



Department for
Communities and
Local Government

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Our Ref: APP/E2001/A/13/2207817
Your Ref: SMITHMO/156396.000117

15 October 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY RWE INNOGY UK LIMITED (FORMERLY RWE NPOWER
RENEWABLES LTD)
AT LAND NORTH WEST OF WELHAM BRIDGE, WEST HOWDEN ROAD,
HOLME-ON-SPALDING-MOOR, EAST RIDING OF YORKSHIRE YO43 4BX
APPLICATION REF: DC/12/04561/STPLFE/STRAT/PP-02290228**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Woolcock BNatRes(Hons) MURP DipLaw MRTPI, who held a public local inquiry on 7 to 9, 13, 14 and 16 May 2014 into your client's appeal against a decision of East Riding of Yorkshire Council (the Council) to refuse planning permission for the installation of six wind turbines and construction of associated infrastructure on agricultural land. The maximum height to blade tip of each turbine will be 128 m above existing ground level, with a maximum hub height of 81.5 m above existing ground level. Infrastructure associated with the wind turbines includes: (1) approximately 4.5 km of onsite access tracks, laybys and turning areas, with ditch culverts where required; (2) one permanent and one temporary bridge over the River Foulness; (3) two temporary construction compounds; (4) one permanent anemometry mast and one temporary anemometry mast (used for measuring wind speeds); (5) crane hardstanding areas to enable construction of the wind turbines and anemometry masts; (6) external transformers adjacent to each turbine; and (7) underground cabling connecting the turbines to an onsite substation with associated parking in accordance with application DC/12/04561/STPLFE/STRAT/PP-02290228, dated 7 November 2012.

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2. On 4 December 2013 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because it was believed that 6 turbines could be held to have an impact beyond the local area.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. In reaching this position the Secretary of State has taken into account the Environmental Statement (ES)(October 2012), and the Further Environmental Information (FEI), which included an updated cumulative noise assessment (February 2014), and a Residential Visual Amenity assessment (March 2014) (IR3). Overall the Secretary of State is satisfied that the ES and FEI comply with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 and that sufficient information has been provided for him to assess the environmental impact of the appeal.

Policy considerations

5. 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.
6. In this case, the development plan comprises the saved policies of the Regional Strategy for Yorkshire and Humber 2008 (RS), the Joint Structure Plan for Hull and East Riding of Yorkshire 2005 (JSP), and the Boothferry Borough Local Plan 1999 (LP). The Secretary of State agrees with the Inspector (IR8) that none of the saved RS policies are relevant to this appeal and that the development plan policies most relevant to it are those identified by the Inspector at Annex 1 of the IR.
7. The Secretary of State has had regard to the Inspector's remarks (IR8) about the Proposed Submission Strategy Document for the East Riding Local Plan (eLP), including draft policy EC5, and the Inspector's view that the document attracts only limited weight. The Secretary of State is aware that the emerging document has progressed since the inquiry, but he does not consider that this adds significantly to the weight that should now be attributed to it.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); the National Policy Statements: the Overarching National Policy Statement for Energy (EN-1); and the National Policy Statement for Renewable Energy Infrastructure (EN-3). He has also had regard

to *The Assessment and Rating of Noise from Wind Farms*, ETSU-R-97; *A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise*; *PPS5 Planning for the Historic Environment: Historic Planning Practice Guide*; English Heritage's *Conservation Principles*; the *Noise Policy Statement for England 2010 (NPSE)*; and the Council's *Planning for Renewable Energy Developments Interim Planning Document (2009) (IPD)*; *Low carbon and renewable energy capacity in Yorkshire and Humberside 2011*; the Council's *Landscape Character Assessment 2005*; and the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment (GLVIA3)*.

9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the proposals before him or their settings or any features of special architectural or historic interest which they may possess.

Main issues

10. The Secretary of State considers that the main issues in this case are those outlined by the Inspector at IR174.

Character and appearance of the area

11. The Secretary of State agrees with the Inspector's remarks at IR175-176. Having had regard to his reasoning and conclusions at IR177-194, the Secretary of State endorses the Inspector's conclusion at IR194 that the proposed development would have an adverse effect on landscape character of moderate significance, which would cumulatively with other consented and proposed turbines increase to moderate/major significance. He further agrees that the appeal scheme would have an adverse effect on visual amenity by itself of major/moderate significance, and cumulatively of major significance (IR194). Like the Inspector (IR194), the Secretary of State is of the view that, given the pattern of wind turbine development in the area, this cumulative effect would be of particular importance, and that the overall adverse cumulative effect on the landscape character and visual amenity of the area would be of moderate/major significance (IR194). He agrees with the Inspector that this is a consideration which weighs against the proposal and brings it into conflict with the aims of JSP Policies SP1, SP4, SP5 and that it would be at odds with the aims of LP Policies EN2, EN7, EN19 and EN73 (IR194).

Local amenity and the living conditions of nearby residents

12. For the reasons given at IR195-204, the Secretary of State agrees with the Inspector's conclusions at IR204 that the proposal would not result in an overwhelming and oppressive impact on the outlook from nearby dwellings or their associated amenity space that would result in unsatisfactory living conditions, and nor would it, by reason of deprivation of outlook, unacceptably affect amenities and the use of land and buildings which ought to be protected in the public interest.

13. Turning to the issue of noise, having had regard to the Inspector's reasoning at IR205-212, the Secretary of State sees no reason to disagree with his view that the imposition of conditions could minimise the scheme's noise impacts and that the expert evidence indicates that the scheme could operate within acceptable ETSU-R-97 limits (IR212). Like the Inspector, the Secretary of State has also considered issues of noise in his overall planning balance and in relation to compliance with policy.

Heritage assets

14. The Secretary of State has carefully considered the Inspector's reasoning and conclusions at IR216-225. For the reasons given at IR217-219 he agrees with the Inspector's conclusion that the appeal scheme would harm the setting of the Grade I listed Howden Minster, and impair the ability of observers to understand and appreciate the importance of the Minster in its wider context (IR217). He also shares the Inspector's view (IR217) that the Spaldington Airfield Windfarm along with the appeal proposal would cumulatively further diminish the dominance of the tower in its wider landscape. Like the Inspector (IR217), the Secretary of State considers that the adverse impact on the setting of the asset would harm the significance of the Minster although, for the reason given by the Inspector at IR219, he agrees that the overall adverse effect on the Grade I listed heritage asset would be of moderate significance. The Secretary of State also agrees with the Inspector's analysis at IR220 and he too concludes that the appeal scheme would have an overall adverse impact of minor significance on the Grade II* listed Holme Hall (IR220). In common with the Inspector, the Secretary of State considers that only limited weight should be given to any time limited element of the harm that would result to cultural heritage from the appeal scheme (IR221).

15. The Secretary of State has given very careful consideration to the Inspector's comments in relation to the risk to archaeology at IR222-223. Like the Inspector, the Secretary of State considers that it is difficult to quantify the risk to archaeology but that, in the absence of further archaeological evaluation, there would be a significant risk to possibly important remains from granting planning permission and dealing subsequently with any archaeological features that required preservation *in situ* (IR223).

16. Overall, the Secretary of State, like the Inspector, finds that the likely harm to heritage assets would not result in substantial harm for the purposes of applying the policy set out in the Framework (IR225). However he agrees that the identified harms are sufficient to bring the proposal into conflict with the aims of JSP Policies SP5 and ENV6 concerning local heritage, and LP Policies EN2 and EN51 regarding the effect on listed buildings (IR225). The Secretary of State attaches considerable importance and weight to the desirability of preserving the settings of the affected listed buildings given the statutory duty established in section 66 of the LB Act. Like the Inspector (IR225) he concludes that the appeal scheme would have an adverse effect of moderate significance on a Grade I listed building, and a minor effect on a Grade II* listed building and that the risk to archaeology also weighs against the proposal and he has gone on to weigh this less than substantial level of harm against the benefits of the scheme.

Other considerations

17. The Secretary of State sees no reason to disagree with the Inspector's analysis on the range of matters set out at IR226 – 232. He concurs with the Inspector that the proposal would result in some socio-economic benefits and that there would also be some indirect economic benefits and benefits to the wider economy (IR232).

Renewable energy

18. The Secretary of State has taken account of the Inspector's assessment at IR233 - 235. He agrees with the Inspector that, with any of the candidate turbines, the scheme would make a significant contribution towards the generation of renewable energy and to meeting national targets, reducing greenhouse gas emissions and providing energy security, which are important public benefits (IR236). In common with the Inspector, he concludes that the renewable energy generation that would result from the scheme is a consideration which weighs heavily in favour of the proposal (IR236).

The planning balance

19. The Secretary of State agrees with the Inspector's planning balance at IR237-240. He too considers that the main considerations here are the adverse effects on the character and appearance of the area, and on heritage assets, against which must be weighed the benefits of the renewable energy that would be generated by the proposed wind farm (IR237).

20. The Secretary of State agrees that the balancing exercise is to be made within the context of Government policy on sustainable development and that the proposed development would make a significant contribution to renewable energy targets, towards the reduction in greenhouse gases and to energy security and, like the Inspector, he gives significant weight to these important public benefits (IR238). However, he shares the Inspector's view (IR239) that the cumulative effects of the appeal proposal along with existing and consented turbines are particularly important in this case with respect to the likely impact on the character and appearance of the area and on heritage assets. The Secretary of State gives considerable importance and weight to the desirability of preserving the setting of the listed buildings and, like the Inspector, he considers that the harm arising in this respect weighs significantly against the proposal (IR239). The Secretary of State has weighed these matters very carefully and, in common with the Inspector, he concludes that the public benefits of generating electricity from a renewable source would not outweigh the harm to the character and appearance of the area, to the local amenity of the area, and to listed buildings. He further agrees that the risk to archaeological remains tips the planning balance even further against granting permission (IR239). Like the Inspector (IR239) he concludes that the planning balance here falls against granting planning permission.

21. In common with the Inspector (IR240), the Secretary of State is satisfied that, insofar as noise is concerned, subject to the imposition of planning conditions, the scheme would not unacceptably harm the amenities of any neighbouring

properties. He too concludes that, taking into account the combined effects on outlook, of shadow flicker and likely noise, the proposal would not have a significant adverse effect on the living conditions of nearby residents and it would not conflict with LP Policies EN2(i) or EN73(C) in this regard.

Accordance with the Development Plan

22. The Secretary of State agrees with the Inspector's assessment that the proposal would conflict with the aims of JSP Policies SP1, SP4 and SP5 concerning landscape character and local distinctiveness; that it would be at odds with the aims of LP Policies EN2, EN7, EN19 and EN73 with respect to landscape character, local amenity, visual intrusion and the environment; that it would conflict with the aims of JSP Policies SP5 and EN6 concerning heritage; and with LP policies EN2 and EN51 regarding the effect on listed buildings (IR241). He also agrees with the Inspector that, overall, the proposal conflicts with the development plan when read as a whole (IR241). For the reason given by the Inspector at IR242, the Secretary of State shares the Inspector's view that LP Policy EN73 is not consistent with the Framework and that some of the other development plan policies with which the scheme is in conflict also have an element of inconsistency with the Framework. Like the Inspector (IR242), he has therefore given more weight to national policy in the Framework in determining this appeal (IR242).

Accordance with the Framework

23. The Secretary of State has given very careful consideration to the Inspector's comments at IR243-245. He has concluded at paragraph 21 above that the planning balance falls against allowing this appeal and granting planning permission. The Secretary of State shares the Inspector's view (IR244) that, taking all material considerations into account, the proposed wind farm would not be acceptable in this location. The Inspector advises that he does not consider the scheme to be sustainable development but, in any event, takes the view that the scheme's adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (IR244). The Secretary of State sees no reason to disagree.

Conditions and Obligations

24. The Secretary of State has considered the schedule of conditions recommended by the Inspector (commencing at page 72 of the IR), the Inspector's comments at IR170-171 and IR246-252, national policy set out in the Framework, and the planning guidance. He is satisfied that the conditions recommended by the Inspector meet the tests set out at paragraph 206 of the Framework, however he does not consider that they overcome his reasons for dismissing the appeal. Having also had regard to the CIL regulations, the Secretary of State attaches no weight to the unilateral undertaking dated 16 May 2014, for the reasons given by the Inspector at IR253-254.

Overall Conclusions

25. The Secretary of State sees no reason to disagree with the Inspector's overall conclusions at IR255 – 257. The Secretary of State has concluded that the identified harms are not outweighed by the scheme's benefits, that the scheme is not in overall compliance with the development plan and that it does not amount to sustainable development.

Formal Decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the installation of six wind turbines and construction of associated infrastructure on agricultural land. The maximum height to blade tip of each turbine will be 128 m above existing ground level, with a maximum hub height of 81.5 m above existing ground level. Infrastructure associated with the wind turbines includes: (1) approximately 4.5 km of onsite access tracks, laybys and turning areas, with ditch culverts where required; (2) one permanent and one temporary bridge over the River Foulness; (3) two temporary construction compounds; (4) one permanent anemometry mast and one temporary anemometry mast (used for measuring wind speeds); (5) crane hardstanding areas to enable construction of the wind turbines and anemometry masts; (6) external transformers adjacent to each turbine; and (7) underground cabling connecting the turbines to an onsite substation with associated parking in accordance with application DC/12/04561STPLFE/STRAT PP-02290228, dated 7 November 2012.

Right to challenge the decision

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

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

Yours faithfully

Christine Symes

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Date: 7 August 2014

Town and Country Planning Act 1990

East Riding of Yorkshire Council

appeal by

RWE Innogy UK Limited (formerly RWE npower Renewables Ltd)

Inquiry held on 7 to 9, 13, 14 and 16 May 2014.

Land North West of Welham Bridge, West Howden Road, Holme-on-Spalding-Moor, East Riding of
Yorkshire YO43 4BX

Report Appeal Ref: APP/E2001/A/13/2207817

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ABBREVIATIONS

AM	Amplitude modulation of aerodynamic noise
BS4142	<i>Method for rating industrial noise affecting mixed residential and industrial areas</i>
CD	Inquiry Core Document
CLVIA	Cumulative landscape and visual impact assessment
DNO	Distribution Network Operator
EH	English Heritage
EIA	Environmental Impact Assessment
eLP	emerging East Riding Local Plan
EN-1	<i>Overarching National Policy Statement for Energy</i>
EN-3	<i>National Policy Statement for Renewable Energy Infrastructure</i>
ERYC	East Riding of Yorkshire Council
ES	Environmental Statement
ETSU-R-97	<i>The Assessment and Rating of Noise from Wind Farms, ETSU-R-97, Energy Technology Support Unit</i>
FEI	Further Environmental Information
<i>Framework</i>	<i>National Planning Policy Framework</i>
GHG	Greenhouse gases
GLVIA2	<i>Guidelines for Landscape and Visual Impact Assessment, Second Edition, Landscape Institute</i>
GLVIA3	<i>Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape Institute</i>
ID	Inquiry Document – document submitted at Inquiry
IoAGPG	<i>A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise, Institute of Acoustics, 20 May 2013</i>
IHWF	Ivy House wind farm
JSP	Joint Structure Plan for Hull and East Riding of Yorkshire 2005
LCA	Landscape character area
LCT	Landscape character type
LP	Boothferry Borough Wide Local Plan 1999
LVIA	Landscape and visual impact assessment
MoD	Ministry of Defence
NATS	National Air Traffic Services
NE	Natural England
<i>Guidance</i>	<i>Planning Practice Guidance</i>
NPSE	<i>Noise Policy Statement for England</i>
OAM	Other Amplitude Modulation
PROW	Public Rights of Way
PPS5 Practice Guide	<i>PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide at CD</i>
RE	Renewable energy
RVWF	River Valley Wind Farm
SAWF	Spaldington Airfield Wind Farm
SCWF	Spaldington Common Wind Farm
SOAEL	Significant observed adverse effects level
SoCG	Statement of Common Ground between East Riding of Yorkshire Council and appellant

SPC	Spaldington Parish Council
T1-T6	Proposed wind turbines 1 to 6 in appeal scheme
VP	View Point
WMS	Written Ministerial Statements at CD2.5 and CD2.6
ZTV	Zone of Theoretical Visibility
2005LCA	Landscape Character Assessment ERYC 2005

Appeal: APP/E2001/A/13/2207817
Land North West of Welham Bridge, West Howden Road, Holme-on-Spalding-Moor, East Riding of Yorkshire YO43 4BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (hereinafter the 1990 Act) against a refusal to grant planning permission.
 - The appeal is made by RWE Innogy UK Limited (formerly RWE npower Renewables Ltd) against the decision of East Riding of Yorkshire Council (ERYC).
 - The application No:DC/12/04561STPLFE/STRAT PP-02290228, dated 7 November 2012, was refused by notice dated 13 August 2013.
 - The development proposed is the "installation of six wind turbines and construction of associated infrastructure on agricultural land. The maximum height to blade tip of each turbine will be 128 m above existing ground level, with a maximum hub height of 81.5 m above existing ground level. Infrastructure associated with the wind turbines includes: (1) approximately 4.5 km of onsite access tracks, laybys and turning areas, with ditch culverts where required; (2) one permanent and one temporary bridge over the River Foulness; (3) two temporary construction compounds; (4) one permanent anemometry mast and one temporary anemometry mast (used for measuring wind speeds); (5) crane hardstanding areas to enable construction of the wind turbines and anemometry masts; (6) external transformers adjacent to each turbine; and (7) underground cabling connecting the turbines to an onsite substation with associated parking."
-

Summary of Recommendation:

The appeal be dismissed.

Preliminary matters

1. The appeal was recovered, by letter dated 4 December 2013, for determination by the Secretary of State because it was believed that six turbines could be held to have an impact beyond the local area.
2. The application and the appeal were made by RWE npower Renewables Ltd, but the appellant formally changed its name to RWE Innogy UK Limited on 31 January 2014. The appeal scheme is known as River Valley Wind Farm, which is abbreviated to RVWF in this report.
3. The planning application was accompanied by an Environmental Statement dated October 2012 (ES). Further Environmental Information (FEI) was submitted in February 2014, which included an updated cumulative noise assessment, and a Residential Visual Amenity assessment was submitted in March 2014. The ES and FEI were advertised in accordance with the Environmental Impact Assessment (EIA) Regulations.¹ The ES and FEI reasonably comply with the relevant provisions of the EIA Regulations, and the Environmental Information, as defined in the EIA Regulations, has been taken into account in this report and its recommendation.
4. ERYC refused the application, against officer recommendation for approval, because the siting, height and number of wind turbines proposed would, in

¹ The Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

combination with other consented wind farms and large single turbines in the area, have a significant adverse negative cumulative impact on the landscape character and visual amenity of the area. The reason for refusal adds that the adverse cumulative impacts of the proposal would significantly and demonstrably outweigh the benefits of the provision of renewable energy (abbreviated to RE in this report), and that the proposal would be in conflict with relevant local and national policy.

5. On application Spaldington Parish Council (abbreviated to SPC in this report) was granted Rule 6(6) status on 13 November 2013 pursuant to the Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, which then applied. SPC participated fully in the Inquiry, opposing the proposed development.
6. The accompanied site visit took place on 21 May 2014. I undertook unaccompanied site visits to the locality on 15 and 22 May 2014. I requested agreed heights of some existing and proposed turbines in the wider area, along with the height of Howden Minster tower.² I also asked for an additional table for the suggested noise condition, which I say more about later. I kept the Inquiry open for the submission of this information and a signed planning obligation. I closed the Inquiry in writing on 3 June 2014.
7. A unilateral undertaking, dated 16 May 2014, provides for an annual payment to a community benefit fund, for a contribution for trees and woodland, for establishing a community liaison forum, and for securing the decommissioning of the site.³

Planning policy and guidance

8. The development plan comprises saved policies of the Regional Strategy for Yorkshire and Humber May 2008, the Joint Structure Plan for Hull and East Riding of Yorkshire 2005 (JSP), and the Boothferry Borough Local Plan 1999 (LP). Those policies of the Regional Strategy not revoked are not relevant to this proposal. Relevant policies of the JSP and LP are set out in Annex 1 to this report. ERYC has prepared a Proposed Submission Strategy Document for the East Riding Local Plan (eLP). Policy EC5 of the eLP supports the energy sector and generally has a similar aim to national policy with respect to sustainable development. The eLP is proposed for submission for formal examination in 2014, and this limits the weight that can be given to it at this stage.
9. Paragraph 3 of the *National Planning Policy Framework* (hereinafter the *Framework*) states that national policy statements are a material consideration in decisions on planning applications. Footnote 17 to paragraph 97 of the *Framework* states that in assessing the likely impacts of potential wind energy development in determining such planning applications the approach in the *National Policy Statement for Renewable Energy Infrastructure* (EN-3), read with the relevant sections of the *Overarching National Policy Statement for Energy* (EN-1), should be followed. In accordance with paragraph 1.2.1 of EN-1 and paragraph 1.2.3 of EN-3 there are no reasons here why these national planning statements should not apply in the interests of consistency, notwithstanding that

² ID30.

³ ID2.2.

the appeal scheme falls below the 50 MW threshold for national infrastructure projects.

10. The *Planning Practice Guidance* (hereinafter the *Guidance*) was published on 6 March 2014 and replaced a number of circulars and guidance that had been cited in previous appeal documentation. The *Guidance* replaced the *Planning practice guidance for renewable and low carbon energy*, which was published by DCLG in July 2013, and was foreshadowed in the Written Ministerial Statements (WMS) to Parliament dated 6 June 2013.
11. The *Guidance* states that *The Assessment and Rating of Noise from Wind Farms*, ETSU-R-97 (abbreviated to ETSU-R-97 in this report) should be used when assessing and rating noise from wind energy developments.⁴ *A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise*, Institute of Acoustics, 20 May 2013 (IoAGPG) has been endorsed as a supplement to ETSU-R-97.⁵ ETSU-R-97 refers to the measurement of noise levels in terms of $L_{A90,10 \text{ min}}$. However, for ease of reading, references to all noise levels in this report do not repeat the $L_{A90,10 \text{ min}}$ descriptor.⁶
12. *PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide* remains extant. This refers to English Heritage's (EH) *Conservation Principles*, which identifies four types of heritage value that an asset may hold: aesthetic, communal, historic and evidential value.
13. The *Noise Policy Statement for England 2010* (NPSE) aims through the effective management and control of environmental noise within the context of Government policy on sustainable development to; avoid significant adverse impacts on, mitigate and minimise adverse impacts on, and where possible, contribute to the improvement of, health and the quality of life. The Explanatory Note refers to, but does not set specific values for, the noise level above which significant observed adverse effects level on health and quality of life occur (SOAEL).
14. At the Inquiry I queried how the night time lower fixed noise limit proposed in the suggested condition would square with the NPSE concerning its objective to minimise adverse impacts on the quality of life, where the candidate turbines would be capable of complying with the lower fixed limit proposed for the day time. No expert noise evidence about this was presented to the Inquiry, but it seemed to me to be a matter that would need to be addressed. I pointed out that the suggested lower fixed night time limit based on the 43 dB limit cited in ETSU-R-97 would permit a significant increase in noise emissions from the proposed turbines at 2300 hours. For example, at wind speeds of 1-5 m/s the suggested condition would permit an increase of 7.5 dB (from 35.4 dB to 42.9 dB) at Cottage Farm late at night. To properly report on this matter to the Secretary of State I requested at the Inquiry that the appellant provide an

⁴ *The Assessment and Rating of Noise from Wind Farms*, ETSU-R-97 at CD9.1. This was drafted by the Noise Working Group for ETSU, which is an abbreviation for Energy Technology Support Unit.

⁵ EN-3 states at paragraph 2.7.56 that ETSU-R-97 should be used in the assessment of noise from the operation of wind turbines, and footnote 32 to paragraph 2.7.55 provides that ETSU-R-97 includes any supplementary guidance to it endorsed by the Government.

⁶ For example, 40 dB $L_{A90,10 \text{ min}}$ is specified simply as 40 dB in this report.

additional table for the suggested noise condition, to comprise Table 2 filled out with the figures that would apply in accordance with ETSU-R-97 if a lower night time fixed limit the same as the lower day time fixed limit used in Table 1 was applied for those dwellings which do not have a financial interest in the appeal scheme.⁷

The appeal site and surrounds

15. Spaldington village is approximately 1.5 km to the south-west of the appeal site, and the village of Holme-on-Spalding-Moor lies approximately 3.5 km to the north-east. The closest town to the appeal site is Howden, which is approximately 6 km to the south-west. Other settlements are at Welham Bridge (1.1 km), Gribthorpe (1.3 km) and Bursea (2.5 km). The location is shown on ES Figure 2.1. The area is a flat, relatively open agricultural landscape in the shallow valley of the River Foulness. The River bisects the appeal site from its central western boundary to the south-east at Welham Bridge. There is a short section of bridleway within the appeal site.⁸
16. Residential dwellings in the area are shown on Figure 4.1 of the appellant's March 2014 Residential Visual Amenity assessment.⁹ There are 7 dwellings within about 1 km of the proposed turbines, and other dwellings at Gribthorpe, Arglam Lane, Welham Bridge and Fir Tree Farm, which are within 1.5 km.
17. The Howardian Hills Area of Outstanding Natural Beauty is over 27 km to the north of the site. The locally designated Yorkshire Wolds Area of High Landscape Value is about 8 km from the appeal site. The Lower Derwent Valley Special Protection Area, Ramsar site and Special Area for Conservation lies about 6 km to the west. The Humber Estuary Special Protection Area is some 8 km to the south-west. There are four non-statutory local wildlife sites between 1 km and 2 km of the appeal site.
18. The appeal site lies within National Character Area 39:Humberside Levels, and at a regional level, within the Vale of York Regional Landscape Character Area. Area 39 is characterised by a low-lying, predominantly flat landscape, with large, regular and geometric arable fields divided by ditches and dykes. Much of the land is maintained by drainage, and views to distant horizons are often long and unbroken, with big expansive skies, and vertical elements like wind turbines are very prominent.¹⁰
19. At the local level, the site lies within Landscape Character Type 7: Foulness Open Farmland.¹¹ The key characteristics of LCT7 are a low lying flat landscape with open views stretching as far as the Wolds, very few trees and woodland, sparse

⁷ ID31. It has not been possible to assess and verify how these figures have taken into consideration cumulative impacts. If this table was to be used in any condition imposed on a planning permission it would be necessary to first seek the views of the parties to ensure that the lower fixed night time limits imposed on the RVWF scheme were not more restrictive than those which would apply during the day.

⁸ Public Rights of Way (PROW) are indicated on ES Figure 10.1.

⁹ Table A1 lists dwellings within 2.5 km of RVWF and includes distances to the nearest consented Spaldington Airfield wind farm (SAWF) turbine.

¹⁰ PoE3 Appendix 3.

¹¹ Landscape Character Assessment 2005 (CD7.13 and PoE3 and PoE8). Landscape Character Areas are shown on PoE3 Appendix 1 MB Figures 01 and 03a.

settlement consisting mainly of scattered farmsteads, few roads or public rights of way, large and very large rectilinear fields surrounded by fragmented hedgerows, rectilinear drainage ditches feeding into the more sinuous River Foulness, important location of Iron Age settlement and iron working with Roman and medieval archaeology present.¹² The assessment finds that there may be capacity to accommodate medium scale wind farm development without large detrimental impact on landscape character, and that cumulative impacts would need to be considered along with a detailed assessment to determine sensitivity of the landscape to individual proposals. It adds that a small number of large turbines may be a large scale development. The appeal site straddles two character areas; LCA7A South Holme on Spalding Moor Farmland and LCA7B Eastrington Farmland. LCA7A is described as having a distinctive field pattern with a few scattered rectilinear plantations and larger areas devoid of trees. Electricity pylons are prominent features in the relatively open farmland. LCA7B has large irregular fields mixed with smaller rectilinear fields and fragmented hedgerow boundaries, and an open landscape with long distance views. The six RVWF turbines (T1-T6) are proposed to be sited within LCA7B.

20. LCT6 Wooded Open Farmland lies to the north and east of the appeal site. LCT5 Open Farmland lies to the west. This is a low lying flat landscape with an open character, and little tree cover contributing to extensive views that include Drax Power Station. Howden Minster is an important landmark. The consented SAWF lies within LCA5A. LCT8 M62 Corridor Farmland lies to the south of LCT7B. Further to the south is LCT9 Drained Open Farmland, an open large scale landscape. LCT9 contains Sixpenny Wood wind farm and other wind farms in the vicinity of Goole.
21. The site lies within Natural Heritage Sensitivity Recommendation Zone 4 in ERYC's *Planning for Renewable Energy Development: Interim Planning Document (IPD)*.¹³ This zone is described as areas with the lowest sensitivity to RE development and the greatest opportunity for development, where a significant number of developments could be acceptable, if undertaken sensitively and with due regard to cumulative impact.
22. Operational, consented and planned wind turbines in the locality are shown in relationship to the boundaries of Landscape Character Types and viewpoint locations in MB Figure 03a.¹⁴ These include 10 turbines at Sixpenny Wood (125 m high), 12 turbines at Rusholme (100 m high) and two 90 m high turbines at Loftsome Bridge. There are also a number of single turbines about 78 m high at Spen Farm, St Helens, Hasholme Hall and Carters Plantation. These and other turbines, both existing and proposed, are shown for the Howdenshire, Humber Levels and wider areas in Figures 1, 3 and 4 of ID3. Planning permission was granted on appeal for five wind turbines up to 126 m high at Spaldington Airfield (this scheme is abbreviated to SAWF in this report).¹⁵ A scheme for 7 wind turbines on land north-west of Ivy House Farm was dismissed at the same appeal. This was known as Spaldington Common wind farm (abbreviated to

¹² Poe3 Appendix 4.

¹³ CD3.4.

¹⁴ PoE3 Appendix 1.

¹⁵ CD5.1.

SCWF in this report).¹⁶ A revision of the SCWF scheme comprising two turbines on land adjacent to Ivy House Farm was refused and an appeal was subsequently turned away. This scheme is again being progressed and was at scoping stage at the time of the Inquiry.¹⁷ The current proposal for two 100 m high turbines is known as Ivy House wind farm, which is abbreviated to IHWF in this report. The potential spatial relationship between the consented SAWF, RVWF and the IHWF at scoping stage, is shown at PoE5 Figure 2.

23. Heritage assets, including listed buildings, are shown on ES Figures 6.1-6.5. Howden Minster is a Grade I listed building with a 41 m high tower, which is located about 7 km from the proposed turbines.¹⁸ Pevsner highlights its fenestration. He refers to the two immensely high two-transomed windows with two-centred arches in the lower stage, with the top stage having one transom and four-centred arches. He describes the tower as “a veritable stone cage – far more window than wall”.¹⁹ Holme Hall is a Grade II* listed building located at the bottom of Church Hill at Holme-on-Spalding-Moor.

The proposed development

24. RVWF includes six wind turbines (T1-T6) with a maximum height to blade tip of 128 m. The scheme would have a life of 25 years, after which the wind farm development would be decommissioned and the land reinstated. Based on a wind turbine with a maximum generating capacity of 2-3 MW, the proposed wind farm would have an installed capacity of 12-18 MW.
25. The turbines would be constructed on piled foundations. These would be likely to comprise a concrete pile cap up to 14.5 m diameter and up to 3.45 m deep, together with 25 piles 0.6 m in diameter and up to 20 m deep.²⁰
26. The main access to the site would be from a loop road, which serves a number of farms and dwellings, off the A614 at Welham Bridge. All abnormal loads would use this route. However, the turbines would be sited on both sides of the River Foulness and a bridge would be required. Temporary access to the southern section of the site would be taken via Ings Lane and the village of Spaldington to construct the southern abutment of a temporary bridge and to test the foundations.
27. The appellant has based estimates of electricity generation and carbon dioxide savings on three candidate turbines, which are the Repower MM92 turbine, Enercon E82 E3 and the Nordex N90LS turbine.²¹ The MM92 with a rated capacity of 2.05 MW would provide a net annual energy output of 33,331 MWh/yr at a capacity factor of 30.9% powering an estimated 7,400 homes and saving 136,400 tonnes CO₂ per year. Equivalent metrics for the other candidates are a rated capacity for Enercon turbines of 3.02 MW with a capacity factor of 18.8% and annual energy output of 29,862 MWh/yr, providing for 6,600 homes and saving 122,500 tonnes CO₂ per year. The Nordex turbine would have a rated

¹⁶ The proposed layout for this scheme is shown on ID25.

¹⁷ ID21.

¹⁸ The list entry description is at PoE6 Appendix 6.

¹⁹ PoE3 Appendix 7.

²⁰ ES paragraph 2.20.

²¹ PoE10 Appendix 3.

capacity of 2.5 MW and net output of 33,769 MWh/yr at a capacity factor of 25.7% powering an estimated 7,500 homes and saving 138,500 tonnes CO₂ per year.

28. Grid connection works are not part of the appeal scheme and would need to be the subject of separate consideration by the distribution network operator (DNO). However, the most likely means of connection would be via a 33 kV underground cable along the A614 to an existing substation at Thorpe Road, Howden.

Statement of Common Ground, photomontages and wireframes

29. A Statement of Common Ground (SoCG) between ERYC and the appellant, dated 3 April 2014, sets out, amongst other things, a procedural history and documentation for the application. The SoCG includes details about the proposed development and the site location, along with agreed distances to settlements and dwellings. It refers to relevant policy, and Appendix 2 helpfully sets out a summary of national RE policy.
30. Plans and drawings that comprise the application include only Site Location ES Figure 2.1 and Wind Farm Layout ES Figure 2.2. The other drawings submitted are indicative or illustrative, and do not form part of the application. These include some matters that would need to be addressed by the imposition of appropriate planning conditions were the appeal to succeed.
31. The ES includes maps showing the Zone of Theoretical Visibility (ZTV) of the proposed turbines.²² A cumulative assessment is included in FEI Volume 2 Figures 3.2-3.4. A number of photographs, photomontages and wireframe illustrations were submitted and are cited in this report. These are referred to by the following abbreviations.

VP 1-25	Viewpoints in the ES Volume 2 October 2012.
FEI VP 1-4, 5a, 5b, 5c, 6-8, 13 and 26	FEI Volume 2 February 2014. ²³
ResFIG 4.1-4.8.4	Residential Visual Amenity assessment March 2014.

The case for East Riding of Yorkshire Council (ERYC)

ERYC's case refers to a significant adverse negative cumulative impact on the landscape character and visual amenity of the area, which would significantly and demonstrably outweigh the benefits of the provision of RE. In preparation of its case ERYC's witnesses became aware of issues, both cumulative and solus, pertaining to the settlement of Spaldington, as well as at Warham Farm and Warham Farm Bungalow. The main points are as follows.²⁴

SAWF and SCWF schemes

32. In the 2011 *SAWF/SCWF* appeal the appellant seeks to highlight this split decision to establish the suitability of this site for a second Spaldington wind

²² ES Volume 2 Figures 13.7-13.11.

²³ The FEI cumulative photomontages are shown at a viewing distance of 25 cm. Although these show the relationship with other consented and proposed turbines in the wider area, the photomontages in the ES should be preferred in assessing visual effects because these are at a viewing distance of 45 cm.

²⁴ Based on closing submissions at ID27.

farm.²⁵ However, there is a narrow applicability of concepts of precedent to planning decisions. Each proposal must be considered on its own merits and the idiosyncrasies of a site are such that rarely more than generalities can apply between sites. The refused SCWF scheme was in a different location, on a different orientation to the village, and to the SAWF scheme. Further, arguments of precedent and consistency have no impact on the major adverse impacts and residential amenity concerns attaching to Warham Farm and Bungalow. It is of note that the appellant seeks to pray the SAWF/SCWF appeal decision in aid in general, but then contradicts it in its landscape evidence on LCT sensitivity, where it might actually have relevance.²⁶

Residential amenity

33. The appropriate test seeks to articulate the level of residential amenity impact which is sufficient to elevate the private rights of a homeowner to a public policy concern engaging the planning system.²⁷ ERYC does not demur from the test in any way and considers that its egregious breach by the proposed development is a central issue in this appeal. Rather, ERYC has sought to assist in the consideration of the test by noting the significance of the concept of 'pervasiveness' in the application of the test and the issue of 'unavoidability' highlighted in *Enifer Downs*.²⁸ The allegation that this would make it 'easier' for a wind farm proposal to fail the test is refuted. The test of pervasiveness has been endorsed in *Palmer's Hollow*.²⁹ The issue of whether pervasive and unavoidable are synonyms does not have any significance in this case where the impacts of the proposal on the relevant properties are so glaring. The solus effects would alone fail the test. However, the other turbines in the area mean that the dominance of the proposed turbines in their main view cannot be 'offset' by turbine-less views to other sides. Significantly more weight in the planning balance should attach to residential living conditions than LVIA amenity, bearing in mind the higher test which applies.

Landscape and Visual Impact Assessment (LVIA) and Cumulative LVIA (CLVIA)

34. In undertaking LVIA both individual and cumulative impacts have been assessed because an understanding of the individual impacts of the specific scheme are a prerequisite for the determination of the additional cumulative effects, and at a cumulative impact stage the focus of effects has often narrowed to a very few viewpoints so that to begin at the cumulative stage is to risk having a partial and incomplete understanding of the case. Furthermore, in some cases it has been successfully argued that the assessment of individual effects in the context of existing wind farms and turbines is a legitimate cumulative development scenario.

35. There is a risk of 'diminishing returns' in a cumulative assessment which fails to take account of combined and additional effect of impacts in landscape character terms: on an 'additional' metric the effect of new wind turbine development in a

²⁵ CD5.1.

²⁶ PoE8 paragraph 4.8-4.10.

²⁷ *Burnthouse* (CD5.2) and the original articulation of the test in *Enifer Downs* (CD5.3).

²⁸ In Section 10 of the Officer Report (CD12.3) the conclusion is reached that the Lavender Test is not failed on the basis that the residential amenity impact would not make 'living conditions intolerable'.

²⁹ CD5.29.

landscape already busy with turbines is diminished as a component of the overall effect. *Guidelines for Landscape and Visual Impact Assessment, Third Edition*, (GLVIA3) advises that the assessment of cumulative effects in this context is an evolving area of the specialism.³⁰ ERYC addresses this evolving area through the application of an additional assessment tool (combined effects). The combined effects assessment can be a more pertinent tool in decision making and is more reflective of stakeholders' concerns.³¹ The Government has noted this very issue in the *Guidance*, which provides that cumulative impacts require particular attention, especially the increasing impact that wind turbines and large scale solar farms can have on landscape and local amenity as the number of turbines and solar arrays in an area increases.³² The appellant's design modifications have not resulted in a marked reduction in the effects of the proposal, and the site is therefore inappropriate for the appeal proposal.

36. ERYC comes to a different conclusion from the ES/FEI in respect of the following. Significant landscape character effects would extend up to 4 km, not 2 km, and significant cumulative effects would affect LCT7 and LCT5, not just LCT7. Significant landscape effects would affect the settlements of Welham Bridge, Gribthorpe and Spaldington, whereas the ES does not assess the landscape setting of settlements. The ES finds significant visual effects on VPs 1–9, 11, 13 and 15, whilst ERYC's assessment also finds significant effects at VPs 10 and 17. The ES finds significant cumulative visual effects at VPs 1–5a, 5b, 6, 8 and 13, whilst ERYC's assessment also finds significant cumulative visual effects at VP 7. The ES and ERYC's assessments both find significant effects on the residential amenity of Wareham Farm and Wareham Farm Bungalow. However, ERYC's assessment finds that these effects would be pervasive with substantial detrimental effects on the residential amenity of residents. The ES finds significant visual effects on the settlements of Welham Bridge, Gribthorpe, Spaldington, Bursea, Willitoft, Portington, Harlthorpe and Brind, whilst ERYC's assessment also finds significant visual effects on the settlements of Holme-on-Spalding-Moor, Foggathorpe and Eastrington. The ES and ERYC's assessments also find significant cumulative visual effects from these settlements (with the exception of Brind). However, ERYC's assessment finds a higher level of significant cumulative visual effects than the ES.
37. The ES finds significant visual effects on users of footpaths and bridleways up to 5 km, whilst ERYC's assessment finds that significant visual effects would be experienced at greater distances, for example at VP 17 at 9.3 km. The ES viewpoint assessment limits significant visual effects to viewpoints within 7 km, but the appellant acknowledges that there would be potential significant visual effects up to 10 km.³³ The FEI finds significant cumulative visual effects on users of the Spaldington Strider and Spaldington Stroll footpath systems, whilst ERYC's assessment finds that significant effects would not be confined to these routes. The ES and ERYC's assessments find significant visual effects on users of local roads, as well as the A163 and A614. The FEI finds significant cumulative visual effects on users of the A163 and B1228, whilst ERYC's assessment also finds significant cumulative visual effects on users of the A614 and local roads.

³⁰ CD7.2 GLVIA3 paragraph 7.4.

³¹ CD7.2 GLVIA3 paragraph 7.18.

³² *Guidance* Paragraph: 007 Reference ID: 5-007-20140306.

³³ PoE8 Rebuttal paragraph 7.15.

38. Howden Minster is the focal point from VP 17, and would be juxtaposed, albeit with screening, with the proposed turbines. The Minster draws the eye and would therefore increase the significance of the motion of the turbines in the background.³⁴
39. The appellant's assessment is not tenable given the significant sequential cumulative effects upon those using the A614, which runs from Howden up through this landscape to Holme-on-Spalding-Moor, the effect on VP 17, and the effect on Spaldington and Warham Farm. In a case characterised by egregious impacts the appellant's evidence has sought to stonewall with untenably 'low' conclusions.

IDP

40. ERYC has not sought to diminish the relevance of its Landscape Character Assessment (2005) and IPD (2009), but has used them as they were intended: as 'starting points' in making assessments. GLVIA3 notes the caveat of age, which can apply to such documents.³⁵ Such a limitation has arisen with regard to the changed nature of LCT7 since 2009.³⁶ Different specific conclusions now apply to LCT7 taking into account subsequent changes in its landscape character. Turbines have become a 'key' characteristic of LCT5 and a characteristic of LCT6 and LCT7. Consented single turbines will act as scale indicators.

Landscape character

41. There is a distinctive and positive pattern of wind power development in the locality and wider area. The pattern of staged transition across the wider landscape includes the 'with wind farm' landscape, which has developed along the River Ouse (with its existing energy infrastructure).³⁷ There is a transition into a 'with turbines' landscape north and east of SAWF and the village of Spaldington, where in recent years single smaller scale turbines have proliferated in the landscape. These turbines were accepted in the landscape and mark a clear transition. The proposed development would be incongruous within the 'with turbines' landscape.
42. The appeal proposal would fundamentally compromise the landscape character of the locality.³⁸ In this area it is apparent that ERYC has to date succeeded in integrating renewable wind development into the landscape. A balance has been achieved whereby single and smaller scale turbine development has been introduced into the landscape with larger scale wind farm development located in

³⁴ ES Figure 13.28.2.

³⁵ GLVIA3 paragraphs 5.12 and 5.13.

³⁶ CD7.7 paragraph 96 states; "The cumulative (i.e. additional) effect of proposed development on existing landscape character should be described, particularly in relation to key landscape characteristics. It is likely that as more windfarms are developed they will begin to be perceived as a key landscape characteristic and will therefore change the landscape character."

³⁷ FEI Figure 3.4. Rusholme and Sixpenny Wood wind farms and the permission granted for the SAWF and their relative separation distances, which contrasts with the close proximity of the proposed development with SAWF and the 'overlapping' of the extent of significant landscape effects and the consequential creation of a 'windfarm landscape' centred on Spaldington. In CD7.6 paragraph 4 a 'windfarm landscape' is one where wind turbines are a dominant characteristic.

³⁸ GLVIA3 paragraph 7.17 bullet 2.

proximity to the River Ouse with its pre-existing energy infrastructure. This balance respects the character of the area and acknowledges the need for RE and the central role this part of England has in contributing to it. The appeal proposal would undermine this balance.

Spaldington

43. Into this landscape the appeal proposal would appear as a discordant feature within a clear pattern of wind power integration: RVWF would not have the benefit of separation which characterises the Rusholme, Sixpenny Wood and SAWF relationships. The overlap between RVWF and SAWF would focus dead centre upon the village of Spaldington, which would run the risk of becoming a 'wind farm village', as would the settlements of Gribthorpe, Willitoft and Welham Bridge.³⁹ The setting of settlements has particular relevance in this council area because of JSP Policy SP1.
44. The appellant acknowledges that there would be successive and sequential views within the village, but not any combined views of RVWF along with SAWF.⁴⁰ The consequences of such sequential and successive views are acknowledged and discussed at length in GLVIA3 Chapter 7. The appellant maintains that Spaldington would not be surrounded or encircled by wind power development, notwithstanding the proximity of SAWF, the Elderfarm turbine, and RVWF, along with the presence of Sixpenny Wood wind farm to the south of the village. Contrary to the appellant's submission, SAWF and RVWF would not be 'sufficiently and comfortably separated' and read separately due to intervening features and trees within the village.⁴¹ The effect of these features is limited in range and is affected by the seasonal nature of vegetation.

Warham Farm and Bungalow

45. RVWF would have a significant adverse impact upon these properties. The house at Warham Farm has been constructed with carefully orientation of the property to a particular view. This includes the creation of the ornamental lake right in front of the principal view from the French windows of the living room and the planting of Warham Plantation, which forms part of this principal view. The occupier confirmed the orientation of all the principal rooms in the direction of the proposed wind farm. He also outlined the care and maintenance of not simply his home and domestic curtilage, but the wider holding, to establish his 'own little nature reserve' on the farm.
46. Unlike neighbouring arable fields the farm land is used on a daily basis for tending grazing sheep and dog training by the residents of Warham Farm. It is clear that they live 'on the farm' rather than just in the farm house, and would have no respite from the impacts of the appeal proposal. Therefore significant visual effects would be particularly unavoidable in the living (and working) conditions of the occupiers. The whole holding has been laid out to allow the occupier to progress and train dogs from a young age up to eventual sale. The nearest turbine would be 110 m from Mr Whitton's largest field, where he shows his 'finished product'. Mr Whitton is concerned that his ability to sell his specialist product would be impeded by the noise of the appeal turbines, as the dogs are

³⁹ ID3 Figure 1.

⁴⁰ PoE8 paragraph 8.9 onwards.

⁴¹ PoE8 paragraph 8.39.

controlled and directed by whistles and calls. He considers that his ability to show his dogs performing to their best would be compromised by the sound of the turbines. There are parallels here with the *Brightenber* case, where it was considered that turbines would dominate the farmland between the farmhouse and the site to an even greater extent and time spent by the family working the land would be accompanied by both the presence of the towers and hubs and by the turning blades.⁴²

47. RVWF would dominate Warham Farm and Bungalow and would be unavoidable for residents of the properties, but would crucially act in consort with other turbines around the compass to undermine the attractiveness of these properties. The residents would suffer a sense of encirclement from the appeal proposal, with more distant views of Sancton wind farm in the north-east, the turbine at Arglam Farm and SAWF nearby, Sixpenny Wood in the distance to the south, along with the numerous constructed and consented wind turbines to the north and east.

Planning balance

48. ERYC's landscape and visual impact concerns are real and substantial at the small (residential), medium (village) and large (landscape) scale. However, ERYC is acutely aware of its obligations to help achieve the UK's RE targets, and accepts the principle of wind turbine development in the right location.⁴³ But that should not and cannot be the end of the matter. RE infrastructure must respect the landscapes and settlements of which it is part. The *Guidance* sets out that there is a need to ensure that the protection of the local environment is properly considered alongside the broader issues of protecting the global environment.
49. If it does not, it fails the planning balance and undermines public trust in planning and the UK's crucial RE goals. That is to say, developers who seek to impose inappropriate renewable development which has not been well thought out and which does not demonstrably minimise its environmental impact undermines public confidence in the low carbon agenda. Bad development harms communities and harms the carefully fostered consensus by which successive governments have sought to combat climate change.
50. ERYC acknowledges the benefits of the contribution the development would make to meeting national RE targets, but considers that the benefits of the proposal relating to the provision of RE are significantly and demonstrably outweighed by the adverse landscape and visual effects.

Conclusions

51. The proposal conflicts with the saved LP Policies EN2, EN29 and EN73, saved JSP Policies SP1 (ii and iv) and SP4 (a), and *Framework* paragraph 109 (bullet point 1) and paragraph 98 (its impacts on the landscape cannot be made acceptable), and guidance offered in National Policy Statements.⁴⁴

⁴² CD5.18.

⁴³ Paragraph 116 of the UK *Renewable Energy Roadmap Update 2013* notes: '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'.

⁴⁴ Sections 5.9 of EN-1 and 2.7 of EN-3.

52. In summary, there is little difference on policy between ERYC and the appellant. The difference is weight. Accepting that the development plan is out of date and specifically so in relation to its RE policy the first bullet to the second bullet point in decision making of paragraph 14 of the NPPF is engaged. Simply put, the evidence is clear that there are significant adverse impacts arising from this development upon the landscape, the settlements of Howdenshire and the properties at Warham Farm and Bungalow. This must be weighed in the balance against the benefits readily accepted by ERYC. Those benefits must be quantified on the basis of the 'worst case'. It has been acknowledged that the type of harm which would be caused by the turbines could not be mitigated by condition. This also means that the proposed unilateral undertaking could not mitigate the harm (and of course it is not intended to).
53. ERYC's case is clear and simple as a consequence of the Members' decision and the subsequent evidence presented to the Inquiry. As a result of the increase in numbers of wind turbines in the combined grouping of SAWF and singly at various locations, the cumulative effect on the character and amenity of the area, and Spaldington in particular, has now reached the tipping point where the harm caused by RVWF is sufficient to refuse permission. Furthermore, the harm caused to the residential amenity of Warham Farm and Bungalow is so significant that this on its own is reason to dismiss the appeal. ERYC contends that for these reasons the appeal should be dismissed.

The case for Spaldington Parish Council (SPC)

SPC's case refers to the impact of RVWF on landscape character, the visual amenity of residents and visitors, the harm to significance of designated heritage assets, and the effect on living and working conditions of the properties at Warham Farm. The main points are as follows.⁴⁵

54. SPC represents a small rural parish in East Yorkshire. Spaldington is a village of 68 homes. The core of the village, containing 43 homes, lies within 1.5 km of the proposed RVWF.⁴⁶ The village is accessed via Willitoft Road which runs in a north/south direction, a number of the larger houses lie to the western side of that road, the larger number of smaller homes line either side of Ings Lane, known locally as Main Street, which runs east/west from Willitoft Road, terminating in a bridleway. The remainder of the homes are dispersed throughout the parish, comprising farms with associated agricultural buildings, smallholdings and country cottages, with small clusters at the Fir Tree hamlet and around the junction of Willitoft Road with Spaldington Lane.
55. The village has no shop, pub or other communal facility (save for the Spiritualist Church at Fir Tree Centre); such needs are catered for in Howden, which is approximately 5 km away, via Willitoft Road, Spaldington Lane and the B1228. The roads serving the village are narrow country lanes, frequently lined with hedges containing mature oak trees. There are numerous PROW traversing the parish, three of which are promoted by the local authority: the Spaldington

⁴⁵ Based on closing submissions at ID26.

⁴⁶ ES Volume 1 paragraph 2.3.

Strider, Spaldington Stroll and the Howden 20.⁴⁷ Many of these routes remain hedged, or sheltered by trees. The main assets of the village are its tranquillity and attractive rural location.

56. To the west of the village, within 700 m of the houses on Willitoft Road, is the site of the permitted SAWF, a development of 5 wind turbines of 126 m in height. It is situated on the site of the old Howden Airship station, an area which was returned to agricultural use many years ago. The proposed RVWF lies to the east, either side of the small River Foulness at approximately 800 m from Cottage Farm, the nearest property in Spaldington, and 1,200 m from Fir Tree hamlet. Spaldington village is set amongst mainly small to medium scale fields, with larger fields within the Spaldington Airfield site. The River Valley site and immediate surroundings also contains larger scale fields. However, here the rectilinear pattern is interrupted by the sinuous River Foulness. The majority of the land parcels are in arable use, although the number of fields in pasture increases around the village core and some outlying holdings.⁴⁸ Despite being in arable production many of the field boundaries remain hedged, and those hedges include frequent mature trees, generally oak.⁴⁹ Where hedgerows have been lost through field amalgamation it is not uncommon for the oaks to have been preserved so that old boundaries are marked by lines of well-spaced trees.⁵⁰
57. The land around Spaldington is low lying and relatively flat, gently undulating between 4 m and 7 m AOD.⁵¹ It is drained by gravity via deep ditches. Within 10 km of the proposed River Valley turbines there is a small area of elevated land close to Holme-on-Spalding-Moor and, to the east and north, the land rises towards the Yorkshire Wolds. To the south of the area, south of the M62, lies an area of lower lying, flatter, land below tide level, where rivers are embanked, drainage is sluiced or pumped, fields are bounded by drains and trees are few. SPC's assessment more accurately describes the local landscape character and sensitivity than does ERYC's 2005LCA, the IPD, the description in the ES, or in the appellants' assessment.⁵²
58. This is not a community that does not recognise its responsibility to contribute to RE generation. It will already contribute, not only through large farm turbines, but also through the permitted SAWF, which alone will provide sufficient for 5,900 homes. In Spaldington Parish there are just 68.

Landscape character

59. The object of landscape character assessment is to identify how elements combine to produce distinctive local landscape character: that is to discern what distinguishes one area from another. GLVIA2 says "Landscapes are considerably more than just the visual perception of landform, vegetation cover and buildings – they embody the history, land use, human culture, wildlife and seasonal changes of an area, these elements combine to produce distinctive local

⁴⁷ PoE3 Appendix 9.

⁴⁸ The field pattern can be seen on SPC's Figure 2.

⁴⁹ ES VP 10.

⁵⁰ ES VP 6 and VP 1.

⁵¹ Local topography is shown on PoE3 Appendix 1 MB Figure 02.

⁵² ES paragraphs 13.96-13.102; 13.118-9; Table 13.15.

character and continue to affect the ways in which the landscape is experienced and valued.”⁵³

60. Swanwick defines landscape character as “a distinct and recognisable pattern of elements that occur consistently in a particular type of landscape. Particular combinations of geology, landform, soils, vegetation, land use, field patterns and human settlement create character. Character makes each part of the landscape distinct, and gives each its particular sense of place.” Character is “A distinct, recognisable and consistent pattern of elements in the landscape that makes one landscape different from another, rather than better or worse”. Characteristics are “Elements, or combinations of elements, which make a particular contribution to distinctive character.” Elements are “Individual components which make up the landscape, such as trees and hedges” and features are “Particularly prominent or eye-catching elements, like tree clumps, church towers, or wooded skylines.”⁵⁴
61. The proposed development site lies within LCT7, straddling the boundary of LCT7A and LCT7B, an apparently arbitrary boundary set slightly north of the gently meandering river Foulness.⁵⁵ The turbines would be located close to the boundary of LCT5 at a point where the LCA subdivides that area into the subtypes of LCT5B and LCT5A. Approximately 1.5 km north of the site lies LCT6.
62. West-south-west of the site at approximately 1.5 km lies Spaldington Village core (just within LCT5A); Fir Tree Farm hamlet lies due south at 1.2 km (within LCT7B); Welham Bridge at a similar distance to the east (in LCT7A); Gribthorpe at a similar distance to the west (in LCT5B). All of these locations are within the 2 km area in which the appellant’s landscape architect accepts there would be a significant effect upon landscape character.⁵⁶
63. The ES slavishly adopts the character descriptions in the 2005LCA, and then adopts the IPD Zones of Natural Heritage Sensitivity recommendations.⁵⁷ There appears to be no rational explanation of that or support in any published guidance on landscape sensitivity. In respect of LCT5 and LCT6 the assessment is of medium sensitivity and for LCT7 it is low.
64. The key characteristics of the land surrounding the site are inaccurately described in the 2005LCA.⁵⁸ In the description of LCT7: the landscape, whilst flat and open, is neither as low lying, flat or open as LCT9, which is similarly described. LCT7 is above mean high water mark, rather than below it, and contains minor undulations. The 2005LCA erroneously identifies a lack of trees and public rights of way in LCT7. However, there are numerous routes and LCT7 has a degree of complexity and numerous trees, particularly mature hedgerow oaks, which create a filtered pattern in the landscape and limit views. The views cannot properly be

⁵³ CD7.1 paragraph 2.3.

⁵⁴ CD7.8 paragraph 2.1.

⁵⁵ Landscape Character Types are shown on PoE3 Appendix 1 MB Figure 03a, which also shows ES Viewpoints and wind turbines considered in the cumulative assessment.

⁵⁶ PoE8 paragraph 7.8. Ms Oxley predicts significant visual effects to approximately 5 km paragraph 7.11.

⁵⁷ ES Table 13.15. Ms Oxley adopts the ES as an accurate description of the baseline (PoE8 paragraph 4.1).

⁵⁸ PoE3 paragraphs 5.3.5-5.3.7.

described as open. Each view is occluded by trees and hedgerows, which serve to screen all but distant views of the Wolds, which are, of course, higher than the vegetation. The mature oak trees are a key characteristic of this landscape, particularly those in the hedgerows or remaining where hedgerows have been lost.⁵⁹ The 2005LCA has not been updated even to record the presence of numerous wind turbines in LCT9. The boundaries between LCT7 and LCT5 are not based on physical features.⁶⁰

65. Such critical appraisal is encouraged by GLVIA3, which advises that “Existing assessments must be reviewed critically as their quality may vary, some may be dated and some may not be suited to the task in hand.⁶¹ Before deciding to rely on information from an existing assessment a judgment should be made as to the degree to which it will be useful in informing the LVIA process”. SPC respectfully suggests that no weight be attributed to the 2005LCA, or the IPD, which is based upon it. The Inspector in the SAWF appeal decision found that he could not distinguish between LCT5 and LCT7, and he gave the IPD little weight.⁶² Furthermore, major wind farm development at Goole Fields 1, Sixpenny Wood and Twin Rivers have been approved in LCT9, which is described in the IPD as Zone 2, high sensitivity. The landscape baseline has changed since 2009, and the frequent trees are “scale indicators” in all the ES viewpoints.⁶³ Trees serve to absorb into the landscape the built elements that this landscape contains: villages, houses and farms are readily screened from view whilst turbines, even those of Sixpenny Wood, 6 km away from Spaldington, can be seen above the trees and hedgerows. The 80 m anemometer mast far exceeds their screening capacity.
66. Drax Power Station is approximately 12 km from Spaldington and outside the ERYC boundaries. Inevitably its 259 m high chimney and 114 m cooling towers are visible in some views, however, its presence at that distance does not define the local landscape character. It is a single presence on the skyline, not a locally repetitive form of development capable of becoming a key landscape characteristic.⁶⁴
67. The susceptibility of the landscape to the proposal has been assessed against a range of factors and this concludes that it has a medium to high susceptibility to wind turbine development, principally on account of the potential for cumulative impacts from the significant presence of existing turbines in the landscape.⁶⁵ This landscape is locally valued by contrast with nearby landscapes because it is more treed and has retained more hedgerows and mature hedgerow oaks, is more complex and intimate than adjacent landscape types and is not dominated by large scale infrastructure or industrial uses. The combination of susceptibility and value give, in accordance with the GLVIA3 methodology, a medium to high sensitivity to the wind turbine development proposed.⁶⁶

⁵⁹ PoE3 paragraph 7.4.7.

⁶⁰ PoE1 paragraphs B1.6.1 and B1.7.1.

⁶¹ CD7.2 paragraph 5.13.

⁶² CD5.1 paragraph 123 and paragraph 31.

⁶³ PoE1 which considers trees to be “predominant existing vertical scale landscape features” paragraphs 2.4.5 and 3.1.4.

⁶⁴ PoE3 paragraph 7.1.6.

⁶⁵ PoE3 paragraphs 7.1-7.1.10.

⁶⁶ CD7.2 paragraph 3.26.

68. Given the cumulative effects of the proposal: whether, in addition to or in combination with existing development, RVWF would become a defining characteristic of the landscape; it would give rise to major changes to landscape character; and/or create a new landscape sub-type. The FEI found significant adverse effects on all sides of the scheme due to the presence of existing turbines.⁶⁷ Operational single turbines are beginning to become a characteristic of the landscape surrounding the site, an effect which will be exacerbated when the SAWF turbines are erected. This will give rise to a high magnitude of change.⁶⁸ Although the landscape north of Howden contains a significant number of single turbines the rural character remains, in contrast to that south of Howden which is more industrialised, more intensively farmed and is characterised by large scale wind turbine development. The proposal would tip the balance so that the existing rural character was significantly diminished and the new land use dominant. Wind turbine development would become the defining characteristic around Spaldington: a major adverse effect.
69. The presence of the numerous consented wind turbines in the landscape increases the sensitivity. The appellant has not addressed capacity or acknowledged that an increase in development necessarily reduces capacity. Within 10 km of Spaldington there are currently 44 operational or consented wind turbines.⁶⁹
70. ERYC finds that there would be significant landscape character effects upon LCTs 5A, 5B, 7A, & 7B as well as potential significant and adverse landscape character effects on LCTs 6A and 6B to within 4 km of the nearest proposed turbine.⁷⁰ Significant cumulative effects would create a new “wind farm LCT sub-unit” largely in LCT7, but extended to include a substantial proportion of LCT5.
71. SPC’s map depicting the effect of superimposing the 2 km extent of significant impact admitted by the appellant shows how the impact of SAWF and RVWF would overlap.⁷¹ The location of Spaldington village within that overlap area would mean that anyone leaving (or more importantly) approaching the village would have to pass a consented or proposed wind energy scheme, the cumulative effect of which would be to create a perception of encirclement and a village visual setting dominated by turbines.⁷²
72. Cumulative visual impacts on PROW users would extend well beyond the 5 km assessed in the FEI, with both visual and aural impacts on users of the promoted routes and local lanes close to the turbines.⁷³ The effect of RVWF would be to “intensify the sense that this was a landscape in which it was impossible to escape from views of wind turbines” which would result in a major adverse impact on the visual amenity of local people using both roads and footpaths.⁷⁴

⁶⁷ PoE3 paragraph 7.4.6.

⁶⁸ PoE3 paragraph 7.4.7.

⁶⁹ PoE6 paragraph 7, Figures 1 and 2 in updated SPC figures at ID3, and PoE3 paragraph 7.4.3, and topographic map at MB Figure 02.

⁷⁰ PoE1 paragraph 3.1.7.

⁷¹ ID3 Figure 1.

⁷² FEI Figure 3.17.

⁷³ VP 15 at 7 km and VP 17 at 9.3 km. Relying on the noise contour plans attached to WR2 rebuttal.

⁷⁴ PoE3 paragraph 8.2.1.

73. The gateway to Spaldington is not via the A614, as the B1228 gives convenient and ready access to Howden and the M62. Throughout much of that route the Spaldington resident would be able to appreciate the turbines at SAWF, Sixpenny Wood, and Rusholme. On their return they would be confronted by both SAWF and RVWF developments, as well as single turbines in the view.

Residential amenity

74. Many of the properties within 2.5 km would sustain significant adverse visual impact of a degree which should go into the planning balance. At two properties, Warham Farm and Warham Farm Bungalow, the impact would be greater and would render the two properties unattractive places in which to live.⁷⁵ This is a small farm where the occupier's business is the rearing and training of sheep dogs. On his pasture paddocks, of varying sizes, he keeps sheep and trains his dogs. They start out close to home and graduate to the larger more distant fields. In those fields he demonstrates their skills for sale purposes. Those fields lie within 110 m of the nearest turbine. The houses have been built to face out over the land. All six turbines would be in view and central to it from the single storey property at Warham Farm. The closest turbine (T6) to the house would be 1,014 m and all six turbines would be within 1,791 m. Two of the turbines would have overlapping or stacking blades.

75. The main view from the house, which all main rooms enjoy, is out over a magnificent pond. Beyond the pond and garden are to be seen the fields and the Warham Plantation created by the owner. It is a most attractive place in which to live and work: it would cease to be so if these turbines were erected. Instead throughout his working day the occupier would be in the dominating presence of the turbines and at evening he would have an uninterrupted view from within his home.⁷⁶ Very similar effects would be experienced at Warham Farm bungalow, a property built to accommodate the owner's son in due course but currently let out. Both properties would be so reduced in amenity as to become unattractive, and thus unacceptable, places in which to live. It is not in the public interest to create such conditions where they did not pertain before.

The Members' Decision

76. The consultation response of the Landscape and Visual Impact Assessment Team of ERYC is dated 11 January 2013 - more than 6 months before the Committee determination. The officer only considered consented and operational single turbines when assessing cumulative impact. The updated SPC figures show that only 5, single, large scale turbines, then had permission. By the committee date there were 12. Furthermore there was 1 in planning and 1 in screening.

77. The Committee Report attached a plan to the Agenda and Report which, drawn from the non-technical summary to the ES, showed only 3 of these single turbines. After that report had gone out, on 10 July, the case officer asked the appellant to update the map to show 4 more. At that stage, some 9 months

⁷⁵ The separation distances and orientation of turbines in relation to these dwellings is shown at PoE3 Appendix 1 MB Figures 04 and 05. SPC Viewpoints at these properties are at PoE4-6 Figures 6-11.

⁷⁶ The turbines at *Brightenber* (CD5.18) were less in number and height as well as more distant. Furthermore the keeping of cattle, as was the case there, does not rely on a quiet environment as does the training of sheep dogs, as Mr Whitton explained.

after the application had been made, it seems that the officers had still not grappled with the consideration of cumulative impact with what was actually in the landscape.

78. SPC sent to each Member of the planning committee a letter of objection and a map showing all the turbines they knew about. The local Members were appraised, despite any shortfall, if there was any, in updating from their officers, of the number and height of the recently consented turbines. Their decision reflects that knowledge.

Cultural Heritage

79. The harm to Holme Hall, a Grade II* country house, would be minor.⁷⁷ However, there would be an adverse impact on Howden Minster, one of the finest churches in East Yorkshire. The significance of the Minster would be diminished by this development within its setting. When a decision maker is balancing harm against benefit, as required by paragraphs 133 and 134 of the *Framework*, considerable importance and weight must be given to the desirability of preserving the setting of the listed building. Howden Minster is a fine and important Grade I building, of the highest significance, and is an iconic landmark building.⁷⁸ The view from the M62 over-bridge is relatively recent, but provides an important view.⁷⁹ The appellant acknowledges that view as “an important aspect of the setting of the Minster” and says “it has a moderately strong contribution to the significance of the Minster as it allows for the Minster’s position dominating the town and its position in the wider landscape to be appreciated”. Although the M62 affords only a “fleeting glimpse” repetition of that view would reinforce it.⁸⁰ SPC’s expert considers it to be “a particularly striking view” and that within this view “the tower serves the same functions as it has historically: a visual expression of the importance of the church in this region and it indicates the historic character of Howden”.⁸¹ There is some agreement that the impact of RVWF in conjunction with SAWF would be to frame the Minster and this would result in a moderate impact.⁸² Impact would also be apparent from the Trans Pennine Trail.⁸³
80. A considerable amount of time was taken checking the accuracy of VP 17 by computer imagery, in the field with camera and viewing aid, and by computation.⁸⁴ This shows that the turbines would be seen to have their hubs above the level of the Minster roof and their blades would reach above the great windows of the tower to the intersection where the later belfry, added by Bishop Skirlaw, joins.
81. The appellant argues that the elements of setting discernible from the M62 and the Trans Pennine Trail are not regarded by EH as key aspects of the Minster’s setting. However, in December 2012 EH wrote; “Howden Minster, a Grade I Listed Building of outstanding special interest. The views of Howden Minster in

⁷⁷ PoE3 paragraph 11.4.1 and PoE9 paragraph 4.53.

⁷⁸ PoE9 paragraphs 4.12-4.15 and 4.20, PoE3 paragraphs 11.1.4-11.1.7.

⁷⁹ PoE3 paragraph 11.1.10 and PoE9 paragraph 4.28.

⁸⁰ PoE9 paragraph 4.28.

⁸¹ PoE3 paragraph 11.1.10.

⁸² PoE9 rebuttal paragraph 1.8.

⁸³ The appellant put it at low to moderate (PoE9 paragraph 4.37). SPC consider there would be a moderate degree of harm (PoE3 paragraph 11.2.9).

⁸⁴ PoE5 and Figures 12a, 12b, 13a, 13b, 13c and 14. Along with Figure 12c in ID3.

its landscape make an important contribution to its significance. The contribution that the wider landscape setting makes to the significance of the historic town should also be taken into account. In our view the proposed wind farm would detract from the visual dominance of Howden Minster, which remains to this day an unchallenged landmark feature with considerable aesthetic value deriving from its architectural interest." EH clarified its position in March 2013 as "our reference to Howden Minster being an unchallenged landmark feature refers to the ability to view, clearly identify and appreciate the historically designed dominance of the church tower and roofscape over the surrounding countryside, from which derives considerable aesthetic and illustrative heritage value. The presence of other consented schemes or any other modern existing intrusions does not justify additional intrusive developments. On the contrary the cumulative impact in conjunction with other turbine developments would contribute to the surrounding landscape setting of the Minster becoming increasingly characterised by the presence of turbines and the viewer/visitor/residents experience of Howden Minster would be significantly affected and to a degree harmed." EH does not say that these views are not regarded as key aspects of setting.

82. Whatever their nuanced differences, the appellant's and SPC's respective experts agree that the relevant assets' significance will be harmed and that there will be a degree of adverse impact on setting. The degree of harm would be less than substantial.

Energy Policy

83. Government policy strongly supports RE development in appropriate locations. The *UK Renewable Energy Strategy 2009* emphasised that RE development must be in appropriate places with continuing protection for the environment and natural heritage, whilst responding to the legitimate concerns of local communities.⁸⁵
84. Since the *UK Renewable Energy Roadmap* was issued in 2011 the Government has expressed confidence that the UK can meet its obligation to Europe and provide 15% of its overall energy requirement from renewable sources. That confidence remains today as the latest update 2013 Roadmap Update establishes.⁸⁶ 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 economic benefits". There is not, in these circumstances, a degree of urgent need that justifies lowering the bar of acceptability. By June 2013, installed onshore wind capacity had increased by 1.6 GW in the previous 12 months (to 7.0 GW), with a further 1.3 GW under construction, 5.2 GW awaiting construction and 6.0 GW in the planning process (see Figure 16). Of the 6.0 GW in the planning process, the 2013 Update estimates that 3.0 GW represents "attrition" or schemes which will not gain consent based on past rates. There was nevertheless a "healthy set of deployment pipelines for renewable electricity technologies".

⁸⁵ Executive Summary paragraph 3.6 (1).

⁸⁶ CD6.13.

85. In his June 2013 Statement (CD2.5), the Secretary of State for Communities and Local Government said “planning decisions on onshore wind are not always reflecting a locally-led planning system” and “it has become clear that action is needed to deliver the balance expected by the NPPF on onshore wind”. He went on; “We need to ensure that protecting the local environment is properly considered alongside the broader issues of protecting the global environment” and “meeting our energy goals should not be used to justify the wrong development in the wrong location”. Guidance as to appropriate locations is found in the development plan, national planning policy and planning policy guidance documents.
86. This appeal has to be determined in accordance with the development plan unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004). The proposal is in breach of saved JSP Policies SP1, SP4, SP5 and saved LP Policies EN2(iv), EN6, EN7, EN19 and EN73(A) in relation to landscape character; with Policies EN2(i), EN7 and EN73(C) in respect of residential amenity; and with JSP Policy ENV6 and LP Policy EN51 in respect to cultural heritage.
87. A most material consideration is the *Framework*. It provides that proposed development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. It contains the Government’s policy for sustainable development which has to be read as a whole. Sustainable development has economic, social and environmental dimensions and these roles should not be undertaken in isolation because they are mutually dependent. This development does not accord with the development plan. It should be refused unless a material consideration capable of outweighing the development plan exists. The *Framework* advises that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole; or specific policies in this *Framework* indicate development should be restricted.
88. There is a development plan and it is not silent regarding those interests which it seeks to have protected. Nor is it silent in respect of RE. All of the identified policies are in accord with the NPPF, save for LP Policy EN73.⁸⁷ That policy is cast in negative form. Proposals for wind turbines generators will only be allowed where it can be demonstrated that there are no adverse effects on (A) the environment and (C) nearby residential properties. That places an insuperable hurdle in the way of onshore wind development and directly contradicts paragraph 97 of the *Framework* which says LPA’s “should: have a positive strategy to promote energy from renewable and low carbon sources”; and “design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts”. The *Framework* also advises that the decision maker should when considering such proposals, “approve the application if its impacts are (or can be made) acceptable”, unless material considerations indicate otherwise.

⁸⁷ PoE7 paragraphs 5.5 and 5.7-5.8.

89. However the test in paragraph 14 is quite clear. Where relevant policies, not, please note, the plan, are out of date, unless material considerations indicate otherwise (footnote 10), approval should be forthcoming unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”. Material considerations which are capable of indicating otherwise are just those adverse impacts, identified by Policy EN73, on the environment, which would include landscape and heritage features, and on residential properties.
90. The core planning principles in the *Framework* establish that planning should take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it, and always seek to secure a good standard of amenity for all existing and future occupants of land and buildings, along with conserving heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. The relevant and up to date policies of the development plan also deal with just those issues. Paragraph 14 of the *Framework* additionally advises that approval should not be forthcoming where specific policies in the *Framework* indicate development should be restricted. Amongst such policies are those relevant to designated heritage assets.
91. That policy statement rather undersells the duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The *Barnwell Manor* judgment considers the weight which must be given to the desirability of preserving the setting of listed buildings, whether that harm is substantial or less than substantial. Parliament in enacting section 66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given “considerable importance and weight” when the decision-maker carries out the balancing exercise.⁸⁸
92. The *Framework* states “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation.” The appellant accepts that conservation goes further than preservation and can encompass enhancement. It is difficult to conceive of development which causes admitted harm not being restricted in those circumstances. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Clear and convincing justification suggests that there should be “blue water” between the harm and the benefit when the balancing exercise is carried out. Nobody disputes that the harm to the two heritage assets affected is less than substantial harm. The harm arises from the location of this proposed development. A developer has no need to demonstrate the overall need for RE. That is a long standing strand of policy most recently repeated in the *Framework*. That is not a justification for the use

⁸⁸ CD4.14 paragraph 25.

of any particular site. The balancing exercise under paragraphs 133 and 134 of the *Framework* both require that the harm be weighed against the benefit. To avoid refusal where there is substantial harm substantial public benefit needs to be demonstrated. A lesser degree of benefit, but still sufficient to outweigh the "strong presumption", will suffice in cases of less than substantial harm. Where highly graded assets are concerned the general duty applies with particular force. Proposals for RE development should be approved if the impacts are acceptable or can be made so unless material considerations indicate otherwise.

93. The impacts of this proposal, for six 128 m high turbines, arise from their location. That is not a matter which can be remedied by condition. The only issue here then is whether the impacts are acceptable. SPC submit that they are not. They could only be so in respect of heritage if the benefits could not equally be provided elsewhere.
94. Furthermore, the benefits are not quantified. They may be 12 MW of installed capacity or as much as 18 MW. This is EIA development. Schedule 4 Part 1 of the 2011 Regulations requires that the ES contains a description of the likely significant effects of the development on the environment. At the least it should contain the data required to identify and assess the main effects which the development is likely to have on the environment. This scheme does not do so, but gives a range of potential and significantly different benefits, for nearly all benefits are related to installed capacity and output. EIA is meant to look at the worst case scenario. The balancing exercise should be conducted taking only the lower potential into account.

Conclusion

95. RVWF would be located where it would significantly harm landscape character and visual amenity. It would harm residential amenity at a number of local properties, affecting two of them so badly that they would become unattractive places in which to live or work. It would harm the significance of two high grade heritage assets. It is doubtful because of those impacts, which conditions cannot ameliorate, that it would be acceptable even if there were no other turbines nearby. It is doubtful that the solus impacts of this development could be outweighed by the benefits. However, this is not the baseline, which is the landscape together with all turbines currently constructed or consented. That results in a cumulative impact on these interests which is totally unacceptable. It is just such impacts that the *Guidance* advises require particular attention.⁸⁹ The developer of this site has missed the boat. Accordingly SPC respectfully requests that this appeal be dismissed.

The case for others opposing the proposed development

The following people gave evidence to the Inquiry and a summary of their submissions is included below.

96. David Davis MP [Member of Parliament for Haltemprice and Howden]. Mr Davis takes a balanced view about achieving RE targets, but considers that the cumulative impact in this area results in local residents and the local environment

⁸⁹ *Guidance* paragraph 007.

under siege, and wind turbines would be seen in every direction. Spaldington is a quiet, pretty, isolated and low key place that would be sandwiched between wind farms. RVWF would be too big, too close and too oppressive. It is not necessary to build so close to dwellings with the resultant loss of living conditions. Views from the south and the M62 bridge are of rurality – trees, woods and farms up to the Vale of York and Wolds to the north-east. Howden Minster tower adds to the special character of the area. The cumulative impact of the built (34) and consented (18) turbines over 50 m high in the locality is difficult to visualise. The white rotating blades would draw the eye and contrast with the arable and pasture land, and the hedgerows and copses.

97. Given Government policy since 2006 the UK can be confident that it will meet the UK target without need for damage to heritage, landscape and society. The *Framework* gives strong protection to the historic environment. The Secretary of State for Communities and Local Government is concerned about decisions not reflecting locally led planning decisions, the need to get the balance right, and to address satisfactorily environmental considerations. Four issues here are; (1) need does not automatically override environmental impact, (2) the importance of cumulative effects, (3) the local topography, and (4) the requirement to take great care regarding views important to the setting of heritage assets.
98. There has been misinterpretation of policy. The Ministerial statement by the Secretary of State for Energy and Climate Change supports sustainable wind farms in line with the economic, environmental and social aims of the *Framework*. The 2007 White Paper about the energy challenge referred to climate change and security of supply, and a range of measures, including that it was not necessary to prove need. But it did not presume any site suitable and that it was for the planning system to determine appropriate siting. The 2009 Renewable Energy strategy was not a trump card, with the planning system to provide safeguards and an equal balance of local impact against climate change and energy security considerations. The 2011 Roadmap provided for the community to be given a stake where RE development can have negative effects. Government priority is to meet need in a timely manner and the Government is confident that the 15% target would be met. There was a change in emphasis with the December 2012 Roadmap, which showed significant progress from dramatic growth in RE. The 2013 update cited a healthy pipeline of RE development and considered that the 2020 target could be exceeded by 50%. There is a place for appropriately placed wind farms, but no need to extend the degree of harm or super weight the RE benefits in the balancing exercise. Significant growth is proposed, with eight major RE schemes recently announced, none of which are on-shore wind energy development. The proportion of RE in this Government has risen from 3% to 4.2%.
99. Local communities should be given greater say in determining the planning balance. Targets are being met and the need is less pressing, therefore greater weight should be given to the environment. The Secretary of State's recovery of decisions has resulted in more discrimination and the rejection rate has fallen from 16% to 38% in 2014. The 2013 Ministerial statement provides that need does not automatically override other considerations, requires particular attention to be given to cumulative impacts, states that impact can be as great in flat areas, requires great care with heritage matters, and proper weight to protecting local amenity. The proposed RVWF fails all these considerations. Local residents oppose the scheme, there would be cumulative visual and noise effects, the

turbines would be seen over considerable distances in the flat landscape, and the setting of the Grade I listed Howden Minster would be severely compromised. There have been adverse effects on local residents living near to Sixpenny Wood wind farm, and near to other turbines, which have been passed by the system. RVWF would result in turbines to both the east and west of Spaldington. It would not be possible to determine the source of noise. The community oppose this scheme for sensible reasons, and the appeal should be dismissed.

100. Dr Peter Halkon [Lecturer in Archaeology University of Hull].⁹⁰ The appellant's assessment underplays the significance of the archaeology of the Foulness Valley. The appeal site lies within a classic wetland landscape which has seen intensive human activity for much of the last 10,000 years. Within the wider Foulness Valley two Iron Age log boats, a medieval timber bridge, an Anglo-Saxon trackway and Anglo-Saxon boat have been found. The Hasholme log boat, for which the trees were felled c 322-277 BC, was found 2 km from the appeal site.⁹¹ The Anglo-Saxon remains date from around AD 455 to AD 610 and were found at Welham Bridge, some 400 m from the proposed development, within alluvial silt and peat deposits.⁹² The geophysical survey carried out identified features which are likely to relate to Iron Age production or Roman settlement activity. A five tonne slag heap found at Moore's Farm dates from around 300 BC.⁹³ The appellant's survey also confirmed the archaeological landscape revealed as cropmarks. T2 would cut across a rectilinear enclosure with a double ditch likely to be of Iron Age or Roman date. T3 and its services would cut across a whole series of linear features and enclosures. However, this survey is not necessarily effective in these conditions, as it only penetrates 1.5 m below the ground surface and would not detect organic remains such as timber structures or boats. Archaeological remains from the Bronze Age, Neolithic and Mesolithic are buried by later alluvial deposits. The latter could be up to 4 m below the present surface, and no assessment of the depth of deposits has been carried out by the appellant.
101. Piled foundations are proposed. But EH advises that the most effective method for mitigating the impacts of piling on significant archaeological remains is to adopt an avoidance strategy, whereby piles are located away from archaeological sensitive areas. Micro-siting would just relocate the problem. Piling could damage the local hydrology, and the presence of heavy machinery would compress peat and alluvium deposits.
102. The mitigation strategy for *in situ* preservation is fundamentally flawed and the wind farm development would do irreparable damage to invaluable and irreplaceable archaeology and palaeo-environmental evidence. Infilled ditches associated with Iron Age or Roman settlements are likely to contain ecofacts preserved in wet and/or anaerobic conditions, where any archaeological excavation would require a lengthy and expensive programme of palaeo-environmental analysis. The appellant acknowledges the potential presence of Iron Age log boats, but no detailed contingency for excavation, recovery and

⁹⁰ ID7.1-4 and ID23.

⁹¹ Mr Bourn for the appellant states that this is about 3.4 km from the appeal site. T3 would be 4.6 km from the Hasholme log boat site [scaled from OS].

⁹² T3 would be 1.1 km from the Welham Anglo-Saxon remains [scaled from OS].

⁹³ T3 would be 1.4 km from the slag heap found at Moore's Farm [scaled from OS].

conservation has been made should they be discovered. Experience with the Hasholme log boat shows that there is no guarantee of the long-term survival of such remains, which are best left *in situ*.

103. The landscape of the Foulness Valley is vitally important in understanding its archaeology and this would be destroyed by the presence of the wind turbines. Dr Halkon's presentation to the Inquiry is at ID7.4 and includes maps showing the location of iron-working sites in the locality, the location of Moore's Farm slag heap, Welham Bridge Anglo-Saxon boat and trackway, the proposed locations of T2 and T3 in relation to cropmarks⁹⁴, along with details about the Hasholme log boat.
104. John Whitton [Local resident]. Mr Whitton resides at Warham Farm and is a shepherd who also trains and sells sheep dogs, and so is in his fields most days. The proposed turbines would be seen and heard all day. When in training the dogs would not hear commands properly, especially in the larger field that is closest to the proposed wind farm. This field is used to train dogs and to show prospective purchasers the dogs working. In answer to my questions Mr Whitton said that commands for the dogs were made by whistles, which could be heard up to half a mile depending on the wind. Mr Whitton demonstrated the range of whistles used for the Inquiry to hear. Considerable work has been undertaken on the property to improve wildlife, including digging three ponds. The effects of the turbines on birds flying near to the River are not known. The outlook from the house is towards a lake and the turbines would be seen behind it and a wood. The size of the turbines would make the wood look like a hedge. The outlook from the property would be spoilt.
105. Janice Chadwick [Local resident].⁹⁵ The proposal would be potentially catastrophic for the livery and training centre at Fir Tree Stud, which is located about 1.5 km to the south of the proposed turbines. There is no intervening screening and those who work and live at Fir Tree Stud, along with clients, would have no respite from either the construction or the wind farm itself. It is intended to expand the enterprise to include larger dressage and show jumping competitions. Horses are hard wired to see and react to movement at a long distance and are sensitive to noise. Horses would feel the vibrations from piling even when in their stables. Resident horses may possibly learn to live with it, but most visiting competition horses would not have wind farm experience. If clients perceive this to be an unwelcoming environment they would go elsewhere. For insurance purposes it would be necessary to review the risk and make changes necessary in order to reduce, mitigate or manage any additional risks associated with the construction of the wind farm. These might be untenable, where daily turnout on paddocks all year round is advertised. Lack of turnout could have health implications for horses. ID13 includes a plan showing the circular hacking route used to and from Fir Tree Stud, which includes the official dead end bridle path.
106. Mary Lunn [Local resident].⁹⁶ Spaldington would lie between two large wind farms, and the cumulative impact on top of the large number already in the area

⁹⁴ The plan attached to ID18 shows cropmarks recorded in English Heritage's National Mapping Programme.

⁹⁵ ID13.

⁹⁶ ID10.

would be overwhelming. Oak trees and hedgerows in the area would be dwarfed by the size of the turbines and would not make the development acceptable. Land either side of the Foulness River has not been built on because it is too wet, and so it would be difficult to build large turbines. Foulness over the centuries has been an important focus for human activity. It would be vandalism to put a wind farm on this site and risk the destruction of such invaluable archaeological deposits. Noise problems from a single turbine at Seaton Ross have not been resolved so what hope would there be to resolve any problems from wind farms either side of Spaldington. The RE benefits of the appeal scheme would not outweigh the considerable harm to the setting of Howden Minster, residential amenity, cumulative landscape and visual amenity, and fragile but important archaeological sites on the Foulness River.

107. Stephen Lunn [Local resident].⁹⁷ The photomontages do not represent the visual impact of the proposed turbines. Such giant industrial structures, so utterly out of scale with the natural landscape, can dominate and distort a view. The proposed turbines placed only 1.5 km from the eastern end of Spaldington Main Street would be overpowering. From the area around the junction of Spaldington Lane and Willitoft Road Sixpenny Wood wind farm is visible nearly 6 km away to the south. With turbines at Spaldington Airfield, Rusholme and River Valley the area would be in the middle of a wind farm landscape. Site access is a concern because ground conditions might demand that far more traffic than anticipated is sent via Spaldington Lane, Willitoft Road and Main Street. Residents are already facing disruption from construction of the SAWF. Strict conditions would need to be imposed if permission was granted as the developers of SAWF are pressing to be allowed to increase the rotor diameter to 99.8 m from 92 m. Should the appeal scheme be granted planning permission and no suitable bridge construction prove to be possible then no turbines on the Spaldington Parish bank of the River Foulness should be allowed.
108. Gillian Craven [Local resident – speaking on behalf of the occupiers of the five dwellings at Moat Farm]. The appellant has underestimated the impact of the proposal on the residents of Gribthorpe. The wind farm would harm the peace and tranquillity of the village. There are no intervening trees to provide screening. The separation distance of 1,200 m would be inadequate. The planning system should provide protection from such development as there would be no compensation for any loss of the value of houses. This area has more than its fair share of wind turbines.
109. Dr Peter Ayling [Ramblers' Association].⁹⁸ The Ramblers oppose the development. The area has a good network of definitive and permissive rights of way. Some of these have been promoted as circular routes. The Trans Pennine Trail runs along the banks of the River Ouse and was used by over 21,000 walkers in 2013. The network is a valuable asset and has further potential as a tourist attraction. The proposed development would increase the trend set by approval for SAWF for the area around Spaldington to become a landscape with wind turbines. The two wind farms would occupy a significant proportion of the view from these paths, and would have a serious detrimental effect of the beauty

⁹⁷ ID11.

⁹⁸ ID12.

of this countryside, especially considering the other large wind turbines in operation or consented further afield.

110. Kathryn Whitworth [Local resident].⁹⁹ Ms Whitworth previously lived near to a wind farm where the impact was enormous. The unremitting noise was worse at night when the background silence served only to focus on the continuous “slap slap slap” of the blades, which affects sleep. Sleep deprivation makes people irritable. Closing windows is not a solution on hot summer nights, and you do not get used to the noise. Shadow flicker was a real problem that was like strobe lighting and prevented reading. It is not true that shadow flicker only happens up to 10 blade diameters away, as this was about 13 diameters. Up close turbines are overpowering and unwelcoming. The turbines caused stress, affected health and caused problems that have only been resolved since moving away. Turbines should be no nearer than 2 km from dwellings.
111. Guy Bramley [Local resident]. The permitted SAWF and the proposed RVWF would be too close together. Spaldington village would be in the middle, with wind farms to both west and east, and Sixpenny Wood wind farm to the south. In this flat area these wind farms would dominate Howden Minster and destroy the area.
112. Margaret Cockbill [East Riding Branch CPRE].¹⁰⁰ CPRE objects to the proposal because the cumulative effect would be unacceptable. Local residents and potential tourists welcome the unique character of the area with its peace and tranquillity. The turbines in this flat, low-lying landscape would have an overwhelming and claustrophobic effect. Residents would be surrounded. The turbines would dominate the skyline and the underlying landscape would not be able to be appreciated. The tranquil setting of Howden Minster, which is part of the historical gateway to the East Riding would be adversely affected. The impact on the view from the M62 is of great concern. Ramblers and horse riders using country lanes and bridle-paths would be affected by the proximity of the turbines. With the number of consented turbines in the area the cumulative effect can no longer be ignored, especially since the original target for energy production in the East Riding has long since been met.
113. Cllr Victoria Aitken [Ward Councillor].¹⁰¹ Cllr Aitken refers to the unanimous decision of the Planning Committee to refuse the application and to the up-to-date information submitted by SPC regarding the number of turbines consented and the cumulative impact, which convinced Members that there were already too many turbines in the area. Government policy provides that the planning concerns of local communities should be heard and taken into account. Members listened to the concerns of Howdenshire residents, respected and agreed with those concerns, and accordingly refused the application. The Howdenshire landscape, with its matrix of fields surrounded by hedgerows and trees, is anything but ‘ordinary’. It bears little resemblance to that described in LCT5 and LCT7 of the 2005LCA. Local residents have experience of other turbines in the area and have based their judgement on this, and there is concern that allowing this scheme would result in more turbines, as has occurred in other areas. The East Riding already hosts more than 7% of all the turbines in England, but has

⁹⁹ ID14.

¹⁰⁰ ID15.

¹⁰¹ ID19.1 and ID19.2.

less than 2% of the country's area. There is no need to impose more turbines on this small area, as the UK's 2020 RE target will be achieved without RVWF. Tourism is growing in the East Riding and there are projects to promote the attractiveness of the area, and to encourage walking, canoeing, cycling and riding. The proposed wind farm would have a devastating impact on the home, life and work of the occupier of Warham Farm.

The case for the appellant

The appellant considers that landscape character and visual amenity, residential amenity, cultural heritage, noise and equestrian activity, along with policy considerations, demonstrate that the environmental, economic and social impacts of the proposed development would be acceptable. The main points are as follows.¹⁰²

Landscape character and visual amenity

114. The conclusions of the Inspector in the *SAFW/SCWF* decision may not be binding in any formal sense, but it is unusually instructive to be able to consider detailed findings about commercial scale wind farms located so close to the village of Spaldington and for the SCWF scheme, about a kilometre away and within the same local landscape character area. Unless there has been a material change in circumstances then it might reasonably be expected that a consistent view would be reached here. The Inspector concluded that whilst the effect on landscape character and the impact on visual amenity would in isolation or in combination be significant, the overall effect would not be so unacceptable as to justify dismissing the appeals, and that the schemes would not conflict with the objectives of JSP Policies SP1 and SP4 or LP Policies EN2 and EN19.¹⁰³
115. RVWF would be smaller than the SCWF scheme, considerably further away from Spaldington village, and much further away from any residential dwelling. Other things being equal, the conclusions in the *SAWF/SCWF* case regarding the impact of SAWF plus another commercial scale wind farm on the other side of the village within LCT7 should remain perfectly valid.
116. The effects on local landscape character relating to the proposed development on a solus basis did not form part of ERYC's Statement of Case or the reasons for refusal, which referred only to significant adverse cumulative effects in combination with consented projects. The only consented wind farm considered relevant to the reason for refusal was SAWF. The Ivy House Farm scheme, which is now in screening, is not a material consideration in the determination of this appeal.
117. The IPD concludes that the local area is in Zone 4 and has the lowest sensitivity to commercial wind farm development. Background assessments are a starting point and they consider the intrinsic sensitivity of areas. It is necessary to understand specific sensitivity to a particular type of development and a specific proposal. The appellant has done this using all such background studies, and then examination on site against well understood sensitivity criteria. Whilst the appellant's expert does not rely on the conclusions of the IPD, having

¹⁰² Based on closing submissions at ID28.

¹⁰³ CD5.1 paragraph 133.

considered factors such as scale, landform, pattern and complexity, settlement, skylines and intervisibility and perceptual aspects, her professional judgement is that the sensitivity of LCT7 to this scale of wind farm is low.¹⁰⁴

118. The characteristics of the landscape are that it is flat, open, sparsely settled, undesignated, 'ordinary', big fields, big scale, big skies, lacking in complexity, influenced by agriculture, including other development and unnatural. Whilst parts of the landscape around Spaldington may have more trees and feel more enclosed with smaller fields, that is the character of Spaldington village and immediate vicinity and not the character of the appeal site. Indeed, the presence of trees and woodland around the village is helpful in containing and screening views and providing separation between SAWF and the proposed RVWF.
119. SPC suggested that the receiving landscape is now of higher sensitivity because of existing and consented developments. However, the logic and rationale of this statement is not clear because the underlying landscape has not changed. The magnitude of change brought about by an additional scheme may be different, but this is not the same thing as sensitivity. Wind farms in this area are becoming part of the landscape and it might properly be termed a "landscape with wind farms", but their presence does not alter the underlying key characteristics. Such underlying character would prevail with the RVWF scheme. There are a number of scattered wind turbines across the landscape but RVWF would fit with this pattern.
120. SAWF would be sufficiently separated from RVWF, at a distance of about 2.8 km, to appear as a different wind farm. However, SAWF was one of the design references for the RVWF scheme. Both schemes contain a similar number of turbines in a reasonably compact but irregular cluster; turbines are evenly clustered and would be the same or similar height. Accommodation of large wind turbines in what is a flat landscape which lacks complexity is assisted by the absence of very few elevated viewpoints. Based on the assessment viewpoints, significant effects on views in the context of the consented baseline environment would extend out to about 7 km.¹⁰⁵
121. The construction of SAWF and RVWF would leave views to the north and south of Spaldington Village unaffected by larger scale wind farm development. This would be appropriate in that the east/west alignment of the village means that the majority of the houses are oriented such that they either look north or south. RVWF would be sufficiently well separated from Spaldington and from the other settlements in the area including Howden, Gribthorpe, Foggathorpe, Holme-on-Spalding-Moor and Gilberdyke.
122. The main gateways and routes into Spaldington Village, used by residents from the A614, along Spaldington Lane and Willitoft Road would not be unacceptably affected, notwithstanding that some visual change would occur. The PROW to the south of Spaldington, namely the Howden 20, Spaldington Strider, Spaldington Stroll would not be directly affected. The appeal site does include a short section of public bridleway. This comes to a dead end and is away from the main path network used by people undertaking recreational

¹⁰⁴ PoE8.

¹⁰⁵ Ms Oxley explained that reference to 10 km in her proof of evidence was the product of 5 km wide bandings within the original ES.

activities from the village. The impacts of the proposed SCWF scheme on public rights of way, which would be more harmful than those brought about by RVWF, were found to be acceptable.

Visual component of residential amenity

123. The reason for refusal makes no mention of impact on residential amenity generally or specifically on any property. The separation between what is a private interest and what should be protected in the public interest is tolerably clear; it has been the subject of particular focus in wind farm cases since the decision at *Enifer Downs*. There needs to be a degree of harm over and above an identified substantial adverse effect on a private interest to take a case into the category of refusal in the public interest. This has been expressly endorsed by the Secretary of State.¹⁰⁶ Changing the outlook from a property is not sufficient. Indeed, even a fundamental change in outlook is not necessarily unacceptable. ERYC sought to introduce a test based on "pervasiveness" which is neither necessary nor helpful. Wind turbines could be pervasive without being so unpleasant, overwhelming and oppressive that they would render a residential dwelling house an unattractive place in which to live. Pervasive connotes a lower degree of harm than the well understood test and should be rejected.
124. The closest turbine would be about 1,014 m from the dwellings at Warham Farm, which is well beyond the 800 m threshold distance recognised as likely to be problematic, and beyond the distance at which any English wind farm has been found to have an unacceptable impact on a single residential dwelling. Distance is not the only criterion, but is likely to be the primary factor. Whilst all six turbines would be in view, they would be well spaced and the minor degree of overlap between the blades of T4 and T6 would not be a serious aggravating feature. Visual permeability would be high and views through and towards the landscape and skyline beyond would remain.
125. Mr Whitton gave very personal evidence regarding his sheep farming and sheep dog training business. However, there are countless examples of upland wind farms around and through which working sheep dogs are able to operate. No actual evidence was provided that at the levels of noise experienced at Warham Farm the sheep dogs would not be able to hear commands.
126. The situation at *Brightenber* was significantly different to the situation which would pertain at Warham Farm, including stand off distance, orientation of the dwelling, arc of view, availability of screening, views from rooms, views from outdoor amenity space and conservatory, and shadow cast.
127. At no dwelling would the turbines be visually overbearing, overwhelming or oppressive, such that they would be rendered unattractive places in which to live. Given the scale of the development, the spacing of the turbines, the distances involved, along with the orientation of properties and amenity space and openness of view, any effects of RVWF on outlook would not cross the public interest line.

Cultural heritage

128. The potential for SAWF and SCWF to have an adverse impact on cultural and heritage assets was not a reason for refusal of those schemes. The Inspector in

¹⁰⁶ Paragraph 10 of the *Burnt House Farm* decision at CD5.2.

that case found, in relation to views from the Trans Pennine Trail, the A63 link from the M62 and the A614, that whilst there would be a visual impact, the ability to see and appreciate the architectural and historic significance of the Minster would not be obscured. Overall, he concluded that the impact of both, or either scheme, on the setting and significance of Howden Minster would be medium adverse.

129. RVWF on its own, and in combination with other consented wind farms and single turbines, would have a moderate impact on limited aspects of Howden Minster's setting. However, those elements of setting represent a small proportion of the setting overall, which is reasonably extensive and panoramic. When considered in the round, the harm to heritage significance arising from the proposed development would be limited and clearly less than substantial. In relation to Holme Hall, the proposed development would have no more than a moderate adverse impact on one aspect of the setting of Holme Hall and overall, no more than a minor impact.
130. RVWF would result in adverse effects of moderate magnitude in limited areas of the setting of Howden Minster, primarily from the Trans Pennine Trail to the south-west of Howden and on the M62 overbridge. However, these elements of the setting are not considered to be key aspects of the setting, which go to the heritage significance of the Minster overall. The impact on significance would be moderate-low overall. In relation to the other designated assets there would be: (1) a minor impact on the significance of Church of All Saints, Holme-on-Spalding-Moor, (2) a minor impact on Holme Hall, (3) no impact on St. Michael's Church, Eastrington, and (4) no more than a minor impact on 21 other Grade II listed buildings within the study area. Where there is harm to a heritage asset, the effect of section 66(1) is that the harm must be given "considerable weight" in the balance, creating a "strong presumption" against the grant of planning permission.
131. Paragraph 134 of the *Framework* applies in relation to the various designated heritage assets. The modest degree of harm identified in this case should be weighed against the wider benefits of the application and the public benefit of mitigating the effects of climate change. It is clear that the benefits of this scheme outweigh any harm within paragraph 134. Paragraph 132 highlights the importance of the "irreplaceable" nature of heritage assets, and that is why policy indicates that the reversible nature of a development is a relevant factor to be taken into account when assessing the acceptability of impacts. Reversibility inevitably works in favour of a grant of permission.¹⁰⁷ This is not a case of the interest of RE trumping the interest of cultural heritage. The proposed development represents an acceptable solution in which both important interests can satisfactorily co-exist.

Archaeology

132. The need to handle the archaeological potential of the appeal site sensitively has always been understood. The detailed archaeological work already undertaken, in combination with the proposed mitigation strategy agreed by HAP

¹⁰⁷ Paragraph 2.7.17 of EN-3 directs that when undertaking an assessment of the likely impacts of wind turbines on both the landscape and cultural heritage assets, the decision maker should take reversibility into account.

on behalf of ERYC, is compliant with section 12 of the *Framework*. A condition is proposed that would ensure the mitigation strategy was implemented, and it is envisaged that such a scheme would include the power to stop work in appropriate circumstances to allow for assessment, and either removal or *in-situ* preservation of significant finds, as appropriate.

133. The mitigation strategy would include a strip, map and sample exercise secured by condition. Piled foundations for turbines and bridgeheads would mean that hydrological conditions of the site would be unaltered. Access tracks and the construction compound would be built by stripping of top soil, providing a layer of terram and then a layer of hard core, so that any archaeological remains below the topsoil would be preserved *in situ*. The micro-siting allowance would be used to move turbines away from any archaeological remains requiring preservation *in situ*. This would be feasible as any such features, such as a log boat, would be likely to be limited in size.

Noise

134. Neither ERYC nor SPC object on the grounds of operational noise impact. Government guidance has consistently incorporated ETSU-R-97 as the approved methodology for assessing the impact of noise from wind turbines. The *Framework* specifically incorporates the guidance contained within EN-1 and EN-3. These provide that ETSU-R-97 should be used, and providing that it is demonstrated that a particular scheme would comply with an ETSU-R-97 compliant assessment, a decision maker may well decide to give limited weight, or further still no weight, to claimed impacts on amenity.
135. Predicted wind turbine immission levels using a candidate turbine would meet the ETSU-R-97 derived noise limits under all conditions and at all locations for both quiet daytime and night-time periods. A number of local residents have raised vague allegations of impacts on health, but there is no substantive evidence to demonstrate that such harm would be caused operating at levels which central government continues to endorse, based on the most recent scientific research.
136. Excess or Other Amplitude Modulation (OAM) has been discussed at length in a number of inquiries. There remains no consensus amongst the acoustic community regarding the definition, causes, mechanics, frequency, duration or seriousness of amplitude modulation. Government policy and guidance, notwithstanding a number of opportunities to change tack by its authors, has not changed. As recorded in the very recently published IoAGPG, current best practice is not to attempt to impose an amplitude modulation condition. The IoA website advice indicates that the Renewables UK template condition should not be used. The *Asfordby* decision, issued in March 2014, is a clear and up to date statement by the Secretary of State that given the current state of knowledge, he does not consider the research or template condition to constitute a material consideration.¹⁰⁸ The situations at *Turncole* and *Dunsland Cross* were both markedly different because, for whatever reason, based on local circumstances, the principal parties agreed that a condition to control OAM was necessary.¹⁰⁹ No such agreement is made here. It is not possible, given the current state of play,

¹⁰⁸ CD5.34.

¹⁰⁹ CD5.35 and CD5.36.

to construct a lawful condition to control OAM, because the causal mechanism is not known and so it is not possible to devise a scheme to predict and abate it. SPC does not argue for use of the Renewables UK template condition, but for a *Swinford* style variant of a scheme to be agreed.¹¹⁰

137. An OAM condition would be unnecessary, imprecise, unenforceable and unreasonable. This does not then mean that planning permission should be refused. The unquantifiable risk of OAM occurring at RVWF at levels which would be unacceptable, and which might justify refusal of planning permission in the public interest, does not lead to this conclusion. Statutory nuisance remains available as an appropriate statutory code for dealing with OAM complaints.

Equestrian activity

138. The *SAWF/SCWF* decision considered the potential effects on Fir Tree Stud which provides livery, rider training, remedial training and accommodation for visiting stud horses. This found that the turbines, particularly those in the SCWF scheme would not be present in such numbers or in such close proximity to the stables so as to unacceptably affect the operation of the stables, which are some 555 m away.¹¹¹ No general case relating to impact on equestrian activity is made in this appeal. Whilst there is some evidence relating to evolution of the Fir Tree Stud business, nothing that was said would justify a different result being reached this time, particularly given the very much greater separation distances which are involved.

Benefits

139. The benefits in favour of the proposed development include the supply of a material amount of RE and contribution to the achievement of the national target of meeting 15% of the United Kingdom's energy demand from renewable resources by 2020. This remains an important material consideration in its own right, even following the recent announcement by the European Union to remove national targets, which will not take effect until 2020. The scheme would contribute to mitigating climate change and energy security through contributing to a mix of renewable resources in the East Riding and Yorkshire and the Humber, whilst providing RE at lowest cost to the consumer. Direct economic benefit would result, in terms of some local new employment, along with indirect economic benefits, which are recognised by the Coalition Government and highlighted by the submissions from the Renewables Network.¹¹² The scheme would provide local community benefits in the form of tangible community projects, which can be enabled through 25 years of local community funding support. Furthermore, the proposed development would be a wholly reversible form of development that would leave the landscape character and visual resource intact.

Energy policy and context

140. Neither ERYC nor SPC takes a performance related case against the proposed development. There is nothing relating to available wind speed, commercial viability, predicted output, carbon payback or emissions savings which specifically weigh against the scheme in the planning balance.

¹¹⁰ CD5.46.

¹¹¹ CD5.1 paragraph 182.

¹¹² ID1.2.

141. Energy policy is clear. When the relevant policy documents are read together there is no reasonable room for dispute regarding; (1) the seriousness of climate change and its potential effects, (2) the seriousness of the need to cut carbon dioxide emissions, or (3) the seriousness of the Coalition Government's intentions regarding deployment of RE generation. The Roadmap Update, written in November 2013 confirms that on-shore wind continues to have an important role to play in UK energy policy and a long term investment programme underpins that commitment. As with the 2012 Update, the document emphasises the economic benefits presented by RE.
142. It is erroneous to suggest that somehow the need case for onshore wind has abated and that it is necessary that a scheme should do less harm than in circumstances when need was more urgent. EN-1 makes it crystal clear that the need for RE remains urgent. The Secretary of State was explicit in recognising this point in the recent *Treading Bank* appeal decision and that need remained a "very important" factor.¹¹³

Planning policy and guidance

143. JSP Policies SP1 and SP4 have been considered at other appeals. ERYC's officers did not identify any conflict with any development plan policy. Policy SP4(a) applies to every part of the County and serves to protect landscape character. All on-shore wind farms give rise to significant landscape effects and if the rigid application of Policy SP4(a) advocated by elected Members were to be followed then every commercial wind farm in every part of each Regional Landscape Character Area would fail policy. Such an interpretation would fail to facilitate RE development contrary to Section 10 of the *Framework*. In relation to Policy SP1 (ii) and (iv), ERYC has never specifically identified any; (1) skyline, (2) view, (3) edge, or (4) settings to settlements in the Spaldington area, as being "important". The second part of the policy would not seem to apply to Spaldington.
144. LP Policy EN73 is negatively worded, not consistent with the *Framework*, and should be accorded limited weight. Given that Policy EN73 is the RE specific and pre-eminent LP policy for this type of development, based on the approach at *Treading Fields*, the Secretary of State may choose to go straight to the second bullet point first indent relating to decision taking in paragraph 14 of the *Framework*. Policy EN2 states that development which would significantly adversely affect a number of stated interests and which cannot be satisfactorily addressed by use of planning conditions will not be approved. This is not consistent with the *Framework* because it does not countenance support for RE development, which is well sited and designed, but which would result in inevitable landscape harm which cannot be mitigated by condition. The key provision of Policy EN19 is that planning permission will only be granted for development that would be prominent in the landscape and visible over a long distance if visual effects have been minimised. Insofar as this policy is applicable to RE developments, its provisions are inconsistent with the terms of the *Framework*, in that the key test in paragraph 98 is that effects need to be judged on their acceptability, and not on the extent to which they have been minimised. This policy should be interpreted to mean that reasonable measures should be

¹¹³ CD5.21.

- taken to ensure that visually harmful effects are acceptable. In any event, evidence of attempts to minimise harm in this case are manifest and agreed.
145. The Proposed Submission Strategy Document will be submitted for formal examination in May 2014. There were unresolved objections to emerging policies and that by reason of the stage reached in the process, only low-moderate weight should be afforded to any relevant emerging policies.
146. Notwithstanding the approach taken by the Secretary of State at *Treading Fields*, a more cautious approach should be preferred in which for each and every potentially relevant policy, a decision about; (1) consistency with the *Framework*, (2) weight to be attached pursuant to paragraph 215 of the *Framework*, and (3) compliance or otherwise of the proposed development, will need to be made.
147. The *Framework* makes clear its support for RE proposals in particularly trenchant terms: encouraging the deployment of RE is explicitly included within the Core Principles, delivery of RE is "central to the economic, social and environmental dimensions of sustainable development". The proposed development is a form of sustainable development within the meaning of the *Framework*. There is a responsibility on "all communities to contribute to" renewable and low carbon energy, need for renewable generation projects does not need to be demonstrated by the appellant, and all applications should be granted permission provided only that the impacts are (or can be made) acceptable. Furthermore, the decision maker should follow the approach set out in EN-1 and EN-3.
148. In his Ministerial Statement of 6 June 2013, Secretary of State Davey reaffirmed that: "appropriately sited 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". RVWF would be appropriately sited and should play its part in our low carbon future. Taken together and properly understood, the Ministerial Statements did not constitute a change in Government planning policy in relation to onshore wind development and deployment. Nor did they signal any diminution in the need case for onshore wind, or direct the decision maker to actually do anything differently.
149. There is nothing in the *Guidance* that does or should be taken to imply a recalibration of the threshold of acceptable change, and it does not say that any greater weight should be afforded to local concerns. None of the recent Secretary of State decisions state that by reason of the Ministerial Statements, draft National Planning Practice Guidance or the *Guidance*, any additional weight to any finding of harm has been applied. There is reference to the "planning concerns of local communities" that need to be "properly heard in matters that directly affect them". This reinforces the need to distinguish between planning concerns that genuinely affect the local community, and generalised objections. There is no exhortation to give such concerns any special or extra weight, indeed it would not be lawful to do so.

Conclusion

150. The adopted development plan policies viewed through the lens of the *Framework*, the various layers of Council policy and guidance, the planning history, the EIA process and the evidence, together comprise a narrative which leads inexorably to the grant of planning permission on the appeal site for the proposed development. In summary, the East Riding has the most potential for

commercial wind energy in the region. There is substantial opportunity for additional commercial wind power to the east and west of the authority. ERYC adopted the IPD as guidance to develop RE in those parts of the District with the lowest sensitivity, and intended the IPD to be used as guidance by developers, officers and elected members alike, and stands by the document.

151. The IPD identifies LCT7 as being the least sensitive landscape character type to commercial wind power in the whole of the District. LCT7 is a relatively small area of land and within it, the proposed development lies in the most open, large scale part of it, away from settlement so far as that can be achieved in what might properly be termed an Area of Search. The authors of the IPD had evidently considered other possible alternatives but decided that by reason of landscape features, LCT7 was the preferred location. They did so in full cognisance of the potential effects that the introduction of commercial wind turbines would have on landscape character, including views towards Howden Minster and views towards the Wolds. The LVIA concludes that the appeal site and surrounding landscape is of low sensitivity to wind farm development of this size and scale. Professional landscape consultants have come to a view which is consistent with the IPD.
152. As the ES makes plain, material on which ERYC did not question the appellant, the iterative design process reduced the number of turbines down to a level which minimises environmental effects to a point where the impacts of the proposed development would be acceptable. Reasonable measures have been taken in this regard. Minimising effects does not mean to make minimal. The High Court in the cases of *Hulme* and *Lee*, made it plain that the developer was under a duty to minimise effects only to a point where effects would result in satisfactory accommodation and compliance with the adopted development plan when read in combination with other material considerations.¹¹⁴ Furthermore, there is no legal requirement on the appellant to demonstrate that the appeal site is the best environmental option, that no other alternatives exist, or to consider a differently configured scheme on the same site, or the same configuration on a different site – the question is solely one of ascertaining that any adverse effects have been made acceptable.
153. The Inspector at the *SAWF/SCWF* inquiry made conclusions about the local landscape, and its ability to accommodate wind development that are directly applicable here. He concluded that “the landscape around Spaldington is that of an extensive flat landscape with a very open character, an extensive skyscape with long distance views to a wide horizon. These all add up to a landscape that lacks complexity. In this context I can see no real difference between the landscape characteristics of the Airfield and Common Sites. Overall, I consider that the landscape around Spaldington has a moderate/low sensitivity to change”. The Inspector also concluded that “the introduction of either or both of these wind farms, which in many views would be set against the backdrop of existing or permitted schemes, the substantial wide, open and flat landscape of the East Riding would remain the dominant feature and still would be described as a landscape with wind farms rather than a wind farm landscape. In this context, the change would not be unacceptable”. In relation to the cumulative impacts for residents in Spaldington, the Inspector concluded that “Such is the

¹¹⁴ CD4.1 and CD4.3.

separation from the village and given the compact nature of the layout of the Airfield scheme, I consider that the character of the village would not be defined by the presence of the wind farms nor would they appear dominant or oppressive". The only reason for distinguishing between the SAWF and SCWF schemes was what the Inspector considered to be unacceptable harm to living conditions of nearby residents. RVWF is a smaller scheme than SCWF, considerably further away from the settlement of Spaldington and much further away from any residential dwelling. The only reason why SCWF was refused planning permission is not a problem besetting RVWF.

154. The proposed development was acceptable to the professionally qualified Landscape and Visual Impact team within ERYC, the case officer, the Director of Planning and Economic Regeneration, the Team Leader for Strategic Development Control and the Head of Planning, who are very experienced in dealing with commercial wind energy development, and were fully aware of and understood the up to date pattern of planning decisions for wind farms and single turbines in the local area. The proposed development accords with national and development plan policy relating to the provision of RE. The appeal scheme would make a valuable contribution towards meeting the national need for RE. The proposed development would be reversible and no permanent harm would be caused to landscape character or visual amenity (or to the significance of heritage assets).¹¹⁵ Reversibility can only militate in favour of the grant of planning permission.
155. The determination must be made in line with policies that are actually in place, based upon the wording actually recorded in the documents. This is highlighted in circumstances where the local MP refers to political considerations that are not reflected in the Government and other policy documents actually in place. Policy, whether it be development plan policy, or policy that constitutes a proper other material consideration, is based upon formal, written, statements of policy, rather than matters that are the subject of internal debate within the corridors of Westminster. It has to be, if it is to be part of a fair, transparent and predictable planning system.
156. The proposed development is in compliance with those parts of the development plan which are consistent with the *Framework* when they are read as a whole, as well as ERYC produced guidance which support and explain development plan policies. Planning permission should be granted without delay. Where the policies are absent, out of date or inconsistent with the *Framework* then the second bullet point in paragraph 14 of the *Framework* applies. The consequence of this is that any landscape or visual harm has to engage a public interest in the first place, and secondly, significantly and demonstrably outweigh the public interest, which is propelling this heavily supported RE scheme.
157. The proposed development would involve change. However, change in itself is not unacceptable. Change of this type and magnitude is an acknowledged impact of a policy of deployment of wind turbines in this least sensitive part of the East Riding countryside, which ERYC itself has encouraged and still wishes to encourage through the IPD. The general landscape and visual effects of this

¹¹⁵ Paragraph 2.7.17 of EN-3.

scheme are precisely what ERYC can expect to see, and are the very consequences of the report.

158. There is nothing so special or out of the ordinary here to suggest that the likely significant environmental effects would be unacceptable in the public interest, which the planning system is there to preserve. RVWF would not be a so-called tipping point. ERYC knew the decision in the previous Spaldington appeal and the very specific residential amenity related reason for which SCWF was rejected. ERYC has continued to grant planning permission for single turbines in the area in full knowledge that the Ivy House Farm scheme had been re-submitted and that the RVWF scheme was going to appeal. Notwithstanding this pattern of wind turbine development, professional planning officers still recommended the now withdrawn Ivy House Farm scheme for approval and still recommended approval for RVWF. The concept of a tipping point is a seemingly attractive headline point for SPC to make, but it is not borne out on the ground and it is patently not a view shared by those professional planning officers who know and understand the local area.
159. The evidence has demonstrated that the environmental, economic and social impacts of the proposed development would be acceptable and that planning permission should be granted in the form in which it has been sought. The unilateral obligation provides for a community fund as required by ERYC. It would be safer to give no weight to this consideration in determining the appeal, but it is a vexed question about which some guidance would be welcome.

The case for others supporting the proposed development

One person gave evidence to the Inquiry supporting the proposal, and a summary of their submission is included below.

160. Sam Pick [Director of Renewables Network Ltd].¹¹⁶ Renewables Network supports the proposal because of its potential for investment in the regional economy. Such developments offer real economic opportunity throughout the supply chain providing much needed jobs. Likely contracts from this scheme could be worth up to £21 million over 25 years.

Written representations

Application stage

161. ERYC received 95 letters objecting to the application, including representations from the Rt Hon David Davis MP and Godfrey Bloom, Member of the European Parliament for Yorkshire and North Lincolnshire. Four letters in support were also submitted. The main reasons for objecting/supporting the proposal are summarised in Section 6 of ERYC's Report to Planning Committee of 18 July 2013.¹¹⁷

¹¹⁶ ID1.2.

¹¹⁷ CD12.3.

Appeal stage

162. There were 29 written submissions at the Inquiry stage, and 6 representations about the FEI.¹¹⁸ Some of those who made submissions subsequently appeared at the Inquiry and their views are documented above. Others raised concerns similar to those expressed by ERYC and SPC. In addition, concerns were expressed about the effects of the proposal on residential amenity and local businesses, the setting of Howden Minster, local archaeology, wildlife and horses. Issues were also raised about noise, flooding, construction traffic, radio interference, and the need for the turbines.

Summary of other written submissions to the Inquiry

163. Mr IH Scotter lives near to a wind farm and considers that it has ruined their lives.¹¹⁹ Noise and flicker are physical effects of the 125 m high turbines, the nearest of which is 600 m away. Views of the turbines are a reminder every day of the process since 2005 that resulted in their construction. Construction has blocked bridleways and reinstatement has been inadequate. The loud noise from the turbines is a rhythmical “whump whump whump” and it is not possible to sleep at night with windows open. A complaint to the local Council was investigated, but the Council has not provided any information. The turbines cause flicker in December and January between 0700 and 0830 hours. This was supposed to be rectified, but the outcome was not known at the time the letter was written. Health issues have arisen since the wind farm was completed, and there is concern about not being able to live in the dwelling, and not being able to sell it, or only at a considerably reduced price. Advice has been taken about suing the operator for illness caused or loss of home value, but this would not have sufficient reasonable prospects of success to have legal cover through insurance.

Consultees

164. Consultation replies at the application stage are summarised in section 5 of ERYC’s Report to Planning Committee of 18 July 2013.¹²⁰ Objections or recommendations for refusal were submitted by the following Parish Councils; Spaldington, Holme upon Spalding Moor, Foggathorpe, Bubwith, Gilberdyke, Seaton Ross, Eastington, and North and South Cliffe.
165. Natural England referred to its standing advice and was satisfied that the mitigation proposals would be sufficient to avoid adverse impacts on protected species. The Highways Agency, Environment Agency and Joint Radio Company Ltd had no objection to the proposal.
166. English Heritage (EH) advised in December 2012 that Howden Minster is a Grade I listed building of special interest, and that views of it in its landscape make an important contribution to its significance. EH considers that the proposed wind farm would detract from the visual dominance of Howden Minster, which remains an unchallenged landmark feature with considerable aesthetic

¹¹⁸ Red Folder.

¹¹⁹ ID1.1.

¹²⁰ CD12.3.

value deriving from its architectural interest. It added that if consent was granted the benefits of the proposed development would need to outweigh the harm to the significance of Howden Minster. EH clarified its position in March 2013 that its reference to Howden Minster being an unchallenged landmark feature refers to the ability to view, clearly identify and appreciate the historically designed dominance of the church tower and roofscape over the surrounding countryside, from which derives considerable aesthetic and illustrative heritage value. The cumulative impact in conjunction with other turbine developments would contribute to the surrounding landscape setting of the Minster becoming increasingly characterised by the presence of turbines and the viewer/visitor/residents experience of Howden Minster would be significantly affected and to a degree harmed. EH reiterated its position that the decision maker should be satisfied that there is a clear and convincing public benefit to be derived from the proposed development which outweighs the harm to the setting of Howden Minster.¹²¹

167. Humber Archaeology Partnership (HAP).¹²² HAP provided advice to the appellant about possible archaeological implications of the development in March 2012. In December 2012 HAP recommended a further geophysical survey followed by targeted excavation to provide an informed and reasonable planning decision to be taken, and that if significant archaeological deposits would be affected mitigation measures should be explored to ensure their preservation. In February 2013 HAP commented on the appellant's archaeological report and noted a number of possible anomalies associated with T1, T2 and T3 and some trackways. HAP concluded that there were enough suggestions here to justify a subsequent stage of intrusive archaeological works, in order to investigate the nature of anomalies. However, HAP was prepared to consider a strip, map and sample approach towards turbine bases and access roads, and a watching brief on the cable trenches – and to do this by condition.
168. Yorkshire Wildlife Trust initially objected to the proposal because of concerns about the bird survey, collision risk modelling and cumulative impact assessment for disturbance. Following further consideration the Trust maintains an objection on two issues; (1) concerns about the collision risk modelling and the impact that this would have on the cumulative impact assessment, and (2) concerns regarding the cumulative impact for disturbance.¹²³
169. The Ministry of Defence and NATS/NERL withdrew objections about effects on aviation radar subject to the imposition of appropriate conditions.

¹²¹ PoE3 Appendix 6. The appellant's response and EH's undated recommendation that the application should be determined in accordance with national and local policy guidance is at PoE9 Appendices 4 and 5.

¹²² Appendices 1-3 of ID18.

¹²³ WR1 paragraph 3.3.

Conditions and obligations

170. ERYC and the appellant agreed suggested conditions in the event that the appeal was to succeed and planning permission to be granted. SPC and local residents participated in the without-prejudice round table discussion at the Inquiry about suggested conditions. I also questioned the wording of some conditions and the discussion had regard to the *Guidance*. The outcome of the discussion was a revised list of suggested conditions.¹²⁴ These are dealt with in more detail in the Conclusions section of this report.
171. The unilateral undertaking, dated 16 May 2014, provides for an annual payment of £5,000 per MW of installed capacity to a community benefit fund, for a contribution of £10,000 for trees and woodland to be used in the East Riding of Yorkshire and Kingston upon Hull, for establishing a community liaison forum, and for securing the decommissioning of the site.¹²⁵ I consider the weight which should be given to these obligations in my Conclusions.

My Conclusions begin on page 46 of this report.

¹²⁴ ID29.

¹²⁵ ID2.2.

Conclusions

Preliminary matters

172. The following conclusions are based on the evidence given at the Inquiry, the written representations and my inspection of the site and its surroundings. In this section the figures in parenthesis [] at the end of paragraphs indicate source paragraphs from this report.

173. The ES and FEI reasonably comply with the relevant provisions of the EIA Regulations. I am satisfied that the Environmental Information is adequate for the purposes of determining this appeal, and I have taken it into account in these conclusions. [3]

Main considerations

174. In the absence of any matters set out, about which the Secretary of State particularly wishes to be informed for the purposes of considering this appeal, the evidence indicates that the main considerations here are as follows. [1]

- (1) The effects of the proposed development on its own, and in combination with other wind turbines in the area, on:
 - a) The character and appearance of the area.
 - b) Local amenity and the living conditions of nearby residents, with particular reference to;
 - (i) outlook,
 - (ii) noise,
 - (iii) shadow flicker and other considerations.
 - c) Heritage assets.
 - d) Other considerations.
- (2) The contribution of the proposed development towards the generation of energy from renewable sources.
- (3) Whether any benefits of the scheme would be sufficient to outweigh any harm that might be caused.
- (4) The extent to which the proposed development would be in accordance with the development plan for the area.
- (5) The extent to which the proposed development would be in accordance with the *National Planning Policy Framework* (the *Framework*).
- (6) Whether any permission should be subject to any conditions or obligations and, if so, the form that these should take.
- (7) Overall conclusions.

The remainder of this report addresses the matters outlined above, and my recommendation is based on these findings.

(1a) *Character and appearance*

175. East Riding of Yorkshire Council (ERYC) adopted *Planning for Renewable Energy Developments Interim Planning Document* in April 2009 (IPD) to promote the development of renewable energy (RE) technology in locations identified as having the capacity to accommodate such development. The assessment takes into account such issues as the potential impacts on the local landscape and visual amenity, biodiversity and nature conservation, and impacts on local communities, amongst other planning considerations. The IPD identifies Zones of Natural Heritage Sensitivity to classify sensitivity of the range of landscape character areas, where Zone 1 includes landscapes of greatest sensitivity, and Zone 4 those with little or no sensitivity to wind power developments. The appeal site lies within Zone 4. However, existing wind energy development is listed as one of a number of principal constraints in the IPD, which advises that a separation distance between established schemes and potential schemes should be provided in most cases, to avoid negative cumulative impacts, and that development should be assessed using site specific considerations such as landscape and cumulative visual impacts and the height of the turbines. It adds that this may mean that a larger separation distance is appropriate in some locations, particularly where the landscape is relatively flat.¹²⁶ The IPD also states that ERYC would keep the document under review and update it as necessary. The IPD has not been updated to reflect the changes in the locality, especially the number and size of constructed and consented turbines, which has implications for cumulative impacts. It seems to me that this limits the weight, in determining this appeal, that should be given to the IPD's finding that the appeal site is within Zone 4. [21,31,40,63,117,151]

176. *Low carbon and renewable energy capacity in Yorkshire and Humberside 2011* is more recent than the IPD, but it highlights that whilst the information it presents is appropriate for a strategic regional study, it is not a sufficient basis for planning decisions about individual RE proposals.¹²⁷ These documents, along with ERYC's *Landscape Character Assessment 2005 (2005LCA)*, provide a starting point for considering landscape impact, but given that recognising the intrinsic character and beauty of the countryside is a core principle of the *Framework*, more reliance should be placed on site selection and screening on a case by case basis. The Landscape Institute's third edition of the *Guidelines for Landscape and Visual Impact Assessment (GLVIA3)* states that such capacity studies are useful preliminary background information for assessment, but not a substitute for individual assessments of the susceptibility of receptors in relation to change arising from the specific development proposal. It also provides advice on the completion of landscape and visual impact assessment (LVIA), and cumulative landscape and visual impact assessment (CLVIA). I deal first with the solus effects of the appeal scheme and then consider cumulative effects. [64,65,116]

Solus effects

177. GLVIA3 defines landscape receptors as aspects of the landscape resource with potential to be affected by the proposal. Visual receptors are individuals or groups of people with potential to be affected by the proposal. For both landscape and visual effects the GLVIA3 methodology combines sensitivity of

¹²⁶ CD3.4 volume 1 section 3.3.

¹²⁷ CD3.5 paragraph 2.3.

receptors (value of receptor/particular view and their susceptibility to the change proposed) with magnitude of effects (size/scale, geographical extent, duration and reversibility of effects) to indicate the significance of effects. The baseline for LVIA includes existing turbines and those under construction.¹²⁸ [22]

178. GLVIA3 also notes that people living in an area might be affected by changes in views and visual amenity, and that the visual receptors most susceptible to change are likely to include residents at home or engaged in outdoor recreation. It adds that effects on private property are frequently dealt with through 'residential amenity assessments', which are separate from LVIA. This distinction is recognised by dealing in this section only with the visual amenity of residents as a character and appearance issue, and dealing separately with deprivation of outlook from specific dwellings as a living conditions issue later in this report. The appellant acknowledges significant visual impacts across a number of properties located in closest proximity to the development area.¹²⁹

179. EN-3 advises that the length of time the development would be operational is a material consideration. The appeal scheme would have a limited duration of 25 years, and conditions could ensure that decommissioning reversed significant harmful effects. However, this would be a substantial period for those who would have to endure any adverse effects from the proposed wind farm. RVWF would be a long-term development and the reversibility of the scheme should not be a determinative factor in assessing the effects of the proposal on the character and appearance of the area.

180. It was evident from my site visits that the area that contains the appeal site is characterised by an extensive flat landscape with a very open character, large skies and long distance views to a wide horizon. It is a landscape that lacks complexity, although the fields in the immediate vicinity of the village of Spaldington are smaller and field boundaries contain more hedgerow trees.¹³⁰ There are also some wooded areas in the vicinity, such as Warham Plantation, which help to convey a sense of scale in the landscape. Where views of this landscape include the River Foulness it is a feature of interest which adds to the landscape value of the area. The Inspector in the SAWF/SCWF appeal considered the landscape around Spaldington to have a moderate/low sensitivity to change, but I do not consider that this finding would apply to the area to the north-east of Spaldington that includes Warham Plantation and the river. Overall, and on a solus basis, I consider that this landscape currently has a medium sensitivity to the change that is proposed. The appellant acknowledges that the appeal scheme would have a moderate adverse effect up to about 2 km from the turbines on National Character Area 39: Humberhead Levels and LCT7. RVWF would in the appellant's submission have a moderate/major residual effect up to about 2 km from the turbines on LCT5.¹³¹ [15,18,19,20,61,62,67,118]

¹²⁸ GLVIA3 paragraph 7.13. Existing turbines are documented in ID3.

¹²⁹ PoE8 paragraph 9.5. Paragraph 9.21 identifies significant cumulative effects at Cottage Farm, Arglam Dairy Farm, Warham Bungalow and Warham Farm. Paragraph 9.24 refers to significant visual impacts at Fir Tree Farm, Welham Bridge, Gribthorpe, Bursea, Spaldington and Oak Tree farm.

¹³⁰ This is apparent from FEI Figure 3.17.

¹³¹ PoE8 Appendix 3.

181. The RVWF would become a characteristic feature in this landscape that would diminish the existing characteristics outlined above. This would give rise to a medium magnitude of change. Noise from the turbines would, to some extent, adversely affect the tranquillity of the area at times. However, with road traffic noise from the A614 and agricultural activity in the vicinity, the locality is not, for the purposes of applying the provisions of both the *Guidance* and the *Framework*, an area that has remained relatively undisturbed by noise. Any impairment of tranquillity here would not result in substantial harm to the landscape character of the area. RVWF would, on its own, have a moderate adverse effect on the landscape resource. [108,112,119]
182. The assessment of visual effects concerns the effects of the proposed wind farm on the views available to people and their visual amenity. The zone of theoretical visibility (ZTV) for such large and moving structures in this landscape is extensive. Visual receptors here include people living and working in the area, along with visitors and those engaged in recreational activities. These people are likely to be particularly susceptible to the change in views that would result from the proposed turbines, and there is evidence that the visual amenity of the area is valued. GLVIA3 notes that residents at home, especially using rooms normally occupied in waking and daylight hours, are likely to experience views for longer than those briefly passing through an area. I consider that visual receptors here would have high sensitivity to the change in views that would result from the appeal scheme.
183. The appellant's assessment acknowledges that RVWF would have significant adverse visual effects from 12 of the 25 viewpoints assessed, and from eight of the fifteen settlement receptors assessed.¹³² In terms of visual effects, RVWF by itself would fundamentally change the view from many local vantage points. This change would be of major or major/moderate significance from nearby vantage points, but more generally of moderate significance, reducing to minor or negligible with distance.
184. Overall, the solus effects of the proposal would have a moderate adverse effect on the character and appearance of the area. However, of more significance in this case are the likely cumulative effects, which I consider in more detail next.

Cumulative effects

185. The baseline for CLVIA comprises the LVIA baseline, along with potential schemes not yet present in the landscape, but with planning consent or the subject of a valid planning application.¹³³ An assessment of cumulative effects can either focus on additional effects of the appeal scheme, or the combined effects of all the past, present and future proposals together with the new project. In this case an additional or incremental approach to considering cumulative effects might not convey properly the overall effects on the area between the low lying Spaldington area and higher ground at Holme-on-Spalding-Moor. This area is visible in panoramic views from Church Hill, from

¹³² PoE8 Appendix 3.

¹³³ Existing and consented turbines are documented in ID3. IHWF although at scoping stage arises from a previous appeal scheme and so firm information exists on which to base an assessment. Therefore it warrants some consideration in the CLVIA, but the stage it has reached limits the weight to be given to it.

where the area is seen as having a particular identity and local distinctiveness in the wider landscape.¹³⁴ I have therefore considered the combined effects of existing and proposed turbines, including the appeal scheme, on the landscape resource, and on views and visual amenity. [34,55,153,158]

186. I deal first with cumulative landscape effects. The appellant considers that the residual cumulative effect on landscape character would at worst result in a moderate effect on LCT7. I consider that this underestimates the likely effect. With the existing and consented turbines in the locality a pattern is emerging of large turbines and wind farms in the low lying areas around Goole, the River Ouse and the M62 corridor, which would also extend to include SAWF if constructed, contrasting with scattered medium sized single turbines in a less urbanised landscape, which is more rural and contains more trees, to the north and east of Spaldington. This change would be particularly apparent from VP 13, where the local landscape can be appreciated in its wider context. For the purposes of CLVIA the pattern of constructed and consented turbines in the area increases the sensitivity of this landscape to the change that would result from the appeal scheme above that which applies to the LVIA baseline. The large turbines, configured as a wind farm, would cumulatively become a dominant characteristic of the area that would diminish the significance of existing landscape elements, such as the trees, and would be at odds with the pattern of single medium sized turbines that would otherwise prevail in this locality. The inclusion of RVWF into this context would result in a high magnitude of change. IHWF, if ever permitted and constructed would add to this effect, but little weight can be attributed to this given the stage that this scheme has reached. Overall, I find that with medium/high sensitivity and a high magnitude of change, the combined cumulative effect on the landscape resource from the inclusion of RVWF would be adverse and of moderate/major significance. I deal next with cumulative visual effects. [35,36,41,42,68,69,70,113]

187. Combined cumulative visual effects occur where the observer is able to see two or more developments from one viewpoint, either in combination (seen within the observer's arc of vision) or in succession (by turning around to see various developments). Sequential effects occur when the observer has to move to another vantage point to see the same or different developments, such as along road or footpath. These may be frequently or occasionally sequential depending on speed of travel and distance between vantage points. The appellant's assessment acknowledges that RVWF would have significant adverse cumulative visual effects from seven of the twelve viewpoints assessed, and from three of the seven sequential views from routes assessed.¹³⁵

188. In assessing the size/scale of visual effects this section of the report considers the effects, for various vantage points and routes, so as to come to a judgement about the overall significance of cumulative visual effects. This is based on the expert evidence, wireframes and photomontages, along with my observations on site visits. The following considers likely cumulative visual effects on three broad areas; (1) the area in the vicinity of the proposed RVWF and extending east to Arglam Farm and Moore's Farm and west to the B1228 beyond the consented site for SAWF, (2) the area to the north, including the A163 and Holme-on-Spalding-

¹³⁴ VP 13.

¹³⁵ PoE8 Appendix 3.

Moor, and (3) to the south including Howden and the M62. [37,106,120]

189. In the vicinity of the appeal site, from FEI VP 1 and nearby footpaths, receptors would experience a major adverse cumulative visual effect from turbines at SAWF, RVWF, and IHWF if constructed. The contrast in the scale of these turbines with smaller single turbines, where visible, at Elder Farm (78 m high), Arglam (78 m), Hasholme Hall (78 m) and Hasholme Grange (78 m) would be apparent. The turbines at Sixpenny Wood would be visible in the distance. From the area around FEI VP 4 the contrast between the single medium sized turbines and the larger turbines within the wind farms would be apparent, resulting in a moderate/major cumulative effect. Views from within Spaldington would be softened by intervening trees, vegetation and buildings, resulting in a cumulative effect of moderate significance (FEI VP 5b and FEI VP 5c).¹³⁶ However, this would not be so for the footpaths near to the settlement. Those using the Spaldington Stroll PROW (for example from FEI VP 3 to FEI VP 5a) would experience a high magnitude of visual effect from views at close range of the consented Elder Farm turbine, with the SAWF turbines located to the south-west and seen in combination in some views, and with RVWF to the east seen in succession. This promoted path would afford frequently sequential views of turbines, and RVWF would result in an adverse cumulative visual effect of major significance. Similar considerations would apply to footpaths in the vicinity of FEI VP 6, which is on the Howden 20 and Spaldington Strider routes, but given the separation distance RVWF would result in a cumulative visual effect of moderate/major significance from some vantage points, but more generally of moderate significance. Both in combination and frequently sequential views of turbines would be apparent along parts of the A614 when travelling in both directions. For example, from FEI VP 2, RVWF and SAWF, along with IHWF if constructed, would be seen within the same 90 degree frame. Views along parts of this main road would also include the single turbines at Arglam, Hasholme Hall and Hasholme Grange. I consider that RVWF would have a cumulative effect of moderate/major significance from the A614. Some in combination and sequential effects would also be apparent for those using the B1228 (VP 10) and Spaldington Lane, which joins the B1228 with the A614. [39,43,44,56,57,71,72,73,96,109,111,121,122]

190. From the area to the north of the appeal site RVWF would significantly reduce the area currently unaffected by large scale wind turbine development in views from Church Hill, Holme-on-Spalding-Moor (FEI VP 13). This is apparent from ES Figures 13.24.2 and 13.24.3, where existing wind farms and power station development appear in the far distance on the horizon. The existing and consented medium sized single turbines are sufficiently separated so as not to impact significantly on this view. SAWF would appear closer than the existing wind farms and power stations, but the proposed RVWF would appear as the third and nearest line of turbines in a series of wind farms that would occupy the middle to long distance views in this panorama. RVWF would be seen in a central part of this wide plain, and by reason of its height and spread would be an intrusive feature, that cumulatively resulted in an adverse effect of moderate/major significance. A similar effect, albeit from a lower vantage point would be apparent from some vantage points in and around Holme-on-Spalding-Moor (VP 9), which would adversely affect the perception of depth in views of this

¹³⁶ This is shown on the aerial photograph at FEI Figure 3.18.

landscape. Frequently sequential views of turbines would be possible along the A163 west of Holme-on-Spalding-Moor (FEI VP 7 and FEI VP 8). These would include views of the single turbines at Spen Farm (78 m high), St Helens (68 m), Arglam Farm and Elder Farm. In views from further to the west, in the vicinity of Bubwith (VP 12 and VP 14), the proposed turbines would be seen behind a line of pylons and intervening trees would provide a degree of screening. In these and more distant views (VP 16, VP 20, VP 21 and VP 23) RVWF would not have a significant visual effect on the wider landscape. [66]

191. From the south the most important vantage points are from the Trans Pennine Way (VP 17), a long distance footpath, which here follows the banks of the River Ouse, and from major roads, including the M62 bridge over the river (VP 18) and the A614 south of Howden (FEI VP 26). From the Trans Pennine Way, which is about 9.3 km from the site of the nearest proposed RVWF turbine, views from the walk between the Boothferry Bridge to the M62 bridge would initially see both the SAWF and RVWF turbines sited to the left of Howden Minster.¹³⁷ On the walk towards the M62 SAWF would always appear to the left of the Minster, but the RVWF turbines would be seen behind the Minster. Turbine blades would appear below the top of the tower, but above the roof of the Minster. The blades of the SAWF turbines would appear at about the same height as the tower, but they would be seen to be set well apart from it. The addition of turbines in the background behind and to both sides of the Minster in some views would cumulatively have an adverse effect of moderate/major significance from the Trans Pennine Way. [38,112]
192. The appellant did not submit photographs from the M62 bridge because it is not possible to stop. However, SPC submitted photographs from the SAWF/SCWF appeal.¹³⁸ From this elevated vantage point the RVWF turbine blades would appear above the height of the Minster tower, and would be seen set to its right. The turbines by reason of their height and siting would compete with the dominance of the tower in this flat landscape, which includes views of the rising Wolds in the background. Vehicle speeds on the motorway would limit the duration that receptors experienced these views, but it was evident from my site visits that there would normally be sufficient time in crossing the bridge to take in and appreciate the wider landscape, especially for passengers not concentrating on driving. The volume of traffic on the M62 bridge makes this a significant vantage point in assessing visual impact. I find that RVWF would cumulatively have an adverse effect of moderate/major significance from the M62 bridge. Trees and buildings would screen or soften the visual impact of the turbines in views from the A614 south of Howden (FEI VP 26). There would also be some views of the RVWF turbines or their moving blades from open areas in the vicinity of Easttrington (VP 11) and Howden (VP 15), but these would have a minor effect. In more distant views (VP 22, VP 19 and VP 24) the effect would be negligible.
193. Overall, I find that with high sensitivity receptors, such as those using local PROW, and a high magnitude of change, the cumulative effect on visual amenity from RVWF would be adverse and of major significance.

¹³⁷ See also PoE5 Figures 12a, ID24.1 and ID24.2.

¹³⁸ PoE5 Figures 13 to 14.

194. The proposed development would have an adverse effect on landscape character of moderate significance, which would cumulatively with other consented and proposed turbines increase to moderate/major significance. It would have an adverse effect on visual amenity by itself of major/moderate significance, and cumulatively of major significance. Given the pattern of wind turbine development in the area this cumulative effect would be of particular importance. I find that the overall adverse cumulative effect on the landscape character and visual amenity of the area would be of moderate/major significance. This is a consideration which weighs against the proposal and brings it into conflict with the aims of JSP Policies SP1, SP4 and SP5 concerning landscape character and local distinctiveness. It would also be at odds with the aims of LP Policies EN2, EN7, EN19 and EN73 with respect to landscape character, local amenity, visual intrusion, and the environment.

(1bi) Living conditions - outlook

195. There are seven dwellings about 1 km from the nearest proposed RVWF turbine, and 22 dwellings between 1 km and 1.5 km from the nearest turbine.¹³⁹ There is local concern about the effects of the proposed turbines on the residential amenity of nearby occupiers, particularly at Warham Farm and Warham Bungalow, and Cottage Farm. There is no test prescribed by law or policy to assess deprivation of outlook. The Secretary of State in the *Burnthouse Farm* appeal considered that in assessing the effect on visual outlook it is helpful to pose the question; "would the proposal affect the outlook of these residents to such an extent, i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?" The *Guidance* notes that the Courts have generally taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations. [16,33,74]

196. It seems to me that where decision makers have asked whether the impact would make a property an 'unattractive' or 'unsatisfactory' or 'unsuitable' place to live, they were articulating effects on outlook in this way as an aid to making a judgement about whether a private interest was, in the particular circumstances, required to be protected in the public interest. In considering deprivation of outlook in relation to a wind farm scheme, it is useful to ask whether the presence of turbines, by reason of their number, size, layout, proximity and movement, would have such an overwhelming and oppressive impact on the outlook from a dwelling and its amenity space that they would result in unsatisfactory living conditions, and so would unacceptably affect amenities and the use of land and buildings which ought to be protected in the public interest. It is not clear that the assessment in the ES addresses this. However, I share the appellant's reservations about introducing 'pervasiveness' as a factor in judging deprivation of outlook, as this might just convey whether turbines were widespread, which would not assist much in determining impact on a particular dwelling. [123]

¹³⁹ The distances cited in this section to dwellings do not take into account any micro-siting of turbines.

197. Where the impairment of outlook for any dwelling was so deleterious that this threshold was breached, then the resultant harm to living conditions would be a weighty consideration against allowing the development proposal to proceed. Conversely, if the effects of development fell below this threshold the protection afforded to the public interest by the planning system would not be engaged. As a result, any such adverse effect on outlook would not feature in the planning balance, irrespective of how many dwellings were so affected. But to reiterate, this would not preclude weighing in the balance, as a component of the character and appearance issue, the effects on the locality generally that would derive from visual effects on resident receptors, including those using the local roads and working nearby fields, which nonetheless fall short of impacting adversely on living conditions by deprivation of outlook.
198. I was able to make a reasonable assessment of the likely relationship between nearby properties and the proposed turbines on the basis of the submitted documentation, including the wireframes, along with my observations on accompanied and unaccompanied site visits to the area. It is clear from the wireframes and photomontages that the outlook from some dwellings and their amenity space would be significantly altered by the siting and height of the proposed turbines. References to other decisions and separation distances are not of much assistance, as so much depends on local circumstances, such as the specific configuration of the turbines, orientation and layout of dwellings, topography and vegetation. The *Enifer Downs* appeal decision is not comparable to the circumstances which apply here because three dwellings in that case were located less than 500 m from the proposed 120 m high turbines.
199. The location and orientation of Warham Farm and Warham Farm Bungalow are shown on PoE5 Figures 5, 6 and 7. Warham Farm would be about 1,014 m from T6.¹⁴⁰ The outlook to the appeal site is shown in ResFIG 4.8-4.8.4. These indicate that the view from windows in living rooms and amenity space by the lake would change significantly with the construction of RVFW. The turbines would tower over the wood and their moving blades might be distracting at times. Some views could include overlapping or stacking of turbines, and the extent of any stacking might depend on micro-siting. Nonetheless, the turbines would be seen against a large sky, and there would be considerable visual permeability both between turbines and separation between wind farms. Any reflections in the ornamental lake would be transitory effects that would have a limited effect on the overall outlook from this dwelling. There would also be oblique views of the turbines at SAWF, but at a greater distance. However, at the separation distances involved here, I do not consider that the RVWF turbines either by themselves, or cumulatively with other turbines proposed, would have an overbearing or dominating impact on the outlook from this property. The wind farm would not render this property an unpleasant and significantly less attractive place to live. Similar considerations apply to Warham Farm Bungalow (T6 1,004 m), where the sitting room and kitchen face towards the appeal site.¹⁴¹ There would be some stacking of T4, T5 and T6 from this vantage point, but again the turbines would be slender structures and the layout would provide substantial visual breaks or gaps between turbines, through which the open

¹⁴⁰ The orientation of T1-T6 and outlook from the property is shown at PoE3 Appendix 1 Figure MB Figure 04, PoE5 Figures 9, 10 and 11.

¹⁴¹ PoE3 Appendix 1 Figure MB Figure 05, PoE5 Figure 8.

countryside and sky would be apparent. I find that the proposed turbines would not have a dominating effect on the outlook from Warham Farm Bungalow. [45,47,75,104,113,124]

200. The occupiers of Warham Farm and Bungalow are concerned about the effects of the turbines on their sheep dog breeding and training enterprise. The dogs work sheep in fields that would be close to T6 and T3. However, I am not convinced that noise from the turbines would mask commands for the dogs. Any turbine noise would be likely to be characterised by broadband or low frequency noise, whereas it was evident at the inquiry that mostly high pitch whistles are used to control the dogs. Furthermore, it seems to me unlikely that the presence of the turbines would diminish appreciation of the dogs' skills by potential purchasers. There is no substantial evidence that the turbines would harm this enterprise, albeit they would have an adverse visual effect on receptors on the farm, which is a consideration taken into account in my findings about the effects on the character and appearance of the area. The circumstances here are not comparable with those that applied in the *Brightenber* appeal, especially with respect to shadow flicker. [46,74,104,125,126]
201. Dwellings at Fir Tree Farm would be further away from the turbines (about 1,240 m) than would be so at Warham Farm, and any solus or cumulative deprivation of outlook for the occupiers would be of less significance (VP 1 for example). I do not consider that the outlook from these properties would be dominated by the turbines. The appellant acknowledges significant (moderate) solus and cumulative effects from the rear of Cottage Farm (T5 800 m) and its approach track.¹⁴² However, it was evident from my site visit that some views to the north-east would be screened by intervening buildings or vegetation. This would also apply to any views south-west towards SAWF. Given the separation distance, and degree of screening and softening of visual impact, I do not consider that the proposed turbines would have an overbearing or dominating impact on the outlook from Cottage Farm.
202. The appellant also acknowledges significant effects on Arglam Dairy Farm (T1 897 m).¹⁴³ Views from this property to the south-east would include the Arglam Farm turbine under construction, whilst SAWF would be some 4.2 km to the south-west. RVWF turbines would be prominent, especially from upstairs rooms. Vegetation would provide some screening from lower vantage points. The turbines would be widely spaced and unlikely in my view to dominate the outlook from this property. The nearest dwelling to RVWF turbines would be Arglam Grange (T1 639 m).¹⁴⁴ Other dwellings closest to the proposal include Arglam Grange Cottage (T1 654 m)¹⁴⁵ and Welham Bridge West Farm (T3 948 m)¹⁴⁶. Little evidence was submitted to the Inquiry about these properties because they are involved with the appeal scheme. However, it was apparent at my site visits that the RVWF would not, either by itself or cumulatively with other turbines, have an overbearing or dominating impact on

¹⁴² PoE8 paragraph 9.21. ResFIG 4.4.

¹⁴³ ResFIG 4.5.

¹⁴⁴ ResFIG 4.2.

¹⁴⁵ ResFIG 4.3.

¹⁴⁶ ResFIG 4.6.

the outlook from these dwellings that would render them an unpleasant and significantly less attractive place to live.

203. I also saw at my site visits dwellings within settlements at Gribthorpe, Spaldington, Welham Bridge, Bursea and Willitof. Given the variety of wide views from these properties towards the surrounding countryside, and the separation distances from the appeal site, I do not consider that the RVWF turbines would have an overbearing or dominating impact on the outlook from dwellings in these settlements.

204. I have had regard to all the representations, but it was clear from my site visits that the outlook from other dwellings in the wider area, and from other dwellings within settlements, not specifically addressed in this section of the report, would not be materially affected by the proposal. In my judgement, the proposed turbines would not result in an overwhelming and oppressive impact on the outlook from nearby dwellings or their associated amenity space that would result in unsatisfactory living conditions. The proposal would not, by reason of deprivation of outlook, unacceptably affect amenities and the use of land and buildings which ought to be protected in the public interest.

(1bii) Living conditions - noise

205. The *Guidance* states that ETSU-R-97 should be used when assessing and rating noise from wind energy developments. The *Noise Policy Statement for England* (NPSE) is also relevant. This aims through the effective management and control of noise, within the context of Government policy on sustainable development, to avoid significant adverse impacts on health and quality of life, mitigate and minimise adverse impacts on health and quality of life, and where possible, contribute to the improvement of health and quality of life. [11,13,134]

206. ETSU-R-97 is not to be interpreted as statute or applied inflexibly, especially as the document describes a framework for the measurement of wind farm noise and gives indicative noise levels thought to offer a reasonable degree of protection to wind farm neighbours, without placing unreasonable restrictions on wind farm development or adding unduly to the costs and administrative burdens of developers or local authorities. The noise limits set out in ETSU-R-97 are fixed limits within the range of 35-40 dB during the day and 43 dB during the night (with higher limits for dwellings with a financial interest in the scheme), or 5 dB above the prevailing background level, whichever is the greater. The actual value chosen within the 35-40 dB range depends upon three factors: the number of dwellings in the neighbourhood of the wind farm, the effect of noise limits on the number of kWh generated, and the duration and level of exposure. Taking these factors into account there is no reason to doubt that a cumulative lower fixed limit of 38 dB would be appropriate here during the day.¹⁴⁷ EN-3 provides that where the correct methodology has been followed and a wind farm shown to comply with ETSU-R-97 recommended noise limits, the decision maker may conclude that it will give little or no weight to adverse noise impacts from the operation of the wind turbines.¹⁴⁸

¹⁴⁷ WR2 paragraph 6.16.

¹⁴⁸ EN-3 paragraph 2.7.58.

207. Local residents who have experienced noise from wind farms raised concerns about the effects on sleep patterns and health. Turbine noise would result in a significant increase above the low background noise levels that are apparent in the area at night. BS4142 *Method for rating industrial noise affecting mixed residential and industrial areas* and the WHO revised guidelines can help inform an overall judgement about the likely effects of noise. However, ETSU-R-97 found that a literal interpretation of BS4142 difficult to apply to an assessment of wind farm noise and that it might not be appropriate. Given the policy support for ETSU-R-97, I do not consider that other standards or guidelines should be determinative in this case. I am satisfied that the evidence indicates that turbines could be installed in the proposed wind farm that could comply with the ETSU-R-97 limits. [106,110,135,163]
208. However, I raised a query at the Inquiry about whether the day time cumulative lower fixed limit should also apply at night. Candidate turbines could operate within this limit. A higher night time noise limit could allow turbines to operate at a higher noise mode at night than during the day. Such a change might be particularly intrusive late at night when background levels might be low, and so could affect sleep patterns of nearby residents. It seems to me that a restriction of the cumulative lower fixed limit to 38 dB at night would accord with the second bullet point in paragraph 123 of the *Framework* and the NPSE, which aim to minimise adverse impacts on the quality of life arising from noise. Notwithstanding the advice in ETSU-R-97, I consider that there is a strong case here for imposing such a lower fixed limit at night were planning permission to be granted. This would accord with the *Guidance* about the impact of noise on those affected, which includes as a relevant factor, that some types of noise will cause a greater adverse effect at night than if they occurred during the day because people tend to be more sensitive to noise at night as they are trying to sleep. [14]
209. ETSU-R-97 incorporates some consideration of blade swish, but there is local concern that wind turbine noise might be more intrusive due to amplitude modulation (AM) that would be in excess of that acknowledged by the Noise Working Group. This was referred to as Other Amplitude Modulation (OAM) at the Inquiry. There was a dispute at the Inquiry between SPC and the appellant about whether it would be necessary and reasonable in this case to impose a condition concerning AM. [136]
210. The Government has endorsed the IoAGPG, which states that at the time of writing (May 2013) current practice is not to assign a planning condition to deal with AM. RenewableUK has published research about OAM, including a template for a planning condition. There is a measure of agreement between the parties that it would be premature to impose a condition in the form set out in RenewableUK's template before it has been properly validated and tested. What is in dispute is whether it would be necessary and reasonable to impose a condition that would require a scheme to be submitted, approved and implemented for the control of OAM, were it to occur.
211. The circumstances where OAM might arise cannot currently be predicted, and there is no general consensus about what factors would be likely to increase the likelihood of its occurrence. But such uncertainty does not mean that it is a consideration that falls outside the scope of the planning regime. There are many situations where planning conditions are properly imposed on a

precautionary basis. RenewableUK's research indicates that OAM is a potential problem that can make wind turbine noise more intrusive and annoying. ETSU-R-97 states that developers have to consider the interests of individuals as protected under the Environment Protection Act 1990. However, legal remedies such as an action in nuisance might take considerable time to resolve, during which any unacceptable OAM would result in harm. The risk of uncontrolled OAM is, therefore, a factor which weighs against the proposal in the planning balance. If the harm from this risk was sufficient to tip the balance, such that the benefits of the scheme did not outweigh its disadvantages, then the imposition of a condition to deal with OAM would be both necessary and reasonable to allow the scheme to go ahead. I return to this point after having considered the planning balance in this case. [137]

212. Noise from the turbines would be audible at nearby homes at times. It would sometimes be heard at levels significantly above background levels. However, the imposition of planning conditions could minimise such impacts. The expert evidence indicates that the scheme could operate within acceptable ETSU-R-97 limits. I deal later with how this consideration should weigh in the overall planning balance, and how the proposal squares with relevant policy.

(1biii) Living conditions – other considerations

213. There is local concern about possible shadow flicker from moving turbine blades. However, given the separation distance from dwellings, this is a matter that could be adequately addressed by the imposition of an appropriate planning condition. There is no compelling evidence before the Inquiry that the proposed wind farm would give rise to unacceptable infrasound or adversely affect the health of local residents. Any fears about such possible adverse effects cannot be given much weight. [110,163]

214. The *Guidance* states that protecting local amenity is an important consideration which should be given proper weight in planning decisions, but does not define the term 'local amenity'. It seems to me that it includes more than 'visual amenity', and should, therefore, be given its ordinary meaning. As such the *Guidance* seeks to safeguard the pleasantness of a place or locality. However, reference to a particular place would not preclude this being a specific dwelling. Local amenity could therefore include an element that derives from residential amenity. This report draws a distinction between the effects of the proposal on the character and appearance of the area, and the effects on living conditions of nearby residents attributable to shadow flicker, noise and disturbance, and any deprivation of outlook. Protecting local amenity should be given significant weight. I have found that the proposal would have an adverse impact on the character and appearance of the locality, but that any adverse effects on living conditions arising from deprivation of outlook or shadow flicker, would not weigh heavily against the proposal.

215. The evidence indicates that the effects of the proposed turbines on the outlook of nearby occupiers, along with likely shadow flicker, health fears, and any disturbance or disruption during construction, operation or decommissioning, would not have a significant adverse effect on the living conditions of local residents. Noise would be audible from dwellings at times, especially when background levels are low, but there is evidence that the scheme could accord with ETSU-R-97, which is a matter to be weighed in the overall planning balance in determining whether the proposal would be acceptable.

(1c) *Heritage assets*

216. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the setting of a listed building. Any adverse effect on a heritage asset, even if slight or minor, would not preserve the asset. The *Framework* provides that development resulting in substantial harm to the significance of heritage assets should not be permitted unless it would be necessary to achieve substantial public benefits that would outweigh the harm. The *Guidance* states that in general terms, substantial harm is a high test, so it may not arise in many cases. Where less than substantial harm would result, this should be weighed against the public benefits of the proposal. A balanced judgement is required for non-designated assets, having regard to the scale of any harm and the significance of the asset. Potential harm was identified at the Inquiry as an issue for the listed buildings at Howden Minster (Grade I) and Holme Hall (Grade II*). In addition, the Inquiry heard detailed evidence about local archaeology. [23,79,128]
217. I deal first with the likely effects on Howden Minster. The tower of the Minster was intended as a landmark and to be prominent in the flat landscape of the Humber levels. It still serves this function, notwithstanding urban expansion around the periphery of Howden. The historic importance of the Minster is highlighted by the visibility of its tower at considerable distances. It was evident from my site visits that the setting of Howden Minster makes an important contribution to the significance of this Grade I asset. Views of the tower from the north, west and east would not be significantly affected by RVWF. However, the turbines would be seen behind, or to one side of, the tower in views from the south. There are important vantage points to the south of Howden, including the M62 bridge and part of the Trans Pennine Way. Vehicles travelling fast on the M62 would have limited time to take in the wider landscape, but it was evident from my site visits that the dominance of the Minster tower is apparent, even in fleeting views of the surrounding countryside. It seems to that there is, in crossing the bridge, both the opportunity and time to appreciate some of the details of the tower's construction, such as the void/blank proportions in the tower walls, and some of the features of the windows. The turbines would be the most prominent structures visible on the skyline and movement of their blades would attract attention. This would detract from the dominance of the tower as the most distinctive feature in this view. In views from the Trans Pennine Way to the east of Boothferry Bridge the RVWF turbines would appear behind the Minster tower, with blades rising above the roof of the Minster. Because of the siting and size of the proposed turbines the appeal scheme would harm the setting of the Minster, and impair the ability of observers to understand and appreciate the importance of the Minster in its wider context. The construction of SAWF along with RVWF would cumulatively further diminish the dominance of the tower in its wider landscape, because turbines would then appear in views from the south on either side of the tower. This adverse impact on the setting of the asset would harm the significance of the Minster. [79,80,129]
218. English Heritage (EH) advised that Howden Minster is of special interest, and that views of it in its landscape make an important contribution to its significance. EH considers that RVWF would detract from the visual dominance of Howden Minster, which remains an unchallenged landmark feature with considerable aesthetic value deriving from its architectural interest. EH's refers to the ability to view, clearly identify and appreciate the historically designed

dominance of the church tower and roofscape over the surrounding countryside, from which derives considerable aesthetic and illustrative heritage value. EH adds that the cumulative impact in conjunction with other turbine developments would contribute to the surrounding landscape setting of the Minster becoming increasingly characterised by the presence of turbines and that the experience of Howden Minster would be significantly affected and to a degree harmed. [81,111,130,166]

219. Taking all the evidence into account, I consider that the RVWF turbines would not preserve the setting of Howden Minster, but as its setting to the north, west and east would only be affected to a limited degree by RVWF, I find that the appeal scheme would have an overall adverse effect of moderate significance on this Grade I listed heritage asset.
220. Holme Hall is an 18th century country house. Tree planting around the house limits views of the asset and its setting. However, Church Hill provides a public vantage point, from which the RVWF turbines would be seen in the landscape above the house and towards the horizon (VP 13). From this vantage point the proposed turbines would have a limited effect on the wooded setting that envelopes the house. RVWF and SAWF beyond would cumulatively have an adverse impact on only one aspect of the setting of Holme Hall, and I find that the appeal scheme would have an overall adverse effect of minor significance on this Grade II* listed heritage asset.
221. The proposed wind farm would be temporary and endure for a short period relative to the longevity of some of the historic assets likely to be affected by it. The reversibility of the development is a relevant consideration, but the harm to heritage assets would last for a generation, and the *Framework* aims to conserve such assets for both this and future generations. This is a consideration which limits the weight that should properly be given to any time limited element of the harm that would result to cultural heritage from RVWF. [131]
222. I turn next to concerns about the impact of the appeal scheme on archaeology. There is considerable evidence about significant archaeological finds in the locality as the appeal site lies within a classic wetland landscape which has seen intensive human activity for much of the last 10,000 years. Within the wider Foulness Valley two Iron Age log boats, a medieval timber bridge, an Anglo-Saxon trackway and Anglo-Saxon boat have been found. The Hasholme log boat, for which the trees were felled c 322-277 BC, was found in the vicinity of the appeal site. The Anglo-Saxon remains date from around AD 455 to AD 610 and were found at Welham Bridge, within alluvial silt and peat deposits. Cropmarks on the appeal site indicate a rectilinear enclosure with a double ditch likely to be of Iron Age or Roman date. [100,103,132,167]
223. The appellant argues that any implications for archaeological remains could be addressed by the imposition of a planning condition. The suggested mitigation strategy relies on the use of micro-siting to move turbines away from any archaeological remains found which required preservation *in situ*. I am not convinced that this would be reasonable in the circumstances that apply here, where significant archaeological features have been found in the wider area, and

restrictions would apply on possible micro-siting.¹⁴⁹ For example, T3 could only be moved west. There might not be enough space to provide for the construction of turbine foundations, whilst maintaining sufficient separation so as to protect any archaeological remains which justified *in situ* preservation. This is particularly so as foundations would comprise a concrete pile cap, measuring 14.5 m diameter by 3.45 m deep, and 25 piles, each of 0.6 m diameter and up to 20 m deep, and their construction would require the manoeuvring of heavy vehicles. If insufficient space was available this could affect the important context for archaeological remains. The *Guidance* states that where an asset is thought to have archaeological interest, the potential knowledge which may be unlocked by investigation may be harmed even by minor disturbance, because the context in which archaeological evidence is found is crucial to furthering understanding. It is difficult to quantify the risk to archaeology. However, in the absence of further archaeological evaluation, possibly including intrusive archaeological works or targeted excavation, as initially suggested by Humber Archaeological Partnership, there would be a significant risk to possibly important remains from granting planning permission and dealing subsequently, by the discharge of a planning condition, with any archaeological features that required *in situ* preservation. [25,101,102,133]

224. I have taken into account the submissions from other parties and interested persons about other heritage assets, but do not consider that the appeal scheme, either by itself or cumulatively, would have a significant adverse effect on other assets not specifically referred to above.

225. The likely harm to heritage assets here would not result in a serious impact that would either vitiate or very much reduce the significance of the assets. The proposal would not, therefore, result in substantial harm for the purposes of applying the policy set out in the *Framework*. However, the adverse impacts I have identified would not preserve the setting of two listed buildings, and there is a significant, but difficult to quantify, risk to archaeological remains. The harm I have identified would be sufficient to bring the proposal into conflict with the aims of JSP Policies SP5 and ENV6 concerning local heritage, and LP Policies EN2 and EN51 regarding the effect on listed buildings. In coming to a judgement about the effects on heritage assets, I have given considerable importance and weight to the desirability of preserving the setting of listed buildings. I find that the appeal scheme would have an adverse effect of moderate significance on a Grade I listed building, and a minor effect on a Grade II* listed building. The risk to archaeology also weighs against the proposal. Overall, this less than substantial level of harm should be weighed against the benefits of the scheme in accordance with the provisions of the *Framework*. [82,91]

(1d) Other considerations

226. Concerns have been raised about the effects on the local ecology, and particularly the flight paths for birds along the River Foulness. Yorkshire Wildlife Trust has concerns about the collision risk modelling and the impact that this would have on the cumulative impact assessment, and regarding the cumulative

¹⁴⁹ Suggested Condition 15 states that T4, T5 and T6 shall not be moved closer to Cottage Farm. T1, T2 and T3 shall not be moved closer to Arglam Dairy Farm. T3 and T6 shall not be moved closer to Warham Farm, Warham Farm Bungalow or Chapel Farm. T4 shall not be moved closer to Patch Cottage. T3 may not be moved to a location further east.

impact for disturbance. However, Natural England referred to its standing advice and was satisfied that the mitigation proposals would be sufficient to avoid adverse impacts on protected species. I am satisfied that the written evidence about the likely effects on biodiversity indicates that the proposed development would not have an unacceptable impact on wildlife.¹⁵⁰ The imposition of appropriate planning conditions would in this case safeguard nature conservation interests in the area. [165,168]

227. There is local concern about the effects of construction traffic on rural roads. The river crossing the appeal site and the need for a temporary bridge would complicate construction of RVWF. However, a methodology could be approved and implemented which safeguarded the local road network during the construction phase. This is a matter that could be addressed by the imposition of appropriate planning conditions. Issues concerning drainage, flooding and flood risk could also be the subject of conditions. [26,107,162]
228. Horses are kept in the local area and are an important source of local employment. There is local concern that riders would avoid bridleways in the area because the turbines would frighten horses. High performance horses are kept at Fir Tree Farm, and it is argued that these horses are easily startled. British Horse Society guidelines aim for a separation distance from bridleways, but also provide for other considerations to be taken into account, such as facilities to allow horses to become accustomed to turbines. In the absence of reliable evidence about any adverse experience from other localities where turbines have been erected, it is difficult to give much weight to representations about likely harm to the local economy because of impacts on horses. I do not consider that the likely effects on equestrians, or safety perceptions, should weigh significantly against the proposal. [105,112,138]
229. Any adverse impact on television and radio reception, or interference with electro-magnetic transmissions in the locality is a matter that could be addressed by the imposition of appropriate planning conditions. [165]
230. Aviation interests were raised at the application stage. However, the MoD has no objection to the proposal, subject to the provision of aviation safety lighting. NATS has no safeguarding objection. There is no reason to find against the proposal on aviation safety grounds. [169]
231. Grid connection would be a matter for the relevant regional Distribution Network Operator (DNO). There are no obvious reasons why such a connection would not be possible, or that the necessary approvals would be refused, but this remains a matter for the DNO, and a commercial risk for the appellant. Proximity of a likely grid connection is not a consideration which would weigh against the proposal. [28]
232. The proposal would result in some socio-economic benefits, primarily from the construction of the wind farm, but the impact on the local economy would be limited. There would also be some indirect economic benefits and benefits to the wider economy. [160]

¹⁵⁰ WR1.

(2) *Renewable energy (RE)*

233. There is a wide measure of agreement about relevant policy for RE, which is helpfully set out in Appendix 2 to the SoCG. In summary, the European Union Renewable Energy Directive has a commitment to a binding target of 20% of its energy coming from renewable sources by 2020. The UK Renewable Energy Strategy confirms the 15% contribution which the UK is expected to make to the EU's 2020 target, and in order to be achievable, it will require more than 30% of the UK's electricity generation to come from renewable sources. The Government has since confirmed in the UK Renewable Energy Roadmap the scale of the development of RE that will be required to meet the 2020 targets. [83,84,85,97,139]
234. The *Framework* provides that applicants do not need to demonstrate the overall need for RE development. The *Written Ministerial Statement by Edward Davey: Onshore Wind* provides that appropriately sited onshore wind, as one of the most cost effective and proven RE technologies, has an important part to play in a responsible and balanced UK energy policy as it reduces reliance on imported fossil-fuels and helps keep the lights on and our energy bills down. The statement adds that the UK has some of the best wind resources in Europe, and that the Government is determined that the UK will retain its reputation as one of the best places to invest in wind energy. [98,99,140,148,149,155]
235. Based on a wind turbine with a maximum generating capacity of 2-3 MW, the proposed wind farm would have an installed capacity of 12-18 MW. The RE benefits of the appeal scheme should be based on the lowest figure in this range so that the assessment is based on a worst case outcome. However, the appellant has based estimates of electricity generation and carbon dioxide savings on three candidate turbines, which would provide a net annual energy output of between 29,862 MWh/yr and 33,769 MWh/yr, powering between an estimated 6,600 and 7,500 homes, and saving between 122,500 tonnes and 138,500 tonnes CO₂ per year. [24,27,58,94]
236. With any of these candidate turbines the scheme would make a significant contribution towards the generation of RE. The scheme would make a significant contribution to meeting national targets, reducing greenhouse gas (GHG) emissions and providing energy security, which are important public benefits. The RE generation that would result from the proposed RVWF is a consideration which weighs heavily in favour of the proposal.

(3) *Planning balance*

237. The planning balance is a matter of judgement. The proposed wind farm would harm the landscape character and visual amenity of the area. However, its likely effects, by reason of outlook or shadow flicker, on the living conditions of those residing in the area would not be significant. I deal with noise later. There would be some harm to local amenity, but this would largely be attributable to the effects on the local landscape and visual amenity of the area, which should not be double counted in the balancing exercise. The proposal would have an overall moderate adverse effect on cultural heritage. This less than substantial harm should be weighed against the public benefits of the proposal. Subject to the imposition of appropriate conditions the wind farm would not unduly affect air safety, biodiversity or highway safety. Some minor benefits would accrue to the local economy, and there would also be some

indirect economic benefits. The main considerations here are the adverse effects on the character and appearance of the area, and on heritage assets, against which must be weighed the benefits of the RE that would be generated by the proposed wind farm.

238. EN-3 recognises that the landscape and visual effects will only be one consideration to be taken into account and that these must be considered alongside the wider environmental, economic and social benefits that arise from RE projects. The balancing exercise should be made within the context of Government policy on sustainable development. The proposed development would make a significant contribution to RE targets, and towards the reduction of GHG and to energy security. These are important public benefits, which should be given significant weight.
239. However, the cumulative effects of RVWF along with existing and consented turbines are particularly important in this case with respect to the likely impacts on the character and appearance of the area and on heritage assets. I have given considerable importance and weight to the desirability of preserving the setting of listed buildings. I find that the harm I have identified weighs significantly against the proposal. The public benefits of generating electricity from a renewable source would not outweigh the harm to the character and appearance of the area, to the local amenity of the area, and to listed buildings. The risk to any archaeological remains affected by the proposed development tips the balance even further against the proposal. In my judgement, the planning balance here falls against granting planning permission.
240. It is also necessary to determine how any noise impact should be taken into account in the overall balancing exercise. The scheme could operate within ETSU-R-97 limits, which were formulated on the basis of a balancing exercise. Furthermore, the NPSE aims are to be applied in the context of policy on sustainable development. So the benefits of the RE generated by the appeal scheme are a relevant matter. Taking all these considerations into account, and subject to the imposition of appropriate planning conditions, which I deal with later in this report, I find that the proposal, insofar as noise is concerned, would not unacceptably harm the amenities of any neighbouring properties. Taking into account the combined effects on outlook, of shadow flicker and likely noise, the proposal would not have a significant adverse effect on the living conditions of nearby residents. I find no conflict with LP Policies EN2(i) or EN73(C) in this regard.

(4) Development plan ¹⁵¹

241. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be decided having regard to the development plan, and to be determined in accordance with it, unless material considerations indicate otherwise. The proposal would conflict with the aims of JSP Policies SP1, SP4 and SP5 concerning landscape character and local distinctiveness. It would also be at odds with the aims of LP Policies EN2, EN7, EN19 and EN73 with respect to landscape character, local amenity, visual intrusion, and the environment. Furthermore, the appeal scheme would conflict with the aims of JSP Policies SP5 and ENV6 concerning heritage, and LP Policies EN2 and EN51 regarding the effect

¹⁵¹ A summary of these policies is included at Annex 1 of this Report.

on listed buildings. Overall, the proposal conflicts with the development plan when read as a whole. [8,86,143,]

242. The *Framework* provides that due weight should be given to relevant policies in existing plans according to their degree of consistency with the *Framework*. The proposal would be at odds with the requirement of LP Policy EN73 to require no adverse effects on the environment or nearby residential properties. However, this requirement is not consistent with the provisions in the *Framework* concerning support for the transition to a low carbon future in a changing climate, or with the balancing exercise between the economic, social and environment dimensions to sustainable development. This inconsistency also applies to a degree to some of the other development plan policies with which the appeal scheme is in conflict. Therefore, more weight should be given to national policy in the *Framework* in determining this appeal. [144]

(5) National Planning Policy Framework

243. The economic, social and environmental roles for the planning system, which derive from the three dimensions to sustainable development in the *Framework*, require in this case that a balancing exercise be performed to weigh the benefits of the proposed wind farm against its disadvantages. Core planning principles in the *Framework* support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources, for example by the development of RE. Supporting the delivery of RE is central to the economic, social and environmental dimensions of sustainable development. Other core principles recognise the intrinsic character and beauty of the countryside, along with conserving and enhancing the natural environment, and conserving heritage assets in a manner appropriate to their significance. It also provides that a proposal for RE should be approved if its impacts are, or could be made, acceptable. This is a matter to be judged, not in some absolute sense, but in the context of the *Framework's* overall objectives for sustainable development. [88,92,147,156]

244. I have found that the planning balance here falls against the proposal. The encouragement given in the *Framework* for RE is not sufficient here to outweigh the harm to the intrinsic character and beauty of this part of the countryside, and to heritage assets. Taking all material considerations into account, I do not consider that the proposed wind farm would be acceptable in this location. Furthermore, there are no grounds here, having regard to paragraphs 18-219 of the *Framework*, to find that the proposal would be sustainable development, to which the presumption in favour set out in the *Framework* would apply.

245. At the Inquiry both main parties considered that paragraph 14 of the *Framework* was engaged in the circumstances that apply here, and so the application of this policy was not discussed in any detail. However, if paragraph 14 of the *Framework* applies only to sustainable development, then my finding that the scheme would not be sustainable development, would mean, if the Secretary of State were to come to the same conclusion, that it was not appropriate to apply paragraph 14 at all in this case. If, in the alternative, the *Framework* should be interpreted to mean that paragraph 14 does apply here, then in my judgement, the adverse impacts of the appeal scheme would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole. [52,89]

(6) Conditions and obligations

246. The parties reached a measure of agreement at the Inquiry about possible conditions in the event that planning permission was granted for the proposal. The conditions agreed at the Inquiry, with some minor alterations in the interests of precision and enforceability would be necessary to minimise the impact of the proposed development. The conditions set out in the Schedule of Conditions attached to this report would reasonably relate to the proposed development and would appropriately address some of the issues raised at the Inquiry. The reason for each condition is set out in more detail below.
247. A five year commencement period would be appropriate in this case given the details that would need to be approved before development started (Condition 1). Otherwise than as set out in any decision and conditions, or approval pursuant to a condition, it would be necessary that the development be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning (Condition 2). It would also be necessary to set out the further details to be approved. The scheme has been assessed on the basis of a minimum capacity of 12 MW, and a condition would be necessary to ensure that this would be provided (Condition 3). This would be a temporary permission and a condition would need to specify that it would expire 25 years from the date that electricity was first exported to the grid (Condition 4), and a decommissioning and site restoration scheme would need to be approved and implemented (Condition 5).
248. Provision for the removal of structures and restoration, including any turbines which ceased to operate for a continuous period of 9 months, would be necessary in the interests of the appearance of the area (Condition 6). A construction method statement would also be necessary in the interests of the amenity of the area (Condition 7). So too would be a restriction on hours for works and deliveries (Conditions 8 and 9). Approval and implementation of a construction traffic management plan would be necessary in the interests of highway safety. This should include reference to any necessary holding areas. But it would not need to include provision for pre and post construction structural surveys of buildings and properties on Spaldington Lane, Willitoft Road and Main Street, as suggested by SPC, because of the limited use of these routes by construction vehicles (Condition 10). However, it would be necessary to undertake condition surveys for the roads used by construction traffic and to make provision for repairing any damage (Condition 11). On-site and off-site vehicular access and construction parking facilities would also need to be approved and provided (Condition 12). It would not be necessary to restrict the scheme to the turbines on one side of the River if, for whatever reason, the bridge could not be constructed. In these circumstances the planning permission would be unimplementable.
249. It would be necessary to secure the implementation of a programme of archaeological work in accordance with an approved scheme of investigation (Condition 13). Measures would be necessary to safeguard trees and hedgerows (Condition 14). Coordinates for siting and provision for some micro-siting would need to be set out in a condition to accord with the scheme assessed, but it would not be necessary to submit a plan showing micro-siting prior to construction, as was suggested by SPC (Condition 15). Details of colours and finishes would need to be approved, and restrictions imposed on names, signs, or

- logos, in the interests of the appearance of the area (Condition 16). For similar reasons, the details of the permanent lattice anemometer mast and electricity substation would need to be approved (Conditions 17 and 18).
250. To accord with the details of the scheme assessed, the turbines would need to be of three-bladed construction, rotating in the same direction, with an overall height not exceeding 128 m and hub height between 73.5 m and 81.5 m (Condition 19). The scheme has been assessed on the basis of turbines with 93 m diameter blades and so it would be necessary to impose a condition specifying this as the maximum rotor diameter. On-site cabling would need to be underground in the interests of the appearance of the area (Condition 20). Similarly, external lighting would need to be controlled and infra-red aviation lighting specified (Conditions 21 and 22). Radar mitigation schemes would be necessary for air safety reasons (Conditions 23 and 24), as would submission of details about the siting and height of turbines when constructed (Condition 25).
251. A scheme for pre-construction wildlife surveys and mitigation would need to be approved and implemented in the interests of biodiversity (Condition 26), along with a habitat management plan (Condition 27). Development would need to be carried out in accordance with the submitted flood risk assessment (Condition 28). A scheme to control shadow flicker would be necessary, but this need not specifically identify provision for turbine shut down facilities on each turbine, as suggested by SPC, as what controls would be appropriate in the particular circumstances would be a matter for the local planning authority to determine (Condition 29). A condition would be required to deal with any electro-magnetic interference to TV and radio reception, and as suggested by SPC it would be reasonable to provide a period of two years from the First Export Date for any such complaints to be registered (Condition 30).
252. A noise condition would be necessary to accord with the provisions of ETSU-R-97 (Condition 31). The suggested form of the condition and associated Guidance Notes would generally accord with the *Institute of Acoustics' Good Practice Guide* (IoAGPG). For the reasons set out above, I consider that it would be necessary and reasonable to impose the same night-time lower fixed limit as would apply during the day. I have found that the benefits of the scheme would not outweigh its disadvantages, but if the Secretary of State were to find otherwise, then it would be likely that the matter was finely balanced. In these circumstances the risk of uncontrolled amplitude modulation (AM) could tip the balance against the proposal. The imposition of an AM condition would then be both necessary and reasonable to allow the scheme to go ahead. However, it would be premature to impose a condition in the form of RenewableUK's template until it has been tested, validated and endorsed. The condition suggested by SPC should be preferred because this would require action only if an AM problem arose. On this basis, my recommendation is that *Version II with the suggested AM condition* of the noise condition would need to be imposed if planning permission were granted.
253. I turn next to the unilateral undertaking. The community liaison forum to keep the local community informed about the construction and operation of the proposed wind farm would be useful, but not necessary to enable the development to proceed. The contribution to tree and woodland planting and maintenance would also be beneficial. However, there is nothing to indicate how the sum of £10,000 for such work would be directly related to the proposed

development, as it could be used in the East Riding of Yorkshire and Kingston upon Hull. There is no convincing evidence that a decommissioning bond agreement would be necessary, and restoration of the site is a matter that could be addressed by a planning condition. In my view, no weight should be attributed to these obligations in the overall planning balance.

254. The undertaking would be adequate to secure the provision of a community fund contribution. However, there was some doubt at the Inquiry about whether any weight should be given to the proposed community fund in determining this appeal. The Inquiry was not made aware of any planning policy in support of such a provision, and so the weight given to this obligation would depend upon the usual tests of whether the obligation is; (1) necessary to make the development acceptable in planning terms, (2) directly related to the proposed development, and (3) fairly and reasonably related in scale and kind to the development. I do not consider that there is evidence to indicate that the obligation would pass these tests. Therefore, it seems to me that no weight should be given to the provision of a community fund contribution, but it would be open to the Secretary of State to conclude that it should be given weight in the planning balance if there is a national policy basis for doing so.¹⁵²
[7,159,171]

(7) Overall conclusions

255. There is considerable local opposition to the proposed development, which is evident from the written representations and the submissions made at the Inquiry, but also some support for the scheme. One of the aims of national planning policy is to strengthen local decision making.¹⁵³ However, local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons. The proposal therefore falls to be determined on its planning merits.

256. The proposed development would result in significant harm to the character and appearance of the area. It would also harm heritage assets, including the setting of a Grade I listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the setting of a listed building. I acknowledge that EN-1 states that without significant amounts of new large-scale energy infrastructure, the objectives of the Government's energy and climate change policy cannot be fulfilled, and that it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts. It seems to me that this should also apply to smaller schemes, which cumulatively would also contribute to these objectives. However, whilst the *Framework* seeks an increase in the supply of green energy, the *Guidance* notes that the need for RE does not automatically override environmental protections and the planning concerns of local communities. In my judgement, the RE and other benefits of the proposal

¹⁵² I note that the WMS by Edward Davey, dated 6 June 2013, states that communities hosting RE installations play a key role in meeting the national need for secure, clean energy, and that it is only right that local people should be recognised and rewarded for that contribution. It also concludes that communities will receive more reward for hosting such developments, that this is an important sector that is driving economic growth, and that local communities should share in these benefits. CD2.6.

¹⁵³ *National Planning Policy Framework* Annex 1: Implementation.

would not outweigh the likely harm from the proposed wind farm. Notwithstanding the support the proposal derives from EN-1, the balance here falls against granting planning permission for RVWF. The scheme would conflict with the development plan, and would not gain support from the *Framework*. [9,50,52,53,95,99,159]

257. All other matters raised in evidence have been taken into account, but there is nothing to outweigh the main considerations that lead to my conclusions. I conclude that the appeal should be dismissed.

Recommendation

258. It is recommended that the appeal be dismissed.

John Woolcock
Inspector

ANNEX 1 Summary of relevant JSP and LP policies

The policies highlighted by '*' are listed in the SoCG as those which ERYC considers the appeal scheme to be in conflict with.

Saved policies of Joint Structure Plan for Hull and East Riding of Yorkshire 2005 (JSP)

Policy SP1 provides for the protection and enhancement of the character and distinctiveness of settlements and their settings, and that special consideration should be given to (ii) important skylines and views, and (iv) important edges and settings to settlements. *

Policy SP4 (a) provides that the distinctive character of areas should be protected, and that development should protect and where necessary enhance or restore distinctive landscape character. *

Policy SP5 requires a high standard of design that, amongst other things; (i) respects local landscape, (ii) integrates visually with its surroundings, and (iii) harnesses local heritage and landscape distinctiveness.

Policy ENV6 states that the setting, character or appearance of strategically important buildings, features and areas of historic or architectural interest, which includes listed buildings, should be protected and where appropriate enhanced.

Saved policies of the Boothferry Borough Local Plan 1999 (LP)

Policy EN2 states that in considering proposals for development account would be taken of the likely effects on, amongst other things, (i) The character of the locality and amenity of local residents, (ii) any nature conservation interests on the site and in the immediate locality, (iii) ancient monuments, listed buildings and conservation areas, and (iv) the character of the landscape and particular built and natural features within it. It adds that development which would significantly adversely affect these interests and which could not be satisfactorily dealt with by the use of planning conditions/agreements or by mitigation works would not be approved. *

Policy EN6 is cited by SPC, but this policy has not been saved.

Policy EN7 provides that new development in the open countryside would only be allowed when it, (i) is located and sited so as to minimise visual intrusion, (ii) is of a scale and design appropriate to the rural area, (iii) is, where practicable, built of traditional materials, (iv) avoids bright or reflective surfaces, and (v) makes use of existing landscaping where possible or is adequately landscaped as part of the proposal.

Policy EN19 provides that consent would only be granted for an otherwise acceptable development which would be prominent in the landscape and visible over long distances if all reasonable measures have been taken to minimise its visual effect. *

Policy EN51 states that any application for development that adversely affects the setting of a listed building would be refused, except where a proposal would secure the retention of and beneficial use of a listed building.

Policy EN73 states that proposals for wind turbine generators would only be allowed where it can be demonstrated that there are no adverse effects on: A. The environment, B. Nature conservation, C. Nearby residential properties or places where people regularly congregate. Off-site operational infrastructure, including transmission arrangements and access roads, would also be taken into account. *

SCHEDULE OF CONDITIONS 1-31

- 1) The development hereby permitted shall begin not later than five years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority no later than 14 days after the event.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans; Site Location ES Figure 2.1. and Wind Farm Layout ES Figure 2.2. No development shall take place until details have been submitted to and approved in writing by the local planning authority for the following;
 - Turbine Elevations
 - Turbine Foundations
 - Bridge Cross Section
 - Bridge Elevation and Layout
 - Substation Elevations and Layout
 - Meteorological Mast
 - Temporary Anemometer Mast
 - Temporary Construction Compound
 - Ancillary Temporary Construction Compound
 - Crane Hardstanding

The development shall then be carried out and thereafter retained in accordance with the approved details.

- 3) The total rated capacity of all the wind turbines installed under this permission shall be not less than 12 MW.
- 4) The development hereby permitted shall be removed in accordance with condition 5 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.
- 5) Not later than 12 months before the expiry of the 25 year period from the First Export Date, a decommissioning and site restoration scheme shall be submitted to the local planning authority for its written approval. The scheme shall make provision for the removal of the wind turbines and transformers, the turbine foundations to a depth of at least one metre below the ground level at the date of this permission, the substation and meteorological mast, compound areas, buildings and hard standings and shall also provide for the removal of access tracks. 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 lay down 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. No traffic associated with the works of decommissioning shall pass through Spaldington village, along Ings Lane or Willitof Road. The approved scheme shall be fully implemented in accordance with the timescale set out in the Scheme.
- 6) If any wind turbine hereby permitted ceases to export electricity to the grid for a continuous period of nine months then a scheme for the repair or removal of that turbine shall be submitted to the local planning authority within three

months of the end of that nine month period for its written approval. The scheme shall include either a programme of remedial works where repairs to the relevant turbine are required, or a programme for removal of the relevant turbine and associated above ground works approved under this permission and the removal of the turbine foundation to a depth of at least one metre below ground level at the date of this permission and for site restoration measures following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.

- 7) Prior to the commencement of development a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. The Construction Method Statement shall stipulate that no traffic other than traffic associated with construction of the southern buttress of the temporary bridge shall pass through Spaldington village, along Ings Lane or Willitoft Road. The construction of the development shall be carried out in accordance with the approved statement. The Construction Method Statement shall include:
- (a) Details of the phasing of 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 compounds;
 - (c) Dust management;
 - (d) Pollution control: protection of the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage, prevention of silts, soils and construction materials from entering rivers and ditches;
 - (e) Temporary site illumination during the construction period, including proposed lighting levels and specification of any lighting;
 - (f) Details of the proposed storage of materials and soils and disposal of surplus materials;
 - (g) Details of timing of works;
 - (h) Details of surface treatments and the construction of all hard surfaces and tracks;
 - (i) Details of emergency procedures and pollution response plans;
 - (j) Siting and details of wheel washing facilities;
 - (k) Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;
 - (l) A site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and habitats;
 - (m) Details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound;
 - (n) Working practices for protecting nearby residential dwellings to control noise and vibration arising from on-site activities shall be adopted as set out in British Standard 5228 Part 1: 2009;
 - (o) Identification of areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles; and

- (p) Details of methods of handling and prevention of drying out of any peat soils encountered on site.
- 8) Construction work shall only take place between the hours of 0700 to 1900 hours Monday to Friday inclusive and 0700 to 1200 hours on Saturdays with no such work on a Sunday or Public Holiday. Works outside these hours shall be limited to (a) erection of turbines, provided prior written approval of the local planning authority is obtained, or (b) in the case of an emergency, necessary work provided that the local planning authority is notified by telephone and writing as soon as reasonably practicable (and in any event within 48 hours) following the emergency first being identified, such notification to include both details of the emergency and any works carried out and/or proposed to be carried out, or (c) dust suppression.
- 9) The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be restricted to the hours of 0700 to 1900 on Monday to Friday inclusive, 0700 to 1200 on Saturdays with no such deliveries on a Sunday or Public Holiday unless the delivery is necessary in the event of an emergency on the site, provided that the local planning authority is notified by telephone and writing as soon as reasonably practicable (and in any case within 48 hours) following the emergency first being identified, such notification to include both details of the emergency and delivery made and/or proposed to be made.
- 10) Prior to the commencement of development a Construction Traffic Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Traffic Management Plan shall include proposals for the routing of construction traffic, scheduling and timing of movements (including identification of any necessary holding areas), the management of junctions to and crossings of the public highway and any public rights of way, timing and details of escorts for delivery of abnormal loads (which shall include the transport of turbine blades, nacelles and towers), temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, reinstatement of any signs, verges or other items displaced by construction traffic, banksman/escort details and a timetable for implementation of the measures detailed in the Construction Traffic Management Plan. No vehicles transporting abnormal loads shall access the site until any identified works to accommodate abnormal loads along the delivery route have been carried out and measures put in place to maintain any such works for the period abnormal loads are scheduled to be delivered to the site. The Construction Traffic Management Plan shall be carried out as approved in writing by the local planning authority.
- 11) Prior to the commencement of development a scheme for a condition survey and any necessary repairs to Ings Lane, Main Street and Willitof Road as shown on the plan reference 12/04561/STPLFE shall be submitted to and approved in writing by the local planning authority. The scheme shall include a specification for a photographic highway condition survey of Ings Lane to be undertaken and submitted to the local planning authority prior to the commencement of construction and shall also include a programme and methodology for (i) identifying and repairing any damage caused to Ings Lane, Main Street and Willitof Road as shown on the plan reference 12/04561/STPLFE as a result of construction traffic associated with the

development and (ii) removal of improvement works as required. The scheme shall be carried out as approved in writing by the local planning authority.

- 12) Prior to the commencement of development full details of the proposed on-site and off-site vehicular access and construction parking facilities including a timetable of works shall be submitted to and approved in writing by the local planning authority. The construction of the proposed vehicular access and construction parking facilities shall be implemented as approved.
- 13) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 14) Prior to the commencement of development a scheme providing details of the methods of working and any proposed mitigation measures to be adopted when works fall within root protection zones of trees and hedgerows shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 15) The wind turbines and meteorological mast hereby permitted shall be erected at the following grid co-ordinates.

Turbine	Easting	Northing	AOD
1	477750	435366	4m
2	477997	435118	4m
3	478290	434943	5m
4	477282	435102	5m
5	477517	434781	5m
6	477876	434600	5m

Meteorological Mast – 477669, 434446

Notwithstanding the terms of this condition the wind turbines and associated crane pads and infrastructure hereby permitted may be micro-sited within 30 metres and the consequential realignment of the access tracks between the wind turbines following micro-siting of the wind turbines is permitted, subject to the following limitations.

Turbines T4, T5 and T6 shall not be moved closer to Cottage Farm.

Turbines T1, T2 and T3 shall not be moved closer to Arglam Dairy Farm.

Turbines T3 and T6 shall not be moved closer to Warham Farm, Warham Farm Bungalow or Chapel Farm.

Turbine T4 shall not be moved closer to Patch Cottage.

Turbine T3 may not be moved to a location further east than the position listed above.

A plan showing the position of the turbines and tracks established on the site shall be submitted to the local planning authority within one month of the First Export Date.

- 16) Prior to the erection of any wind turbine, details of the colour and finish of the towers, nacelles and blades and any external transformer units shall be submitted to and approved in writing by the local planning authority. No name, sign, or logo shall be displayed on any external surfaces of the wind turbines or any external transformer units other than those required to meet statutory health and safety requirements. The approved colour and finish of the wind turbines and any external transformer units shall not be changed without the prior consent in writing of the local planning authority. The development shall be carried out in accordance with the approved details.
- 17) Prior to the erection of the permanent anemometer mast details of the colour and finish of the permanent lattice anemometer mast shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 18) Prior to commencement of the construction of the electricity substation, details of the design and the external appearance, dimensions and materials for the building and any associated compound or parking area, access tracks and any associated fencing and details of surface and foul water drainage from the substation building shall be submitted to and approved in writing by the local planning authority. The development of the substation building and any associated compound or parking area shall be carried out in accordance with the approved details.
- 19) The overall height of the wind turbines hereby approved shall not exceed 128 metres to the tip of the blades when the blade is in the vertical position as measured from natural ground level immediately adjacent to the turbine base. The turbines shall have a hub height between 73.5 metres and 81.5 metres as measured from natural ground level immediately adjacent to the turbine base and a maximum rotor diameter of 93 metres. The blades of all wind turbine generators shall rotate in the same direction.
- 20) All electrical cabling between the individual turbines and between the turbines and the electricity substation on the site shall be installed underground.
- 21) There shall be no permanent illumination on the site other than aviation related lighting on the turbines, lighting required during planned or unplanned maintenance or emergency lighting and a movement sensor-operated external door light for the electricity substation building door to allow safe access.
- 22) Prior to the commencement of development full details including a timetable of works relating to the installation of MoD-accredited infrared warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration shall be submitted to and approved in writing by the local planning authority. The installation and operation of the aviation lighting shall be implemented as approved.
- 23) 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. The Air Traffic Control Radar Mitigation Scheme is a scheme designed to mitigate at all times the impact of the development upon the operation of the Primary Surveillance Radar at RAF Linton-on-Ouse (RAF 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 RAF Radar and shall be in place for the operational life of the development provided the RAF Radar remains in operation. No turbines shall become operational unless and until all those measures required by the approved Air Traffic Control Radar Mitigation Scheme to be implemented prior to the operation of the turbines have been implemented and the local planning authority has confirmed this in writing. The development shall thereafter be operated in accordance with the approved Air Traffic Control Radar Mitigation Scheme.

- 24) No development shall commence unless and until a Primary 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. The Primary Radar Mitigation Scheme is a scheme designed to mitigate at all times the impact of the development on the Claxby primary radar (the Radar) and air traffic management operations of NATS (En Route) plc 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). The Primary 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. No turbines shall become operational unless and until all those measures required by the approved Primary Radar Mitigation Scheme to be implemented prior to the operation of the turbines have been implemented and the local planning authority has confirmed this in writing. The development shall thereafter be operated in accordance with the approved Primary Radar Mitigation Scheme.
- 25) Prior to the commencement of development the local planning authority shall be provided with the following information:
- (a) The anticipated dates of commencement and anticipated completion of construction;
 - (b) The height above natural ground level of the tallest permanent structure;
 - (c) The maximum extension height of any construction equipment; and
 - (d) The latitude and longitude of every turbine.
- 26) Prior to the commencement of development a specification for protected species surveys shall be submitted to and approved in writing by the local planning authority. The surveys shall be undertaken by a suitably qualified ecologist in accordance with the approved specification in the last suitable season prior to site preparation and construction work commencing. The survey results, a programme of any mitigation measures required as a consequence and a timetable for any such mitigation measures 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 under the supervision of a qualified ecologist.
- 27) Prior to the commencement of development an on-site Habitat Management Plan (HMP), including a timetable for its implementation, shall be submitted to and approved in writing by the local planning authority. The HMP shall be consistent with habitat management and enhancement measures

contained in the Environmental Statement. The HMP shall be implemented in accordance with the approved details.

28) The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment (FRA) dated 23 October 2012/Revision D/Mott Macdonald and the following mitigation measures detailed within the FRA:

(a) Limiting the surface water run-off generated by the proposed development so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site. The surface water must be limited to the greenfield run-off rate.

(b) The permanent bridge structure must have a soffit level a minimum of 600 mm above the modelled 1 in 100 year flood level plus an allowance for climate change.

(c) Finished floor levels of T2, T3, T4, T5 and T6 are set no lower than 1000 mm above the existing ground level, as they are located outside of the floodplain. Finished floor levels of T1 are set no lower than 1500 mm above existing ground level.

(d) Finished floor levels of the sub-station are set no lower than 750 mm above the existing ground level.

The mitigation measures shall be fully implemented prior to the First Export Date and thereafter in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be approved, in writing, by the local planning authority.

29) Prior to the erection of the first wind turbine, a written scheme shall be submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved scheme unless the local planning authority gives its prior written consent to any variations.

30) Prior to the First Export Date a scheme providing for a baseline survey and the investigation and alleviation of any interference caused by the operation of the 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 lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the developer by the local planning authority within 24 months of the First Export Date. Where impairment is determined by the qualified television engineer to be attributable to the wind turbines hereby permitted, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the local planning authority.

Condition 31 concerns noise. The form it should take and the limits imposed would depend upon a determination as to whether it would be necessary and reasonable to impose the same lower fixed limit during both day and night-time, along with whether the condition suggested by SPC to control amplitude modulation (AM) would be necessary.

If no AM condition was imposed, Version I below would apply if the condition was imposed with different lower fixed limits for day and night time, and Version II below would be appropriate if the same lower fixed noise limit was imposed for day and night time.

Version I

31) 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:

(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.

(B) Within 21 days from receipt of a written request of the local planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).

(C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from

the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.

(D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.

(E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol setting out the following:

- (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.
- (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

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.

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

(G) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the

attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.

(H) The wind farm operator shall continuously log 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 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the local planning authority on its request within 14 days of receipt in writing of such a request.

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 permission.

Tables 1 and 2 follow: -

Table 1: Between 07:00 and 23:00 hours (Noise Level in dB L_{A90, 10-min})

Location (easting, northing grid co-ordinates)	Standardised 10 m height Wind Speed (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
L _{A90} Decibel Levels												
Arglam Dairy Farm (478395, 435952)	38.0	38.0	38.0	38.0	38.0	38.0	40.3	42.6	47.8	49.6	49.6	49.6
Arglam Grange / Arglam Grange Cottage (477981, 435953)	44.7	44.7	44.7	44.7	44.7	44.7	44.6	44.6	48.6	50.2	50.2	50.2
Bursea Lane End Farm (479713, 435206)	37.1	37.1	37.1	37.1	37.1	37.5	38.5	40.3	42.5	44.9	47.3	49.4
Chapel Farm (479069, 434239)	36.4	36.4	36.4	36.4	36.4	37.7	40.7	43.7	46.3	47.7	47.6	47.6
Corner Farm (478776, 436012)	35.0	35.0	35.0	35.0	35.0	36.4	40.3	38.9	46.9	49.0	49.0	49.0
Cottage Farm (476901, 434285)	35.4	35.4	35.4	35.4	35.4	37.8	41.9	45.8	49.0	50.7	50.7	50.7
Fir Tree Cottage (478301, 433324)	40.4	40.4	40.4	40.4	40.4	42.1	44.5	47.0	48.8	49.3	49.3	49.3
Fir Tree House (478284, 433295)	40.4	40.4	40.4	40.4	40.4	42.1	44.5	47.0	48.8	49.3	49.3	49.3
Newholme (479475, 435424)	36.5	36.5	36.5	36.5	36.5	36.9	37.9	39.8	42.2	44.7	47.2	49.4
Patch Cottage (476148, 435605)	35.4	35.4	35.4	35.4	35.4	37.5	41.7	45.8	49.0	50.7	50.7	50.7
Southgate (479445, 434735)	36.4	36.4	36.4	36.4	36.4	38.1	40.9	43.9	46.5	47.9	47.9	47.9
Warham Farm Bungalow (478664, 434006)	36.4	36.4	36.4	36.4	36.4	38.0	40.9	43.9	46.5	47.9	47.8	47.8
The Coach House (478272, 433356)	40.4	40.4	40.4	40.4	40.4	42.1	44.5	47.0	48.8	49.3	49.3	49.3
The Croft (478469, 434767)	36.4	36.4	36.4	36.4	36.4	38.1	40.9	43.9	46.5	47.9	47.9	47.9
Warham Farm (478540, 433928)	36.4	36.4	36.4	36.4	36.4	38.2	41.0	44.0	46.5	47.9	47.9	47.9
Welham Bridge West Farm (479089, 434588)	44.9	44.9	44.9	44.9	44.9	44.9	44.8	44.8	46.5	47.8	47.8	47.8

Table 2: Between 23:00 and 07:00 hours (Noise Level in dB L_{A90, 10-min})

Location (easting, northing grid co-ordinates)	Standardised 10 m height Wind Speed (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
L _{A90} Decibel Levels												
Arglam Dairy Farm (478395, 435952)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	42.6	44.1	43.9	43.9	43.9
Arglam Grange / Arglam Grange Cottage (477981, 435953)	44.7	44.7	44.7	44.7	44.7	44.7	44.6	44.6	45.7	45.7	45.7	45.7
Bursea Lane End Farm (479713, 435206)	42.8	42.8	42.8	42.8	42.8	42.8	42.8	42.8	42.7	42.7	42.7	42.7
Chapel Farm (479069, 434239)	42.7	42.7	42.7	42.7	42.7	42.7	42.7	42.5	45.2	45.1	45.0	45.0
Corner Farm (478776, 436012)	40.4	40.4	40.4	40.4	40.4	42.0	40.7	38.9	41.4	41.0	41.0	41.0
Cottage Farm (476901, 434285)	42.9	42.9	42.9	42.9	42.9	42.8	42.7	44.5	47.5	47.5	47.5	47.5
Fir Tree Cottage (478301, 433324)	42.9	42.9	42.9	42.9	42.9	42.9	42.9	43.3	45.2	45.2	45.2	45.2
Fir Tree House (478284, 433295)	42.9	42.9	42.9	42.9	42.9	42.9	42.9	43.3	45.2	45.2	45.2	45.2
Newholme (479475, 435424)	42.6	42.6	42.6	42.6	42.6	42.7	42.6	42.5	42.4	42.4	42.4	42.4
Patch Cottage (476148, 435605)	42.8	42.8	42.8	42.8	42.8	42.7	42.6	44.4	47.5	47.5	47.5	47.5
Southgate (479445, 434735)	42.8	42.8	42.8	42.8	42.8	42.9	42.8	42.8	45.5	45.4	45.4	45.4
Warham Farm Bungalow (478664, 434006)	42.9	42.9	42.9	42.9	42.9	42.8	42.8	42.7	45.4	45.4	45.3	45.3
The Coach House (478272, 433356)	42.9	42.9	42.9	42.9	42.9	42.9	42.9	43.3	45.2	45.2	45.2	45.2
The Croft (478469, 434767)	42.8	42.8	42.8	42.8	42.8	42.9	42.8	42.8	45.5	45.4	45.4	45.4
Warham Farm (478540, 433928)	42.9	42.9	42.9	42.9	42.9	42.9	42.9	42.8	45.5	45.4	45.4	45.4
Welham Bridge West Farm (479089, 434588)	44.9	44.9	44.9	44.9	44.9	44.9	44.8	44.8	45.4	45.3	45.3	45.3

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

Guidance Notes

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 in accordance with the procedure specified in BS 4142: 1997 (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 (m/s) and arithmetic mean wind direction in degrees from north at hub height in each successive 10-minutes period at the permanent meteorological mast erected in accordance with the planning

permission on the site. Each 10 minute arithmetic average mean wind speed data as measured on the mast at turbine 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 Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). The wind farm operator shall continuously log arithmetic mean nacelle anemometer wind speed, arithmetic mean nacelle orientation, arithmetic mean wind direction as measured at the nacelle and arithmetic mean power generated during each successive 10-minute period for each wind turbine on the wind farm. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary.

- (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 prior to the commencement of measurements.

Note 2

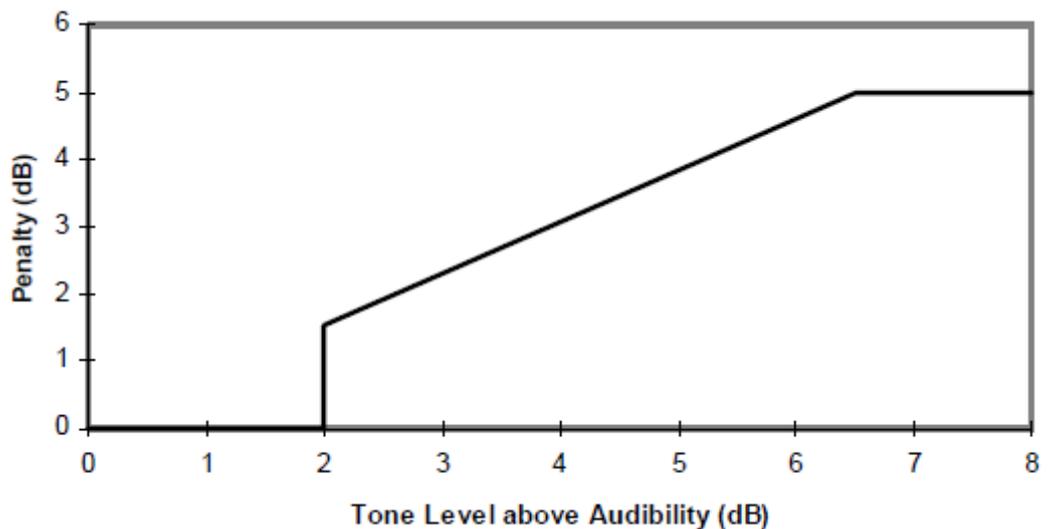
- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the local planning authority under paragraph (E) of the noise 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 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 substituted.
- (e) A least squares "best fit" linear regression 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 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:

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

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

Version II

As for *Version I*, except the contents of Table 2 replaced by the following, as modified if necessary, after referral back to the parties to ensure that the lower fixed limit was not more restrictive than that which would apply during the period from 0700 to 2300.

Property	Standardised Wind Speed at Ten Metres Height, m/s											
	1	2	3	4	5	6	7	8	9	10	11	12
Arglam Dairy Farm	38.0	38.0	38.0	38.0	38.0	38.0	38.0	41.8	44.1	44.0	44.0	44.0
Arglam Grange	44.7	44.7	44.7	44.7	44.7	44.7	44.6	44.6	45.7	45.7	45.7	45.7
Burse Lane End Farm	33.6	33.6	33.6	33.6	33.6	33.9	33.5	34.7	39.8	39.7	39.7	39.7
Chapel Farm	33.0	33.0	33.0	33.0	33.0	32.9	34.1	41.2	45.2	45.1	44.9	44.9
Corner Farm	35.0	35.0	35.0	35.0	35.0	35.0	36.6	38.9	41.5	41.1	41.1	41.1
Cottage Farm	34.1	34.1	34.1	34.1	34.1	33.3	38.7	44.5	47.5	47.5	47.5	47.5
Fir Tree Cottage	34.6	34.6	34.6	34.6	34.6	35.0	39.1	43.3	45.3	45.3	45.3	45.3
Fir Tree House	34.6	34.6	34.6	34.6	34.6	35.0	39.1	43.3	45.3	45.3	45.3	45.3
Newholme	31.3	31.3	31.3	31.3	31.3	32.4	31.3	32.8	39.2	39.1	39.1	39.1
Patch Cottage	33.9	33.9	33.9	33.9	33.9	32.4	38.4	44.4	47.5	47.5	47.5	47.5
Southgate	33.8	33.8	33.8	33.8	33.8	34.0	35.1	41.6	45.4	45.4	45.4	45.4
Warham Farm Bungalow	34.0	34.0	34.0	34.0	34.0	33.9	35.0	41.5	45.4	45.3	45.3	45.3
The Coach House	34.6	34.6	34.6	34.6	34.6	35.0	39.1	43.3	45.3	45.3	45.3	45.3
The Croft	33.8	33.8	33.8	33.8	33.8	34.0	35.1	41.6	45.4	45.4	45.4	45.4
Warham Farm	34.3	34.3	34.3	34.3	34.3	34.2	35.3	41.6	45.5	45.4	45.4	45.4
Welham Bridge West Farm	44.9	44.9	44.9	44.9	44.9	44.9	44.8	44.8	45.4	45.3	45.3	45.3

If the Secretary of State determines that it would be necessary and reasonable to impose the suggested condition to control AM, then the following should be included in the noise condition.

Additional paragraph (J) of Condition 31 and Note 5 as follows:

(J) On the written request of the local planning authority, following a complaint to it considered by the local planning authority to relate to regular fluctuation in the turbine noise level (amplitude modulation), the wind farm operator shall at its expense employ an independent consultant approved in writing by the local planning authority to undertake the additional assessment outlined in Guidance Note 5 to ascertain whether amplitude modulation is a contributor to the noise complaint as defined in Guidance Note 5. If the said assessment confirms amplitude modulation to be a contributor as defined in Guidance Note 5, the local planning authority shall request that within 28 days of the completion of the noise recordings referred to in Guidance Note 5, the developer shall submit a scheme to mitigate such effect. Following the written approval of the scheme and the timescale for its implementation by the local planning authority the scheme shall be activated forthwith and thereafter retained.

Note 5

Amplitude Modulation (AM) is the regular variation of the broadband aerodynamic noise caused by the passage of the blades through the air at the rate at which the blades pass the turbine tower. ETSU-R-97, *The Assessment and Rating of Noise from Wind Turbines*, assumes that a certain level of AM (blade swish) is intrinsic to the noise emitted by the wind turbine and may cause regular peak to trough variation in the noise of around 3 dB and up to 6 dB in some circumstances. The noise assessment and rating framework recommended in ETSU-R-97 fully takes into account the presence of this intrinsic level of AM when setting acceptable noise limits for wind farms.

Where the local planning authority considers the level of AM may be at a level exceeding that envisaged by ETSU-R-97, they may require the operator to appoint an approved independent consultant to carry out an assessment of this feature under Condition 31(J). In such circumstances, the complainant(s) shall be provided with a switchable noise recording system by the independent consultant and shall initiate recordings of the turbine noise at times and locations when significant amplitude modulation is considered to occur. Such recordings shall allow for analysis of the noise in one-third octave bands from 50Hz to 10kHz at intervals of 125 milliseconds. The effects of amplitude modulation are normally associated with impacts experienced inside properties or at locations close to the property, such as patio or courtyard areas. For this reason the assessment of the effect necessarily differs from the free-field assessment methodologies applied elsewhere in these Guidance Notes.

If, over a period of 6 months, commencing at a time of the first occasion at which the local planning authority records an amplitude modulation event, the complainant fails to record 5 occurrences of significant amplitude modulation, in separate 24 hour periods, then its existence as a contributor to the noise complaint shall be excluded. If, however, the independent consultant, on analysis of the noise recordings,

identifies that amplitude modulation is a significant contributor to the noise complaint then the local planning authority shall be informed in writing.

My recommendation, for the reasons set out above, is that Version II should be imposed with the AM condition.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Gill
of Counsel

Instructed by Legal Department East Riding of
Yorkshire Council.

He called

Mark Steele BA DipLD CMLI
Hannah Coldwell MSc

Mark Steele Consultants Limited.
Principal Development Management Officer.

FOR THE APPELLANT:

David Hardy

Partner Eversheds LLP.

He called

Samantha Oxley MA BSc CMLI
Robert Bourn BA(Hons) MA MIfA
David Bell BSc(Hons) DipUD
MRTPI MCHIT

Principal, Land Use Consultants.
Director of CgMS Ltd.
Regional Director, Jones Lang LaSalle.

FOR SPALDINGTON PARISH COUNCIL (SPC) Rule (6) party:

Tina Douglass
of Counsel

Instructed by SPC Parish Clerk.

She called

Michelle Bolger CMLI DipLA
BA(Hons) LA PGCE BA(Hons) Eng
Cllr Kath Westin
Cllr Robert Hare MA(Cantab)
Wendy McKay
Steven Arnold MA (Cantab) MA
(TRP) MRTPI MRICS

Senior Associate of Gillespies LLP.
Chair of SPC.
Vice-Chair of SPC.
Clerk SPC.
Planning consultant.

INTERESTED PERSONS:

David Davis MP

Member of Parliament for Haltemprice and
Howden.

Dr Peter Halkon MA FSA

Lecturer, University of Hull.

John Whitton

Local resident.

Mary Lunn

Local resident.

Stephen Lunn

Local resident.

Dr Peter Ayling BSc PhD

Countryside Officer for East Yorkshire &
Derwent Area of the Ramblers' Association.
Director Renewables Network.

Sam Pick

Local resident.

Gillian Craven

Local resident.

Janice Chadwick BHSAl

Local resident.

Kathryn Whitworth

Local resident.

Guy Bramley
Margaret Cockbill
Cllr Victoria Aitken

Local resident.
East Riding Branch of CPRE.
Ward Councillor.

Local residents also asked questions of opposing witnesses and joined in the discussion about possible conditions.

PROOFS OF EVIDENCE (PoE), WRITTEN REPRESENTATIONS (WR) AND STATEMENT OF COMMON GROUND (SoCG)

East Riding of Yorkshire Council (ERYC)

PoE1 Summary, Proof, Rebuttal and Appendices of Mark Steele
PoE2 Summary and Proof of Hannah Coldwell

Spaldington Parish Council (SPC)

PoE3 Summary, Proof, Appendix 1 Figures and Appendices 2-9 of Michelle Bolger
PoE4 Proof of Kath Westin
PoE5 Proof of Robert Hare
PoE6 Proof of Wendy McKay
[Appendices 1-5 for PoE4, PoE5 and PoE6]
PoE7 Proof and Appendix 1 of Steven Arnold

Appellant

PoE8 Summary, Proof, Rebuttal and Appendices 1-3 of Samantha Oxley
PoE9 Summary, Proof, Rebuttal and Appendices 1-6 and Figures of Robert Bourn
PoE10 Summary, Proof and Appendices 1-5 of David Bell
WR1 Summary and Proof of Dr Steve Percival BSc(Hons) PhD MCIEEM
WR2 Summary, Proof, Rebuttal and Appendices A-C of Dr Andrew Bullmore BSc PhD MIOA

Other representations

Written representations to the Council at the application stage - attached to Questionnaire.

Third party written representations about appeal – Red Folder.

Written representations on FEI – Red Folder.

SoCG Statement of Common Ground dated 3 April 2014.

LIST OF PLANS

Site Location ES Figure 2.1.

Wind Farm Layout ES Figure 2.2.

DOCUMENTS SUBMITTED AT THE INQUIRY (ID)

- ID 1.1 Letter from Mr IH Scotter, Balkholme.
- 1.2 Letter from Sam Pick, Director Renewables Network.
- ID 2.1 Draft unilateral undertaking.
- 2.2 Unilateral undertaking signed and dated 16 May 2014.
- ID 3 SPC updates to figures.
- ID 4 Opening submissions on behalf of the appellant.
- ID 5 Opening submissions on behalf of the local planning authority.
- ID 6 Opening statement on behalf of Spaldington Parish Council.
- ID 7.1 Dr Halkon's Reply to rebuttal submitted by Mr Robert Bourn.
- 7.2 Letter from Dr Malcolm Lillie FSA MifA FHEA
- 7.3 Letter dated 8 May 2014 from Dr Justine Bayley, Honorary Editor, The Historical Metallurgy Society.
- 7.4 Presentation by Dr Halkon.
- ID 8 Suggested AM condition by SPC.
- ID 9 Enlarged wireframe VP17 showing T6 in relation to met mast height.
- ID 10 Statement by Mary Lunn.
- ID 11 Statement by Stephen Lunn.
- ID 12 Statement by Peter Ayling.
- ID 13 Statement by Janice Chadwick.
- ID 14 Statement by Kathryn Whitworth.
- ID 15 Statement by Margaret Cockbill on behalf of CPRE.
- ID 16 Ministerial statement dated 9 April 2014 by Rt Hon Eric Pickles on local planning and renewable energy developments.
- ID 17 Email dated 10 July 2013 concerning updated cumulative plan.
- ID 18 Written representation on archaeology by Robert Bourn.
- ID 19 Statement by Cllr Victoria Aitken.
- ID 20 Email dated 17 July 2013 providing updated cumulative plan.
- ID 21 Screening opinion concerning proposed erection of two 100 m high wind turbines on land adjacent to Ivy House Farm, including proposed layout plan.
- ID 22 Email dated 14 May 2014 to Dr Halkon concerning submission by Robert Bourn [ID18].
- ID 23 Dr Halkon's reply to written representation submitted by Robert Bourn.
- ID 24. View from Trans Pennine Trail including temporary meteorological mast.
- ID 25 Site Layout Plan for Spaldington Common Wind Farm scheme.
- ID 26 Closing submissions on behalf of Spaldington Parish Council.
- ID 27 Closing submissions on behalf of the local planning authority.
- ID 28 Closing submissions on behalf of the appellant.
- ID 29 Suggested conditions.
- ID 30 Agreed AOD heights and SPC alternatives for:
 - 1. camera height for VP17,
 - 2. camera height/eye level sitting in car height at top of M62 bridge,
 - 3. the tip height of RVWF T1-T6,
 - 4. the top of Howden Minster tower,
 - 5. the top of the existing met mast,
 - 6. the tip height of the three most southern consented WT in SAWF,
 - 7. the tip height of the most northerly and westerly of WT in Sixpenny Wood WF.[requested by Inspector]

ID 31 Table 3 of the noise condition - comprising Table 2 filled out with the figures that would apply in accordance with ETSU if a lower night time limit the same as the lower day time limit used in Table 1 was applied for those dwellings which do not have a financial interest in the appeal scheme. [requested by Inspector]

CORE DOCUMENTS (CD)

CD1.1	Saved Policies of the Yorkshire and Humber Plan Regional Spatial Strategy to 2026 (2008)
CD1.2	Saved Policies of the Joint Structure Plan for Hull and East Riding of Yorkshire (2005)
CD1.3	Saved Policies of the Boothferry Borough Wide Local Plan(1999)
CD2.1	DCLG: <i>National Planning Policy Framework</i> (March 2012)
CD2.2	DCLG: <i>National Planning Practice Guidance</i> (as at 8 April 2014)
CD2.3	DECC: <i>Overarching National Policy Statement for Energy</i> EN-1
CD2.4	DECC: <i>National Policy Statement for Renewable Energy Infrastructure</i> EN-3
CD2.5	DCLG: Written Statement to Parliament, Local Planning and Onshore Wind, The Rt Hon Eric Pickles MP (6 June 2013)
CD2.6	DECC: Written Statement to Parliament, The Rt Hon Edward Davey MP (6 June 2013)
CD2.7	DECC: Press Release (6 June 2013)
CD2.8	DECC: Written statements to Parliament (October 2013)
CD3.1	Letter dated 6 July 2010 from the Secretary of State for Communities and Local Government to all Chief Planning Officers
CD3.2	Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013
CD3.3	Government Office for Yorkshire and the Humber and the Yorkshire and Humber Assembly: Planning for Renewable Energy Targets in Yorkshire and Humber (December 2004)
CD3.4	East Riding of Yorkshire Council: Planning for Renewable Energy Developments Interim Planning Document (2009) (Volumes 1 and 2)
CD3.5	AECOM: Low Carbon and Renewable Energy Capacity in Yorkshire and Humber (Final Report) (March 2011)
CD3.6	East Riding of Yorkshire Council: Proposed Submission Strategy Document (January 2014)
CD3.7	Representations to consultation on East Riding Local Plan (7 March 2014)
CD4.1	<i>R (Hulme) v Secretary of State for Communities and Local Government</i> [2010] EWHC 2386 (Admin)
CD4.2	<i>Michael William Hulme v Secretary of State for Communities and Local Government and RES Developments Limited</i> [2011] EWCA Civ 638
CD4.3	<i>R (Lee) v Secretary of State for Communities and Local Government, Maldon District Council, Npower Renewables</i> [2011] EWHC 807 (Admin)

CD4.4	<i>(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)</i>
CD4.5	<i>Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government, Great Yarmouth Borough Council [2012] EWHC 1419 (Admin)</i>
CD4.6	<i>(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)</i>
CD4.7	<i>(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)</i>
CD4.8	<i>Colman v Secretary of State for Communities and Local Government and others [2013] EWHC 1138 (Admin)</i>
CD4.9	<i>Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Ltd [2012] EWHC 4344 (Admin)</i>
CD4.10	<i>Chernley Campaign Limited v Mole Valley [2013] EWHC 2582</i>
CD4.11	<i>R v Cornwall County Council ex parte Jill Hardy [2001] (Official Transcript)</i>
CD4.12	<i>Tegni Cymru Cyf v The Welsh Ministers [2010] EWCA Civ 1635</i>
CD4.13	<i>Morge FC v Hampshire County Council [2011] UKSC 2</i>
CD4.14	<i>Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and others [2014] EWCA Civ 137</i>
CD4.15	<i>Forest of Dean DC v Secretary of State [2013] EWHC 4052 (Admin)</i>
CD4.16	<i>North Norfolk District Council v Secretary of State for Communities and Local Government and David Mack [2014] EWHC 279</i>
CD5.1	<i>Spaldington (APP/E2001/A/10/2137617 and APP/E2001/A/10/2139965)</i>
CD5.2	<i>Burnthouse Farm (APP/D0515/A/10/2123739)</i>
CD5.3	<i>Enifer Downs (APP/X220/A/08/2071880)</i>
CD5.4	<i>Carland Cross (APP/D0840/A/09/2103026)</i>
CD5.5	<i>Cleek Hall (APP/N2739/A/12/2172629)</i>
CD5.6	Intentionally blank
CD5.7	<i>Chelveston (APP/ K0235/A/11/2160077 And APP/G2815/A/11/2160078)</i>
CD5.8	<i>Watford Lodge (APP/Y2810/A/11/2153242)</i>
CD5.9	<i>Church Farm, Southoe (Common Barn) (APP/H0520/A/12/2188648)</i>
CD5.10	<i>Beech Tree Farm (APP/H3320/A/11/2151744)</i>
CD5.11	<i>Earls Hall Farm (APP/P1560/A/08/2088548)</i>
CD5.12	<i>Burnham-on-Sea (APP/V3310/A/06/2031158)</i>
CD5.13	<i>Sixpenny Wood (APP/E2001/A/09/2101851)</i>

CD4.14	<i>Masters Pit</i> (APP/B1225/A/11/2161905)
CD5.15	<i>Busseys Loke, Hempnall</i> (APP/L2630/A/08/2084443)
CD5.16	<i>Lilbourne</i> (APP/Y2810/A/11/2164759)
CD5.17	<i>Newlands Farm</i> (APP/E0915/A/12/2168121)
CD5.18	<i>Brightenber</i> (APP/C2708/A/09/2107843)
CD5.19	<i>Cotton Farm</i> (APP/ H0520/A/09/2119385)
CD5.20	<i>Yelvertoft</i> (APP/Y2810/A/10/2120332)
CD5.21	<i>Treading</i> (APP/D0515/A/12/2181777 and APP/A2525/A/12/2184954)
CD2.22	<i>Ellough Airfield</i> (APP/T3535/A/13/2193543)
CD5.23	<i>Potato Pot</i> (APP/G0908/A/12/2189934)
CD5.24	<i>Gayton le Marsh</i> (APP/D2510/A/12/2176754)
CD5.25	<i>Nunwood</i> (APP/Y0435/A/10/2140401, APP/K0235/A/11/2149434 and APP/H2835/A/11/2149437)
CD5.26	<i>Sober Hill</i> (APP/E2001/A/09/2101421)
CD5.27	<i>Airfield Farm, Poddington</i> (APP/K0235/A/09/2108506)
CD5.28	<i>Harelaw Renewable Energy Park, Glenouther Moor</i> (s36 application)
CD5.29	<i>Palmers Hollow Wind Farm</i> (APP/Y2430/A/09/2108595)
CD5.30	<i>Spittal Hill Windfarm</i> (report to Scottish Ministers)
CD5.31	<i>Catwick Grange</i> (APP/E2001/A/13/2193302)
CD5.32	<i>Monkwith</i> (APP/E2001/A/10/2130670)
CD5.33	<i>Brightenber Hill</i> (APP/C2708/A/09/2107843)
CD5.34	<i>Asfordby</i> (APP/Y2430/A/13/2191290)
CD5.35	<i>Turncole</i> (APP/X1545/A/12/2174982, APP/X1545/A/12/179484 and APP/X1545/A/12/2179225)
CD5.36	<i>Dunsland Cross</i> (APP/W11545/A/13/2194484)
CD5.37	<i>Black Ditch</i> (APP/V3310/A/12/2186162)
CD5.38	<i>Druim Ba Windfarm</i> Report to Scottish Ministers (DPEA November 2012)
CD5.39	<i>Bicton</i> (APP/H0520/A/11/2146394)
CD5.40	<i>New House Farm, Brineton</i> (APP/C3430/A/11/2162189)
CD5.41	<i>Pentre Tump, Powys</i> (APP/T6850/A/13/2198831)
CD5.42	<i>Chase Farm, Baumber</i> (APP/ D2510/A/10/2121089)
CD5.43	<i>Wormslade Farm, Kelmarsh</i> (APP/Y2810/A/13/2200118)
CD5.44	<i>Routh</i> (APP/E2001/A/07/2050015)
CD5.45	<i>Withernwick</i> (APP/E2001/A/05/2088796)
CD5.46	<i>Swinford</i> (APP/F2415/A/09/2096369/NWF)
CD5.47	<i>Roos</i> (APP/E2001/A/09/2113076)
CD6.1	DTI Energy White Paper Meeting the Energy Challenge (2007) (Extracts)
CD6.2	DECC: <i>The UK Renewable Energy Strategy</i> (2009)
CD6.3	DECC: <i>The UK Low Carbon Transition Plan White Paper</i> (July 2009) (Executive Summary)
CD6.4	Climate Change Plan for Yorkshire and the Humber 2009 – 2014
CD6.5	Committee on Climate Change: Renewable Energy Review (May 2011)

CD6.6	DECC: <i>UK Renewable Energy Roadmap</i> (July 2011)
CD6.7	DECC: <i>Onshore Wind, Direct and Wider Economic Impacts</i> (May 2012)
CD6.8	DECC: <i>Special Feature – Renewable Energy in 2011</i> (June 2012)
CD6.9	DECC: <i>Special Feature – Sub-national renewable electricity, renewable electricity in Scotland, Wales, Northern Ireland and the regions of England in 2011</i> (September 2012)
CD6.10	DECC: <i>UK Renewable Energy Roadmap Update</i> (December 2012)
CD6.11	DECC: <i>Energy Trends</i> (June 2013)
CD6.12	DECC: <i>Onshore Wind Call for Evidence: Government Response to Part A (Community Engagement and benefits) and Part B (Costs)</i> (June 2013)
CD6.13	DECC: <i>UK Renewable Energy Roadmap Update</i> (November 2013)
CD6.14	European Commission, <i>Press Release 2030 climate and energy goals for a competitive, secure and low-carbon EU economy</i> , (22 January 2014)
CD6.15	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: <i>A Policy Framework for Climate and Energy in the period from 2020 to 2030</i> , COM (2014)15 Final, 22.0114, European Commission
CD6.16	DECC: <i>UK Government response to the EC 2030 White Paper on Climate Change, Statement by Secretary of State Davey</i> (22 January 2014)
CD6.17	Natural England: <i>Sustainable Energy Policy</i> (2008)
CD6.18	Natural England: <i>Climate Change Policy</i> (2008)
CD6.19	Natural England: <i>Position on Wind Energy</i> (2009)
CD6.20	Natural England: <i>Future Landscapes</i> draft policy for consultation (2009)
CD6.21	Natural England: <i>Making Space for Renewable Energy</i> (2010)
CD6.22	Energy Act 2013
CD6.23	Climate Change Act 2008
CD6.24	Annual Energy Statement (2013)
CD6.25	Renewable Energy Directive 2009/28/EC
CD6.26	DECC: <i>Digest of UK Energy Statistics (DUKES July 2013)</i>
CD6.27	National Infrastructure Plan (2013)
CD7.1	The Landscape Institute, Institute of Environmental Management and Assessment: <i>Guidelines for Landscape and Visual Impact Assessment</i> , Second Edition (2002)
CD7.2	The Landscape Institute, Institute of Environmental Management and Assessment: <i>Guidelines for Landscape and Visual Impact Assessment</i> , Third Edition (2013)
CD7.3	Landscape Institute: <i>Landscape Architecture and the Challenge of Climate Change</i> (October 2008)

CD7.4	Landscape Institute: Photography and Photomontage in Landscape and Visual Impact Assessment, Advice Note 01/11
CD7.5	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance (2006)
CD7.6	Scottish Natural Heritage: <i>Siting and Designing Windfarms in the Landscape, Version 1</i> (December 2009)
CD7.7	Scottish Natural Heritage: <i>Guidance Assessing the Cumulative Impact of Onshore Wind Energy Developments, Version 3</i> (March 2012)
CD7.8	The Countryside Agency: Landscape Character Assessment: Guidance for England and Scotland (2002)
CD7.9	Natural England's LCA Topic paper 6 <i>Techniques and criteria for judging capacity and sensitivity</i>
CD7.10	Natural England's LCA Topic paper 9 <i>Climate change and natural forces - the consequences for landscape character</i>
CD7.11	Countryside Character Volume 3: Yorkshire and the Humber
CD7.12	Gillespies: <i>Our Landscape – Today for Tomorrow</i> (1995)
CD.7.13	The East Riding of Yorkshire Landscape Character Assessment (November 2005)
CD7.14	Natural England: <i>All Landscapes Matter</i> (2010)
CD7.15	East Riding of Yorkshire Landscape Character Assessment – Howden (updated 2013)
CD7.16	The Highland Council: <i>Visualisation Standards for Wind Farm Developments</i> (updated 2013)
CD7.17	Extract from Landscape Institute website - http://www.landscapeinstitute.co.uk/knowledge/GLVIA.php
CD7.18	European Landscape Convention
CD7.19	Scottish Natural Heritage (2013) Visual Representation of Wind Farms Consultation Questions and Overview
CD7.20	University of Sterling – The Effect of Focal Length on Perception of Scale and Depth in Landscape Photographs (2012) [only available electronically unless requested]
CD8.1	English Heritage: <i>Conservation Principles, Policies and Guidance</i> (2008)
CD8.2	English Heritage: <i>PPS5 Planning for the Historic Environment Historic Environment Planning Practice Guidance</i> (2010)
CD8.3	English Heritage: <i>The Setting of Heritage Assets</i> (2011)
CD8.4	English Heritage: <i>Wind Energy and the Historic Environment</i> (October 2005)
CD9.1	ETSU-R-97: <i>The Assessment and Rating of Noise from Wind Turbines</i> (September 1996)
CD9.2	<i>Prediction and assessment of wind turbine noise - agreement about relevant factors for noise assessment from wind energy projects.</i> D Bowdler at al, Institute of Acoustics, Acoustics Bulletin, Vol 34, No 2 March/April 2009
CD9.3	<i>A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise</i> , Institute of Acoustics (May 2013)

CD9.4	DEFRA: <i>Noise Policy Statement for England</i> (March 2010)
CD9.5	British Standard BS 5228, <i>Code of Practice for Noise and Vibration Control on Construction and Open Sites, Part 1, Noise</i> (2009)
CD9.6	International Standard ISO 9613 Acoustics – <i>Attenuation of Sound during Propagation Outdoors, Part 2, General Method of Calculation</i> (1996)
CD10.1	Band, W., M. Madders, and D. P. Whitfield (2007). <i>Developing field and analytical methods to assess avian collision risk at wind farms</i> . In M. de Lucas, G. Janss, and M. Ferrer, editors. <i>Birds and Wind Farms</i> . Quercus, Madrid
CD10.2	Douse, A. (2013). <i>Avoidance Rates for Wintering Species of Geese in Scotland at Onshore Wind Farms</i> . SNH Guidance, May 2013
CD10.3	Drewitt, A.L. and Langston, R.H.W. (2006). <i>Assessing the impacts of wind farms on birds</i> . <i>Ibis</i> , 148, 29-42
CD10.4	Hotker, H., K. M. Thomsen, and H. Koster. (2004). <i>Impacts on biodiversity of exploitation of renewable energy sources</i> . NABU BirdLife Germany
CD10.5	Illner, H. (2011). <i>Comments on the report "Wind Energy Developments and Natura 2000"</i> , edited by the European Commission in October 2010
CD10.6	Maclean, I.M.D., Wright, L.J., Showler, D.A. and Rehfisch, M.M. (2009) <i>A Review of Assessment Methodologies for Offshore Windfarms</i> . British Trust for Ornithology report to COWRIE Ltd
CD10.7	Pearce-Higgins, J., Stephen, L., Langston, R., Bainbridge, I. and Bullman, R. (2009). <i>The distribution of breeding birds around upland wind farms</i> . <i>Journal of Applied Ecology</i> 46, 1323-1331
CD10.8	Pearce-Higgins, J.W., Stephen, L., Douse, A. and Langston, R.H.W. (2012) <i>Greater impacts of wind farms on bird populations during construction than subsequent operation: results of a multi-site and multi-species analysis</i> . <i>Journal of Applied Ecology</i> , 49, 386-394
CD10.9	Percival, S. M. (2005). <i>Birds and wind farms: what are the real issues?</i> <i>British Birds</i> 98: 194-204
CD10.10	Percival, S. M. (2007). <i>Predicting the effects of wind farms on birds in the UK: the development of an objective assessment methodology</i> . in M. de Lucas, Janss, G.F.E. and Ferrer, M., editor. <i>Birds and Wind Farms: risk assessment and mitigation</i> . Quercus, Madrid
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CD11.1	ERYC Walking the Riding promoted routes
CD11.2	Natural England Permissive Access AG00291577
CD11.3	Market Weighton Canal and River Foulness Action Plan
CD11.4	British Horse Society Advice on Wind Turbines 2013/1
CD11.5	British Horse Society Scottish Wind Farm Advice Note
CD11.6	British Horse Society – Wind Turbine Experiences 2012 Survey Results
CD12.1	Planning application and supporting documents
CD12.2	Environmental Statement October 2012
CD12.3	Officer report to the Planning Committee
CD12.4	Decision Notice dated 13 August 2013
CD12.5	Appellant statement of case
CD12.6	Council statement of case
CD12.7	Rule 6 part statement of case
CD12.8	Statement of common ground
CD12.9	Consultation responses from planning application
CD12.10	Further environmental information (February 2014)
CD12.11	Further environmental information (March 2014)
CD12.12	Committee Minutes



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.