reason for refusal, and then analyses the impact of the development against them. That process reveals that the proposed habitat management plan encompassing the reinstatement and improvement of hedgerows within the application boundary will enhance the landscape pattern and improve underlying landscape character. Further, the key characteristics of the Chalk Wolds landscape character type within which the site is located comprise large scale rolling hills and plateaux with open panoramic views dissected by narrow valleys. In Mr Denney's experience, large scale and open landscapes typically lend themselves to wind energy development.

²⁶ CD 7.17 page 47

63. None of those long distance panoramic views, which lie to the Vale of Pickering to the north, or across the Wolds to the south where the North York and Yorkshire Landscape Characterisation Project (NYYLCP)²⁷ seeks to preserve inter-visibility with the Chalk Foothills and the Broad and Narrow Chalk Valleys, will be interrupted by the turbines. For the vast majority of places, they will only appear in relatively short distance across a large scale arable landscape towards a flat horizon.
64. The Council's main argument is that it is alleged that the landscape is more sensitive than suggested by the appellant, saying that support for that conclusion is derived from the AECOM Report, Managing Landscape Changes 2012²⁸; the NYYLCP; Delivering Sustainable Energy in North Yorkshire (LUC, 2005)²⁹ and our Landscape – Today for Tomorrow (Gillespies, 1995)³⁰. However, as Mr. Denney explains and Mr Weir agreed, the AECOM report derived its conclusions from the earlier LUC study based on landscape characterisation at a national scale. Such a high level approach does not reflect variations in characteristics at a local level, and should not be applied at a development control level.³¹
65. A not insignificant section of the Council's evidence also relies upon the East Riding of Yorkshire Landscape Character Assessment. It presumably does so because it is seen as advantageous, since it allows reference to the comments made in relation to the capacity of that landscape to accommodate wind turbines. It would seek to argue that since the Yorkshire Wolds Landscape Character type (LCT) (as identified in the NYYLCP) extends into East Riding, the conclusions of a landscape character assessment which apply to the Chalk Wolds in that administrative area can be extended some 7 kilometres north to encompass the appeal site. That is simply not a robust approach. It cannot be the case that any weight can be given to a document which does not cover the area in question, and belies a lack of engagement with the considerations actually demanded by policy SP13 and the decision making process.
66. The appellant therefore undertook a more refined sensitivity analysis of the local landscape around the site as recommended by LUC, which concluded that the key characteristics of the Chalk Wolds in this area lend themselves to wind energy development whilst acknowledging that visual sensitivity of the area is high. The extent of significant effects will be localised and the presence of hedgerow vegetation combined with the variation in topography influences the availability of views of the turbines, which in turn alters the perception of how the project will be seen. It is therefore concluded that the part of the Chalk Wolds LCT within which the appeal site is located has the ability to accommodate the development due to its inherent characteristics. The Council could not rebut the conclusions because it is reliant on a broad brush approach. Consequently the appellant concludes that the distinctive elements of landscape character in the Wolds which policy SP13 refers to will be protected.
67. Similarly, there will be no significant effects on the Chalk Foothills and Broad and Narrow Chalk Valley LCTs to the west and south/south east of the site

²⁷ CD7.16

²⁸ CD 7.18

²⁹ CD 3.3

³⁰ CD 7.14

³¹ CD 3.3. para 6.92

respectively due to the degree to which the turbines would not be seen from those areas due to the effects of topography, or where views are available are at some distance. The Council's evidence does not address these areas and therefore the appellant's conclusions lie unchallenged.

68. It is therefore only the appellant's landscape witness who truly grapples with what is required by SP13. He has undertaken a comprehensive analysis which has led him to conclude the distinctive elements of the surrounding landscape, and the specific points of that character which should be carefully considered, remain and will be protected. In certain respects they will be enhanced. Accordingly, the appellant concludes that the proposals are in accordance with policy SP13 and consequently can be assimilated within the landscape to satisfy the first criteria with policy SP18. On that basis, and as agreed by the Council's planning witness, the Council's first reason for refusal must fail.
69. Turning to deal with impacts on the Wolds Way National Trail, the Council's concerns relate to impacts on that section of the trail between Knapton Wood and Sherburn Brow, although as stated above those concerns have now been focussed further. The appellant provided a walk-through of that entire section of the route. The Council sought to emphasise the character of the trail from its promotional website but has no evidence to substantiate the claim that tranquillity forms a major reason for users to use this particular part of the Trail. Mr Weir stated that he had an objection "in principle" to turbines being seen at such close proximity to a National Trail, a point which the appellant established had no basis in policy or guidance and which had not been followed in decision making³². There can be no doubt that it is an objection in principle since the Council agrees that the impact on the visual amenity of users of all other public rights of way is acceptable – including those running through the site itself at a much closer distance than the National Trail. The appellant's assessment is that whilst the proposal would form a prominent landmark adjacent to the trail, the turbines would not be the main focus of any users of the way except at certain isolated points along the route (for example ES viewpoint 1). For the majority of this section of the Trail the primary focus would be on views across the Vale of Pickering and not in the direction of the turbines.
70. Where the turbines would be seen, no closer than 765m, they would be at no stage overwhelming or oppressive, and would gradually come into view over the horizon, due to the nature of the landform. As the Council's reason for refusal refers to impacts on the tranquillity of users of the trail, evidence has been provided of the relative tranquillity of the area and the extent to which that would be affected by the proposals. Given the presence of moving traffic on the A64 at the bottom of escarpment across which views will be primarily focused it is not considered that the tranquillity of the area is so strong that the turbines would have an unacceptable impact upon it. As already indicated, the sense of openness and exposure characteristic of the area would remain.
71. Accordingly, whilst users of this section of the National Trail will experience significant visual effects, they would only do so for a short section of the route. Even within that section, the primary focus of views would be away from the

³² David Bell Appendix 6 page 46 para 73

turbines across the Vale of Pickering. Nor would the presence of a wind farm in that locality necessarily prove a detractor for walkers as highlighted by the statement given by Ms Downs³³ and referred to in Mr Bell's evidence with regard to the findings of the Moffat report³⁴. Some would consider the proposals to be a feature of added interest.

72. Even the National Trail Officer did not object to the proposals on a standalone basis once he realised that the turbines would not be within the direct sight line of walkers for the length of time that he had originally anticipated³⁵. The impacts identified are not sufficient to unacceptably adversely impact on the local community and therefore there is no basis for concluding that the Council's second reason for refusal is substantiated. Whilst the Council referred to a number of other policies relating to impacts on the Wolds Way, the appellant's evidence is that they do not give rise to any further considerations which are not already dealt with in addressing the matters raised by policies SP18 and SP13 and accordingly no conflict is identified with them.

73. In conclusion then, there is no dispute between any of the parties as to the urgent need for renewable energy generation. Furthermore, as highlighted in opening, the UK Renewable Energy Roadmap Update 2013³⁶ indicates that whilst significant progress has been made, more is still needed if the UK is to achieve its 2020 target. That is why policy remains fervently in favour of renewable energy development. It is against that background that issue is taken with the approach of the Council's planning witness. He repeatedly refers to the precautionary principle in the application of his judgement and confirmed that he applied it to his decision on compliance with policy. His evidence sought to draw support for that approach from the UK Renewable Energy Strategy³⁷. However to the extent that the Strategy intended a precautionary approach to be taken it clearly envisaged that it would be achieved through the issue of new planning policy. We now have that policy in the form of National Policy Statements EN-1 and EN-3, the NPPF, the Low Carbon Development and PPGRE, and of course the LPS, which is in accordance with it.

74. None of those policy documents contain guidance which direct decision makers to adopt a precautionary principle when taking decisions. The precautionary principle is inherent in the policy. To apply a further precautionary principle to the final decision is simply giving too much weight to any impacts identified. Whilst it is acknowledged that the second limb set out in paragraph 14 of the NPPF (that permission should be granted unless impacts significantly and demonstrably outweigh the benefit) is not specifically engaged by this proposal, it would be perverse to suggest that where a development plan is up to date the decision maker should err on the side of caution and reject proposals for development which is sustainable "in principle" where a decision is finely balanced.

75. It is also clear that the Council's planning witness is a keen walker. His personal preference as set out in his evidence is to walk unspoilt landscapes.

³³ See paragraph 114

³⁴ CD 6.34 page 117 Table 4.14

³⁵ CD 11.6

³⁶ CD 6.37

³⁷ CD 6.2

He notes that he has walked sections of the Wolds Way and formed his own view on the level of impact. He admitted that personal views have influenced his judgement in undertaking the planning balance. So much is clear from the impassioned plea with which he concludes his evidence. However, even given his interpretation of policy SP13, his precautionary approach, his personal preference for walking without seeing turbines, and “mentally disposing” himself in the way set out in paragraph 8.2.4 of his proof before taking his decision, he still admitted that it was a finely balanced decision. In the appellant’s view, that in itself should be evidence of the acceptability of this proposal.

76. The proposals accord with the criteria set out in policies SP18 and SP13. The project is commended as a well designed and suitably located one which can meet the urgent need for renewable energy development. It is remarkable that a project that can deliver the benefits of 30MW of renewable energy generation can have such limited impacts. Therefore the Secretary of State should be advised that permission should be granted.

The case for Ryedale District Council

The main points are:

77. It is agreed that an assessment of landscape effects ought not to “salami slice” impacts into individual landscape units. One needs to take a comprehensive view. For that reason, the impacts upon the Vale of Pickering and the North York Moors National Park need to be addressed, even though those impacts are not of themselves significant and would not, of themselves, provide a foundation for a reason for refusal. Such an approach is not only agreed, it is supported by the guidance in the third edition of the Guidelines for Landscape and Visual Impact Assessment³⁸, which provides that assessments ought to make clear that non-significant effects are not to be completely disregarded.
78. The landscape witness for the appellant emphasises the importance of a site specific assessment and that published assessments at larger scales ought to be taken into account. One cannot push that point too far. The whole point of identifying a landscape character type is to identify a distinct type of landscape which is relatively homogenous in character and although LCTs will occur in different locations, where they do, they will share broadly similar combinations of all of the factors which make up character. A Landscape Character Assessment is the geographically unique location of a particular landscape type. One must not expect to find significant variations within a LCT or Area, otherwise the units of land in question would not have been identified as falling within the same LCT or LCA in the first place. One needs to find a good reason for concluding that the appeal site is different from the rest of the LCT or LCA within which it is located if a finding that it has a sensitivity different from the rest of the LCT or LCA is to be justifiable.
79. It is useful to start with the assessment of National Character Area 27, the *Yorkshire Wolds*³⁹. The following aspects of that assessment can be noted: a)

³⁸ ‘GLVIA3’ CD 7.2 (not the basis for assessment in this case but a material consideration)

³⁹ CD7.12

there are multiple references to the tranquillity of the Wolds landscape, its openness, long range views, and the sense of remoteness and escapism that it provides; b) the contrast between the plateaux and the dissecting deeply incised valleys which provide a sense of intimacy is recognised, so the appeal site is not outside the scope of a typical Wolds landscape; c) the Wolds Way is identified as an important recreation opportunity; and d) the landscape is described as “much valued”. These aspects of character and value suggest that this is a landscape of high sensitivity.

80. Then there is the 1995 study by Gillespies, “Our Landscape Today for Tomorrow”⁴⁰. Although a 1995 publication, the landscape’s character has not changed considerably since then. In re-examination of the landscape witness for the appellant, there was reference to two consented, but not built, wind energy development in the Wolds and also to Fraisthorpe, which would not be located in the Wolds but close to the coast south of Bridlington. The Gillespies document recognises the expansive views outward from and across elevated farmland, in which the sky is important⁴¹; sets out that the Wolds has an internal diversity of type but an overall coherence of character⁴²; warns that the landscape is fragile and vulnerable to change through insensitive development or inappropriate land management⁴³; and advises that vertical structures cannot easily be assimilated into the open rolling landscape of the Wolds and that in elevated and skyline positions they can be highly prominent, but that there “may be opportunities to accommodate limited development without harm, but that proposals which would industrialise the open expansive nature of the Wolds would conflict with this essential character”⁴⁴.
81. This assessment indicates that this is a highly sensitive landscape, including in relation to wind energy development. A landscape which is fragile and vulnerable to change could hardly fairly be described as anything else.
82. The NYLCP⁴⁵ is the most recent assessment of the landscape. It makes the point that landscape character does not stop at administrative boundaries, because it considered the character of the continuation of landscape units outside the study area; as a result, when one considers the assessment of the *Chalk Wolds* LCT, the area to which the assessment applies extends beyond North Yorkshire and into the East Riding. It also recognises the contrast between the character of the plateaux and the valleys⁴⁶; and ascribes a high visual sensitivity of the landscape, seeking the protection of open views and the overall sense of tranquillity and remoteness⁴⁷. It too refers to a predominantly open character and a strong sense of tranquillity and remoteness⁴⁸. This document therefore expressly recognises the high sensitivity of the Wolds landscape.

⁴⁰ CD7.14

⁴¹ CD7.14 page 5/1 paragraph 5.1.2 and page 5/4 paragraph 5.1.15

⁴² CD7.14 page 5/4 paragraph 5.1.15

⁴³ CD7.14 page 5/6 paragraph 5.2.2

⁴⁴ CD7.14 page 5/9 paragraph (v)

⁴⁵ CD7.16

⁴⁶ CD7.16 page 130 “Description”

⁴⁷ CD7.16 page 132 “Sensitivity to Change Issues” and Aesthetic and Historic Character sub-heading of Guidance

⁴⁸ CD7.16 page 130 “Key Characteristics” and page 132 end of first paragraph

83. In relation to the *Chalk Wolds* LCT, it is submitted that the 2005 East Riding of Yorkshire Landscape Character Assessment⁴⁹ is also relevant. That is because the Wolds within that Council's administrative area fall within the 10km radius used for detailed study of landscape character in the ES; and LCT 13 in the East Riding Assessment: *Yorkshire Wolds Open High Rolling Farmland* is the same LCT as the *Chalk Wolds* in the NYLCP. The only difference between the two LCTs is that they fall within different administrative areas and there is no reason to think that there is any difference in character between the two assessments.
84. It follows that the content of the East Riding Assessment is not just relevant to the Wolds landscape within East Riding, it must also be relevant to the same LCT when it occurs in Ryedale. As a result, the following aspects of the East Riding Assessment are noteworthy: the part of East Riding LCT13 which abuts Ryedale is within LCA13d, the *North Wolds Plateau Farmland*; it shares key characteristics in common with the *Ryedale* LCT, such as the large scale open landscape with long distance views dominated by the sky; and the landscape is expressly described as highly sensitive to built development in general and specifically to wind farm development which, it is said, would introduce uncharacteristic features into the Wolds⁵⁰.
85. The East Riding assessment therefore provides support for the contention that the Wolds Landscape is of high sensitivity to wind energy development not just when it occurs in the East Riding, but also when it occurs in Ryedale, because it is discussing the same LCT separated only by an administrative boundary and not by any change in character. The 2005 LUC study⁵¹ '*Delivering Sustainable Energy in North Yorkshire: Recommended Planning Guidance*' prepared for the local planning authorities in North Yorkshire also points to the Wolds having a high sensitivity and that is despite it assessing the sensitivity of the landscape on the basis of turbines of 100m to blade tip, markedly smaller than the turbines proposed by the appellant. Although the maps produced for that assessment showing the location of areas of varying sensitivity have not been included in the extracts of the LUC study contained in the core documents, the information can be seen in the 2012 AECOM document '*Managing Landscape Change: Renewable & Low Carbon Energy Developments – a Landscape Sensitivity Framework for North Yorkshire and York*'⁵². That document carried out no new sensitivity assessment but drew upon the LUC study which it refers to as Key Reference 2 ("KR2")⁵³. Figure T1 in the document shows the appeal site and its surroundings as coloured red – the notation for high sensitivity to wind energy development.
86. The appeal site does not exhibit characteristics which are different from the rest of the Wolds landscape. It is an area of big skies, tranquil, remote, with openness, large scale with a horizontal emphasis and inter-visibility with other places. That is shown by the visual material, particularly Mr Weir's photo viewpoint C⁵⁴. The appellant criticised Mr Weir on this aspect of his evidence by asking why he had not pointed to publicly accessible locations where such inter-

⁴⁹ CD7.17

⁵⁰ CD7.17 pp 174-175

⁵¹ CD3.3

⁵² CD7.18

⁵³ CD7.18 page 18

⁵⁴ Appendices to Mr Weir's evidence

visibility exists. That is not a fair criticism: photo viewpoint C shows an extensive panoramic view to and from the environs of the appeal site: the idea that no human looks across to the appeal site from any of those locations is nonsensical. In any event, this is an aspect of character impact, not visual amenity impact and so one should not be fixated about the availability of specific viewing locations.

87. The landscape witness for the appellant has produced a detailed assessment of sensitivity, but it does not really provide a justification of his view which shows that he is right and the Council is wrong. His appendix 2 takes a series of aspects of sensitivity and records his judgment of each aspect's sensitivity. It is his own methodology. His examples of what would be a low and high sensitivity for each aspect are of his own devising too. Each judgment of each aspect of sensitivity is then combined to reach the overall view that the landscape's sensitivity is medium. This exercise is not really very useful, because he does not explain which aspects of character are more and less important, how he has weighted them and how he has combined the judgments on each aspect to reach his overall opinion that the landscape is of medium sensitivity. The overall assessment of "medium" is not really explained. In any event, his analysis⁵⁵ is not a site specific assessment of the sensitivity of the appeal site to wind energy development. The table is headed "*Chalk Wolds* LCT", suggesting that what it assesses is the sensitivity of the unit of land LCT 18 from the 2011 NYYLCP. The explanation that it assesses the *Chalk Wolds* LCT in the light of the appeal site's character still does not explain why it is expressed to be an assessment of the *Chalk Wolds* LCT or why paragraph 2 of Appendix 2 refers to the Appendix assessing landscape character "with reference to the LCTs within 5km of the appeal proposals".
88. The appellant's sensitivity assessment underplays the sense of remoteness of the appeal site. It overstates the effect of movement and noise on the A64 which is not visible from the appeal site or to its west, south and east. It is visible from its north and along the Yorkshire Wolds Way, but the appellant's view of its visual and aural impact is overstated. The Campaign to Protect Rural England (CPRE) tranquillity mapping⁵⁶ shows that the majority of the appeal site is at the higher end of tranquillity, even if the robustness of the CPRE exercise is taken at face value. It points towards the appeal site having high sensitivity in respect of inter-visibility. There is no sound basis for concluding that the appeal site has a medium sensitivity to wind farm development.
89. The Yorkshire Wolds is a valued landscape. It is to be noted that the recent adoption of the LPS containing policy SP13, including its reference to the Wolds AHLV, shows that the designation is up to date, accords with the NPPF and deserves considerable weight as a soundly based recognition of its value.
90. When assessing the significance of landscape effects the parties agree that the effects of the proposal should be treated as adverse. The appellant takes what is referred to as a precautionary and worst case approach by assuming that the landscape effects would be adverse. That is an inappropriate stance which presents the issue as though some kind of concession is being made. The fifth core principle in paragraph 17 of the NPPF includes an exhortation to

⁵⁵ Mr Denney's Appendix 2

⁵⁶ Mr Denney's Appendix 1, figure A1.7.

recognise the intrinsic character and beauty of the countryside. The appellant accepted that such recognition meant that one should look to protect the character (and beauty) of the countryside. If one is seeking to protect that character, then changing the character of the countryside must be adverse, because it fails to fulfil this aspect of the core principles. That conclusion follows regardless of whether any individual would be positively or negatively disposed to the development in question. Changing the character of the countryside can only logically be found to be adverse.

91. The GLVIA3⁵⁷ sets out that it is incumbent on the assessor actually to make a judgment upon the question of whether landscape effects would be positive, neutral or negative. By assuming that they are negative and portraying this as some kind of concession to an opponent's position, the appellant company is failing to shoulder a burden that it ought.
92. All the appellant's evidence does is to tell us when significant effects would occur. No indication of by how much the effects would exceed the threshold of significance is given. Appendix 7⁵⁸ identifies that there are classifications of significance, but there is no description of what those definitions mean, even by way of examples, as with the definitions of classifications of sensitivity and magnitude given elsewhere in the appendix. Further still, the grades of significance which are given never once appear anywhere in the evidence. The assessment of the distances over which significant effects would occur is not properly explained. In contrast, the Council's witness clearly records that his view is that significant effects would extend across most of the *Chalk Wolds* LCT and he did not depart from that view in cross-examination. The Council also criticises the assessment in the ES that significant effects would end at 3km from the site as arbitrary; it ignores terrain and inter-visibility.
93. The Appellant therefore has no credible basis for alleging that the Council considers that significant effects would extend to an area less extensive than the appellant argues. The Council's assessment is robust and can be accepted. There are three sound reasons why the appeal site has a low ability to accommodate development. The absence of incongruous man-made features and the vertical scale of the turbines would introduce an unprecedented landscape element and the effects would not just be confined to the *Chalk Wolds* LCT but would extend into the Vale of Pickering and the southernmost areas of the National Park. Those effects outside the *Chalk Wolds* LCT would of themselves be unacceptable. The turbines would dominate the skyline and would erode the tranquillity of the area and the sense of escapism and remoteness that it provides.
94. The second reason for refusal relates to the effect upon the Yorkshire Wolds Way which is an important recreational resource. It is a popular national trail. It is promoted in terms that show that the sense of escapism is an important aspect of its attractions. The effects are best judged by on-site assessment. It is not instructive to use other decision letters in other cases as a means of approaching the issue. There are more factors to be addressed than mere distance from the trail to the turbines. One would need to consider such matters as the size and number of turbines; the relative elevation of the

⁵⁷ CD7.2 page 88, paragraph 5.37

⁵⁸ Of Mr Denney's evidence

turbines to the viewer; the proportion of views occupied by the turbines; the types of view that they would occupy; whether the views would be continuous, continual or intermittent; and the effect that the turbines would have on key views.

95. The appellant's assessment overplays the effect of the A64 in the Vale of Pickering. It also needs to be recalled that the turbines would affect experiences even when they were not being looked at directly. People would not forget that the turbines were there, even when they looked the other way. The turbines would become a defining experience of the walk along that section and would seriously detract from the experience.
96. As to whether the benefits of the proposal are sufficient to outweigh any harm that the proposal would cause, it is important to keep in mind that the starting point has to be the Development Plan. Only policies at the District level are of any relevance to the determination of this appeal. The Development Plan is agreed to be up to date. That can hardly be surprising given the adoption of the plan on 5th September 2013 after an examination report dated 14th August 2013. It is common ground that this is a case where the decision-taking test in paragraph 14 of the NPPF, which applies when the Development Plan is absent, silent or out of date has no role to play at this inquiry. The suggestion that the decision is finely balanced and how that compares to the test of whether any adverse effects of the scheme would significantly and demonstrably outweigh its benefits, can safely be ignored.
97. Section 38(6) of the Planning and Compulsory Purchase Act 2004 of course requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. The second issue needs to be addressed through a consideration of the policies of the up to date Development Plan.
98. Policy SP13 deals with landscapes. The appellant's approach is to seek to rewrite the policy. Its words are perfectly clear and are not difficult to interpret. The first part of the policy opens by telling the reader of the plan that the quality and value of Ryedale's diverse landscapes will be protected by, amongst other things, encouraging new development which reinforces the distinct elements of landscape character within the Yorkshire Wolds. It follows that development which does not reinforce those distinctive elements of landscape character cannot derive support from the policy. SP13 also requires proposals to contribute to the protection and enhancement of distinctive elements of landscape character including visually sensitive skylines and the ambience of an area, including its tranquillity. These aims of the policy would not be served by the proposal.
99. The second part of policy SP13 requires development proposals to contribute to the protection and enhancement of distinctive elements of the landscape. It must follow that proposals which do not contribute, conflict with the policy. The third part deals with landscape designations. In accordance with paragraph 113 of the NPPF, it imposes stricter tests for development in the Howardian Hills AONB and the North York Moors National Park than is the case with the two AHLVs or the Vale of Pickering. The policy does not set out any specific development management test or criteria for development in the AHLV. Rather, it requires careful consideration of applications in such areas.

100. In providing specific guidance about the AHLV, the penultimate paragraph of the policy advises the reader that the AHLV is valued locally for its scenic beauty and scenic qualities; serves to protect the distinctive elements of landscape character in the AHLV; and there are particular visual sensitivities in the AHLV. The last paragraph makes it plain that the AHLV has significant historic landscape value and that degradation of those elements which are integral to their landscape character make it “particularly sensitive to change”. The Inspector acting as Local Plan Strategy Examiner found that the policy was not unduly restrictive towards the AHLVs, carried forward the approach justified in the Ryedale Local Plan and was supported by landscape character assessments. He also found it to be broadly consistent with the NPPF⁵⁹ referring to paragraph 109. That reference shows that the examiner must have accepted that the AHLV designation indicates that it is a “valued landscape” for the purposes of the NPPF. Seeking to protect and enhance such a landscape is an aim which is wholly consistent with the NPPF. This analysis shows that only the first and second parts of the policy provide development management criteria for the AHLV. For the reasons given above, the appeal scheme cannot serve those aims. It therefore conflicts with policy SP13.
101. It is not open to the Appellant to suggest that policy SP13 ought to be interpreted so as to imply into it a different approach in respect of commercial scale wind energy developments, which will always have some degree of adverse effect. That is an erroneous argument for two reasons; firstly, the policy is perfectly clear. The appellant has itself included case law in the core documents which establishes that words cannot be read into Development Plan policies to make them mean what they do not clearly say⁶⁰. That was a case where a claimant tried to argue that pre-NPPF planning policy could be rendered up to date by implying words into the relevant policies. The Court made it perfectly clear that Development Plan policies have to be interpreted according to the words they use and that implication of words or aims is not permissible. Secondly, policy SP18 is the place where the Appellant’s argument is relevant.
102. The only justifiable conclusion as regards policy SP13 is that the careful consideration that the policy requires to be given to development in the AHLV, taking into account the AHLV’s visual and general sensitivity and the application of the development management tests that the first and second parts of the policy contain, all point to the conclusion that the appeal scheme cannot meet the terms of this policy.
103. Policy SP15 of the LPS is also engaged. It is the only policy which deals with public rights of way and so must be highly material to the consideration of the issue of the effect upon rights of way, even allowing for it being but one component of a policy which deals with green infrastructure networks. It requires public rights of way to be protected and enhanced. For the reasons discussed above in relation to the Yorkshire Wolds Way, this policy is breached by the appeal scheme. This policy was also considered during the LPA examination process.
104. Policy SP16 on design is also engaged. It requires development to reinforce local distinctiveness and that development’s location and scale, amongst other

⁵⁹ CD3.6, page 24, paragraph 104

⁶⁰ CD4.8 Colman v SoSCLG and others [2013] EWHC 1138 (Admin)

things, should respect the context provided by the site's surroundings. The fact that the list of 6 bullet points is an inclusive, not exhaustive list of considerations reinforces the point that the policy is of general application and not limited to the more usually encountered forms of built development. Again, for the reasons set out under the first issue, the appeal scheme does not satisfy the requirements of this policy. This policy was also given specific consideration during the Local Plan Strategy examination and was approved after scrutiny.

105. Policy SP20 contains generic development management guidance. Amongst other things, it requires development to respect its character and context of its immediate locality and the character of the wider landscape. Again, this requirement would not be met by the appeal scheme. This policy, when it was referenced as SP19, was also expressly considered in the LPS examination report⁶¹.
106. Policy SP18 is the policy specific to renewable and low carbon energy. It provides that such development will be supported provided that proposals, amongst other matters, can be satisfactorily assimilated into the landscape, especially in respect of, among other areas, the Wolds. The policy therefore expressly reminds one of the need for careful consideration of proposals in the AHLV (as well as other places). As the policy refers to satisfactory assimilation in the landscape, it is this policy which makes allowance for the fact that commercial scale wind energy development will always have some significant effects. There is no need to pervert the words of policy SP13 in order to achieve this aim. It is also this reference to satisfactory assimilation which allows for the landscape effects to be assessed in the light of the benefits of the scheme. In other words, one can ask oneself whether a particular wind energy development is satisfactorily assimilated into the landscape taking into account the number of turbines, their scale and the benefits that they would bring.
107. The Council's judgment is that an assessment of the benefits and harms of the proposal points to a conclusion that the proposal would not be satisfactorily assimilated into the landscape. The benefits do not outweigh the harm.
108. The Secretary of State can note that, as made clear in opening, it has been no part of the Council's case to question the importance of taking action to tackle climate change; the role of national and international targets for renewable energy generation; the contribution that the appeal scheme could make to contributing to renewable energy provision, by reference to a target or as a more general benefit of the scheme; or the type, range and extent of benefits associated with renewable energy generally or with the appeal scheme in particular. The parties' agreement as to these matters is set out in the Statement of Common Ground, particularly in 5.33 to 5.41 and its Appendix 3. However, three important points should be noted: a) the lack of discussion by the LPA about the benefits should not be taken as the downplaying or setting aside of the significant benefits of proposals such as this; b) it has been no part of the appellant's case to allege that, in forming its overall view, the Council has left out of account any benefit that the scheme would bring or that inadequate

⁶¹ CD3.6 page 27, paragraph 115. The preceding paragraph explains that a model policy on sustainable development was to be included in the LPS. That was subsequently done and appears in the LPS as policy SP19. What was policy SP19 therefore became policy SP20, hence the numbering difference between the adopted LPS and the policy considered by the LPS examiner.

weight has been given to the benefits side of the balance; and as a consequence, the dispute in this case must be about the existence, nature and extent of the harm that the proposal would bring and how that is to be weighed against a collection of benefits, the range and weight of which are not in dispute.

109. In performing the necessary balancing of benefits and harm, the Secretary of State's Written Ministerial Statement needs to be borne in mind. It cannot be dismissed, as the Appellant sought to do, as an example of "ministerial statements peddling their own political agenda"⁶².

110. As this is a case with an up to date development plan, it is nothing to the point that the Council's planning witness finds that the decision is finely balanced. Nor does the use of an expression 'precautionary principle' undermine his conclusions. That approach is simply intended to be a reminder that the drive for renewable energy should not mean that the importance of protecting the landscape and environment is lost sight of⁶³.

111. The Council has not argued that if the application of the Development Plan points to the appeal being allowed, that there are material considerations outwith the scope of the Development Plan which would indicate that the appeal should nevertheless be dismissed. In return, the appellant's planning witness accepted that if the application of the Development Plan pointed towards refusal, that there were no material considerations which indicated that the appeal should be allowed. That was because any material considerations relevant for the purposes of section 38(6) of the 2004 Act would have to be ones which were not taken into account when the LPS was formulated and examined; there were no such material considerations which were of a policy nature, the 2013 Roadmap update being the only post-LPS examination document which the appellant points to and that is accepted to be a reaffirmation of and not an amendment to Government policy; and there were no such material considerations which related to factual matters.

112. The upshot is that the application of the Development Plan should determine this appeal. It strongly indicates that the appeal should be dismissed. There are no countervailing material considerations. The Council therefore asks the Inspector to recommend and the Secretary of State to determine that the appeal is dismissed.

Interested parties

113. Many of the points made by interested parties are also made by SHWFAG or repeated by others. Where the same points have been made by several interested parties, they are not repeated in this summary.

In favour of the proposal:

The main points made are as follows

⁶² Stated in appellant's opening remarks

⁶³ See paragraphs 4.9 and 4.10 of the UK Renewable Energy Strategy, which Mr Newlove points to when explaining this point, and paragraph 116 of the Renewable Energy Roadmap 2013 update (CD6.37)

114. **Josephine Downs** spoke on her own behalf but pointed out that there is a lot of support for the project from individuals. The Yorkshire Wolds can look attractive but do not represent the best landscape. Wind turbines look tranquil turning in the breeze. There are no wind farms in the Ryedale area yet and very few issues weigh against this scheme. She is a member of a walking group and observes that many things can detract from the experience including spoil heaps and railways. The turbines would be well to the side of the Wolds Way and there are plenty of other things to see in its 127 km length. Most concerns tend to ease once wind farms are built. There is a need for low carbon energy and all energy technologies have some detrimental impact.
115. **Paul Elliot**⁶⁴ says the Intergovernmental Panel on Climate Change concludes that anthropomorphic climate change poses an almost certain threat to human existence as we know it. It is essential that on-shore wind farms are built as part of the national drive to reduce carbon emissions. East Heslerton is a near ideal location for the generation of electricity from wind and unless there are strong risks to health or wildlife then this wind farm must be built.
- Objections to the wind farm from a very vocal minority are using arguments which focus on misunderstandings and incorrect assertions. One example is that load factor is confused with efficiency and thereby grossly overestimating the challenges that a greater proportion of wind power will have on the ability of the National Grid to match supply with fluctuating demand. Of great concern to him is that the principal opposition website denies that anthropomorphic climate change exists and this may unduly influence other objectors who are principally concerned about the visual impact. Whilst he appreciates some people find the addition of wind turbines to the landscape objectionable, he and many others believe they enhance the landscape and represent man and nature "co-creating" pollution free energy generation.
116. Further support is offered by **Glyn Wild**⁶⁵ who says that the applicants for the wind farm and the District Council both agree that this country must provide an increased capacity of low carbon renewable energy. This is urgently needed if the challenges of global warming and climate change caused by the burning of fossil fuels are to be seriously addressed. Both the applicants and the District Council also agree that areas of sensitive landscape quality need some degree of protection. If the application is rejected then we will have 'preserved' the Wolds landscape for our present enjoyment and delight. But we will have done nothing to help ensure the welfare of our children and grandchildren in years to come. If the application is accepted, however, it will be a strong symbol of our commitment to future generations. The Wolds landscape is special but it can absorb a limited amount of wind generation development on the periphery of the area as proposed in the application.
117. There has been much talk of the effect of the development on the Wolds Way long distance footpath. It is inevitable that walkers on this path would be aware of the turbines as they neared the site. Some walkers would object to this intrusion, some would not be bothered, and yet others may appreciate the 'tranquillity' of the gently turning blades. It is interesting that in the 1982 guide to the Wolds Way the author, Roger Ratcliffe, describes the RAF Staxton Wold

⁶⁴ Doc 6

⁶⁵ Doc 7

radar site (some 4 miles east of the proposed wind farm) with its "radio masts, revolving scanners and dishes behind double security fences fortified with Dannert wire" as ... "one of the most fascinating features to be found on the Wolds Way". Others may consider it an intrusion.

Objecting to the proposal:

118. **Carl Stott** is a resident of West Heslerton and is also a qualified and experienced planner. He highlights 3 matters of accuracy that are relevant; firstly, that the officer's report to committee of 14 May 2013 inaccurately referred to three Parish Councils (Settrington, Ebberston with Yedingham and Weaverthorpe) as supporting the proposal, when, in fact, no explicit collective support had been expressed by any of the Parish Councils referred to. There is also an inaccuracy in the officer's report to committee⁶⁶ in the context of future proposals for connection to the Grid; in this respect, the committee report suggested that the grid connection is expected to be made via an underground cable to the electricity distribution network. However, the appellant's own SEI provided no such assurances, instead stating in that it is ultimately the responsibility of the Distribution Network Operator to determine whether connection can be made by underground cable or not⁶⁷. Finally, concern is raised that the officer's report to committee failed to quantify any of the economic benefits alleged by the appellant, with the report itself stating in paragraph 10.18 that the alleged significant economic benefits could not be quantified at this stage and that the longevity of much of the alleged employment benefits would be limited to the construction of the proposal; despite then concluding in paragraph 10.21 of the committee report that the overall benefits are such that they outweigh the significant landscape impacts the proposal would have. He questions how such a conclusion could have been reasonably reached without actual quantification of the alleged benefits.
119. Turning to the main issues, in contrast to the appellant's assertion that the area is already modified by human activity, the Wolds, and this part of it in particular, has not been modified by human activity in any way, shape or form that could be reasonably considered to be relevant to the case in support of the siting of ten 126 m high turbines on the top of a largely undeveloped escarpment of a similar height. Indeed, both the previous and current Local Plan regimes clearly document the unspoilt character of the Wolds. The A64 is a mile or so from the site and on much lower ground. A telecommunications mast is some distance from the site⁶⁸. There is the odd domestic-scale wind turbine in the wider landscape and the occasional silo on a farm. Hedgerows have been planted to form field boundaries. None of these have remotely any relevance to a proposal for the siting of a commercial windfarm.
120. 'Large fields and big skies', as referred to by the appellant, cannot be considered to be reasonable mitigating factors for the siting of the proposed wind turbines. They serve only to highlight that the area has not been modified by human activity to any significant degree and that the eye will inevitably be drawn to the proposals, given their alien nature, scale and associated movement. The appellant's assertion that the wind turbines would not prevent

⁶⁶ CD 11.5

⁶⁷ Volume 1 Main Text (March 2012)

⁶⁸ A picture of this appears in Golders Assessment CD7.19 at p13

views through to the horizon beyond is largely irrelevant – it is the visual impact of the turbines themselves and their significant harmful impact upon the character and appearance of the landscape that renders the proposed development unacceptable. Wind turbines can, through their design and function, cause harm to the landscape by introducing, for example, visual dominance and vertical man-made structures affecting people's perception of unspoilt areas. Furthermore, it is also a fact that the rotating movement of turbine blades in the natural landscape draws the eye, meaning the viewer sees the turbine as the dominant feature of the landscape as opposed to a background feature. The siting of ten 126 metre high wind turbines cannot in any way, shape or form be reasonably considered to respect the scale or form of what is an otherwise largely unspoilt landscape.

121. The site lies in a strongly rural area, in which there are few tall, manmade detracting elements on landscape character. Its inherent quality and value is well-documented, not least of which in the document *'Delivering Sustainable Energy in North Yorkshire - Recommended Planning Guidance' of 2005 and AECOM's 2012 document 'Managing Landscape Change: Renewable and Low Carbon Energy Development - A Landscape Sensitivity Framework for North Yorkshire and York'*⁶⁹, both of which confirm the area in which the site is located to have the highest sensitivity to commercial scale wind developments. The appellant has under-estimated the quality and sensitivity of the site and its surroundings and that these are actually of high landscape quality, with low capacity to accommodate the proposed development, which is also the conclusion of the local authority. In particular, Mr Stott considers the northern escarpment of the Wolds to be a landscape feature of regional importance, which forms an important visual backdrop to the extensive, deeply rural views experienced from within the Vale of Pickering.

122. The Appellant does not consider the Wolds' northern escarpment to be a visually sensitive hill side, particularly in the context of the views and impact of it seen from the adjacent lower lying land within the Vale of Pickering to its north and even further afield and, more so, in the context of any commercial wind turbine development, given that the height of the turbines would roughly equal the height of the escarpment itself. There is a sense that the appellant needs to make the proposed development have a 'best fit' into landscape characterisations and appraisals and that the only way they can achieve this is to largely ignore the numerous impartial historic and more recent landscape and visual assessments undertaken and to 'rewrite the book' themselves. Mr Stott considers that these earlier landscape assessments, that were written by impartial third parties rather than by a consultant appointed by a windfarm developer, hold significantly more credence and subjectivity, and therefore more weight, in this instance. The appellant's own assessments included were written in the context of a specific proposed development in an effort to make that development appear as acceptable as possible – a *fait accompli*, as it were. This rather defeats the purpose of the design-led approach advocated in the NPPF, whereby such assessments are undertaken at the outset and which subsequently help to steer the design of new development.

⁶⁹ CDs 3.4 and 7.18

123. Mr Stott appreciates the 'science' that is the assessment of landscape and visual impact, but provides comment based on his own experience of living for the last ten years in part of the area impacted by the proposed development. He lives at the foot of the Wolds northern escarpment and regularly enjoys walks up and along it with his family, as well as in the Vale of Pickering and beyond. He is a supporter of the Forestry Commission's Dalby Forest near Thornton Dale and, as such, also regularly views the escarpment when travelling through the Vale of Pickering. Additionally, having commuted along the A64 from West Heslerton to Scarborough and from West Heslerton to Malton and beyond for ten years, he has a good understanding and appreciation of the character of the escarpment. This is also the key route into the tourist towns of Scarborough and Filey, passed by millions of tourists each year, who visit and pass through the Ryedale and Scarborough districts. The presence of commercial wind turbines, or even glimpsed views of their rotating blades along this route, will serve only to detract from these tourists' impression of the attractive and unspoilt nature of the wider area. At a more local level, many walkers and ramblers use the Wolds Way National Trail and pass by Mr Stott's own house and, whilst he can only speak in respect of those that pass whilst outside tending his garden at a weekend, all those spoken to 'over the hedge' agree that the presence of a commercial windfarm along the route would detract from their walking experience. Certainly, when the appellant's notion that walkers would not tend to look in a southerly direction towards the wind turbines when on the Trail is mentioned, they have, without fail, laughed, or at least smirked - and understandably so.
124. Mr Stott understands the landscape and its inherent beauty from living, working and breathing it, not by trying to categorise and compartmentalise its character as a paper exercise. When he goes for walks in and around the Wolds, he views the landscape in the round. He sees the greens, yellows, browns and ochres that nature intended, not the greys and hatchings of a character area appraisal map. The appellant's team can try to categorise or compartmentalise this important landscape as much as they like but, put simply, common sense should surely prevail when viewing and walking through the landscape in person, as opposed to viewing it in an office on a 2-dimensional plan, and it is clear that vertical structures cannot be easily assimilated into such open, rolling landscape.
125. The appellant has underestimated elements of the proposed development. Three similar letters dated 30 October 2013 from Yorkshire Water had appeared on the local authority's website. It appears from these letters that the development, as proposed when the appeal was submitted, will adversely affect several strategic water supply pipes and that Yorkshire Water therefore object to the appeal proposals. It is surprising that the appellant, seemingly, did not undertake a full site investigation of such below-ground apparatus before the design even went as far as the drawing board. Perhaps they thought it best to design the scheme first and worry about such matters later on. My understanding of the objection is that there will be a need to reposition some of the proposed turbines and infrastructure or divert the pipes. It is indeed unfortunate, and perhaps even inappropriate, that the presence of strategic water supply pipes below the appeal site was not addressed comprehensively in the ES.

126. Mr Stott has numerous misgivings about the appellant's consideration of the public perception of the proposed development. In particular, paragraph 8.1 of the appellant's Statement of Case refers to many people being positively disposed towards wind farm developments, both in concept and practice. Irrespective of whether or not this is the case, it has little merit in respect of the development proposed in this instance. It is, however, rather telling that the PR companies the appellant has used to help generate letters of support for the development, including Yes2Wind, have sought to focus their attentions on the residents of the district's urban areas and market towns of Malton and Pickering and even further afield, rather than those resident in the more rural hinterlands. The appellant is, on one hand, seeking to limit the geographical extent of the area in which they claim there will be a significant visual and landscape impact (as mentioned earlier), yet, on the other, has sought to principally engage with residents outside these areas in efforts to curry favour for the proposed development.
127. The appellant's engagement with the local communities, and particularly with those within the areas which the appellant claims will be most affected by the proposals, has been poor. Mr Stott considers any benefits of the proposed development, including those relating to the provision of renewable energy, are significantly and demonstrably outweighed by the significant adverse landscape and visual impacts that would result from the development of the wind turbines in this location. Vertical skyline features such as commercial-scale wind turbines are not characteristic of the Wolds and would be a detractor in its unspoilt, rolling, open agricultural landscape. The proposed development would also have an adverse effect on views of the Wolds from the Vale of Pickering. As such, the appeal proposals are contrary to local and national development plan policies.
128. **Kathryn Stephens** runs an equine business. She grew up here and takes great take pride in living in the beautiful Wolds. She has built up an equine business from scratch on the family farm, but has serious concerns that if the wind farm goes ahead it will have a grave negative effect on the business, or worse it could force it to end. One part of the business is bringing in young horses from Ireland to sell to both young and mature riders. On the information sent by RWE, they claim that horses become accustomed to turbines, their noise, the look of them etc. This point is not true, nor is it relevant to her case because new horses are constantly being introduced, therefore their unpredictable reactions cannot be anticipated. This will have a knock on effect, as clients understandably want to try horses out in the open. This would not happen, in fear for client's safety, therefore horses would not be shown off to their full advantage, nor would clients be able to try them out fully. This will reduce the success and future of the business.
129. Ms Stephens also competes horses to a high level, therefore they have to be fit which includes doing road work. A fit event horse is very unpredictable if spooked. Even if hacking horses out from her yard, the wind turbines would be in full view from every direction. It would be a sad future to have to take horses in the lorry for hacking to a safe location every time; the increased cost and vehicle emissions would be ridiculous. Horses are sold nationwide and abroad and clients choose to stay at local B & Bs. If the business cannot continue because of the safety factors this will have a knock on effect on local tourism.

130. With regard to employment, currently two members of staff are employed and there are plans to extend this to three employees to support the success of the business. However, if the wind farm were to go ahead, not only would it prevent an increase in the number of employees (due to having to reduce the number of horses to sell due to the turbines), staff may have to be laid off for the following reasons because horses and client numbers may fall; staff would be at risk exercising horses in the vicinity of the wind farm and also on the roads; and unpredictability would lead to risk of injury, accident for horse and rider.
131. She has enjoyed the use of all bridleways and local quiet roads including the Heritage Bridleway on a regular basis, as part of exercising and fitness. At the moment it is safe for the horses, youngsters and riders alike. She fears that because of the close proximity of the turbines (200m) to the Heritage Bridleway (not 500m as stated in the British Horse Society guidelines (4 times their own height)) it will be unsafe and it will diminish from the attraction of the natural view and beauty of the landscape.
132. Ms Stephens has friends who have regularly visited with their horses. They have enjoyed riding along the bridleways in the area and enjoy the natural untouched landscape. She has already been informed that if the turbines go ahead they would no longer come. This would affect the business in livery, and local businesses in accommodation, eating out and local attractions.
133. She understands the stated guidelines for the proximity of proposed wind turbines to roads/ bridleways, but would openly invite anyone claiming horses become accustomed to turbines or that they are safe, to attempt to ride a fit competition horse down the road or bridleway and deal with an unpredictable horse's mind, spinning round, fear, potential for ice or debris falling from turbines leading to shock or spooking. 500kg of a horse with a brain is not a motorbike, you cannot tell it to stop or deal with a situation. It may make its own decision as to how it deals with a situation. She has had a few bad falls in the past, and does not want to have more purely due to trying to hack her own horse out in the countryside where she has grown up.
134. She also has a duty of care to make sure that riding out is safe for staff, youngsters that sometimes ride with me and clients. Another aspect of the business is livery. Current liveries have expressed their delight to be able to keep their horses in the safe surroundings without threat of traffic or disturbance; they enjoy the Wolds and the quietness this area has to offer. She fears that she will lose liveries if the turbines go ahead. A livery has the choice where to keep their horse, but her business is based on the family farm. She has had the privilege to keep her horses and other people's in this beautiful area. Her business will be badly affected by lost liveries if the turbines go ahead.
135. **Peter Ayling** represents the East Yorkshire & Derwent Area Ramblers and its constituent Ryedale Group. Most of the increased level of greenhouse gases in the atmosphere since the industrial revolution comes from human activities and this is a major factor in global warming and other features of climate change. The Ramblers' Association supports the Government's policy of using renewable energy sources such as wind, waves and sunlight to reduce greenhouse gas emissions in order to mitigate climate change, but believes that proposals to

utilise these energy sources outside National Parks and AONBs should be considered on their own merits for their effect on the countryside and rights of way.

136. The site is on the northern slope of the Yorkshire Wolds and is in an area designated in the Ryedale Local Plan as "Wolds Area of High Landscape Value". The area is rural with gently rolling terrain and affords expansive views of farmland, prominent escarpments, and low hills rising from the Vale of Pickering to the north. The northernmost turbine would be about 700m from the Yorkshire Wolds Way, one of ten National Trails selected because they pass through high quality landscape. Five of the turbines would be within 200-300m of a BOAT right of way passing through the site. The Ramblers strongly support the position taken in the Ryedale Local Plan that the undeveloped nature and long distinctive views make this region very sensitive to change. The number of turbines, their height and location would introduce an industrial element into this landscape, whose impact would significantly outweigh the benefits claimed for this development by the applicant. Therefore, they oppose this appeal and maintain their objection to the planning application.
137. **Councillor Andy Macdonald** is Clerk to Luttons Parish Council and a resident of West Lutton. Luttons Parish lies immediately to the south of the application site; one corner of the site is within the parish. The Parish is small having only 411 residents in approximately 150 households. Consequently it has limited resources and expertise. It is one of five small parishes along the Great Wold Valley that lies parallel to the northern scarp of the Wolds. To the south the parish abuts the boundary with the East Riding of Yorkshire. However, the administrative boundary is irrelevant to the residents who have a great love of, and pride in, the wider area of the Wolds. The Wolds are formed on the northernmost outcrop of chalk tilted upwards from Holderness in the south-east to the northern scarp above York and Pickering Vales. It is the underlying chalk that determines the topography, the landscape, the aquifer and the heritage of the area - and knows no administrative boundaries.
138. The Ryedale Plan, adopted by the RDC on 5th September 2013 in full accord with the NPPF, confirms the area as one of High Landscape Value. This echoes the Hobhouse Report of 1947, that led to the establishment of AONBs and National Parks, wherein the Yorkshire Wolds were identified as appropriate to AONB status. The current drive for AONB status for the Wolds has arisen as a result of the LEADER initiative (Coast, Wolds, Wetlands and Waterways) in eastern Yorkshire embracing the whole of the Wolds. A Landscape Forum has been formed in which the lead organisation is the East Riding but in which Ryedale District Council and the Wolds communities are fully engaged. This Council believes that the introduction of ten turbines, each 126m to blade tip, upon the northern scarp of the Yorkshire Wolds will have a detrimental effect on the landscape, south across the Wolds and north across the Vale of Pickering to the Fringes of the Moors. This elevated and highly visible development against the skyline will have an overbearing presence for miles around. In particular, the open panoramic views across the Wolds from the Settrington High Street, and roads from West Lutton to Cowlam, Cowlam to Octon and Kirby Grindalyte to West Lutton will be prejudiced. Users of the Cowlam to A64 road will find the wind farm in their face.

139. This Council does not believe that the proposed development can be assimilated into the landscape due to its scale and location; moreover, the Council believes that the proposals, by damaging perceptions of the landscape, will adversely impact upon the local communities and the local economy which is highly dependent upon visitors. This would undermine policy SP8 *Tourism* wherein RDC would support 'Tourism in areas where potential is significantly underdeveloped, in particular, Mallon and Norton and the Wolds' and policy SP12 Heritage wherein 'The potential of heritage assets to contribute towards the economy, tourism, education and community identity will be exploited including: the nationally significant prehistoric archaeological landscapes of the Yorkshire Wolds and the Vale of Pickering.'
140. This parish values its environment and heritage, as expressed by the overwhelming majority of parishioners in their Parish Plan of September 2008. Aside from the Wolds Way National Trail, recent efforts to attract visitors and promote economic activity have included the National Cycle Route 166, local cycle routes (Big Skies Bike Rides) and heritage trails (Sykes Churches, Great Wold Valley) all of which pass close to the proposed development site. The unique selling point for these schemes has been the unspoilt tranquillity of the heritage landscape of the Wolds, which this development puts at risk.
141. The cumulative impact of wind turbines upon the landscape is of particular concern to this Council. There are currently 18 turbines, applied for, approved or erected, in the Ryedale parishes in the Great Wold Valley, excluding the 10 in the current proposal. Whatever their size, these industrial, vertical structures are alien to the environment and a dynamic insult to the tranquil landscape. The PPGRE is expansive on both landscape and visual impacts, and on the need to assess the cumulative effects of all turbines whether in application or approved. With reference to sequential cumulative effects it states: 'Common routes through a landscape (eg major roads, long distance paths or cycle routes) can be identified as 'journey scenarios' and the proposals impact on them can be assessed.' The applicant has not examined either the cumulative impact of all turbines in the area or their effect upon residents going about their daily lives or visitors, especially tourists, walkers, horse-riders and cyclists.
142. As a small rural parish, with communities directly affected by this proposed development, the Council struggles to make its voice heard. It therefore welcomes the Minister's direction that the concerns of local communities should feature more strongly. The area's principal asset is not wind but the unique heritage landscape that English Heritage likens to Salisbury Plain. This Council believes that the proposed development will be detrimental to the character and perception of the landscape with adverse consequences for local communities and economy, and so runs contrary to national and district policy. This is the wrong development in the wrong location.
143. **Paul Stephens** runs a chicken and arable operation at Moor Farm to the east of the appeal site. He has operated an airstrip and had an aircraft based at Moor Farm for 41 years. He uses the aircraft for both business and pleasure. By having an airfield, he assumes a duty of responsibility for the safety of not only himself and his family who fly with him, but also visitors to his strip. Please refer to the many letters of objection and concern sent in by some of

those that have visited the airfield⁷⁰. He maintains his duty of care will be compromised if this appeal is allowed.

144. The nearest turbine will be only 2000m from the airstrip (Civil Aviation Authority (CAA) publication CAP764 chapter 5, states that a minimum separation for wind turbines from a 600 metre strip like mine should be 3000 metres). In fact all 10 turbines will be between 2000 and 3000 metres from the strip. It also states that liaison and cooperation between the developers and the airfield operator should take place. RWE are well aware of the airstrip because RWE visited the farm and was made well aware of the situation. They have not liaised with him about it at all.
145. CAA publication CAP 428 chapter 4 paragraph 3.6 states "It is recommended that that there are no obstacles greater than 46 metres (150 feet) above the average runway elevation within 2000 metres of the runway mid-point" The nearest turbine (No. 3) will be 162 metres (531 feet) above my runway mid-point. Although these publications have no legal status, they are prepared by the CAA and in view of their expertise in such matters, their guidance should be considered as representing sound practice. He notes that the closest feature to the approach and take off track will be the anemometer mast, which will be virtually invisible.
146. The airfield is at 135 metres above mean sea level (amsl). The turbines will be on land rising to 183 metres amsl. Together with their own height of 126 metres this means that the tip height will be 173 metres (567 feet) above the point where aircraft take off. Consequently, those taking off from the strip into the prevailing wind would not be able to reach a safe height to overfly the windfarm, if indeed they could outclimb the turbines at all. There are nearby houses that all aircraft should avoid for safety and noise reasons when taking off and landing at Moor Farm⁷¹. As can be seen by the zone created by the windfarm, there is virtually no way that aircraft can take off from Moor Farm without either compromising their own safety, the safety of local residents or without making a noise nuisance. By avoiding these houses over the last 41 years, he has never had a complaint.
147. When approaching the runway from the West (when the wind is from the East) on the final approach aircraft will be below turbine height and if blown off course would become perilously close to the turbines. This would be the case if aircraft are forced to take up a final approach track directly over Ling Hall Farm (which might cause complaints), so as to avoid the turbines to the North. On approaching Moor Farm airstrip, these turbines will be a hazard in failing light and deteriorating conditions. Low cloud is often encountered on the Wolds and the tops of the turbines would be hidden in the cloud. Even in good visibility whilst flying towards Moor Farm in the morning when the sun is in the East, they will become practically invisible as they would be a light shade of grey or white.
148. The turbines will create turbulence and buffeting as they will interrupt the wind flow. This factor alone will be a danger when taking off and landing at Moor Farm especially with a north westerly wind. Because of their height and

⁷⁰ See Questionnaire

⁷¹ See plan attached to Mr Stephen's letter of 26 April 2011 (Questionnaire)

the ground they stand on, they will tower 309 metres (1014 feet) above the Vale of Pickering. It is quite normal for aircraft to fly at 1000 feet amsl or less (500 feet is the lowest altitude allowed above any person, vessel, vehicle or structure), above the Vale and when approaching Moor Farm and descending, they could very easily be flown into.

149. When learning to fly, all pilots are taught a standard joining and landing procedure. This entails flying a circuit to the north of this airfield, in consideration of farmhouses and the villages of Helperthorpe and Weaverthorpe to the south. If permission is granted, this would result in a change of circuit involving flying over local houses (which is a safety issue at low altitude on take off and landing). This will result in complaints from neighbours. The alternative is to try and fly over the turbines at low altitude or perilously close to them. In his opinion as an aviator with 2000 hours experience, he considers obstacles of 173 metres in the vicinity of the airstrip to be a huge safety issue. He would not be able to use the strip in anything less than perfect visibility or recommend the strip to any other users in any circumstances, due to his duty of care.
150. In the ES at paragraph 14.5.3, it is stated "It is not anticipated that the proposed wind farm at East Heslerton will affect the reasonable operation of the two private airstrips located within 10 km of the Development". It is his opinion that RWE have very little knowledge or experience of operating an airfield or an aircraft and therefore their statement is totally unfounded. There are 5 private airfields plus a temporary airfield all within 10 km, not 2.
151. As for visual impact, he is not against all renewable energy schemes. He is in favour of small 'farm' turbines, solar PV and biogas plants. In fact he is presently installing a large solar PV plant on the farm. All these are relatively unobtrusive and will be developing power for the farms they are situated on and exporting to the grid. This would be an 'industrial' development which has no place on the Yorkshire Wolds. Ryedale Council class this area as being of High Landscape Value, which is a constraint. Because they would stand over 1000 feet above the Vale of Pickering on the northern escarpment of the Wolds, the turbines will spoil the views from as far away as the North Yorkshire Moors and Scarborough and will totally detract from the beautiful rolling countryside of the Wolds. There is nothing like this proposed development on the Yorkshire Wolds and they would be totally out of keeping with the beautiful, rolling, rural and agricultural countryside. On a recent trip to Germany in my aircraft, he noticed how windfarms are dominating their countryside. Flying back to the Yorkshire Wolds he realised how unspoilt, neat and tidy the area is.
152. In the ES at paragraph 6.14, Moor Farm is given a rating of 'no significant visual effect', but this includes the views from the house itself rather than views from the fields where he spends more of the daylight hours than in the house. The development will have a dominating effect on views from all over the farm. Even from the house, he will be able to see the turbines quite clearly through the windows facing the North West as the plantation is quite thin, especially in the winter months when there are no leaves on the trees.
153. The developers say that the means of connection to the grid 4.5 km away at Yedingham would probably be made by underground cable. This should surely be clarified, otherwise, would it mean a row of pylons coming down from the Wolds escarpment, across the A64 and across the Vale of Pickering? Surely this

must be part of the overall plan as one is no good without the other. There are 2 caravan and camping sites at Ebberston (The Vale of Pickering Caravan Site) and at Knapton Wold (Wolds Way Caravan and Camping). The latter is only 4 km from the Development and it will totally dominate their views to the East. This could lead to a drop off in tourism for this area if holidaymakers choose to go where the views are not hampered by turbines. 300 cubic metres of concrete will be needed for each turbine's foundation; that equates to 750 tonnes per turbine. A total of 7500 tonnes of concrete with 450 tonnes of reinforcing steel will be poured into the Yorkshire Wolds together with hard standing pads, roads and underground cabling. In 25 years time, all this will be left on site after decommissioning and will be there for ever. On the farm we are not allowed to bury waste including concrete, under the Farm Waste Regulations.

154. It would be better to meet the renewable energy target with far less intrusive smaller individual projects such as farm sized turbines, solar PV and biogas plants. Within just a few miles of the appeal site there are already farm turbines at Dotteril Farm and Kirby Wold Farm. There are two turbines planned for Duggleby Wold and a large solar array at Moor Farm. These are just the ones he is aware of and in a small area.
155. Although a birds study has been done, it plays down the likely amount of fatalities. A number of raptors have been seen at the site including the scarce Marsh Harrier. Raptors seem particularly prone to colliding with turbines. Quote from the Caithness Windfarm Information Forum (CWIF) report March 2011: "At the Altamont Pass windfarm alone, 2400 protected golden eagles have been killed in 20 years, and about 10,000 protected raptors (Dr Smallwood, 2004). In Germany, 32 protected white tailed eagles were found dead, killed by wind turbines (Brandenburg State records). In Australia, 22 critically endangered Tasmanian eagles were killed by a single windfarm (Woolnorth)." As a neighbouring farmer he can vouch for the fact that there are an increasing number of buzzards in this area as well as other birds of prey which the study fails to take account of.
156. He strongly objects to such a massive project that will spoil the beauty of this part of Ryedale and upset many people, their pastimes and businesses. There are only a minority of people who actually support the project. Unfortunately, the majority of local people have no idea of the scale of these turbines, thinking that they will be like small 'farm' turbines which they will have seen locally and therefore don't bother to object.
157. Mr Stephens makes further specific observations in response to the appellants' specialist aviation witness⁷².
158. **Chris France** is Director of Planning at the North York Moors National Park Authority. The Authority considers that the wind turbines would be of sufficient distance from the southern boundary of the National Park not to impact adversely on its setting. Whilst this assessment is a valid one, the proposal has been assessed from the landscape to the north of the villages of Hutton Buscel, West and East Ayton where the boundary of the Park is at its closest to the proposed site, a distance of less than 10km. This is an area of elevated arable

⁷² Doc 12

and pasture land characterised by linear roads and public footpaths that provide open views out across the Park and Vale of Pickering to the ridge of the Yorkshire Wolds.

159. Whilst not constituting the setting of the National Park, the Wolds escarpment forms an important visual backdrop to the extensive deeply rural views which characterise the southern vista from this part of the Park. The relationship between the landscape character areas of the Vale of Pickering and the Wolds and the southern dip slopes of the North York Moors is an important one where the lack of significant man made features and the linear character of the immediate and longer distance views are fundamental to the public enjoyment of the public enjoyment of the special qualities of the National Park.
160. The proposed wind farm would introduce a highly intrusive form of development which owing to its scale, vertical emphasis, the number of turbines, their elevated siting, movement and prominence in relatively close proximity to the National Park would seriously undermine these landscape features and therefore impact adversely upon the public enjoyment of the special qualities of the National Park within its south-eastern edge area. As such, the proposal is considered to be contrary to national advice relating to the siting of renewable energy projects outside but close to designated areas.
161. Jacksons Wold is a neighbouring farmstead with a 3 acre garden about 2 km from the easternmost turbine (T10) which is open to the public as part of the National Gardens Scheme. Owned and developed by **Richard and Sarah Cundall**, it comprises amongst other features of interest a walled garden with mixed borders and old shrub roses underplanted with unusual perennials. Woodland paths lead to further shrub and perennial borders and out into the surrounding fields which include a wild flower meadow. The turbines would have a detrimental impact on the experience of visitors to the garden which is in a unique elevated location on the edge of the Wolds escarpment. Moreover a free range egg unit at Sherburn Wold Farm also owned by the Cundalls had to be partially sunk into the ground to reduce its visual impact. It is difficult to understand why that was necessary if large industrial scale structures visible from a long distance are acceptable. Moreover they have great concern about the impact the turbines will have on the chicken unit which will be less than 1 km from T10.
162. **Edward Legard** is Ryedale District Councillor for Wolds Ward. The view shared by local parishes is that the development would have a devastating effect on a landscape which has a unique and precious value. Local people feel frustrated that their concerns fall on deaf ears; they worry that they will be tagged as 'nimbies' but they have legitimate and rational fears. Pedantic legal analysis distracts from the true voices of those who live here, who are overwhelmingly against it. The turbines would be visible in the view down the Vale of Pickering from Castle Howard and Ampleforth; and on the escarpment, will draw the eye.

Written representations

163. A large number of written representations are submitted both in support and against the proposal. The points made generally fall in line with those made by

others at the Inquiry. The following points reflect concerns raised that are not already summarised above or are of particular interest.

164. Amongst supporters, representations draw attention to the grace and beauty of wind farm developments which are in tune with nature and represent a sustainable energy future. Doing nothing or expecting others to do it is not enough; everyone must do their bit.
165. Those objecting point out amongst other things that the turbines would be twice the height of York Minster. There would be massive disruption during the construction period as well as damage to the environment and the small lanes around the site.
166. **David Ogilvy** is a past president of the Aircraft Owners and Pilots Association and writes to object to the application. Wind turbines are large obstructions and in the vicinity of a flying site they can be dangerous when a pilot is flying in poor visibility, in failing light or when letting down through or flying under low cloud. In certain conditions they can be virtually invisible, especially when heading towards a low sun. The Civil Aviation Authority states minimum distances at which any turbine should be erected in relation to an active aerodrome or airstrip. In the case of a small private unlicensed flying site such as Moor Farm the figure is 3km, yet on the present proposal the distance is only 2km. This and other factors that a developer is required to take into account appear in chapter 5 of Civil Air Publication (CAP) 764 – CAA Policy and Guidance on Wind Turbines. It appears that in this case the developer has failed to fulfil that responsibility. The positioning of the turbines reduces safety further by creating a need for pilots approaching Moor Farm to alter their flight paths from those accepted as standard practice. Already these have been modified to take account of environmental considerations and any further alterations can be confusing, especially to a pilot flying to the airstrip for the first time. He adds that in the past 22 years he has handled 717 planning or operational issues relating to aerodromes and airstrips; also that he has a working lifetime's experience in general aviation as a pilot and flying instructor in aerodrome management and in many other spheres, including giving evidence as an 'expert witness' at 30 aviation-related Public Inquiries.
167. County Councillor **Janet Sanderson** draws attention to the high quality of the landscape in Ryedale and the major regional importance of the northern escarpment and the views outwards from and across elevated farmland, views in which the sky is important. She is also concerned about the impact on the long established unlicensed airstrips at Moor Farm and Eddsfield, particularly Eddsfield as this is where the Yorkshire Air Ambulance and police helicopter are able to refuel. If circuits used at these airstrips are changed, this could adversely affect residential areas.
168. Many written representations refer to the potential impact on local lanes and byways of traffic during construction by way of noise, congestion and the effect on wildlife.
169. **Gilbert Morrey** is a resident of Scarborough and considers that the site at East Heslerton is ideal because it is relatively isolated. The turbines would be very visible from the Wolds Way, but would enhance the visual experience by providing a contrast to the agricultural landscape. **Dr J Skinner** of Rillington hopes that Ryedale will wish to be at the forefront of alternative technologies in

this area of the country and says that as a nation we should give serious consideration to applying alternative forms of energy production to cope with the ever increasing load on energy resources. **Mrs Jill Wilson**, resident of Weaverthorpe, cannot understand the reasons for the planning committee decision to refuse the scheme, saying the location is perfect and had been the subject of extensive environmental assessments that were accepted by Ryedale's planning officers. **Jim Mortimer** is a parish councillor living in Snainton on the slopes of the North Yorkshire Moors with a view towards the proposal and has no problem with it, saying that wind turbines are now common across Europe.

170. **Kenelm Storey** and others point out amongst other objections that the proposed grid connection is not clarified and if over ground, would be likely to have a detrimental visual impact. **RAH Sword** FRICS on behalf of the Trustees of the Wykeham Estate draws attention to Wykeham Abbey, the Dawnay family home, which sits at the centre of the Vale of Pickering facing south. There is no significant development in the Vale. The scheme will have dramatic and negative effect on this beautiful and important house and landscape.
171. **Richard Craggs** says that as a resident in the area and involved in an engineering business based in West Heslerton, the turbines would have a not insignificant effect on the landscape but have been designed to reduce impact and would provide a reasonable balance with the surroundings, bearing in mind the busy trunk road, a large landfill site and hundreds of acres of fields with pigs. The national need for renewable energy should be accepted.
172. **Mrs Valerie Bottomley** is a resident of West Luton who points out amongst other matters that thousands of pounds have been spent on promoting the Centenary Way Guide to encourage people to explore some of the finest countryside England has to offer. There is no point in trying to attract visitors to use the Trail, spend money in local cafes, B & Bs and galleries if they have to negotiate their way past a massive construction site and 126m turbines.
173. **KVA Planning** on behalf of the North Yorkshire County Branch of the CPRE draw attention to the increasing number of wind turbine applications across Yorkshire and the importance of ensuring cumulative impacts are properly assessed. They suggest that the proposal conflicts with paragraphs 97, 98 and 99 of the NPPF because it would conflict with the golden thread of sustainable development that underpins the NPPF because of the way it would harm the environment. It is also pointed out that the site is not one of those identified as suitable in the 'Delivering Sustainable Energy in North Yorkshire: Recommended Planning Guidance' prepared for the local planning authorities in North Yorkshire (October 2005) and is 'highly sensitive' and suitable only for domestic scale turbines.
174. **The Reverend Anthony Pritchett** of West Heslerton has lived near a wind farm before and was only too aware of the noise. He is concerned that noise will be a problem at West Heslerton but also says that the turbines will be in direct line of sight for tourists travelling from Whitby towards Pickering and Malton and will affect a vast area. The Wolds are being recognised as a site of great tourist value and the impact cannot be exaggerated enough.

Inspector's conclusions

In this section, numbers in brackets [] refer to paragraphs in this report of main relevance to my conclusions.

Main issues

175. The reasons for refusal are as follows:

01. 'The application site is within an area designated in the Ryedale Local Plan as the Wolds Area of High Landscape Value. The area is characterised by relatively undeveloped, visually distinctive gently rolling terrain with expansive views of well-managed fields, prominent escarpments and foothills rising from the Vale of Pickering. The open and, undeveloped character combined with long distance views make this landscape particularly sensitive to change and it is therefore valued in terms of the quality of its contribution to the landscape of Ryedale.

The height, number and location of the turbines in this proposed wind farm would introduce a grouping of uncharacteristic, alien vertical structures into a relatively unspoilt area of the Yorkshire Wolds, representing a visually intrusive and discordant feature which will neither contribute towards, or enhance, the local environment of this sensitive landscape which cannot be satisfactorily addressed through mitigation.

The significant adverse landscape and visual impact that will result from the development of the wind farm in this location would significantly and demonstrably outweigh the benefits of the development proposal including the acknowledged benefits relating to the provision of renewable energy and carbon dioxide emission reduction.

The proposal, therefore, does not accord with NPPF paragraphs 97 and 109, guidance offered in National Policy Statements 1 and 3 (Section 5.9 of EN-1 and 2.7 of EN-3), Ryedale Local Plan Policy ENV 3 and Policy SP13 of the Emerging Ryedale Plan – Local Plan Strategy.'

02. 'The Wolds Way National Trail extends from the Humber Estuary to Filey, along wooded slopes and through serene dry valleys. The introduction of 10 wind turbines, 126 metre to tip in this location, will not enhance the character of the National Trail, but will significantly adversely alter the character of the route by detracting from the tranquil qualities of the farmland which is currently experienced around this part of the Wolds Way.

The proposed development would significantly adversely alter the character of the Wolds Way National Trail route along wooded slopes and through serene dry valleys by detracting from the tranquil qualities of the farmland currently experienced around this part of the Wolds Way which would significantly and demonstrably outweigh the benefits of the development proposal including the acknowledged benefits relating to the provision of renewable energy and carbon dioxide emission reduction.

The proposal, therefore, does not accord with NPPF paragraph 75 and Policy T10 of the Ryedale Local Plan.'

176. Following from these reasons for refusal, the main considerations upon which the decision on this application should be based are as follows:

- The effect of the proposed development on the landscape character and visual amenity of the surrounding area, with particular reference to the Wolds Way National Trail; and
- Whether the environmental and economic benefits of the scheme would be sufficient to outweigh any harm that might be caused.

Landscape and visual impact

177. It is necessary firstly to summarise the guidance on landscape character that was referred to at the Inquiry. In September 2012 Natural England (NE) published the National Character Area (NCA) Profile 27: Yorkshire Wolds⁷³. The summary says that the Wolds comprise a prominent chalk escarpment and foothills rising from the Vale of York to the west and the Vale of Pickering to the north. Its key characteristics include a large scale expansive, rolling landscape with big skies and long views from the escarpment and plateau, contrasting with the more enclosed, dry, sheltered valleys deeply incised into the chalk. The thin soils support mainly arable farming. A very low proportion of the area is urban and woodland, and the vast majority of the land is agricultural. The enclosure of most of the land in the 1700s led to the pattern of field hedge boundaries and drove roads evident today.
178. The NCA Profile goes on to advise that 'this gently rolling landscape instils a sense of openness, escapism and tranquillity provided by the expansive views, sparse population and agriculture. Protection of the rural character and long, open views is important for conservation of this distinctive landscape.' It provides a Statement of Environmental Opportunities which includes at SEO3 the objective of improving opportunities to enhance people's enjoyment of the area while protecting high levels of tranquillity by conserving extensive views and intimate, steep-sided valleys which contribute to sense of place, and by protecting and promoting the extensive historic evidence of past human settlement, landscape change and designed landscapes. Key drivers of change are identified including demand for wind farm sites; in this connection, it is notable that a number of small and medium scale wind turbines have been erected in the Wolds, some in the area within 10km of the appeal site⁷⁴.
179. The document records the sense of place and inspiration provided by the landscape, saying 'The open, undulating, simple, uniform and much valued landscape provides inspiration for creativity such as is seen in the work of David Hockney'; 'The sense of openness and a largely unchanged landscape is likely to have a strong effect on local identity. The lack of man-made structures in this lightly settled landscape creates a sense of escapism from the modern world'⁷⁵.
180. NCA profile 26 covers the Vale of Pickering⁷⁶. SEO4 seeks to ensure that developments are successfully integrated into the landscape, making a contribution to biodiversity and habitat networks, and that they do not compromise the sense of tranquillity and openness of the rural landscape, or delivery of other important ecosystem services, including mitigating and

⁷³ CD7.12

⁷⁴ ES Figure 6.36 indicates those used for cumulative visual assessment and Appendix 2b includes all

⁷⁵ CD7.12 p47

⁷⁶ CD 7.13

adapting to climate change. There is a strong physical link between the Vale and the Wolds by virtue of the steeply sloping escarpment that defines these 2 NCAs. Increased pressure for onshore wind farms together with growth of biomass crops and gas exploration is identified as a key driver for change.

181. NCA 26 identifies the A64 Leeds-York-Scarborough trunk road as a major route for tourists and as an important road freight corridor; and the railway line to Scarborough as a central feature. Nevertheless it says the flat open landscape and limited north-south access contribute to a sense of remoteness and tranquillity, clarified as most likely to be experienced in the pastoral valley of the western area. I consider that although subservient to the scale of the landscape, the appearance and noise of traffic on the A64 and trains have a noticeable urbanising impact on the southern side of the Vale, reinforced by associated industry, settlements and public lighting. That does not diminish at all the tranquillity apparent on the south side of the escarpment in NCA 27 on the Wolds themselves.
182. The advice in both NE NCA profile documents draws attention to the high sensitivity of the Wolds and the Vale to development in general. It is inevitable that wind turbine development will have significant landscape and visual effects for a number of kilometres around a site. The guidance in Gillespies 1995 publication "*Our Landscape Today for Tomorrow*" (including a prescient very early reference to the likelihood of wind turbines at page 5/9), further emphasises the sensitivity of the open rolling landscape but notes that the extent to which wind power structures are likely to be detrimental will depend upon their siting, design, scale and the extent to which the local topography and land cover will enable effective assimilation.
183. The 2005 East Riding of Yorkshire Landscape Character Assessment specifically resists wind turbine development. The most recent county level NYLCP supports the assessment of high sensitivity for the *Chalk Wolds* LCT, as a result of the panoramic open views which can be gained from the tops of hills and plateaux, their predominantly open character; and strong intervisibility with adjacent LCTs (particularly the *Chalk Foothills* and *Broad and Narrow Chalk Valleys* (much smaller LCTs within the Wolds). Development pressure is identified as resulting from large agricultural sheds and the introduction of telecommunication masts, overhead wires or other tall structures such as lighting columns. A tall telecommunication mast lies to the east of the appeal site on the crest but is mitigated by surrounding tree cover; nevertheless it is a prominent vertical structure⁷⁷ near the crest.
184. The AECOM Report of 2012⁷⁸ provides a landscape sensitivity appraisal methodology to assist in planning decision making for renewable and low carbon energy developments in North Yorkshire and York, using existing sensitivity assessments including the 2011 AECOM Report on energy capacity⁷⁹, 2005 planning guidance prepared by Land Use Consultants⁸⁰ and the NYLCP. This confirms the landscape and visual sensitivity of the area around the site as high⁸¹. It also confirms the wind development typology for a 10 turbine scheme

⁷⁷ This is illustrated on p13 of the Golder Report CD7.19

⁷⁸ CD7.18

⁷⁹ 'KR1' CD3.5

⁸⁰ 'KR2' CD3.4

⁸¹ Figs. 15.1 and 15.2

over 80m high as 'large', the highest category in this methodology. However, the point is made that local level assessment is still necessary for each individual proposal.

185. Taking all this advice into account and following extensive site visits, it is accepted that the surrounding AHLV Wolds landscape is highly valued, but the large scale of the landform, intensive agricultural quality of the farmland and lack of a national designation indicates a medium sensitivity to wind turbine development for assessment purposes. The area along the farmed crest, which forms a conspicuous skyline, has high sensitivity⁸². The longstanding moves towards AONB status for the Wolds are noted but only attract limited weight. [85,138]
186. The baseline landscape character of a large scale expansive, rolling landscape with big skies and long views would allow this turbine development to be assimilated successfully viewed from the Wolds NCA to the east, west, and south. The breadth and scale of the undulating arable landscape, which extends for more than 15 km in these directions and well into the East Riding, would be of such size as to absorb their height and movement. The turbines would be located in a relatively compact group that would relate to the local landform of rolling fields and incised valleys leading up the top of the escarpment. The sparse settlement pattern and large fields with thin hedge boundaries and only occasional blocks of woodland further emphasise the simple nature of the receiving landscape, in which the development would seldom occupy more than a few degrees of the view.
187. There would be a more significant effect within a radius of about 3.5 km from the turbines. Depending on location, the turbines would be seen together with other landscape features such as trees, hedges and farm buildings. These and the undulating fields would partially conceal towers, hubs and blades to varying degrees. The turbines would still relate logically to the local topography but large moving man-made structures, as acknowledged in national policy advice, inevitably significantly influence landscape character; and here they would become a significant and defining characteristic of the landscape. One definition of a moderate adverse significance of effect is 'the proposed scheme would be out of scale with the landscape or at odds with the local pattern and landform; ...will leave an adverse impact on a landscape of recognised quality'⁸³. Near to the development, there would be a high magnitude of change leading to a moderate adverse effect⁸⁴. Beyond 3-3.5 km, the effect would be moderate/minor, declining with distance.
188. Turning to the impact on the landscape in the Vale of Pickering NCA, the steep scarp that defines the southern extent of this NCA has very substantial and dominating height, length and bulk. None of the turbines would be on the highest ground on the crest. Although the turbines themselves would be similar in height to the overall height of the escarpment from the valley, this would not be readily apparent due to the distance between the crest and the nearest turbines at T7-T10. Nevertheless, all of the group would be visible to varying degrees depending on distance, partial views of revolving turbine blades in

⁸² A useful table of sensitivity is also included in the Golder Report CD7.19 at Appendix A

⁸³ GLVIA 2nd edition CD7.1 p141 Appendix 6 (used for the purposes of this Inquiry)

⁸⁴ With reference to Table 6.1 of the ES

particular appearing as a distracting element above the horizon from many parts of the valley⁸⁵. However they would affect only a small part of the scarp and in the context of the NCA as a whole, would be of only medium landscape significance⁸⁶. The impact would be greater on the north facing slopes nearer to the turbines (within the *Chalk Foothills* and *Sand and Gravel Vale Fringe* LCTs) where the Wolds Way passes, but stands of trees and shrubs on the slope and crest between East and West Heslerton would mitigate the effect. A medium magnitude of change leads to a moderate/minor level of effect on this NCA. [58,95]

189. Overall, I concur with the conclusion of the ES that the impact on the Vale NCA landscape would be moderate/minor within a short distance of the turbines and minor from further afield; and therefore 'not significant' in EIA terms. That is not to say that there would be an insignificant visual impact, a matter I turn to later. At the Inquiry, the Council sought to clarify further the process used in the ES to analyse landscape character, suggesting that the 2005 East Riding of Yorkshire Landscape Character Assessment⁸⁷, specifically the Yorkshire Wolds *Open High Rolling Farmland* therein is the same LCT as the *Chalk Wolds* in the NYYLCP. I do not disagree and have had regard to the fact that landscape character inevitably crosses administrative boundaries in my assessment. The overall degree of harm, taking into account the impact on the whole diverse landscape and not just each NCA or LCT in turn, needs to be taken into account. [59-61,62-64, 68, 80, 121-124]
190. In terms of policy, the moderate and moderate/minor landscape impacts of the development would not protect or enhance the quality, character and value of Ryedale's diverse landscapes or the visually sensitive skyline and would conflict with the clearly expressed aims of LPS policy SP13. The degree of harm needs to be considered in the balance.
191. Whilst considering landscape impact, the effect on the North York Moors National Park (NP) needs to be assessed. The most obvious way in which the turbines would affect the NP is as a distracting element on the horizon, visible from the opposite side of the Vale of Pickering and from areas of the NP that extend southwards at Hutton Buscel and Thornton-le-Dale (a minimum distance of about 9 km). Viewpoint 10 illustrates the visibility of the proposal from a point near to Hutton Buscel at about 8.25 km. At this distance, this indicates that almost all of the hubs and blades would be visible above the crest of the scarp⁸⁸; but turbines would be sufficiently far back from the crest to avoid being seen at full height from any location in the Vale of Pickering or the NP.
192. However, the angle of view occupied by turbines would be small. The breadth and scale of the Vale of Pickering as a whole overwhelms the view south from any part of the NP. Whilst the turbines would represent a change in the view, there are no identified special qualities of the NP which comprise distant views towards the Wolds and as a result the development would not lead to any harm to any special qualities. Whilst the effect should not be completely disregarded, the development would not significantly detract from the natural

⁸⁵ As an example see ES Figures 6.16b and SEI PP10.3

⁸⁶ As an example see ES Figure 6.29b

⁸⁷ CD7.17

⁸⁸ See also SEI Appendix 2d VP1-5

beauty and special qualities of the NP or its setting. In coming to this conclusion I note that the Council has no objection on this ground. Moreover, the development would be removed after 25 years, a consideration that bears on landscape matters. [54-57,158-160]

Visual amenity and recreational users

193. Visual receptors include local residents, people working and recreational users such as walkers and horse riders. There are very few residents within 2.5 km of the proposal. There would be a significant visual impact for those that live and work within 1 km of the turbines at Ling Hall Farm, Manor Wold Farm, Whin Moor, East Heselton Farm and just beyond 1 km at Sherburn Wold Farm, on going about their daily business and travelling to and from their houses and places of work, but the dwellings and buildings are mostly shielded to varying degrees from the appeal site by landform, trees and/or other buildings. There would be no significant visual impact on living conditions in terms of visual dominance. Residents of East Heselton Farm would have a clear view from some windows of the turbines but this property is financially involved in the development.
194. Within 6 km of the scheme there are village settlements at East and West Heselton (approximately 2.1 and 1.7 km from the nearest turbine), Sherburn (2.8 km), West and East Knapton (about 4.5 km), Yedingham and Potter Brampton (6 km) in the Vale of Pickering where there would be significant visual effects. Some properties on the southern edge of East Heselton would have views of 7 blade tips and 3 hubs over the crest of the scarp. The partial view of revolving blades would be incongruous in what is otherwise a pleasant rural backdrop, and would constitute a moderate visual effect, but would not be visually oppressive at a distance of more than 2 km. Visibility of the development from West Heselton would be less at 4 upper blades. Although closer, most views from this settlement would be largely shielded by vegetation and buildings.
195. The visual effect on residents of Sherburn, West and East Knapton, Yedingham and Potter Brampton would be significantly reduced by distance. Seen from further away, more of the turbines would be visible, but more of the escarpment would also be apparent and the magnitude of change would be less.
196. As for settlements to the south of the development in the Wolds, East and West Luton, Wintringham, Helperthorpe and Weaverthorpe all lie at or around the 5 km radius line. There would be no visibility from East Luton itself⁸⁹, and very little from West Luton, though turbines would become visible to varying degrees on leaving and approaching these villages on higher ground and on using local rights of way. Residents of Helperthorpe and Weaverthorpe would see the blades of 3 turbines, partially screened by vegetation and landform, to various degrees, to the north, but they would be beyond a distance at which there would be any significant visual effect. That is not to dismiss the concerns of residents who would notice a change in the surrounding landscape and this needs to be taken into account.

⁸⁹ See ZTV at ES Fig 6.4 (large format)

197. The area is well used for recreational purposes as well as by people passing through, mainly on the A64, travelling to the coast. Looking first at the site itself, the opportunity for people to pass very close by the development is limited to the Byway Open to All Traffic (BOAT) crossing the site in a north-south direction; and a number of public bridleways mainly to the south and east. The BOAT does not appear to cross the farmyard of Manor Wold Farm and is of limited value as a through route. The sensitivity of people walking or riding these routes should be regarded as high because the expectation and activity indulged in. There would be a very substantial magnitude of change in the view for people using the BOAT, in that they would be passing through a windfarm with turbines on both sides, 5 of which would be at relatively close quarters (though all beyond the 200 m minimum recommended by the British Horse Society⁹⁰). Having said that, the wind farm experience would form only a small part of most walking or horse riding trips. There would be extensive views towards surrounding landscape features in the Wolds without turbines, except for a brief period. In any event, it is not clear that all would find the introduction of turbines into their rural experience unpleasant. EN-1 says that public rights of way are an important recreational facility and that adverse effects should be mitigated, but it would be difficult to hide structures of the size proposed. The visual impact would be substantial and the turbines would diminish the enjoyment of those on the BOAT. [56,69-72,103,136]
198. Significant objections have been raised by local horse riders and by people who operate equine businesses nearby. Whilst these fears are understood, there is no evidence to indicate that wind turbines are likely to result in the sterilisation of local rights of way for any equine purpose. There is now a significant number of windfarms across Britain where horses and turbines co-exist and it has not been shown that the 200m minimum distance suggested in the British Horse Society's guidance, which is based on surveys of riders' experiences, would not be appropriate in this case. This because a rider and horse would have plenty of forewarning of the windfarm on the routes concerned. Moreover it has not been shown that the dead end BOAT across the site is essential to ensure interesting and stimulating rides in the area.
199. The difficulty when introducing new horses to the area from elsewhere for training at Moor Farm is clearly expressed. It is accepted that a period of familiarisation may be necessary and that the turbines would be a constraint. However, given the visibility of turbines at a distance of 1.5-3 km from the business, in an intensively farmed agricultural landscape with many other distractions including aeroplanes, farm activity and traffic, they would be unlikely to cause an undue or unacceptable additional level of alarm. The equine based objections do not weigh heavily against the proposal. [45-47,128-134]
200. Turning to the Yorkshire Wolds Way/Centenary Way, this national trail traverses the scarp just under the crest. Blades and hubs and parts of towers would be visible above the hill for a good proportion of the route between Knapton Wood and Sherburn, a distance of about 7.5 km. Turbines would be a more prominent characteristic of the experience for a much shorter distance of around 3.5 km but for much of that they would be hidden or partially hidden

⁹⁰ CD6.35

behind trees or vegetation. At no time would anyone on the trail see all the turbines in their entirety, mostly only hubs and blades appearing over the crest. At only 2 points would they be particularly noticeable and prominent: on emerging eastwards into the open after crossing the West Luton-West Heslerton road; and ascending westwards up the hill to East Heslerton brow (Appendix 3 to Mr Denney's proof provides a sequence of views). It is unquestionable that there would be a major visual effect, but notwithstanding the likelihood that some would find the turbines interesting, it is not clear that the experience of walkers would be unacceptably affected. The main reason for this is that the trail follows the slope of the hill and has a very broad and long view across the Vale of Pickering to the Howardian Hills and the North York Moors- away from the windfarm to the north. There is much in the foreground (including industry of various kinds) and in the distance to look at. The turbines would be behind this expansive prospect. The Wolds Way does not comprise 127 km of unbroken peace and quiet as some claim; it offers a varied journey. Moreover various changes of direction and frequent vegetation have the effect of altering the turbine experience as one goes along. The appellant has provided a sequential cumulative assessment for the Wolds Way⁹¹. [54-57,69-73,158-160]

201. Much was made of tranquillity at the Inquiry and this is undoubtedly an attractive feature of much of the Wolds and some areas in the Vale. That quality is not a particularly strong characteristic of the Wolds Way in this location. Depending on wind direction, sirens, traffic and railway noise from the A64 corridor imposes to varying degrees upon the enjoyment of the viewer. It is in no sense of the word remote.

202. On the other hand, the tranquillity of the Wolds NCA contributes strongly to its perception by many as a unique and distinctive landscape; and this aspect is specifically protected in LPS policy SP13. The Campaign to Protect Rural England publishes tranquillity mapping⁹² which confirms the peaceful nature of much of the Wolds AHLV. A relative level of tranquillity was confirmed at the site visits that I undertook, allowing for agricultural machinery which is an integral part of all productive 21st century countryside; and the occasional military jets. The rolling nature of the contours also facilitates raised levels of peacefulness in narrow incised valleys which shield the receptor from noise. Although not particularly noisy in themselves, the turbines would detract from levels of tranquillity that exist in the fields and lanes around East Heslerton Farm and would diminish the enjoyment of a small number of people that use the BOAT. But they would not seriously diminish the public enjoyment of the Wolds Way; and would have a lesser impact on other PROWs in the area which are further away. [135,136,140]

Cumulative effects

203. There are no consented or operative large scale commercial wind developments above 80m to blade tip within 20 km of the proposal. Six 100-110m turbines planned at Thornholme Fields would be over 19 km away⁹³. A larger development at Hunmanby (up to 14 turbines at 145m 13 km away) is at

⁹¹ SEI Appendix 2e

⁹² CD7.25

⁹³ At the time of writing, at appeal

pre planning stage and this would be the largest scheme within sight. There are no consented or operative medium scale (55-80m) wind developments within 10 km, though 3 individual applications within 5 km remain to be determined. The numerous but relatively small turbines that already exist on the Wolds within this radius⁹⁴ are of insignificant scale in themselves but they do reflect the pressure for onshore energy generation mentioned in the NCA Profiles. Updated visualisations are provided in the FEI including 2 No. 48m consented turbines at Duggleby Wold and 1 consented turbine at 46m at Manor House, both schemes between 2.4 and 3.1 km of the proposal and not yet erected. Others are in the planning process. The proposed scheme is of a quite different order of scale to any of those within 10 km and will stand alone. Moreover blocks of woodland and the undulating topography do a great deal to reduce intervisibility between them and there would be no significant cumulative landscape or visual impacts⁹⁵. [141]

204. To conclude on the first main issue, in broad landscape terms there would be a minor/slight adverse impact on the *Vale of Pickering* NCA because of the visibility of hubs and blades beyond the scarp over a wide area. Within about 2 km, there would be a moderate to moderate/minor adverse effect decreasing with increased distance. The effect on the *Yorkshire Wolds* NCA is greater due to increased visibility of towers but the moderate adverse impact does not extend beyond a 3-3.5 km radius. The proposed development would detract from the qualities of the *Chalk Wolds* LCT by reducing the sense of tranquillity and remoteness that form one of its key characteristics. The harm would be moderate within 3-3.5 km of the development decreasing with distance, but would not have a significant effect throughout the vast majority of the LCT or the Wolds NCA which extends over a wide area. Even within the appeal site, the scheme would not prevent appreciation of the other key characteristics listed in the NYYLCP particularly the open character of the chalk hills and the long open views. There would be a minor adverse impact on the *Chalk Hills* LCT due to the visibility of blades above part of the scarp slope.
205. The effects of the proposal on skylines, tranquillity and landscape character would conflict with the landscape protection and visual amenity aims of LPS policies SP13 and SP20 but the moderate level of harm caused would be limited to within a short distance of the appeal site and the key characteristics of the surrounding landscapes would not be seriously affected. The impact on public rights of way and the Wolds Way in particular would conflict with the aim of LPS policy SP15 of protecting and enhancing the quality and integrity of the Yorkshire Wolds, but the magnitude of the impact on the Wolds Way as a whole would be low. [105]
206. The reasons for refusal refer to a conflict with the aims of paragraphs 75, 97 and 109 from the NPPF. The NPPF is to read as a whole. The requirements to protect and enhance public rights of way (75) and valued landscapes (109) do not mean that applications for renewable energy should necessarily be refused, when paragraph 98 advises that they should be approved if their impacts are (or can be made) acceptable. Similarly, the words 'protect and enhance' when used in the LPS for instance in policies SP13 and SP15, need to be read in the

⁹⁴ See schedule at FEI 2.1

⁹⁵ ES Figures 6.36-6.44 and FEI Figures 2.2-2.4 refer. See also Golder Report CD7.19 p 36

context of SP18 which requires that renewable energy developments need to be satisfactorily assimilated, specifically mentioning the setting of the NP and the Vale of Pickering. Renewable energy development may by its very nature have a significant effect on protected or valued landscapes, but the NPPF, the LPS and the PPGRE do not explicitly exclude it in any location.
[49,51,52,98,99,101,102]

Other matters

Energy benefits

207. Many objectors draw attention to the energy benefits of the proposal and the level of Government subsidy, but wide environmental and economic benefits attach to all renewable energy proposals this is a significant material consideration. There is nothing in planning policy to indicate a cut off point at which turbines become unacceptably inefficient. The question of subsidies is for central Government. It is evident that adjustments are likely in the future as onshore wind capacity targets are approached; when and if that occurs, the viability of the scheme may change, but that is not a matter for my consideration.

208. Matters relating to the ability of the national grid to absorb wind generated power and the need for back up 'spinning' reserve are material considerations, but no objections have been received from any power distribution company. I give these concerns little weight.

Noise

209. The noise section of the ES is updated following the issue of the Institute of Acoustics Good Practice Guide⁹⁶. Revised predicted turbine noise emission levels have been calculated⁹⁷. These fall within ETSU limits, though the margin (or 'headroom') at Whin Moor is tight at about 0.6 dB at wind speeds around 5m/s in quiet daytime. There is also a considerable difference between background noise and predicted turbine noise amounting to between 2 and 20dB at night time, reflecting an unsurprising level of tranquillity at night. I have no doubt that residents of properties nearby will notice turbine noise from time to time and that on occasion, this may discourage the opening of windows for ventilation in the summer, for instance. This would be a disadvantage at uninvolved properties such as Whin Moor Farm, where there would be an approximate difference of 12 dB. However, these figures represent a worst case position; Whin Moor Farm lies to the south/south west of the turbines and the number of occasions when winds blow from the north/north east is likely to be less, though not uncommon.

210. ETSU seeks to achieve a level of noise which is reasonable and which would allow the nearest neighbours acceptable living conditions. What it does not seek to do is reduce wind farm noise to a level which would be inaudible to local occupiers or such that no-one will ever be disturbed by it. The Council engaged its own noise consultant on this case following which negotiations took place with the appellant on conditions that could be applied to protect the interests of nearby residents. The noise tables in the suggested conditions are the result

⁹⁶ CD 8.3 and FEI Chapter 5

⁹⁷ FEI Chapter 5

and overall, the noise conditions would adequately protect the interests of nearby occupiers. There is no reason for refusal in connection with noise. [40,174]

Ecological concerns

211. The ES contains comprehensive assessments of the potential impact on the local ecology, updated as part of the FEI. On the basis that appropriate conditions are imposed to ensure that protected species are surveyed before work commences with provisions for mitigation if necessary; and an Ecological Management Plan (EMP) is put in place, NE have no objection. As part of the EMP, over 4 km of hedgerows are to be improved and gaps filled, which is likely to significantly benefit wildlife. The Council has no objections on this ground and ecological concerns do not weigh against the scheme. [155]

Cultural heritage

212. Concerns have been raised regarding impacts on a number of heritage assets including the historic landscape of the Vale of Pickering and designated assets including listed buildings at Grades I, II and II* such as the Church of St. Andrew in East Heslerton, St. Hilda in Sherburn, St Andrew in Weaverthorpe, St Margaret in West Lutton; a conservation area at Wintringham and archaeological sites in the area including Scheduled Ancient Monuments (SAMs). There is also a Grade II* Registered Park and Garden (RPG) at Scampston Hall within 5 km of the scheme. Wykeham Hall (listed at Grade II*) lies in the Vale of Pickering about 8 km from the site and would have a view of the escarpment including turbines, but the heritage significance of this asset would only be slightly affected by the change. There would be no direct effects on known heritage assets on the site itself but there is a good potential for fresh finds despite the current arable use and a suggested condition would allow any to be recorded. [41-44,170]

213. A significant number of funerary/ritual monuments lie on the ridge on the south side of the Vale of Pickering within 5 km of the development site and several lie between 0.6 and 1 km of T4⁹⁸. These barrows are in very poor physical condition due to agricultural activity and are considered 'at risk' by English Heritage (EH). The proposed development would be a very conspicuous feature of their setting on the brow but as the barrows themselves are largely subsumed into the intensively farmed landscape, it is hard to conclude that understanding of them or their intervisibility would be seriously harmed, particularly as the turbines would exist for only 25 years; a small proportion of the time these ancient assets have existed up to now. Whilst interested visitors would see the turbines within their setting, the effect on these assets' historical importance and heritage significance would be very low.

214. Having visited all of the other heritage assets within a 10 km radius or, where access is difficult or prevented, their general location, there is no question that turbines would be a feature in the general landscape setting, diminishing with distance, of which the visitor would be aware. Except for one case, intervening landform, vegetation and trees or buildings, combined in some instances with roads, prevent them having such a serious effect as to have anything other than

⁹⁸ See ES Figures 10.1-10.3

a slight or insignificant impact. Properly appreciating their heritage significance including their settings, does not depend upon the absence of turbines in the wider landscape. There are no heritage assets beyond the 5 km radius that would be affected to any significant degree. Having regard to the comments of EH⁹⁹, the Vale of Pickering is of large scale and its historic landscape and heritage assets within the Vale would not be significantly affected by this scheme any more than they are by existing modern development including industry, roads and traffic.

215. However at East Heslerton, St Andrew's is a Grade I listed church by the well known Victorian architect G E Street with a significant presence in the village. It is a landmark in the Vale of Pickering, as it possesses a high octagonal tower and spire. Built in 1877, it also features a lychgate, an elaborate wrought iron lamp standard and churchyard cross, each separately listed at Grade II, and all near the large western entrance porch. There is important group value in these assets, which are set within an extensive open churchyard without any trees of any significance. The building is approached from the west or the east and turbines would be visible on both approaches because of the lack of any buildings or significant screening between it and the escarpment. The conspicuous raised skyline draws the eye and contributes significantly to its setting at the southern edge of the village. Passing through the lychgate on the west side, blades and hubs would be visible on the ridge at a distance of just over 2 km beyond the conspicuous block of woodland on the crest at Manor Farm, in the same view as the other listed assets. Sheep graze up to the boundary of the churchyard.

216. The development would influence the way the asset is interpreted and understood because partial views of moving blades on a significant part of the conspicuous crest of the escarpment on the main approach and from within the churchyard would be a distracting element in this quiet rural setting, which apart from a few 20th century dwellings to the west, is unaffected by modern development. The view up to the crest is not a 'designed' view but it is prominent in the experience of visiting the church. The harm caused to the setting would not be so severe as to amount to 'substantial harm' in the terms of the NPPF. The impact would be adverse and this weighs against the proposal. The public benefits have to be considered in the final balance.

Aviation

217. Concerns that the scheme would interfere with the operation of air defence and the safety of civil aircraft can be addressed by conditions requiring the prior implementation of mitigation schemes which provide a method of distinguishing radar returns from turbines from those of aircraft¹⁰⁰. [35]

218. Objections are raised by Paul Stephens of Moor Farm who operates an unregistered grass airstrip from his property. Used primarily by him and his family, the airstrip is also the venue for visitors from elsewhere including other farmers that fly. An objection has also been submitted by the Aircraft Owners and Operators Association¹⁰¹. Mr Stephens points out the difficulties which

⁹⁹ SEI main text Chap 5

¹⁰⁰ See Mr Arden's Appendix

¹⁰¹ CD10.14

would arise for pilots of light aircraft using Moor Farm which lies about 2.3 km from the nearest turbine location. These essentially comprise the potential hazard that would be presented by very large moving structures to the west of the airstrip which would be encountered primarily on taking off into the prevailing wind. They include the likelihood of turbulence affecting aircraft which would be in a critical phase of flight, particularly in northerly winds. Mr Stephens also draws attention to the effect on a circuit to the north of Moor Farm which is reasonably short and prevents disturbance to neighbouring occupiers.

219. An aviation consultancy was appointed by the Council to advise them on aviation matters at application stage. I have also taken account of evidence from the appellant's specialist aviation witness. At the Inquiry, Mr Stephens was unrepresented but was given a full opportunity to put forward his case and answer questions in a less formal 'hearing' type session.
220. Moor Farm is in Class G airspace and pilots are not required to be in contact with air traffic control or to notify anyone of their flight plan in advance. There are no established procedures and pilots have to operate under Visual Flight Rules (VFR) and are expected to see and avoid obstacles and other aircraft. According to CAP 774¹⁰² pilots in class G airspace are ultimately responsible for collision avoidance and terrain clearance. Under VFR pilots should have flight visibility of at least 1500m and remain clear of cloud with the ground surface in sight. Taking off and landing direct ahead would mean that aircraft using Moor Farm would be in the region of between 300 and 450m (using the most recent drawing ref PA002a) from the anemometer mast, the most southerly structure, which would be more than 2 km from the end of the grass strip. Aircraft would be in the region of 550 and 675m from T3, the nearest turbine, which would be about 2 km from the end of the runway (2300m from the centre point). Aircraft would be in sight of, and well within the minimum 500 feet clearance required by CAP 393¹⁰³.
221. Turbulence is likely to occur downwind of a wind turbine. CAP 764¹⁰⁴ *CAA Policy and Guidelines on Wind Turbines* indicates that published research shows measurements at 16 rotor diameters downstream of the wind turbine indicating that turbulence effects are still noticeable. That would bring aircraft operating out of Moor Farm into an area of potential turbulence in northerly winds. CAP 764 goes on to say that 'in circumstances where wind turbines are planned to be developed, in areas where aircraft will operate in close proximity to them, it is incumbent on the aerodrome operator (in collaboration with the developer) to ensure that safe operations are maintained; in the absence of further research, the assessment of obstacles within the Approach Surface and Take Off/Climb surface (as detailed in CAP 168¹⁰⁵) could be used for assessment of fixed wing activity, and the guidance is extant for unlicensed aerodromes.' The important point is not that turbulence might occur, but whether it would pose an unacceptable risk in this case.

¹⁰² CD10.6

¹⁰³ CD10.4 Sect 3

¹⁰⁴ CD10.1

¹⁰⁵ CD10.3

222. Using the definitions in CAP 168, the approach, take off and climb surfaces do not include any turbine or mast¹⁰⁶. It cannot be concluded therefore, that turbulence would present an unacceptable risk at the current state of knowledge. There are no aircraft accident reports related to wind turbines in the UK, although it is a requirement that any such incidents are reported.
223. Turning to the circuit currently used by Mr Stephens, there is no requirement for him to use a circuit, if one is needed, over the appeal site. Other options include a longer circuit around the edge, as set out by Osprey Consulting. Mr Stephens has not seriously questioned this possibility.
224. There is no doubt that Mr Stephens would be put to some inconvenience by the proposal which would introduce additional safety considerations. Flying from Moor Farm would have to be carried out differently were the turbines to be erected. However the negative impact of wind turbines on aviation is one envisaged in CAP 764¹⁰⁷. Mr Stephens acknowledges that the airfield does not constitute a 'major operation' and that if there is a strong case for holding that the development is needed in the public interest, its existence should not thwart that. CAP 764 says at paragraph 1.12:

'In all cases, regardless of the status of the aerodrome, any development that causes pilots to experience – or simply perceive – an increase in difficulty when using an aerodrome may lead to a loss of utility. The CAA considers that if the Aerodrome Manager (or equivalent) advises that the aerodrome's established amenity would be affected by a development, their advice can generally be considered as expert testimony. However, such comment requires robust evidence, and may be subjected to scrutiny by the CAA (or any other party with equivalent expertise), should disagreement between the aviation operator and the wind energy developer arise. It is accepted that an Aerodrome Manager is competent until proved otherwise.....'

No robust evidence was put forward at the Inquiry to indicate that the turbines would introduce an unacceptable safety risk for operations at Moor Farm. Mr Stephens would be able to operate aircraft and advise visiting pilots of the constraints. This matter did not form a reason for refusal.

225. I have had regard to other aviation interests, including operations at Eddsfield Airfield, a busy unlicensed strip 8.4 km to the south east, but this field operates a traffic pattern no closer than 3.5 km to the wind farm. The area is designated as an Area of Intense Aerial Activity but this does not indicate, in itself, that the development would pose an unacceptable risk. [35-39,143-150,166,167]

Overall balance

226. The 2013 Roadmap update does not indicate that there should be any lessening in the drive to increase renewable energy by means of on-shore wind. There remains a need for new wind energy projects to come forward.
227. It is common ground that reports which contain assessments undertaken to confirm the ability of the area to support the deployment of renewable energy

¹⁰⁶ See Mr Arden's proof of evidence, p16

¹⁰⁷ CD10.1 Para 4

developments are relevant material considerations. These include "Planning for Renewable Energy Targets in Yorkshire and Humber" (December 2004) produced for the Government Office for the Yorkshire and Humber Assembly¹⁰⁸ and subsequent reports including that by AECOM in March 2011 - "Low Carbon and Renewable Energy Capacity in Yorkshire and Humber (Final Report)" (the AECOM Report)¹⁰⁹. I have already referred to "Managing Landscape Change: Renewable & Low Carbon Energy Developments - a Landscape Sensitivity Framework for North Yorkshire and York" (AECOM, 2012).

228. Since the revocation of regional strategies, there are now no regional renewable energy targets, only the national targets set out above under the heading 'national policy'. The proposal would add a maximum of approximately 20-30 MW (depending on the final turbine type selected). This could provide enough energy for between approximately 9700 and 14500 homes, assuming a modest (for this location) capacity factor of 26%; with a CO₂ saving of between 18400 and 62500 tonnes during each year of its operational life¹¹⁰. There is no dispute that the appeal proposal would make a very significant and useful contribution to renewable energy in Ryedale, which has a current installed capacity of 0.36MW. LPS policy SP18 reflects the aims of the NPPF in respect of renewable energy, which is that renewable and low carbon energy projects should be granted planning permission if their impacts are (or can be made) acceptable. [73,74,106,108]

229. The supporting text to LPS policy SP18 refers at paragraph 7.33 to the 2011 AECOM Report and the fact that it identified a variety of sources of renewable and low carbon energy as being feasible and viable within Ryedale. Commercial wind is one such source, with its potential contribution towards Ryedale's installed capacity being assessed at 10MW. Whilst that provision was anticipated in the Vale of York, development is not precluded in AHLVs¹¹¹. The recent PPGRE does not rule out energy development in designated areas such as National Parks and AONBs and reiterates that in all cases, detailed landscape assessment is necessary. That is what has been done here, independently professionally reviewed by the Council at application stage, agreed to be properly carried out in the SOCG and extensively discussed at the Inquiry in the light of up to date national and local policies. The proposed development of the appeal site conforms with the aims of LPS policy SP18 and the likely contribution it would make to renewable energy production and CO₂ savings attracts very significant weight.

230. Moreover, acknowledging that on-shore wind development will always have significant landscape and visual effects, the proposal has been designed to relate to the undulating contours of the Wolds landscape and would not conflict with the design quality aims of LPS policy SP16. Additional benefits that weigh in favour concern the economic benefits that flow from construction work such as employment; and the improvement and reinstatement of hedging which has suffered from intensive agricultural encroachment and removal. [62,68]

¹⁰⁸ CD3.2

¹⁰⁹ CD3.5

¹¹⁰ Depending upon the type of generation capacity displaced.

¹¹¹ As the examining Inspector for the LPS recorded (CD 3.6 para 104)

231. Against that, there would be a conflict with LPS landscape protection policies by way of a moderate degree of harm to landscape character and tranquillity within a 3.5 km radius of the site, but the scheme would be satisfactorily assimilated further into the wider landscapes on each side of the escarpment, which are of very substantial scale and extend for many kilometres. The visual impact would be major for users of the few public rights of way through the site itself, but would only affect a limited part of the Wolds Way, where only a small part of the experience would be affected. The minor overall level of harm caused in terms of visual intrusion would not compromise people's enjoyment of the Wolds Way or any other PROW, except for a very short distance.
232. There would be a minor¹¹² degree of harm to the setting of St Andrew's Church at East Heselton, but this would not amount to substantial harm. No other heritage asset would be significantly adversely affected. [42]
233. No other significant material adverse impacts have been identified. The problems highlighted by Yorkshire Water (and highlighted by Mr Stott) were explored at the Inquiry and a condition specifically deals with the methods to be employed should a water main be encountered. [125]
234. The impact of the construction process and disruption caused by congestion and the delivery of large components would be significant but would be temporary. [165,168]
235. No evidence has been presented to show that tourism would be affected or that the area would become less attractive to visitors. In the 21st century, wind farms are a common feature of many areas where tourism is an important contributor to the local economy. [129,139,153]
236. The currently proposed electricity connection to the grid is via an underground connection following existing highways to Yedingham, which would be permitted development. Any other type of overhead connection which would require a three wire line on wooden poles, would require planning consent¹¹³ and consent under section 37 of the Electricity Act¹¹⁴. [118,153,170]
237. There is no evidence to show that a glimpse of turbines on the way to and from Jacksons Wold Garden and an oblique view from the garden itself would discourage people from visiting or detract from their enjoyment; or that chickens are likely to be detrimentally affected. [161]
238. Many in the local community have expressed an opinion and hold strong views which have been expressed through the application and Inquiry process. These have been taken into account, including the concern of many that any permission would be for a period of 25 years, more than the span of a single generation, within which local residents would see the development every day. However, the site is remarkable for the fact that the number of people likely to be affected is relatively low and there would be almost no impact on residential amenity. In conclusion, in my judgement the final balance indicates that the environmental and economic benefits of the scheme would significantly outweigh the disadvantages.

¹¹² Using the methodology summarised at tables 10.3 and 10.4 of the ES

¹¹³ See Chapter 10 of SEI main text

¹¹⁴ Grid connection route options shown at Appendix 10 of SEI

Formal recommendation

239. I recommend that the appeal be allowed and planning permission be granted subject to the conditions in Annex 2.

Planning conditions

240. The wording of all suggested conditions has been adapted in accordance with the recommendations in Circular 11/95 where appropriate, to ensure conditions are precise, necessary, relevant and enforceable. The guidance notes on noise form part of the conditions.
241. The following are conditions that attracted controversy and drew comments at the Inquiry, or because they require explanation or important rewording. All other conditions are necessary and should the Secretary of State decide to grant planning permission, should be imposed for the reasons stated.
242. Condition 8 **Non-productive decommissioning** allows 6 months of non-production, rather than 12, before a scheme must be submitted for the repair or removal of a turbine. That is a reasonable period for the operator to want to do something about non-production, bearing in mind that a defective turbine would not be producing power for that period.
243. Condition 10 **Surface Water Drainage for the Site** is reworded to include a programme in view of the phased way in which construction activity is likely to take place. Requirements to construct drainage in accordance with specified standards and in a sustainable manner can be dealt with within the scheme to be approved.
244. As discussed at the the Inquiry, condition 14 **Construction Traffic Management Plan** is expanded and simplified to include all the matters of concern to the Highways Authority referred to in the draft conditions except for the improvement works at the A64/ Sandy Lane junction, which is retained at condition 15 in the interests of precision.
245. Condition 17 **Protected Species Surveys** includes brown hare in view of the UK Biodiversity Action Plan status of that creature in the ES at para 7.3.12.8 and its likely use of the site.
246. Condition 18 **Ecological Management Plan** includes the need for a programme in order to ensure that the necessary improvements take place and take place at appropriate times during the year.
247. Condition 20 **Shadow Flicker** is reworded to ensure that remedial measures, if necessary, take place within a reasonable time.
248. **Aviation conditions 22-26** reflect the wording requested by consultees reworded slightly to improve precision and enforceability. Aviation lighting is restricted to infra-red in view of the high visibility of the development and the need to avoid intrusive aerial lighting in a dark sky protected by LPS SP13 (nocturnal character).

249. Condition 27 **Water Mains** is necessary in order to control the means by which Yorkshire Water mains on the site would be protected.
250. Condition 29 **Micrositing** is revised to ensure that in the event micrositing is required, neither T2, T3 or the anemometer mast are not sited any closer to Whin Moor Farm or the approach and take off path used by pilots at Moor Farm airfield, in order to avoid an unacceptable noise environment and to protect the safety of aircraft.
251. Condition 31 **Rating Level of Noise and Mitigation** includes the mitigation clause requested by the Council at paragraph (I). As the title of the condition suggests, there needs to be a mechanism by which local occupiers can be assured action would actually be taken to mitigate a breach. In considering this matter the submissions of Ryedale Council's Environmental Health Officer have been taken into account¹¹⁵.

Paul Jackson

INSPECTOR

¹¹⁵ Doc 19

Annex 1

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter	Of Counsel
He called	
Nigel Weir BA (Hons) MA CMLI	Associate Landscape Architect, URS Infrastructure and Environment UK Ltd
Robin Newlove LLB Dip TP MRTPI MUKELA	Associate, URS Infrastructure and Environment UK Ltd

FOR THE APPELLANT:

Paul Maile	Partner, Eversheds LLP
He called	
Brian Denney BA (Hons) DipLA CMLI CENV MIEMA	Pegasus Group
David Bell BSc (Hons) Dip UD MRTPI MIHT	Jones Lang LaSalle
Jon Arden MSc	Osprey Consulting Services Ltd

INTERESTED PERSONS:

Andy Macdonald	Resident of West Lutton and Clerk and Councillor to Luttons Parish Council
Peter Ayling	East Yorkshire Ramblers
Josephine Downs	Resident of Swinton
Paul Elliot	Resident of Pickering
Kathryn Stephens	Local resident
Carl Stott	Resident of West Heslerton
Edward Legard	Councillor, Wolds Ward, Ryedale District Council
Richard Cundall	Local resident
Paul Stephens	Local resident
Chris France	Director of Planning, North York Moors National Park Authority
Glyn Wild	Resident of Swinton

DOCUMENTS

- 1 Letter from Derek Beal
- 2 Note on the status of the Ryedale Plan: Local Plan Strategy, provided by the Council
- 3 Copies of representations dated 20 April and 15 June 2011 from the North York Moors National Park Authority
- 4 Extract from Yorkshire Wolds Way National Trail website, provided by the Council
- 5 Bundle of papers setting out the objections of Yorkshire Water and subsequent correspondence from the Council and the appellant
- 6 Representation from Paul Elliot
- 7 Representation from Glyn Wild

- 8 Representation from Kathryn Stephens
- 9 Email correspondence between East Riding Council and others concerning the potential for the Wolds to be designated as an AONB, submitted by the Council
- 10 Representation from Peter Ayling together with a bundle of publicity leaflets concerning the Yorkshire Wolds Way
- 11 Representation from Andy Macdonald
- 12 Representation from Mr Stephens
- 13 Representation from Carl Stott
- 14 Aeronautical maps, supplied by the appellant at the Inspector's request
- 15 Plan of local bridleways and other routes used by Mrs Stephens for equestrian purposes, supplied by Mr Stephens at the Inspector's request
- 16 Extract from appendices to AECOM Report *Low Carbon and renewable energy capacity in Yorkshire and Humber* (CD 3.5), supplied by the appellant
- 17 Eddsfield Airfield details, supplied by Mr Stephens
- 18 Areas to avoid on approaching, taking off and landing at Moor Farm, showing local dwellings and farmhouses and the anemometer mast location (as then was), supplied by Mr Stephens
- 19 Representation on the need for a mitigation element in the noise conditions, supplied by Ailish Lilley, Environmental Health Officer of Ryedale District Council
- 20 Note on the 149m height AOD of the proposed anemometer mast, supplied by the appellant
- 21 Representation from P Coultas

- 22 Further clarification on the height of the anemometer mast, dated 27 January 2014

Annex 2

Schedule of conditions

1	Time Limit	<p>The development hereby permitted shall be begun before the expiration of five years from the date of this permission.</p> <p><i>Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990.</i></p>
2	Rotation of Blades and Height of Turbines	<p>All blades shall rotate in the same direction. The wind turbines shall not be otherwise than 3 blade horizontal axis type with a maximum tip height of 126 metres when measured from ground level.</p> <p><i>Reason: In the interests of the character and appearance of the area.</i></p>
3	Details of Turbines, Meteorological Mast & Transformer Units	<p>No development shall take place until details of the external appearance (including colour and finish) of the wind turbines to be erected, the meteorological mast and any external transformer units have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out as approved. No advertisements, signs or logos shall be displayed on any part of the wind turbines except as required by any legislative or regulatory requirement.</p> <p><i>Reason: To ensure there is a satisfactory relationship between the proposed development and the surrounding area.</i></p>

4	Details of Substation	<p>Prior to the commencement of construction of the electricity substation, full details of the design and external materials of the building and any associated compound or parking area shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.</p> <p><i>Reason: To ensure there is a satisfactory relationship between the proposed development and the surrounding area.</i></p>
5	Cabling	<p>All electrical cabling between the individual wind turbines and between the turbines and the electricity substation on the site shall be installed underground.</p> <p><i>Reason: To ensure there is a satisfactory relationship between the proposed development and the surrounding area.</i></p>
6	Removal of development	<p>The development hereby permitted shall be removed in accordance with condition 7 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 ("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.</p> <p><i>Reason: In recognition of the expected lifespan of the wind farm and in the interests of safety and amenity once the plant is redundant</i></p>
7	Removal of Development	<p>Not later than 12 months before the expiry of the 25 year period, a decommissioning and site restoration scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall make provision for the removal of the wind turbines, the turbine foundations to a depth of at least 1 metre below the ground, the substation and meteorological mast, compound areas, buildings and hardstandings and shall also provide for the removal of access tracks as required. 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, identification of access routes, location of material storage 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 approved scheme shall be fully implemented within 12 months of the expiry of the 25 year period, or from the date of Local Planning Authority approval, whichever is the later.</p> <p><i>Reason: To ensure the development is decommissioned and the site restored at the expiry of the permission.</i></p>
8	Non Productive Decommissioning	<p>If any wind turbine ceases to operate for a continuous period of 6 months, then a scheme shall be submitted to the Local Planning Authority for its written approval within 3 months of the end of that 6 month period for the repair or removal of the relevant turbine. Where repairs to the relevant turbine are required the scheme shall include a programme of remedial works. If removal of the relevant turbine is required then the scheme shall include a method statement and timetable for the dismantling and removal of the relevant turbine and associated above ground works and foundations to a depth of 1 metre below the ground, and a method statement and timetable for any necessary restoration works following removal of the turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.</p> <p><i>Reason: To protect the visual amenities of the area and to ensure that the land is restored to its former condition.</i></p>

9	Construction Method Statement	<p>No development shall take place until a Construction Method Statement ("CMS") has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall be carried out in accordance with the approved CMS. The CMS shall include:</p> <ul style="list-style-type: none"> a) Details of the phasing of all construction works; b) Details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development; c) Details of foundation design; d) Dust management; e) Pollution control measures in respect of: <ul style="list-style-type: none"> • Water courses and ground water • Bunding and storage areas • Foul sewerage • Construction noise mitigation measures f) Temporary site illumination during the construction period; g) Details of the proposed storage of materials and soils and disposal of surplus materials; h) Details of timing of works; i) Details of surface treatments and the construction of all hard surfaces and tracks; j) Details of emergency procedures and pollution response plans; k) A site construction Environmental Management Plan to include details of measures to be taken during the construction period to protect wildlife and habitats; l) Details of how the construction compound and associated construction works will be reinstated, including a timetable for completion of the post construction restoration and reinstatement works; and m) Details of construction methods to avoid extra loading on water mains. <p><i>Reason: To protect the amenities of the area during the construction process.</i></p>
10	Surface Water Drainage for the Site	<p>The development hereby permitted shall not be commenced until a sustainable drainage scheme including a programme to manage surface water run-off and non-mains drainage at the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved in accordance with the approved programme.</p> <p><i>Reason: To prevent the increased risk of flooding by ensuring the satisfactory storage of/disposal of surface water from the site.</i></p>
11	Hours of Construction	<p>Construction work shall only take place between the hours of 07:00 - 19:00 on Monday to Friday inclusive, and 07:00 – 13:00 on Saturdays with no construction work at all on Sundays or Public Holidays. Outside these hours, works at site shall be limited to emergency works and dust suppression. The Local Planning Authority shall be notified in writing of any emergency works within 3 working days of their occurrence.</p> <p><i>Reason: To protect the amenity of nearby properties from adverse effects due to noise nuisance.</i></p>
12	Delivery of Materials	<p>Subject to Condition 13, the delivery of any materials or equipment for the construction of the development shall be restricted to the hours of 07:00 – 19:00 on Monday to Friday inclusive, and 07:00 – 13:00 on Saturdays with no such deliveries on Sundays or Public Holidays.</p> <p><i>Reason: To protect the amenity of nearby properties from adverse effects</i></p>

		<i>due to noise nuisance.</i>
13	Delivery of Materials Outside Specified Hours	<p>Notwithstanding the terms of Condition 12, the delivery of wind turbine, nacelle and/or crane components may take place outside the hours specified, subject to not less than 48 hours prior notice of the associated traffic movements being given to the Local Planning Authority.</p> <p><i>Reason: To protect the amenity of nearby properties from adverse effects due to noise nuisance.</i></p>
14	Construction Traffic Management Plan	<p>Prior to the commencement of development a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. The CTMP shall include but not be limited to the measures set out in the Interim Construction Management Plan ("ICMP") dated February 2012 and shall include:</p> <ul style="list-style-type: none"> a) The arrangements for routing of construction traffic b) Details of the required highway improvements c) The details of each access d) The means by which crossing of the highway verge and/or footway will be achieved e) Provisions to prevent surface water from the site/plot discharging onto the existing or proposed highway f) Details of any gates or barriers g) The final surfacing of any private access h) A programme for the highways improvements and construction of the accesses <p>The CTMP shall be implemented as approved and in accordance with the approved programme.</p> <p><i>Reason: To ensure the safe and continued operation of the A64 and public highways in the area.</i></p>
15	Highways	<p>No delivery of any wind turbine components to the site shall take place until the A64/Sandy Lane junction improvement works shown on Drawing No. D133461/Figure 2.5 Scott Wilson, May 2011 have been implemented in accordance with a scheme and programme to be approved in writing by the Local Planning Authority, which shall include provision for completion of any remedial works. The works shall not take place otherwise than in accordance with the approved scheme.</p> <p><i>Reason: To ensure the safe and continued operation of the TRN (A64) in the area.</i></p>
16	Archaeology	<p>No development shall commence until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which shall have first been submitted to and approved in writing by the Local Planning Authority.</p> <p><i>Reason: The site is of archaeological interest.</i></p>
17	Protected Species Surveys	<p>No development shall take place until a scheme for pre-construction surveys for great crested newts, brown hares and badgers by a suitably qualified and independent ecologist has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the methodology and timetable for the commissioning of the surveys. The scheme shall be implemented as approved in writing by the Local Planning Authority. The survey results and a programme of any mitigation work required shall be submitted to and approved in writing by the Local Planning Authority prior to any works associated with the development taking place. The programme of mitigation work shall be implemented as approved in writing by the Local Planning Authority prior</p>

		<p>to any works taking place or in accordance with the approved programme.</p> <p><i>Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that species are protected having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010.</i></p>
18	Ecological Management Plan	<p>No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the Local Planning Authority. The EMP shall include the measures referred to in Section 7.5 of the Environmental Statement and a programme. The EMP shall be implemented as approved in accordance with the approved programme.</p> <p><i>Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010.</i></p>
19	Breeding Birds	<p>No vegetation removal or ground clearance shall take place between 1 March and 31 August unless a suitably qualified and independent ecologist has first confirmed in writing to the Local Planning Authority that appropriate measures are in place to ensure that no species protected under Schedule 1 of the Wildlife and Countryside Act 1981 as amended will be harmed.</p> <p><i>Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010.</i></p>
20	Shadow Flicker	<p>Prior to the First Export Date a written scheme shall be submitted to and approved in writing by the Local Planning Authority setting out the protocol for the assessment and remediation of shadow flicker including a timetable for any mitigation necessary. In the event of any complaint to the Local Planning Authority 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, investigation and any necessary remedial measures shall be undertaken in accordance with the approved scheme and timetable to alleviate any shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved protocol.</p> <p><i>Reason: This condition is imposed in the interests of residential amenity.</i></p>
21	TV interference	<p>Prior to the erection of any wind turbine a scheme for providing a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial TV 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 of interference with television reception at a 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 developer by the Local Planning Authority within 12 months of the First Export Date. Where impairment is determined by the qualified independent television engineer to be attributable to the wind farm development, mitigation</p>

		<p>works shall be carried out in accordance with the approved scheme within 3 months of the first notification of the complaint to the developer.</p> <p><i>Reason: In the interests of residential amenity.</i></p>
22	Aviation	<p>The developer shall provide written confirmation of the following details to the Ministry of Defence and the Civil Aviation Authority at least 1 month prior to the date of commencement of development:</p> <ul style="list-style-type: none"> a) final grid co-ordinates and tip height AOD of the wind turbines and meteorological mast; b) proposed date for the commencement of development; and c) the maximum extension height of any construction equipment. <p>Within 1 month of the First Export Date, the developer shall provide written confirmation of the following details to the Ministry of Defence and the Civil Aviation Authority:</p> <ul style="list-style-type: none"> a) as built grid co-ordinates and tip height AOD of the wind turbines and meteorological mast b) date of completion of construction; and c) the position of all structures in latitude and longitude. <p><i>Reason: In the interests of aeronautical safety.</i></p>
23	Aviation	<p>No development shall commence unless and until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind farm upon air safety has been submitted to and approved in writing by the Local Planning Authority.</p> <p>The Air Traffic Control Radar Mitigation Scheme is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Linton-on-Ouse ("the Radar") and the air traffic control operations of the Ministry of Defence which is reliant upon the Radar. The Air Traffic Control Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the operational life of the development provided the Radar remains in operation.</p> <p>No turbines shall be erected until all those measures required by the approved Air Traffic Control Radar Mitigation Scheme to be implemented have been implemented and the Local Planning Authority has confirmed this in writing. The development shall thereafter be operated fully in accordance with the approved Air Traffic Control Radar Mitigation Scheme.</p> <p><i>Reason: In the interests of aeronautical safety.</i></p>
24	Aviation	<p>No development shall commence unless and until an Air Defence Radar Mitigation Scheme to address the impact of the wind farm upon air safety has been submitted to and approved in writing by the Local Planning Authority.</p> <p>The Air Defence Radar Mitigation Scheme means a detailed scheme to mitigate the adverse impacts of the Development on the air defence radar at RAF Staxton Wold and the air surveillance and control operations of the Ministry of Defence. The scheme shall set out the appropriate measures to be implemented to that end.</p> <p>No turbines shall be erected until:</p> <ul style="list-style-type: none"> a) the mitigation measures which the approved scheme requires to be implemented prior to the operation of any turbines have been implemented; and

		<p>b) any performance criteria specified in the approved scheme and which the approved scheme requires to have been satisfied have been satisfied; and</p> <p>c) the implementation and satisfaction of the performance criteria have been approved by the Local Planning Authority.</p> <p>The development shall thereafter be operated fully in accordance with the approved Air Defence Radar Mitigation Scheme.</p> <p><i>Reason: In the interests of aeronautical safety.</i></p>																																	
25	Aviation	<p>The development shall not be erected without infra-red warning lighting with an optimized flash pattern per minute of 200ms to 500ms duration at the highest practical point. The warning lighting is to be retained and maintained as long as the development remains in place.</p> <p><i>Reason: In the interests of aeronautical safety.</i></p>																																	
26	Aviation	<p>No turbine shall be erected until a Primary Radar Mitigation Scheme ("PRMS"), agreed with the Operator (as defined below), has been submitted to and agreed in writing by the LPA in order to mitigate the impact of the development on the Primary Radar Installation at Claxby. The development shall thereafter be operated fully in accordance with such PRMS.</p> <p>For the purpose of the condition above:</p> <p>'Operator' means NATS (EN Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of Section 40 of that Act).</p> <p>'Primary Radar Mitigation Scheme' or 'Scheme' means a detailed scheme agreed with the Operator which sets out the measures to be taken to mitigate at all times the impact of the development on the Claxby primary radar and air traffic management operations of the Operator.</p> <p><i>Reason: in the interests of aeronautical safety.</i></p>																																	
27	Water Mains	<p>Prior to the commencement of development a scheme identifying the construction methods which will be employed should it be necessary for any on-site infrastructure to be built within 5m either side of or to cross any water main located within the site boundary shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.</p>																																	
28	Turbine co-ordinates	<p>Subject to Condition 29 the wind turbines shall be erected in accordance with Drawing No. PA002a Site Layout (dated 28 August 2013) at the following grid co-ordinates:</p> <table border="1"> <thead> <tr> <th>Turbine</th> <th>Easting</th> <th>Northing</th> </tr> </thead> <tbody> <tr><td>1</td><td>492275</td><td>473910</td></tr> <tr><td>2</td><td>492580</td><td>473730</td></tr> <tr><td>3</td><td>492990</td><td>473700</td></tr> <tr><td>4</td><td>492265</td><td>474260</td></tr> <tr><td>5</td><td>492820</td><td>474090</td></tr> <tr><td>6</td><td>493285</td><td>474280</td></tr> <tr><td>7</td><td>492740</td><td>474530</td></tr> <tr><td>8</td><td>493220</td><td>474685</td></tr> <tr><td>9</td><td>493605</td><td>474610</td></tr> <tr><td>10</td><td>494030</td><td>474630</td></tr> </tbody> </table>	Turbine	Easting	Northing	1	492275	473910	2	492580	473730	3	492990	473700	4	492265	474260	5	492820	474090	6	493285	474280	7	492740	474530	8	493220	474685	9	493605	474610	10	494030	474630
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		<p><i>Reason: This condition is imposed for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan.</i></p>						
29	Micrositing	<p>Notwithstanding the terms of Condition 28, the wind turbines, transformers, hardstandings, substation, meteorological mast and access tracks may be sited within 30 metres of the grid co-ordinates referred to in Condition 28, providing T2 and the meteorological mast are sited no further south and T3 is sited no further south or east. A plan showing the final layout of the development is to be submitted to the Local Planning Authority when the exact positions of wind turbines, transformers, hardstandings, substation, meteorological mast and access tracks are known.</p> <p><i>Reason: This condition is imposed for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan. A note is added to ensure that turbines and the met mast are not sited closer to the route of aircraft taking off from Moor Farm or nearer to Whin Moor Farm, in the interests of aircraft safety and the living conditions of local occupiers.</i></p>						
30	Approved Plans Condition	<p>The development hereby approved shall take place in accordance with the terms of the submitted application and plans (unless any additional plans are submitted to and approved by the local planning authority in accordance with a condition associated with this planning permission) as set out below:</p> <table border="1" data-bbox="539 1043 1362 1149"> <thead> <tr> <th>Drawing Number</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>PA001</td> <td>Site Location</td> </tr> <tr> <td>PA002a (dated 28.08.13)</td> <td>Site Layout</td> </tr> </tbody> </table> <p><i>Reason: This condition is imposed for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan.</i></p>	Drawing Number	Description	PA001	Site Location	PA002a (dated 28.08.13)	Site Layout
Drawing Number	Description							
PA001	Site Location							
PA002a (dated 28.08.13)	Site Layout							
31	Rating Level of Noise and mitigation	<p>The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (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:</p> <p>(A) Prior to the First Export Date, 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.</p> <p>(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</p>						

		<p>out at least the date, time and location that the complaint relates to, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain 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).</p> <p>(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.</p> <p>(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.</p> <p>(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 following:</p> <ul style="list-style-type: none"> (i) 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; and
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		<p>(ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component</p> <p>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 and the attached Guidance Notes.</p> <p>(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.</p> <p>(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.</p> <p>(H) The wind farm operator shall continuously log wind speed, wind direction at the permanent meteorological mast erected in accordance with this consent and shall continuously log power production and nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine and the permanent meteorological mast shall be retained for a period of not less than 48 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.</p> <p>(I) Where the Local Planning Authority is satisfied of an established breach of the noise limits set out in the attached tables 1 & 2 or as approved under paragraph (C) of this condition; upon notification by the Local Planning Authority in writing to the wind farm operator of the said</p>
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		<p>breach, the wind farm operator shall within 21 days propose a mitigation scheme for the approval of the Local Planning Authority, designed to mitigate the breach. This scheme shall specify the timescales for implementation. The scheme shall be implemented as approved by the Local Planning Authority and according to the timescales within it. The scheme as implemented shall be retained thereafter unless otherwise agreed with the Local Planning Authority.</p> <p>Note: For the purposes of this condition, a “dwelling” is 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 consent.</p>
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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											
East Heselton Wold Farm (493712, 473982)	45	45	45	45	45	45	45	48	52	55	58	58
East Heselton Wold House (493650, 473956)	45	45	45	45	45	45	45	48	52	55	58	58
Ling Hall Farm (492175, 473249)	45	45	45	45	45	45	45	45	46	51	56	56
Ling Hall Cottage (492075, 473236)	45	45	45	45	45	45	45	45	46	51	56	56
Manor Wold Farm (492894, 475330)	35	35	35	37	40	43	46	50	53	56	59	61
Sherburn Wold (495011, 474962)	35	35	35	35	35	35	38	42	46	49	53	53
Whin Moor (492748, 472769)	35	35	35	35	35	38	42	47	51	54	54	54
Wold Farm (491129, 474417)	35	35	35	35	35	35	38	42	46	49	53	53

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

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											
East Heslerton Wold Farm (493712, 473982)	45	45	45	45	45	45	45	45	49	54	57	57
East Heslerton Wold House (493650, 473956)	45	45	45	45	45	45	45	45	49	54	57	57
Ling Hall Farm (492175, 473249)	45	45	45	45	45	45	45	45	45	49	53	53
Ling Hall Cottage (492075, 473236)	45	45	45	45	45	45	45	45	45	49	53	53
Manor Wold Farm (492894, 475330)	43	43	43	43	43	43	45	49	52	55	58	58
Sherburn Wold (495011, 474962)	43	43	43	43	43	43	43	43	45	49	52	52
Whin Moor (492748, 472769)	43	43	43	43	43	43	43	43	48	53	53	53
Wold Farm (491129, 474417)	43	43	43	43	43	43	43	43	45	49	52	52

Note to Tables 1 & 2: The geographical coordinate 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.

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 BS EN 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 calculated and applied in accordance with Guidance Note 3.
- (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. 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.

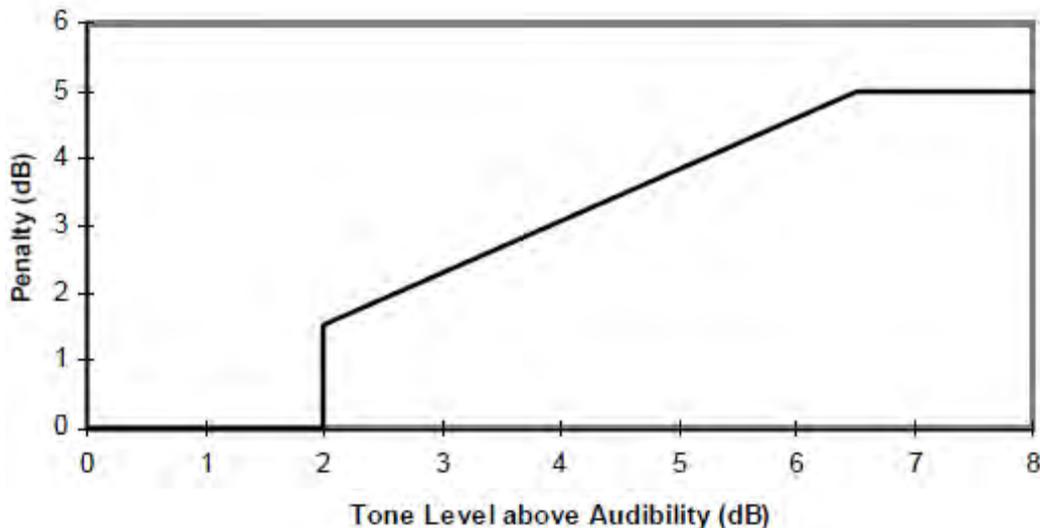
- (c) The $L_{A90,10\text{-minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter.
- (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 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). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the Local Planning Authority for approval prior to the commencement of measurements.

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 or below 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 tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.
- (e) A least squares "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.

**Note 4**

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in

accordance with Note 3 at each integer wind speed within the range 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 in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
 - i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L_3) at each integer wind speed within the range 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:

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

- ii. 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.
- iii. 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.

Annex 3

Core Documents List

		Document
1 Adopted Development Plan Documents		
Requested by		
RWE	1.1	Ryedale District Council Ryedale Plan – Local Plan Strategy (adopted 5 September 2013)
RDC	1.2	Proposals Map defining the Wolds AHLV which formed part of the Ryedale Local Plan 2002 (and incorporated by reference in the adopted Local Plan Strategy)
2 National Guidance		
RWE	2.1	DCLG: National Planning Policy Framework (March 2012)
RWE	2.2	Planning Practice Guidance for Renewable and Low Carbon Energy (July 2013)
RWE	2.3	Government Response to the Communities and Local Government Select Committee Report: NPPF
RWE	2.4	DCLG: Written Statement to Parliament, Local Planning and Onshore Wind, The Rt Hon Eric Pickles MP (6 June 2013)
RWE	2.5	DECC: Written Statement to Parliament, The Rt Hon Edward Davey MP (6 June 2013)
RWE	2.6	DECC: Press Release (6 June 2013)
RWE	2.7	DECC: Written Statement to the Institute of Acoustics, The Rt Hon Edward Davey MP (20 May 2013)
3 Other Local Planning Authority Documents, Regional Renewable Energy Documents and Documents regarding Regional Spatial Strategies		
RWE	3.1	Letter dated 6 July 2010 from the Secretary of State for Communities and Local Government to all Chief Planning Officers
RWE	3.2	Government Office for Yorkshire and the Humber and the Yorkshire and Humber Assembly: Planning for Renewable Energy Targets in Yorkshire and Humber (December 2004)
RWE	3.3	'Delivering Sustainable Energy in North Yorkshire: Recommended Planning Guidance' prepared for the local planning authorities in North Yorkshire (October 2005)
RWE	3.4	'Delivering Sustainable Energy in North Yorkshire: Recommended Guidance for Development Energy Action Plans and Strategies' prepared for the local planning authorities in North Yorkshire (October 2005)
RWE	3.5	AECOM: Low Carbon and Renewable Energy Capacity in Yorkshire and Humber (Final Report) (March 2011)
RWE	3.6	The Planning Inspectorate's Report of Examination into the Ryedale Plan
RWE	3.7	Letter dated 25 November 2002 from the Head of Development Control Policy at the Office of the Deputy Prime Minister to all Chief Planning

		Document
		Officers
4 High Court Decisions		
RWE	4.1	R (Hulme) v Secretary of State for Communities and Local Government [2010] EWHC 2386 (Admin)
RWE	4.2	Michael William Hulme v Secretary of State for Communities and Local Government and RES Developments Limited [2011] EWCA Civ 638
RWE	4.3	R (Lee) v Secretary of State for Communities and Local Government, Maldon District Council, Npower Renewables [2011] EWHC 807 (Admin)
RWE	4.4	(1) Derbyshire Dales District Council (2) Peak District National Park – v – (1) Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin)
RWE	4.5	Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government, Great Yarmouth Borough Council [2012] EWHC 1419 (Admin)
RWE	4.6	(1) South Northamptonshire Council (2) Deidre Veronica Ward – v – (1) Secretary of State for Communities and Local Government (2) Broadview Energy Development Limited [2013] EWHC 11 (Admin)
RWE	4.7	(1) East Northamptonshire District Council (2) English Heritage (3) National Trust v (1) Secretary of State for Communities and Local Government (2) Barnwell Manor Wind Energy Limited [2013] EWHC 473 (Admin)
RWE	4.8	Colman v Secretary of State for Communities and Local Government and others [2013] EWHC 1138 (Admin)
RWE	4.9	Tesco Stores Ltd v Dundee City Council [2012] 2 P&CR 162
RWE	4.10	City of Edinburgh Council v Secretary of State for Scotland [1997] 1 W.L.R. 1447
RWE	4.11	Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Ltd [2012] EWHC 4344 (Admin)
5 Various Wind Farm Appeal and Application Decisions		
RWE	5.1	Woolley Hill (APP/H0520/A/11/2158702)
RWE	5.2	Burnthouse Farm (APP/D0515/A/10/2123739 and APP/D0515/A/10/2131194)
RWE	5.3	Cleek Hall (APP/N2739/A/12/2172629)
RWE	5.4	Carland Cross (APP/D0840/A/09/2103026)
RWE	5.5	Airfield Farm, Podington (APP/K0235/A/09/2108506)
RWE	5.6	Chelveston (APP/K0235/A/11/2160077 and APP/G2815/A/11/2160078)
RWE	5.7	Spaldington (APP/E2001/A/10/2137617 and APP/E2001/A/10/2139965)
RWE	5.8	Carsington Pastures (APP/P1045/A/07/2054080)
RWE	5.9	Thacker Bank/Gayton le Marsh (APP/D2510/A/12/2176754)

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RWE	5.10	North of Goveton, Sandy Lane End, Kingsbridge (APP/K1128/A/08/2072150)
RWE	5.11	Bradwell (APP/X1545/A/06/2023805)
RWE	5.12	Enifer Downs (APP/X220/A/08/2071880)
RWE	5.13	Burnham-on-Sea, Somerset (APP/V3310/A/06/2031158)
RWE	5.14	Sixpenny Wood, East Riding of Yorkshire (APP/E2001/A/09/2101851)
RWE	5.15	Biggleswade (APP/P0240/A/11/2150950)
RWE	5.16	Watford Lodge (APP/Y2810/A/11/2153242/NWF)
RWE	5.17	Church Farm, Southoe (Common Barn) (APP/H0520/A/12/2188648)
RWE	5.18	Batsworthy Cross (APP/X1118/A/11/2162070)
RWE	5.19	Sober Hill (APP/E2001/A/09/2101421)
RWE	5.20	Swinford (APP/F2415/A/09/2096369)
RWE	5.21	Winwick (APP/Y2810/A/11/2156527)
RWE	5.22	Sutton St Edmund (APP/D0515/A/12/2181777 and APP/A2525/A/12/2184954)
6 Planning, Renewable Energy and Climate Change Documents		
RWE	6.1	DTI Energy White Paper "Meeting the Energy Challenge" (2007) (Extracts)
RWE	6.2	DECC: The UK Renewable Energy Strategy (2009)
RWE	6.3	DECC: Overarching National Policy Statement for Energy EN-1 (Designated Version, 19 July 2011)
RWE	6.4	DECC: National Policy Statement for Renewable Energy Infrastructure EN-3 (Designated Version, 19 July 2011)
RWE	6.5	DECC: UK Renewable Energy Roadmap (July 2011)
RWE	6.6	DECC: UK Renewable Energy Roadmap Update (December 2012)
RWE	6.7	Annual Energy Statement – Oral Statement by Edward Davey (29 November 2012)
RWE	6.8	DECC: Annual Energy Statement, November 2012
RWE	6.9	The Energy Act 2008
RWE	6.10	The Climate Change Act 2008
RWE	6.11	The Energy Bill 2012
RWE	6.12	Natural England: Sustainable Energy Policy (2008)

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RWE	6.13	Natural England: Climate Change Policy (2008)
RWE	6.14	Natural England: Position on Wind Energy (2009)
RWE	6.15	Natural England: Future Landscapes – draft policy for consultation (2009)
RWE	6.16	Natural England: All Landscapes Matter (2010)
RWE	6.17	Natural England: Making Space for Renewable Energy (2010)
RWE	6.18	DECC: The UK Low Carbon Transition Plan White Paper (July 2009) (Executive Summary)
RWE	6.19	The Coalition Government: Our Programme for Government (2010)
RWE	6.20	Letter to Lord Turner re: “Increasing the Target for Energy from Renewable Sources” dated 29 July 2010 and Letter to Rt Hon Chris Huhne “The Level of Renewable Energy Ambition to 2020” dated 9 September 2010
RWE	6.21	Committee on Climate Change: Renewable Energy Review (May 2011)
RWE	6.22	DECC: White Paper – Planning our Electric Future – a White Paper for Secure, Affordable and Low Carbon Electricity (July 2011) (Extracts)
RWE	6.23	National Infrastructure Plan (November 2011)
RWE	6.24	The Carbon Plan: Delivering our Low Carbon Future (December 2011)
RWE	6.25	DECC: Onshore Wind, Direct and Wider Economic Impacts (May 2012)
RWE	6.26	DECC: Special Feature – Renewable Energy in 2011 (June 2012)
RWE	6.27	DECC: Special Feature – Sub-national renewable electricity, renewable electricity in Scotland, Wales, Northern Ireland and the regions of England in 2011 (September 2012)
RWE	6.28	DECC: Electricity Market Reform: Policy Overview (November 2012)
RWE	6.29	DECC: Press Notice ‘Government Agreement on Energy Policy sends clear, durable signal to investors’ (November 2012)
RWE	6.30	Committee on Climate Change: Next Steps on Electricity Market Reform – securing the benefits of low carbon investment (May 2013)
RWE	6.31	DECC: Energy Trends (June 2013)
RWE	6.32	DECC: Onshore Wind Call for Evidence: Government Response to Part A (Community Engagement and benefits) and Part B (Costs) (June 2013)
RWE	6.33	DECC: Digest of UK Energy Statistics (DUKES) (July 2013)
RWE	6.34	Moffat Centre: The Economic Impacts of Wind Farms on Scottish Tourism (March 2008)
RWE	6.35	British Horse Society Advice on Wind Turbines 2013/1

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RWE	6.36	British Horse Society Scottish Wind Farm Advice Note
RWE	6.37	DECC: UK Renewable Energy Roadmap Update (November 2013)
7 Landscape and Visual (including public perception) Documents		
RWE	7.1	The Landscape Institute, Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment, Second Edition (2002)
RWE	7.2	The Landscape Institute, Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment, Third Edition (2013)
RWE	7.3	Landscape Institute: Landscape Architecture and the Challenge of Climate Change (October 2008)
RWE	7.4	Landscape Institute: Photography and Photomontage in Landscape and Visual Impact Assessment, Advice Note 01/11
RWE	7.5	Scottish Natural Heritage: Guidelines on the Environmental Impacts of Windfarms and Small Scale Hydro Electric Schemes (2001)
RWE	7.6	Produced for Scottish Natural Heritage by the University of Newcastle: Visual Assessment of Wind Farms: Best Practice (2002)
RWE	7.7	Scottish Natural Heritage and Countryside Agency: Landscape Character Assessment Series: Topic Paper 9 Climate Change and Natural Forces – the Consequences for Landscape Character (2003)
RWE	7.8	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance (2006)
RWE	7.9	Scottish Natural Heritage: Siting and Designing Windfarms in the Landscape, Version 1 (December 2009)
RWE	7.10	Scottish Natural Heritage: Guidance Assessing the Cumulative Impact of Onshore Wind Energy Developments, Version 3 (March 2012)
RWE	7.11	The Countryside Agency: Landscape Character Assessment: Guidance for England and Scotland (2002)
RWE	7.12	Natural England: National Character Area Profile 27 – Yorkshire Wolds
RWE	7.13	Natural England: National Character Area Profile 26 – Vale of Pickering
RWE	7.14	Gillespies: Our Landscape – Today for Tomorrow (1995)
RWE	7.15	Gillespies: The Landscapes of Northern Ryedale: An Assessment of the Vale of Pickering and the Fringe of the North York Moors National Park with Management Guidelines for their Future (1999)
RWE	7.16	Chris Blandford Associates for North Yorkshire County Council: North Yorkshire and York Landscape Characterisation Project (2011)
RDC	7.17	The East Riding of Yorkshire Landscape Character Assessment (November 2005)

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RWE	7.18	AECOM: Managing Landscape Change: Renewable and Low Carbon Energy Developments – a Landscape Sensitivity Framework for North Yorkshire and York (2012)
RWE	7.19	Golder Associates: Review of West Heslerton Wind Farm Application on Behalf of Ryedale Council: Landscape and Visual Issues (2013)
RWE	7.20	Department of Energy and Climate Change: DECC Public Attitudes Tracker – Wave 1 (July 2012)
RWE	7.21	Ipsos Mori: Wind Power Omnibus Research (April 2012)
RWE	7.22	Scottish Executive: Public Attitudes to Wind Farms (2003)
RWE	7.23	Green on Green Public Perceptions of Wind Power in Scotland and Ireland (November 2005)
RWE	7.24	North Yorkshire County Council: Historic landscape character – North Yorkshire, York and the Lower Tees Valley (2010)
RWE	7.25	'Tranquillity Mapping: developing a robust methodology for planning support', Report to the Campaign to Protect Rural England (2008)
RWE	7.26	Campaign to Protect Rural England: Tranquillity in Yorkshire and the Humber (2007)
RWE	7.27	North York Moors National Park Authority: North York Moors National Park Management Plan (2012)
RWE	7.28	Council of Europe: European Landscape Convention (2000)
8 Noise		
RWE	8.1	ETSU-R-97: The Assessment and Rating of Noise from Wind Turbines (September 1996)
RWE	8.2	Prediction and assessment of wind turbine noise - agreement about relevant factors for noise assessment from wind energy projects. D Bowdler at al, Institute of Acoustics, Acoustics Bulletin, Vol 34, No 2 March/April 2009
RWE	8.3	A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise, Institute of Acoustics (May 2013)
RWE	8.4	Analysis of How Noise Impacts are Considered in the Determination of Wind Farm Planning Applications, HM: 2293/R1 (6 April 2011)
RWE	8.5	Wind farm Noise Statutory Nuisance Complaint Methodology, Defra Report NANR 277, AECOM (April 2011)
9 Cultural Heritage		
RWE	9.1	English Heritage: Wind Energy and the Historic Environment (October 2005)
RWE	9.2	English Heritage: Climate Change and the Historic Environment (January 2008)

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RWE	9.3	English Heritage: Conservation Principles, Policies and Guidance (April 2008)
RWE	9.4	English Heritage: The Setting of Heritage Assets (October 2011)
RWE	9.5	English Heritage: Vale of Pickering: Statement of Significance (Yorkshire and Humber Region) (2012)
RWE	9.6	Draft Planning Practice Guidance – Conserving and Enhancing the Historic Environment
10 Aviation		
RWE	10.1	CAP 764: CAA Policy and Guidelines on Wind Turbines (January 2012)
RWE	10.2	CAP 793: Safe Operating Principles at Unlicensed Aerodromes, 1 st Edition (July 2010)
RWE	10.3	CAP 168: Licensing of Aerodromes, 9 th Edition incorporating amendments to April 2011 (Extracts)
RWE	10.4	CAP 393: Air Navigation: The Order and the Regulations, 3 rd Edition incorporating comments to January 2010 and coming into effect 14 April 2010 (Extracts)
RWE	10.5	CAP 382: The Mandatory Occurrence Reporting Scheme
RWE	10.6	CAP 774: UK Flight Information Services (Extract)
RWE	10.7	CAP 760: Guidance on the Conduct of Hazard Identification, Risk Assessment and Production of Safety Cases (Extract)
RWE	10.8	Minutes of Meeting held between the Appellant and the Council on 24 January 2012 in relation to Aviation
RWE	10.9	Letter from the Ministry of Defence to the Planning Inspectorate dated 14 March 2013
RWE	10.10	Letter from NATS Ltd to the Council dated 21 November 2012 (letter reference 2164)
RWE	10.11	Third Party Representation of Mr Edward Peacock dated 26 April 2011
RWE	10.12	Third Party Representation of Mr Paul Stephens dated 3 September 2013
RWE	10.13	Osprey Consulting Services Limited: East Heselton Wind Farm Safety Assessment – Moor Farm and Eddsfield dated 16 March 2012
RWE	10.14	Representation on behalf of Aircraft Owners and Pilots Association dated 19 April 2011
11 Planning Application and Appeal Documents		
RWE	11.1	Planning Application and Supporting Documents
RWE	11.2	Environmental Statement (March 2011)

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RWE	11.3	Supplementary Environmental Information (March 2012)
RWE	11.4	Planning Policy Update (31 August 2012)
RWE	11.5	Officer Report to the Ryedale District Council Planning Committee
RWE	11.6	Update to the Officer Report to the Ryedale District Council Planning Committee
RWE	11.7	Minutes of Committee Meeting on 17 May 2013
RWE	11.8	Decision Notice dated 16 May 2013
RWE	11.9	Statement of Case of Ryedale District Council
RWE	11.10	Addendum to Statement of Case of Ryedale District Council
RWE	11.11	Second Revision Statement of Case of Ryedale District Council
RWE	11.12	Third Revision Statement of Case of Ryedale District Council
RWE	11.13	Statement of Case of the Appellant
RWE	11.14	Further Environmental Information (September 2013)
RWE	11.15	Agreed Statement of Common Ground between the Appellant and Ryedale District Council



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.

<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>