



Department for
Communities and
Local Government

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Our Ref: APP/E3715/A/14/2227479
Your ref: CY02/PR01/43997.1/TRACE

18 January 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 79)
APPEAL BY RES UK & IRELAND LTD AT LAND AT CESTERSOVER FARM,
CESTERSOVER FARM, CESTERSOVER, PAILTON, RUGBY, WARWICKSHIRE
CV23 0QP
APPLICATION REF: R12/2009**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector Paul K Jackson B Arch (Hons) RIBA, who held an inquiry into your client's appeal under Section 79 of the Town and Country Planning Act 1990 against the decision of Rugby Borough Council ("the Council") to refuse an application for the erection of 4 three-bladed, horizontal axis wind turbines, each up to 126.5 metres maximum to tip height, electricity transformers, underground cabling, site access tracks and watercourse crossings, site access upgrades, crane hard standings, turning heads, a control building, a communications mast, and a permanent free-standing meteorological mast. During construction and commissioning a number of temporary works including 2 construction compounds, crane hard standings, and temporary guyed anemometer/power performance masts, dated 31 October 2013, in accordance with application Ref: R12/2009.
2. The appeal was recovered for the Secretary of State's determination on 23 October, 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves a renewable energy development.

Inspector's recommendation

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 recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Procedural matters

4. The Secretary of State has noted the Inspector's remarks and actions at IR1-6.

Policy and statutory considerations

5. In deciding this 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. In this case, the adopted development plan comprises the 2011 Rugby Borough Core Strategy (CS) and saved policies of the 2006 Rugby Borough Local Plan (LP). The Secretary of State agrees with the Inspector that the most relevant policies for this case are those set out at IR10-12, namely: CS14 (Enhancing the Strategic Green Infrastructure Network), CS16 (Sustainable Design) and LP Policy GP5 (Renewable Energy). He notes (IR14) that the Council has embarked upon a new Melton Local Plan, but this remains at consultation stage of development and agrees with the Inspector this has not reached a stage at which it can be given any significant weight. He further notes other planning guidance, namely, the 2010 Renewable and Low Carbon Energy Resource Assessment and Feasibility Study, the 2011 Rugby Borough Landscape Capacity Study for Wind Energy Developments and its 2013 update.
6. The Secretary of State has had regard to his Written Ministerial Statement (WMS) on Local Planning of 18 June 2015. The statement explained that the Secretary of State was setting out new considerations to be applied to proposed wind energy development. Subject to a transitional provision, the statement explained that the new considerations had immediate effect. Given its relevance to this case, the Secretary of State attaches substantial weight to the statement as the most recent expression of government planning policy for onshore wind development.
7. The statement includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this appeal proposal the Secretary of State has considered the representations reported in the Inspector's Report.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the planning practice guidance published March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also taken into account the WMSs on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government; the WMS on renewable energy published by the Secretary of State for Communities and Local Government in April 2014; and the English Heritage/Historic England guidance entitled "*The Setting of Heritage Assets*" as updated in July 2015.

9. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main issues

10. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR246. The other consideration he has taken into account when reaching his decision is the WMS on Local Planning of 18 June 2015.

Effect of the proposed development on the setting of designated heritage assets

Holy Trinity Church

11. The Secretary of State has had regard to the Inspector's remarks on the setting of the Grade II* listed Holy Trinity Church (IR248-249). He further agrees that the rural setting adds to its historical significance and that the turbines would be visible together with the spire in views from the valley. For the reasons set out at IR250, the Secretary of State agrees that the impact on the heritage significance of the church is such that 'less than substantial' harm should be weighed against the benefits of the scheme.
12. The Secretary of State agrees with the Inspector (IR249) that in some views the turbines would spread directly behind or in front of the spire in an uncomfortable, out of scale manner noticeably diminishing the significance of the church in its landscape setting. The Secretary of State gives considerable importance and weigh to the desirability of preserving the setting of Holy Trinity Church.

The Churchover Conservation Area

13. The Secretary of State agrees with the Inspector for the reasons given at IR251-2 that the proposed turbines would not impinge to any great degree on appreciation of the heritage significance of the conservation area.

Other heritage assets – non-designated and designated

14. Like the Inspector the Secretary of State has considered the effect of the proposed turbines on other heritage assets. He agrees with the Inspector that the non-designated ridge and furrow (IR254) would suffer a degree of harm from the adjacent access tracks and pads. The Secretary of State has considered the impact of the proposal on other heritage assets, designated and non-designated, within a 5km radius of the turbines, including the Georgian farmhouse at Streetfields Farm. He agrees with the Inspector that for reasons of distance, orientation and/or screening the effect on other designated heritage assets would be of a neutral magnitude (IR255).

Landscape Character

15. The Secretary of State has given careful consideration to the Inspector's analysis at IR256-265. He agrees that the proposed turbines would have highly significant adverse landscape effects which would extend at least 2km. He further agrees that the proposed development would conflict with the landscape protection aims of the development plan, specifically policies CS14, CS16 and LP policy GP5. It would also not conserve or enhance remote rural character as set out in the management strategy of the Warwickshire Landscape Guidelines (IR266).

Visual Amenity

16. The Secretary of State agrees with the Inspector (IR267-268) that the turbines would become a dominant feature of the local landscape which would re-define the experiences of local residents and the that adverse visual impact on recreational walkers on public rights of way would be major within 1 – 2 km.

Other considerations

Noise

17. The Secretary of State agrees with the Inspector for the reasons given at IR 269 that, subject to an appropriate condition providing for mitigation in the event of Excess Amplitude Modulation arising, turbine noise does not weigh against the scheme.

Residential amenity

18. The Secretary of State has considered the Inspector's analysis at IR270-271 and agrees the change would be detrimental to the residential amenity of the neighbouring properties but not unacceptable.

Health concerns

19. The Secretary of State notes and agrees with the Inspector's remarks at IR273. There is no available evidence to suggest that living in the vicinity of an existing turbine in the UK has had any harmful effect on health.

Safety

20. The Secretary of State agrees with the Inspector's remarks at IR274 and notes his use of a condition regarding relocation of the turbines within the micro-siting allowance.

Balance and conclusions

21. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 (see paragraph 5 above), the Secretary of State has concluded, in agreement with the Inspector, that the proposal does not accord with the development plan taken as a whole, and in particular owing to the clear conflict with policies CS14, CS16 and LP policy GP5 (IR266). The Secretary of State has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeal.

22. The Secretary of State, in applying paragraph 215 of the Framework, has taken into account the degree of consistency between the development plan policies and the Framework. Although there are marked differences between the policies and the Framework, such as in relation to enhancing the strategic green infrastructure, he is satisfied that the policies are consistent with the Framework insofar as they endeavour to conserve the natural environment and to encourage design principles for the layout and siting of renewable energy schemes, and to this extent he considers that the relevant policies merit limited weight.
23. The Secretary of State has also considered Paragraph 216 of the Framework. However, given the emerging Local Plan is still at the consultation stage it is as yet unclear what, if any, relevant policies will emerge and he therefore gives this plan little weight.
24. The Secretary of State agrees with the Inspector the public benefits of the turbines comprise the environmental advantages of the generation of renewable energy. To that extent the turbines would supply approximately 5400 homes contributing to the supply of electricity as part of a mix of renewable resources in Rugby (IR276).
25. The Secretary of State further finds that the appeal scheme would provide a valuable contribution to cutting greenhouse gas emissions and like the Inspector (IR277) attributes substantial weight by virtue of the support in principle given to renewable energy projects by the Framework (paragraphs 93-97, 98) and the overarching National Policy Statements for Energy (EN-1) and Renewable Energy Infrastructure (EN-3).
26. However, the Secretary of State, like the Inspector, has also found considerations that weigh against the scheme. The proposed development would have a harmful effect on the setting of Holy Trinity Church and is counter to policies CS14, CS16 and LP policy GP5. In view of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, considerable weight is attributed to that harm. Like the Inspector (IR248), the Secretary of State agrees that while there would be no direct impact on the fabric of the church, the heritage significance of the church is agreed to be high (IR250) and paragraph 134 of the Framework is engaged and that 'less than substantial' harm weighs against the proposal. The Secretary of State also agrees with the Inspector that the scheme would fail to protect the ridge and furrow, engaging paragraph 135 of the Framework, and that permanent harm would ensue. He gives this further weight. The Secretary of State also finds harmful impacts on landscape and visual amenity and gives this significant weight. The Secretary of State agrees (IR282) that the reversibility of the proposal needs to be taken into account, but affords this only little weight, given that the adverse impacts of the turbines would last for a generation.
27. The Secretary of State agrees with the Inspector that the material considerations that would arise from harm associated with the scheme would outweigh the benefits it would bring. Those material considerations, taken together and including the overarching statutory duty imposed by section 66(1), make unacceptable the impact of the development. The scheme would also conflict with the development plan taken as a whole, national planning policy and policy guidance.
28. In addition, having applied the transitional provision set out in the June 2015 WMS, the Secretary of State is not satisfied that the planning impacts identified by

affected local communities have been addressed. This is demonstrated, in particular, by the Inspector's conclusions at IR278-279 and IR283. As those planning impacts as identified by the affected communities have not been addressed, the proposed scheme would not meet the requirements of the transitional arrangements set out in the WMS of 18 June 2015; and the Secretary of State gives significant weight to this non-compliance.

Conditions

29. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions, as set out at IR242-245. He is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework and the guidance. However, the Secretary of State does not consider that the conditions would overcome his reasons for dismissing the appeal.

Formal Decision

30. 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 erection of, 4 three-bladed, horizontal axis wind turbines, each up to 126.5 metres maximum to tip height, electricity transformers, underground cabling, site access tracks and watercourse crossings, site access upgrades, crane hard standings, turning heads, a control building, a communications mast, and a permanent free-standing meteorological mast. During construction and commissioning a number of temporary works including 2 construction compounds, crane hard standings, and temporary guyed anemometer/power performance masts, dated 31 October 2013, in accordance with application Ref: R12/2009.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, this must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

32. A copy of this letter has been sent to Rugby Borough Council, and a notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Philip Barber

PHIL BARBER

Authorised by the Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Paul K Jackson B Arch (Hons) RIBA

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

Date: 14 October 2015

Town and Country Planning Act 1990

Rugby Borough Council

Appeal by

RES UK & Ireland Ltd

Inquiry opened on 2 September 2015

Land at Cestersover Farm, Cestersover, Pailton, Rugby CV23 0QP

File Ref: APP/E3715/A/14/2227479

INDEX

Preliminary Matters

The Site and its Surroundings	4
Planning Policy	5
The Case for RES UK & Ireland Ltd	11
The Case for Rugby Borough Council	32
The Case for Churchover Parish Council	38
The Case for ASWAR	53
Interested Parties	58
Written Representations	60
Planning Conditions	62
Inspector's Conclusions	63
Formal Recommendation	75

Annex 1 – Appearances and Inquiry Documents

Annex 2 - Schedule of Conditions

Annex 3 - Core Documents list

File Ref: APP/E3715/A/14/2227479

Land at Cestersover Farm, Cestersover, Pailton, Rugby, Warwickshire CV23 0QP)

- The application was recovered for decision by the Secretary of State by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 23 October 2014.
- The appeal is made by RES UK & Ireland Ltd against the decision of Rugby Borough Council.
- The application Ref R12/2009 dated 31 October 2013, was refused by notice dated 23 April 2014.
- The development proposed is 4 no. three-bladed, horizontal axis wind turbines, each up to 126.5 metres maximum to tip height, electricity transformers, underground cabling, site access tracks and watercourse crossings, site access upgrades, crane hard standings, turning heads, a control building, a communications mast, and a permanent free-standing meteorological mast. During construction and commissioning a number of temporary works including 2 no. construction compounds, crane hard standings, and temporary guyed anemometer/power performance masts.

Summary of Recommendation: That the appeal is dismissed.

Preliminary Matters

1. Prior to the Inquiry, 'Rule 6' status (R6) was granted to objector groups Churchover Parish Council (CPC) and Against Subsidised Windfarms Around Rugby (ASWAR). As the only reason for refusal concerning aviation safety had been satisfactorily addressed prior to the Inquiry opening, the Council supported the appellant's position¹.
2. The above description is that used on the application form. Rugby Borough Council (RBC) described the application as 'A wind farm comprising 4 no. wind turbines of up to 126.5m tip height. The proposed development also includes a single, permanent free-standing meteorological mast (80m), a temporary communications mast (10m), a sub-station compound containing a control building, electricity transformers, underground cabling, drainage improvements, channel crossings associated with a series of on-site tracks and turning heads, two site entrances with site access upgrades, 2 no. temporary construction compounds, assist crane hard standings, and two temporary guyed meteorological/power performance masts (80m), with each wind turbine having a micro-siting tolerance of up to 50m'. This is a more comprehensive description.
3. The Inquiry opened on 2 September 2015 and sat for 5 days overall, the public sessions ending on Wednesday 9 September. An evening meeting was held at Churchover Community Centre on 8 September for those unable to attend the daytime sessions. An accompanied site visit was carried out on 10 September 2015. Unaccompanied visits were carried out at other times in the general area; to listed buildings and other heritage assets; and to public rights of way (PROW) drawn to my attention.

¹ See Mr Lowde's appendix 2, NATS letter dated 20 April 2015

4. Because of the temporary absence of one advocate due to sickness, closing submissions were submitted in writing. With the prior agreement of all parties, the R6 closing statements were provided on Monday 14 September and the appellant's and Council statements submitted on Tuesday 15 September. The Inquiry was closed in writing on Wednesday 16 September 2015.
5. Turbines are referred to in the Report as T1-T4 starting with the turbine in the south east and progressing in an anti-clockwise direction². Before and during the site visits, turbine positions were marked on the ground. An 80 metre (m) monitoring mast remained in place for the duration of the Inquiry and this provided a useful guide to relative height. It was in a different position to that proposed on the application plans.
6. The planning application was accompanied by an Environmental Statement (ES) dated October 2013, prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended. After the single reason for refusal relating to aviation safety was resolved, the scheme was re-submitted (Ref 15/0908) accompanied by Supplementary Environmental Information (SEI). This took the form of an update to the ES particularly in terms of policy and cumulative impact. This application was declared invalid on 31 July 2015 for procedural reasons³ but the SEI remains a material consideration.

The site and its surroundings

7. The proposed turbines would be sited either side of the river Swift which lies in a valley north east of Rugby. The appeal site lies to the north-east of the village of Churchover at a distance of approximately 1 kilometre (km), with the edge of the towns of Lutterworth (2km to the north-east) and Rugby (3km to the south) the closest large settlements. The surrounding landscape comprises rolling arable and pastoral farmland with scattered, small villages and isolated dwellings and farmsteads. Fields are separated by hedgerows with trees and ditches. Small areas of woodland are prominent locally, Ryehill Spinney being the subject of a Tree Preservation Order. The area is served by major road infrastructure, including the A5 (Watling Street) which runs along the eastern boundary of the appeal site, the A426 to the east, and the M6 to the south, with the M1 further to the east.
8. There is a network of PROWs within the Swift valley including bridleways which link the nearby villages of Harborough Magna, Churchover and Cotesbach. Three of these pass close to the proposed turbines including a byeway open to all traffic (BOAT). The 4 wind turbines would each be 126.5m high with a hub height of 80m. The 80m meteorological mast would be situated between T3 and T4. The actual turbine is not specified but would be up to 2 megawatts (MW) rated output, leading to approximately 8 MW total potential capacity

² See application drawings, 03010D0001-09 *Turbine Location Plan*

³ See Mr Lowde's Appendix 4

for the whole development. I have considered the proposal on the basis that each turbine would have a 4m x 7m transformer enclosure at the base of each turbine⁴.

Planning policy

9. The Regional Spatial Strategy for the West Midlands was revoked in 2013 along with all the saving directions affecting the Warwickshire Structure Plan. For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the adopted development plan comprises the Rugby Borough Core Strategy of 2011 (CS) and saved policies of the 2006 Rugby Borough Local Plan (LP). The introduction to the CS states amongst other things that *'Rugby Borough has the highest level of thermal demand and carbon emissions of all the districts in the Coventry, Solihull and Warwickshire sub-region. Whilst analysis has suggested there is significant potential for the provision of wind energy developments in the Borough, in common with the other districts in the sub-region, there is relatively little installed renewable energy capacity in the Borough. Public consultation has indicated an appetite amongst the local population for new development to go further in managing its carbon emissions.'* Spatial objective 9 seeks to ensure the challenges of climate change are met by utilising the renewable energy resources present in the Borough, amongst other objectives.
10. Policy CS1 seeks sustainable development in principle. Policy CS16 says that all development will demonstrate high quality, inclusive and sustainable design and will be allowed where proposals are of a scale, density and design that would not cause any material harm to the qualities, character and amenity of the areas in which they are situated. It also advises that development will ensure that the amenities of existing and future neighbouring occupiers are safeguarded and that new development should seek to complement, enhance and utilise where possible, the historic environment and must not have a significant impact on existing designated and non-designated heritage assets and their settings.
11. Enhancing the Strategic Green Infrastructure (GI) Network is the objective of policy CS14 which states that the Council will work with partners towards the creation of a comprehensive Borough-wide strategic GI Network. This will be achieved through the protection, restoration and enhancement of existing GI assets within the network as shown on the Proposals Map.⁵
12. Relevant saved LP policies include GP5 which advises that the provision of renewable energy schemes will be encouraged where careful consideration has been given to design, layout and siting in the landscape. It says that planning permission will be granted where no material harm would result in relation to residential amenity and the

⁴ As shown on application drawing 03010D2302-01

⁵ Doc 16 shows the extent of relevant GI which extends along the whole Swift valley as far as the county boundary on the A5 and along the former Rugby-Leicester railway line

environment. This should be read with the explanatory text, which notes that *'Renewable energy schemes can take various forms and scales. Planning applications for any such schemes must be formulated in order to reflect their characteristics and location. All applications will require a thorough understanding of the character of the landscape within which they are proposed. The proposals should seek, through mitigation measures to reflect the Management Strategies for each landscape as set out in the Warwickshire Landscape Guidelines'*(sic).

13. Saved LP policy E17 says that planning permission will not be granted for development which would adversely affect the character, appearance, or setting of a Park or Garden registered as being of Special Historic Interest; or any other element of the Historic Landscape; or parks or gardens of acknowledged local importance. There is no dispute that there are no registered parks or gardens that would be materially affected by the proposal. The explanatory text adds that *'a number of parks and gardens of local importance have also been identified in the borough as have other elements of the historic landscape for example medieval field systems, deer parks, woodlands, hedges and tracks. It is considered that these features should be similarly safeguarded and development, which makes a positive contribution to their value, should be encouraged.'* This is relevant insofar as the appeal site falls within the surrounding landscape setting of the Grade II* listed Churchover Holy Trinity Church and the Churchover Conservation Area; and contains elements of medieval ridge and furrow.
14. A new Local Plan for the borough is in the course of preparation but this has not reached a stage at which it can be given any significant weight.

Other planning guidance

15. The 2010 Renewable and Low Carbon Energy Resource Assessment and Feasibility Study⁶ carried out for the Councils of Stratford-on-Avon, Warwick, North Warwickshire, Nuneaton and Bedworth, Rugby, Solihull and Warwickshire County provides an evidence base for the potential viability and deliverability of various renewable and low carbon options. The subsequent 2011 Rugby Borough Landscape Capacity Study for Wind Energy Developments (the White report) identifies the Swift valley as being of medium sensitivity for wind energy development. An update (the Rugby Borough landscape capacity study for wind energy review)⁷ of October 2013 looks at the appeal scheme specifically and repeats the previous 2011 assessment that, amongst other things, that the individual and cumulative landscape and visual effects of the Swift windfarm will need to be carefully assessed, especially in respect of Churchover, including its spire, conservation area and effects on residents.

⁶ Core Document (CD) C6

⁷ CD C2

National policy

16. As a result of EU Directive 2009/28/EC, the UK is committed to a legally binding target to achieve 15% of all energy generated from renewable resources, including electricity, heat and transport, by 2020. The 2006 Energy Review has an aspiration of 20% of electricity to be from renewable resources by 2020. The Climate Change Act of 2008 sets a target of at least an 80% cut in greenhouse gas emissions by 2050. The overarching strategy to reduce carbon emissions to meet the requirements of the EU Directive and the Climate Change Act is contained in the 2009 UK Renewable Energy Strategy and the UK Low Carbon Transition Plan; the lead scenario is that 30% of electricity is to be derived from renewable resources by 2020, though this is not binding. An update to the UK Renewable Energy Roadmap was published in November 2013 which confirms that to the end of June 2013, there was a total of installed onshore wind capacity of 7.0 Gigawatts (GW). A total of over 19.5GW of onshore wind capacity was in operation, under construction or had entered the formal planning system. The document records that very good progress has been made against the 15% target but that the Government retains strong ambitions for renewables deployment beyond 2020.
17. There is no cap on capacity. The Roadmap advises that onshore wind, as one of the most cost effective and proven renewable energy technologies, has an important part to play in a responsible and balanced UK energy policy. The Government will continue to provide a stable long term investment framework for the sector. The 2013 update also states that the Government recognises that some people have concerns about onshore wind developments and it remains committed to ensuring that projects are built in the right places, with the support of local communities; and that they deliver real local economic benefits. New proposals are still needed to meet the 2020 ambition and longer term decarbonisation.
18. The National Planning Policy Framework of 2012 (the NPPF) says at paragraph 98 that applicants for energy development should not have to demonstrate the overall need for renewable or low carbon energy. Applications should be approved⁸ if their impacts are (or can be made) acceptable. The NPPF advises that decision makers should follow the approach set out in the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3), read with the Overarching NPS for Energy (EN-1), both dated 2011. The advice needs to be read as a whole.
19. Paragraph 5.9.18 of EN-1 advises that all proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites and that a judgement has to be made on whether the visual effects on sensitive receptors, such as local residents and visitors to the area, outweigh the benefits of the project. EN-3 states at paragraph 2.7.6 that appropriate distances should be

⁸ Unless material considerations indicate otherwise

maintained between wind turbines and sensitive receptors to protect amenity, the two main impact issues being visual amenity and noise. Paragraphs 2.7.48/49 say that commercial wind farms are large structures and that there will always be significant landscape and visual effects for a number of kilometres around a site; the arrangement of turbines should be carefully designed to minimise effects on the landscape and visual amenity whilst meeting technical and operational siting requirements and other constraints.

20. The NPPF has a number of core principles at paragraph 17. One of these specifically supports the transition to a low carbon future in a changing climate and encourages the use of renewable resources (for example, by the development of renewable energy). Another core principle says that a good standard of amenity should always be sought for existing and future occupants of buildings and 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. Another says that planning should also conserve 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.
21. The NPPF defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral. Planning Practice Guidance (PPG) of 2014 and recent guidance from Historic England (HE)⁹ indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset.
22. The NPPF says that the significance of an asset is defined as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. Heritage significance can be harmed through development within setting. Substantial harm to the significance of a Grade II listed building should be exceptional. Substantial harm to the significance of designated heritage assets of the highest significance (including SAMs, Grade I and II* listed buildings) should be wholly exceptional. Paragraph 133 of the NPPF says that if development would cause substantial harm to significance, then planning permission should not be granted unless it can be demonstrated that an exception is warranted; an exception would be justified if the substantial harm is necessary to achieve substantial public benefits that would outweigh the harm. If the development

⁹ CD G1 *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning*: 3

would cause less than substantial harm, this harm should be weighed against the public benefits of the proposal.

23. The PPG advises in the section on renewable and low carbon energy that:

- the need for renewable or low carbon energy does not automatically override environmental protections;
- 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;
- local topography is an important factor in assessing whether wind turbines and large scale solar farms could have a damaging effect on landscape and recognise that the impact can be as great in predominately flat landscapes as in hilly or mountainous areas;
- great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting;
- proposals in National Parks and Areas of Outstanding Natural Beauty, and in areas close to them where there could be an adverse impact on the protected area, will need careful consideration;
- protecting local amenity is an important consideration which should be given proper weight in planning decisions

24. The PPG also provides advice on conserving and enhancing the historic environment, saying that heritage assets are an irreplaceable resource and effective conservation delivers wider social, cultural, economic and environmental benefits. In assessing whether 'substantial harm' in the terms of the NPPF is likely to occur, it says: *'Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the NPPF. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.'*

25. Under the section 'How can proposals avoid or minimise harm to the significance of a heritage asset?' the guidance says '*A clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimise harm. Early appraisals, a conservation plan or targeted specialist investigation can help to identify constraints and opportunities arising from the asset at an early stage. Such studies can reveal alternative development options, for example more sensitive designs or different orientations, that will deliver public benefits in a more sustainable and appropriate way.*'
26. The most recent advice in the PPG¹⁰ with regard to how heritage should be taken into account in assessing wind turbine applications is: '*As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.*'
27. In accordance with the statutory duty set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), special regard must be paid to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess. The preservation of setting is to be treated as a desired or sought-after objective, and considerable importance and weight attaches to the desirability of preserving the setting of listed buildings when weighing this factor in the balance.
28. As required by section 72(1) of the LBCA, special attention must also be given, with respect to any buildings or other land in a conservation area, to the desirability of preserving or enhancing the character or appearance of that area. The appeal site is not within any CA but the proposed turbines would be visible from and in conjunction with the nearest CA in Churchover. The NPPF advises at paragraph 132 that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
29. To conclude on national advice, following a Written Ministerial Statement (WMS) on 18 June 2015, the PPG now advises that it is quite clear that when considering applications for wind energy development, local planning authorities should (subject to a transitional arrangement¹¹) only grant planning permission if:

¹⁰ 6 March 2014

¹¹ When a valid application has been made and the development plan does not identify suitable sites, the PPG indicates that the Council can find the proposal acceptable if, following consultation, it is

- The development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and
- Following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.

The WMS goes on to say that whether the proposal has the backing of the affected local community is a planning judgement for the local planning authority. The Secretary of State attaches substantial weight to the WMS.

The case for RES UK & Ireland

The main points are:

30. A general point can be made that RBC, offering no case against the development, can also be seen to be a separate expert body that has examined each of the issues in dispute below and concluded that they are satisfactorily answered. That independent validation is a very major consideration in favour of the arguments advanced for the appeal.

Landscape character and value

31. The application site lies in the High Cross Plateau in an area around the site that is a medium scale landscape despite areas of very large, simple, open amalgamated arable fields and big farms, because along the bottom of the valley itself it has a less exposed character, with smaller fields. In this way acknowledgement has clearly been made from the outset that there are differences from the plateau to the north that is not influenced by river valleys. CPC conceded there has been some amalgamation of fields but described it as not common. The actual extent to which field boundaries have altered over time (both in hedgerow position and quality) is a matter of fact for which a plan has been prepared for use on the site view¹².
32. The turbines are located in arable fields north of the Swift and in pasture south of it. The north of the site tends to the scale of the open plateau, the south less so. The landscape in which the development is proposed is not designated and as such is not specifically recognised as 'valued' in that way, albeit ordinary local landscapes are valued by the people living local to them. Pockets of the valley are pretty, but not exceptional.
33. Notwithstanding the available published material, CPC offers its own assessment of the landscape value as "high" using the GLVIA criteria. This is acknowledged not to be from a landscape expert, that others may take a different view and also that in a hierarchy of landscape

satisfied it has fully addressed the planning impacts identified by local communities and therefore has their backing

¹² Doc 29

value, non-designated landscapes like this do rank lower. CPC criticise the appellant's landscape witness for not producing a table in similar format but the GLVIA considerations have clearly guided her approach. The ES similarly has used those guidelines.

34. However, CPC take this further, and whilst being in disagreement with the appellant, RBC, White¹³ and the authors of the ES chapter on landscape, say that all those professional experts should not be followed because the people who really understand the landscape are the locals. Sincerely held as those views are, and the belief that they are not coloured by personal objection to the windfarm, one cannot simply wave away that level of professional and independent assessment in that way. CPC's value assessment did not contain anything factual that the appellant was unaware of other than that the land was shot and hunted over.
35. ASWAR concede its description of the Swift Valley as "an unspoiled hidden beauty spot" is not a description found in any published source. As for use by people from outside the village, they do park up and walk from there, but there are no published routes that the appellant has heard of, nor are there any refreshment facilities for people to start and finish walks from. This level of use of the local lane and footpath network, and absence of designation supports the conclusion of a local or community level value.
36. The above features of the landscape indicate a medium susceptibility which increases sensitivity. On the other hand, the major road infrastructure, presence of visible wind farms, of commercial development like Magna Park, reduces the overall sense of remoteness in this area and demonstrates its robust nature and the ability of the area to retain its character despite these influences.
37. CPC say these modern influences are of very limited visibility but one will need to judge how far one can move around in the Swift Valley without some recognition of these and the influence of modern farming practice. The spinneys would not obscure the turbines but that misses the point that they can be effective in breaking up views of what would otherwise be views of complete turbines. Hedges and spinneys also provide varying and seasonal levels of immediate screening when one is in the valley and close to them; and in the case of turbines often allow appreciation of a sense of separation from which it appears the turbines are "over there" without creating scaling features that accentuate the height of the turbines.
38. The Swift valley around the appeal site is acknowledged to be an important part of the landscape setting of the village, but not the only part. There are fields the entire way around the village.
39. The Holy Trinity spire is agreed to be a visible feature locally but spires themselves are not listed as a defining characteristic of the Open Plateau.

¹³ Author of CDs C1 and C2

40. CPC's challenge that the site and environs should be 'High Cross Plateau – village farmlands'¹⁴ is at odds with the description of that area as 'small-medium scale', 'well settled', having 'strong tree cover', with 'settlements located close to valley floors' which applies to Harborough, Pailton, Monks Kirkby, Withybrook and Newton but not Churchover. The Swift valley is a broad river valley, which differentiates it from the village farmlands where the valleys are more pronounced with the villages in the valley bottoms.
41. CPC accept that the Village Farmland areas are geographically separate areas that are too distant to be argued as in any way bordering the appeal site. Moreover this same point was made by CPC to the report authors during consultation but was not accepted by them in reaching their conclusions. That level of public consultation is accepted to give added weight to the White Report.

Landscape sensitivity and capacity

42. The site has been identified in the Renewable and Low Carbon Energy Resource Assessment and Feasibility Study (2010)¹⁵ as being in a less constrained area where 25-48 turbines of 2.5MW capacity might be accommodated. The fragility map in the County Council's 2006 Landscape Sensitivity and Condition Study¹⁶ is not directed at wind power, and is acknowledged to be short on reasoning that makes it hard to judge why the valley was seen as having less fragility but more visibility than the plateau, when the reverse would be expected.
43. The 2011 Landscape Capacity Study for Wind Energy¹⁷ was a separate assessment looking specifically at wind power for large turbines and undertook its own sensitivity assessment. It judged the site landscape type (High Cross plateau/Open plateau) as of medium sensitivity that might accommodate a possible cluster of up to four turbines in the general area of the current application site, noting the need to minimise effects on Churchover and its spire, achieved here through layout and design, especially the positioning of turbines towards the A5, away from the village. The report was intended to guide developers to the areas less likely to give rise to planning objections for appropriate scale of development such that an application in such an area would be expected to be more likely to achieve a consent.
44. CPC draw attention to the word "may" in the report, in terms of capacity, to mean that it is arguable that there may not be capacity. To get any traction with that argument one would equally have to say that all of the thorough analysis (explicitly reviewing sensitivities to development) that supported the conclusion may not have been indicating capacity here, which is an odd way to look at a report, the

¹⁴ CD C1 page 25

¹⁵ CD C6

¹⁶ CD C5

¹⁷ CD C1

purpose of which is to provide independent advice on where landscape capacity for development exists.

45. It is argued that with caveats about Churchover the report is providing only marginal support, but that sits uneasily with this being one of only two locations in the district where capacity was specifically identified. It is better to see the references to Churchover as the downside of this location, a cost of identifying capacity in the district; the indicative location of the asterisk was so close to Streetfield Farm that turbines would have to be moved some distance from that in order to be constructed at all. To date this site remains the only viable proposal to have come forward in any of these areas against a background of no large wind developments having been built to date in the district or wider region.
46. There is some suggestion that the reference to the location of the area with capacity for 1 – 7 turbines suggests there are better sites for development in the district, notwithstanding that would mean development in the Green Belt. Any argument like this means taking a report, the purpose of which was to identify capacity for development, and understanding it to mean that the identification of capacity in respect of the smaller of the two areas is in fact a warning not to develop. Similarly so with the reference¹⁸ that "Wind turbine development is more compatible with the large scale, less settled parts of the area..." which cannot be a warning to avoid the area around Churchover, given that is where the capacity is in fact identified.
47. It is right that the same reference comments that development "...would be less compatible in the valleys especially where juxtaposed with defined changes in level" and is "...less compatible with the more complex lower areas..." but these concerns are answered by White themselves, recognising that complex landcover is generally avoided by these turbines. This is consistent with the turbines being high enough on the valley sides, including to the south of the river, to be on the edges of the valley and plateau areas. The appeal site does avoid the steeper fields leading up to, or dropping down from Churchover.
48. There is impact to ridge and furrow and it is conceded this presents an increase in sensitivity from a landscape perspective but this will also be affected by the quality of that ridge and furrow.
49. The importance of the White Report Appendix A considerations lessen as an objection in any event when read together with Appendix B page 5 where it is clear that in identifying capacity for 1 – 4 turbines in this location the area being considered (LDU 106) is not the plateau but the broad valley of the Swift itself, including both the gentle slopes to the west and the steeper slopes to the east around Churchover. The warning on Page 7 of that Appendix that these steeper slopes on the eastern side should be avoided, has been

¹⁸ CD C1 White Study 2013 Appendix A page 11 sensitivity worksheet

heeded with the layout using the gentler land gradients for turbines north and south of the river which takes them away from the steeper slopes that drop from the village.

50. The 2013 update report¹⁹ provided a review of the Swift Wind Farm scheme and its compliance with the 2011 report noting the proposal is within the size limit and is within the fringes of the area, albeit within the Swift valley and within 1km of Churchover. It also concludes that a 1-4 turbine scheme may be appropriate in the Swift valley and that the proposed development broadly complies with this statement.
51. Attention was given to the statement in the report that the turbines would diminish the scale of the church and become the dominant foci, but that has to be balanced by the findings that Churchover would not feel surrounded, that turbines generally avoid well defined landform and complex landcover and avoid over dominant effects on skylines. CPC disagree with these last two report findings but accept that the report comment that the issue of dominance of Churchover "needing to be addressed" is what is happening in this appeal.
52. With regard to SNH guidance²⁰, the appellant retains the view that the spire would not appear any smaller and that turbines would become another focus in the view, but not the only one.
53. Impacts on Churchover were highlighted by White in recommending this location, an important acknowledgement that needed to be recorded in reaching that overall conclusion, made more pertinent that CPC's case is not that the layout is wrong, but that any development here is wrong. The cost of development White warned of is simply a cost that CPC say should not be paid.

Mitigation

54. EN-3 paragraph 2.7.51 acknowledges that "It is unlikely that either the number or scale of wind turbines can be changed without significantly affecting the electricity generating output of the wind farm. Therefore, mitigation in the form of reduction in scale may not be feasible." Notwithstanding this, RES has sized the proposed wind farm to respond to local constraints, whilst ensuring that the project fulfils the potential of the site. The appeal proposal was designed specifically to address the issues of effects on landscape, number of turbines, residential visual amenity and cultural heritage which were key issues for the previous proposal. The number of turbines was reduced to four, they were proposed further east, near the A5 road corridor. They were positioned further from Churchover and further from residential properties, the river, and the PROW along the valley bottom. The project was made more compact, positioning four turbines together in a group, rather than as a stretched 'S' shape, and reducing the proportion of the skyline which would be affected, particularly seen from Churchover. Track layout and design and the

¹⁹ CD C2 Note that the appendix references are the same in each report version

²⁰ CD F1

location of the site access and substation also changed to reduce effects.

55. Through such mitigation, the project responds to the advice in paragraph 4.5.3 of EN-1 ". . . Whilst the applicant may not have any or very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation". In response the position of CPC is entirely clear. There is no design change that would render this scale of development acceptable in its eyes, be that moving or deletion of turbines. It is an in principle objection to this scale and type of development.

Reversibility

56. The EN-3 paragraph 2.7.17 requirement to consider the lifetime of a wind farm development is an important consideration when assessing impacts such as landscape and visual effects and potential effects on the settings of heritage assets. The permission sought is for 25 years after which it would be decommissioned and the land restored.

Effects on Landscape Character

57. For the avoidance of doubt, all effects have been taken as adverse, even though not all people will necessarily experience the identified effect as adverse. There is no published guidance on establishing a threshold beyond which predicted landscape and visual effects would be 'unacceptable', so consideration has been given to the ability of a landscape to 'accommodate' or 'absorb' new development. During operation of the wind farm there will be a high magnitude of change to the site as a result of large scale structures being introduced, however the key characteristics, including the grazed and arable fields, the river valley, the spinneys, hedgerows, and ridge and furrow field patterns will be retained alongside the turbines and their connecting tracks. These significant effects upon a localised area of landscape character, up to a distance of approximately 1km from the site, are common to all onshore wind farms.
58. CPC acknowledge that even at these distances the relationship of Churchover to the valley is not lost, it can still be appreciated, but it is contended there will be damage to that relationship. CPC point to a significant visual distraction as the cause of landscape harm, against which it is argued the turbines will become features in the landscape, do not rotate quickly and are often quite pale against the sky. As to how much harm, the appellant rejects the words used in objections such as "monstrous, destructive, ruinous" as describing effects. There are impacts but the landscape can still be enjoyed.
59. The effect on landscape character beyond this radius of around 1km from the site will reduce, being major-moderate between about 1 to 2.5km distant. Beyond 2.5km, effects are considered to be slight or less, with key characteristics of the landscape largely unaffected by the proposed wind farm.

Visual effects

60. Within around 5km of the proposed turbines, a number of significant visual impacts are predicted to occur, affecting views experienced by high sensitivity viewers such as residents and users of PROW where there are relatively open views towards the site. The effects obviously reduce over distance. These views are similar to what has been considered acceptable elsewhere, such as at Swinford.

View from Churchover

61. Holy Trinity church, with its 25m high spire, lies to the west of Church Street, with its main views to the skyline being towards the west and northwest. It is a relatively obscured view, with houses and gardens to the northeast and north, and barns and hedgerows around the riding stables to the west and northwest, away from the site which lies to the northeast. The suggestion that T2 may be visible in direct alignment with Church Street appears not to be the case even allowing for micrositing.
62. There would be views of part of the development from the churchyard, becoming more open as one walks through to the new extension, but here the focus of the view is out to the west, not north to the turbines. The overall significance of views is accepted as being major-moderate.
63. Outward views from publically accessible areas within the village will be limited. Where turbines will be seen on parts of the approach to Churchover from the southeast and from the southwest they will be in association with the gas installation and intermittently screened by hedgerows bordering the road, trees, topography and buildings, sometimes seen in combination with the church but not from most angles.
64. Footpaths in the area of Churchover would have visual impacts of significance but along relatively short lengths when walking towards turbines, rather than at oblique angles or away from them. At more distance whilst they will form part of the view from certain areas, they would not be the main focus and in no case would the blades of a turbine oversail a public footpath. It should not be forgotten that Churchover has an extensive network of footpaths out to the west, still in the Swift valley, that are less affected by turbines than those to the north.

Views from Cotesbach

65. Cotesbach is inward looking from where it is difficult to find an open view from a publically accessible location. Whilst private gardens behind properties will have some more open views, visual effects from the public areas of the village itself are slight. Visual effects from the PROW south west from the village towards the A5 will be major-moderate as users approach the wind farm moving westwards.

Cumulative impacts

66. This is an area of proven suitability for wind farms where they are well assimilated in the landscape and now feel part of it, being just one component of the very many both contemporary and historic influences of human activity across this landscape. The avoidance of a 'wind farm landscape' has been achieved as reasonable separation remains between the main wind farms (Swift, Swinford, Lilbourne, Yelvertoft and Low Spinney). The wind farms will not collectively dominate or encircle settlements. Distinctive skylines would not become dominated by wind farms, and the major proportion of a skyline would not become occupied from key viewpoints or receptors. Swift Wind Farm is a relatively small proposal, with four turbines, and so its overall contribution to combined cumulative effects in the area is similarly relatively low.

Residential amenity

67. The LVIA within the ES recognises significant visual effects from the northern edge of Churchover²¹. Whilst the assessment focuses on effects within around 1km, this is supplementary to the LVIA which examines the potential for significant visual impacts across the 25km radius study area. The prospect of micro-siting up to 50m is taken account of in the assessment and could be used to help mitigate any potential environmental effects. Evidence has not been limited to dwellings at 800m and has been open to consideration of effects at greater distances, such as Ringwood, as raised by ASWAR.

Private Views from Residential Properties

68. A study of properties identified within around 1km is in the ES²². Being able to see the turbines in itself does not demonstrate material harm to living conditions. For properties with views such as in Greens Close Churchover, visual impacts are made acceptable by:

- the relatively small number of turbines and the distance that they lie from properties;
- the nature of the medium scale landscape and skyline, which lacks very strong topographical features. The turbines will usually be seen against a backdrop of the sky, often with their lower parts being screened or filtered by vegetation, buildings or both;
- no properties having any sense of being surrounded;
- the compact nature of the project, and of other wind farm projects in the area. Wind farms will be separated, and visual permeability will be maintained both through and between developments.

69. In addition to this, for Ringwood at Moorbarns, the only property where there is an allegation of failure of the "Lavender Test", impacts are acceptable because of the just under 1km separation distance with

²¹ ES Paragraph 6.6.60, page 108

²² Appendix 6.1

woodland in spinneys and vegetation along the busy A5 lying between the property and the site of the proposed turbines providing a physical and psychological separation. Turbines would be set with their bases being lower than the elevation of the property at Ringwood meaning impacts could not be described as overwhelming.

70. To conclude on landscape and visual impacts, this is an accommodating landscape and location, independently identified. Landscape and visual impacts have been reduced as far as they can be by design and are only what are to be expected of development of this scale.

Cultural heritage

Legislation

71. In respect of the statutory duty, the Barnwell Manor judgment states that decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. The decision-maker has to articulate the considerable importance and weight to be given to preservation of the listed building and its setting and in order to grant consent. Despite the CPC references to the s66 test not being applied or not understood, there appears to be acceptance that it is not a test as such for an applicant to meet but rather a consideration for the decision maker to take into account.
72. A contrast was suggested by CPC between "significant weight" to be given to benefits and "great weight" to be attached to preserving the setting of assets. If that is meant to mean all such balances inevitably fall against the development it would make even "less than substantial" harm impossible to consent, which is clearly not the policy position that is faced.
73. Section 72(1) of the LBCA imposes a broadly similar duty on the decision maker to that in s66(1), but only applies in respect of development within conservation areas, however, the effect of the proposed development on the setting and significance of conservation areas is of course a material consideration.

Harm to significance

74. The presence of wind turbines within a particular view or views of a heritage asset may amount to harm if it can be shown that it erodes the significance of the asset, but the degree of harm will depend on whether the affected view constitutes the only or main appreciation of the setting and significance of the listed building or one of several positions from which the setting and significance of the listed building can be appreciated. If there are several other views which are not affected, or which are not affected to the same degree, it follows that a proportion of the setting will be preserved for the purposes of the duty under the Act and the assessment under the NPPF.

NPPF

75. Paragraph 134 of the NPPF provides the balance between public benefit on one hand, and less than substantial harm to the significance of the heritage asset on the other which is the appropriate part of the guidance in this case. CPC's original stance that permission should be refused in any event, is now tempered by an acceptance that a balance of impact and benefit has to precede that decision.

Reversibility

76. Whilst a number of appeal decisions were quoted that suggest little weight to be given to reversibility, EN-3 requires decision-makers to take into account the length of time for which consent is sought when considering any indirect effect such as on setting; and the extent to which the site will return to its earlier state²³. Here any harm to the historic environment will disappear when the turbines and other infrastructure are removed. Historic England guidance is also that consideration should always be given to the reversibility of wind energy projects.

Guidance on setting

77. Guidance on setting includes the Historic Environment Good Practice Guide Note 3²⁴, which the appellant's heritage witness was well aware of, albeit he chose to use in his proof Wind Energy and the Historic Environment (Historic England, 2005)²⁵ in which attention is inevitably drawn to the words that refer to the consideration to be given to visual dominance "...where an historic feature...such as a church spire...is the most visually dominant feature in the surrounding landscape, adjacent construction of turbines may be inappropriate...".
78. Read as a complete document it should be noted that the church is not a hilltop monument or part of a designed landscape (the latter point accepted by CPC). As a matter of fact, the spire is a small feature, albeit a landmark by which the village can be located, rather than dominating views. Turbines being adjacent is best understood as turbines being in the same "cone of view" and that clearly varies significantly depending on viewpoint. The concept of whether the spire is diminished in scale by the turbines as a landscape feature has been considered under landscape and visual impacts, but a key point to note is that to whatever extent that occurs, reduction in heritage significance for this reason will not follow to the same extent, because the heritage significance is only partly influenced by these distant views. Even the above extract from the English Heritage (as was) guidance is stated only to be a consideration and one that may lead to a finding of inappropriate development, not a blanket prohibition.

²³ Paragraphs 2.7.43 and 2.7.17

²⁴ CD G1

²⁵ CD G7

79. As with the position on landscape and visual impacts, the case for CPC is that there is no variant on layout or design of development of this scale in this location that would make these impacts acceptable. Of course different considerations apply to listed buildings than to general landscape considerations, in terms of acceptability, but it is relevant that CPC's opposition remains in principle to development here.

Holy Trinity Church, Churchover

80. Holy Trinity Church is acknowledged to be a building of considerable architectural and historic interest. It is also of archaeological and artistic interest, and it is an aesthetically pleasing link between the present and a remote time in the past. The church is a building appreciated in many different ways, internally and externally, including from a variety of relatively close views within the churchyard and adjoining spaces. It is also visible as a focal point from a number of other locations in the vicinity of Churchover.
81. The vast majority of the setting of the Grade II* listed building will be preserved and any harm will be limited to specific views that would be minor in nature and would fall within the meaning of less than substantial harm in paragraph 134 of the NPPF. The effects on distant views are primarily related to the aesthetic importance of the asset, against which has to be balanced the understanding that the aesthetics and architecture of the church are much more evident from the close-to views of the church that are unaffected by the development.
82. The historic importance of the church is also linked in part to these distant views, but also to the unaffected views around the church and from within the village and conservation area. These immediate setting views are the most important, with the Conservation Area Appraisal²⁶ choosing to refer only to views of the church from within the village. Where there are examples of views out (such as VP3) the heritage impacts are inconsequential, certainly in comparison with VP18. Distant views play a part, but to appreciate the value of this church, one would most likely drive straight to it, not stop on the A5 to do so. The A5 in particular, despite being a historic route, does not appear historically to have been an approach to Churchover²⁷.
83. Where distant views are affected, this happens to differing degrees but does not amount to an inability to see the church and appreciate the role it plays in relation to the historic features in the landscape. The appellant does not suggest that only the worst case alignment of VP18 amounts to harm, but it is contended that as visual separation opens up between turbines and the spire so the harm reduces. Turbines can be conspicuous in views of the spire without necessarily affecting the heritage significance from that viewpoint.

²⁶ CD G3

²⁷ In response to Inspectors question

84. Many views and the most important views are unaffected and it would be wrong to take a worst case distant view and characterise this as the effect that would be had on the totality of the setting of the asset. When the majority of factors giving rise to significance in the asset are unaffected there is not much to be said about them. The limited impacts that have been acknowledged have to be read against the heritage significance that has also been recognised. The appellant's heritage witness pointed to the need to read sections of his proof such as paragraphs 4.7, 6.4 (on HE) and his conclusions together to see the point he was making about the nature of the harm. If CPC is making the suggestion that he failed to understand or apply the concept of harm to significance, that simply does not emerge from his evidence.
85. CPC recognise that the spire is small in itself, but describe it as being notable in the local area. The nature of the spire's visibility, whether through descriptions of being dominant, prominent or notable has to be seen against a recognition that the extent of visibility constantly changes as one moves through the valley. There is no likelihood of loss on the function the spire plays as a landmark because of the development.
86. CPC argue that it is the effect of the scale of the turbines on the church and on the valley itself that diminishes the significance the setting makes to the asset, from wherever the church is seen, unless the turbines are behind the viewer. The comment that the setting would be destroyed has not been pursued. CPC recognise that it varies depending on how the alignment of turbines and spire is seen, being described as not being as great from the west, but the argument is put that whatever level of separation is achieved makes no difference to the impact on significance, which will be just as great.
87. CPC accept that one can tell by moving around in this way that the turbines are horizontally separate from the village and church, still a relevant factor to judge levels of impacts on views, even though the Court in Barnwell made clear that being able to tell that a turbine was not part of a heritage asset was something very obvious and not an answer in itself to effects on assets.
88. At the same time CPC accept that impacts have to equate with how the asset will lose significance as a result. It is not disputed that the church has historic, evidential, communal and aesthetic value, but despite the impact on views that is being stressed, it is not accepted by CPC that it is the church's aesthetic importance that will be affected most, instead it is contended that everything bar the archaeological fabric of the building itself is harmed to the same degree. This is putting the impacts too high. This can be illustrated by CPC agreeing that its stress on the church's tranquil, unspoiled, rural setting adding to the heritage significance, means just that the surrounding area is a nice place to look at the church from. That much can be accepted, but whilst distant views are very obviously linked to aesthetics, there is no allowance in CPC's stance that views are not in all cases so

directly linked to historic importance. As for communal importance, no case is put why this is reduced in line with aesthetic impacts.

89. CPC contend they come to the same view as HE by using the ES methodology and deriving a major adverse effect then which they equate with substantial harm but then reducing it to less than substantial given the NPPF guidance that substantial harm is unlikely without total loss. There is no real dispute about the inputs to be made to this methodology, in terms of value of the assets and magnitude of change²⁸ but the results from the "significance of effect" matrix and "qualitative description of significance" table²⁹ do not dovetail with the NPPF, they simply provide guidance that practitioners then have to use judgement and experience to interpret. It is the very limited extent of changes to views that sits behind the application of judgement by the appellant's heritage witness.
90. Overall the change within the setting of Holy Trinity Church will cause minor harm to the setting of the church and minor harm to its significance; but great weight should still be applied to the desirability of preserving the setting of the listed church when carrying out the balancing exercise in the NPPF and, separately, the overall decision whether to grant planning permission, because of the high significance of the listed building.

Churchover Conservation Area

91. Churchover contains a variety of internal views, vistas, important buildings and locally significant characteristics that make up its special architectural and historic interest. Within its wider surroundings it becomes part of the contemporary agricultural landscape with the parish church being the focal point and defining building within longer views of the conservation area. Effects on the setting and significance of Churchover CA are broadly similar to the effects on the setting and significance of Holy Trinity Church, albeit that VP 18 illustrates an effect on the church not the CA.
92. The effect on the setting and significance of Churchover CA would be minor because the vast majority of the setting of the CA will be preserved and the harm will be limited to specific views. This minor level of harm would be less than substantial harm in terms of paragraph 134 of the NPPF. CPC see the harm to the CA as being the same as the church, because of views from around the compass. There is however less visibility of the totality of the CA from all these different locations than there is of just the spire. When it comes to views from within the CA, the Appraisal does not stress views from Church Street and northern properties that are suggested by CPC.

²⁸ Having regard to the ES Tables 10.1 and 10.2

²⁹ ES Tables 10.3 and 10.4

Ridge and furrow

93. There is a considerable amount of ridge and furrow within and across the appeal site, and in the general vicinity, generally in fair condition. When considering the extent to which this is an unchanged landscape over time there will inevitably have been significant erosion of ridge and furrow in this parish and surrounding areas, as well as loss of hedgerow and tree cover and substantial increases in the intrusion of what is now the modern A5, formerly Watling Street.
94. The ridge and furrow is not of the highest quality regionally, but it is accepted that it should be preserved where possible. The quality of the ridge and furrow varies across the valley, surviving well around Ryehill Spinney but less so to the east of it and in the west of the valley. There is disagreement with ASWAR about the quality of the ridge and furrow on the appeal site, but outside of that, their more general comments about preserving ridge and furrow where possible are not contentious. It is relevant here that no case has been made by the R6 parties for design changes to turbine or track layout.
95. The greatest threats to ridge and furrow tend to be housing developments and commercial developments. In contrast, the development will cause direct impact to ridge and furrow, particularly where the access track between T1 and T2 cuts across the grain of a series of ridges, but this is a localised effect rather than the wholesale removal that can be seen elsewhere in the vicinity. Ridge and furrow is part of the setting and context of Churchover CA but the relationships between the fields in the appeal site and the village are not particularly strong and it is by no means the only ridge and furrow in the area.

Historic England

96. There is agreement between HE and the appellant that paragraph 134 of the NPPF is to be engaged. HE accepts that the balance of acceptability of impacts is one to be struck by the decision maker. This is against the backdrop of HE's initial position on the 9 turbine scheme being a preference that a smaller scheme of say 4 turbines should be negotiated. HE has changed its view since then, and to such an extent that it has become in principle opposed to any development here of this scale. It is said that the Barnwell Manor judgement is an important new consideration, but that judgement is not mentioned in the December 2013 HE letter and in any event it talked only about the weight to attach in discharging the s66 duty, so it is difficult to see how it would have been the cause of a change from in principle acceptance to in principle opposition.
97. Its reference to "the upper end of less than substantial" has no formal policy basis in the NPPF and is not drawn from any HE published methodology. It is a statement of opinion, made after a review of the material from the appellant, not a full heritage impact assessment by HE, and is stated to come from consideration of the guidance on setting. That draws in HE's comment that the church's relationship with the surrounding landscape is both evidential and aesthetic.

Those aspects of heritage significance are not disputed by the appellant but acknowledging them does not lead to any change in the conclusions on impact.

98. Concluding on heritage, impacts on two designated assets are as low as can be achieved by good design and result in less than substantial harm, of a minor nature. The most important parts of the settings are unaffected. Separate consideration of the s66 duty is needed but can be achieved on these facts in the context of a grant of planning permission.

Noise

99. The reasons for refusal do not include noise. Baseline noise measurements were originally carried out for the 9 turbine Bransford Bridge proposal. Use of data from measurement locations, particularly those at the four closest locations to the proposed development, is entirely adequate and suitable for the derivation of noise limits for the assessment of this proposal. No specific case is made that monitoring locations have been wrongly chosen. All were agreed with the Environmental Health Officer at RBC.
100. The 'prevailing background noise' at each measurement location includes all data plots bar the times corresponding to elevated night-time noise from the 'dawn chorus'. The data include substantial traffic noise at other times, which recorded in 2010 is accepted by ASWAR to be lower than traffic levels/noise today. ASWAR argue the lack of any relationship between background noise and wind speed is shown in the graphs in the ES³⁰. If this is meant to be apparent visually, it is hard to perceive (albeit they say it does not happen in all locations) and the mathematical means to identify good or bad correlation alluded to by ASWAR in general terms has not been applied to the data so does not help make the argument.
101. The claim that the best fit curves are "obviously wrong" is not borne out by noise levels in locations more distant from the M6 and A5 (such as ES Fig 7.1 H47 and H48) being markedly lower than those nearer to the M6 (such as H49 on the same plan). A lack of relationship between background noise and wind speed is to be expected where the noise from wind in trees and foliage is not the dominant source but this does not mean that the data is any less valid. Road traffic noise cannot be seen as 'contamination' of the background noise data. ASWAR accept that ETSU makes no mention of removing traffic influence from background noise data, on the contrary it is at pains to say that traffic noise should be part of the baseline. The Institute of Acoustics (IoA) Good Practice Guide³¹ takes the point on and says only if traffic noise is not routine should it be excluded. ASWAR offer nothing to say that this traffic noise is other than routine.

³⁰ ES Appendix 7.4

³¹ CD H2

102. Directional filtering of baseline noise data has been suggested by ASWAR to address a concern that for properties to the north east (Moorbarns and in Cotesbach in particular), the wind direction causing the highest levels of noise from the proposed wind farm may correspond to that causing the lowest levels of noise from the road. This is not what will happen in practice. These properties will be downwind of turbines and the A5 at the same time. The example from IoA GPG Supplementary Guidance Note (SGN) 2 is an extreme example that is very specific to a particular situation that does not apply on the facts here.
103. Directional filtering has not been pursued because it is not justified, not for any other reason. It is impossible to know what to exclude when there are two significant road noise sources which lie in different directions to each property (one of many examples is Long Acre³², which when downwind from the A5 is upwind from the M6.) No request for a directional analysis has been made to the developer by RBC.

Noise predictions

104. Noise predictions were carried out for the proposed wind turbine layout according to the correct methodology³³ using the assumptions described in the IoA GPG. The results of these predictions represent a worst case of all modelled turbines operating at their warranted noise level (+1 dB allowance for uncertainty). This was initially disputed by ASWAR but was accepted at the Inquiry. The contours represent downwind propagation in all directions simultaneously, which is impossible in practice. At wind speeds below 8 metres/second (m/s) and for upwind propagation, noise levels will in practice be lower.

Operational Noise Assessment

105. Noise limits are met at all properties. At Streetfields Farm Cottage, the closest property, the day and night-time limits are met by a significant minimum margin of 10 dB and 6 dB respectively. At all other properties the margin is greater. However, the lack of any real concern over noise goes further, in that
- (a) Noise predictions at night do not exceed 43dB_{LA90} in any case, irrespective of background noise;
 - (b) Daytime noise levels of 37dB_{LA90} can be met at all properties, irrespective of background noise; and
 - (c) Noise predictions are below not only best fit prevailing background noise curves but also all the background noise data points they are derived from, in every case bar Streetfield Farm/Cottages, both of which are financially involved properties.

³² H16 on Figure 7.1

³³ ISO 9613-2, Acoustics - Attenuation of Sound during Propagation Outdoors, Part 2: General method of calculation

All of which is accepted by ASWAR and all of which answer the ASWAR suggestion that '...there will be times, particularly at night, when such [traffic] noise is not dominant when residents at some of these receptors may not be protected.' ASWAR's acceptance that, as required by ETSU, background noise has been assessed separately for daytime and nighttime hours adds more certainty that the point has been answered. The concerns expressed over Moorbarns and Cotesbach are also not borne out by the noise predictions that in any event that show the 35dB_{LA90} contour as short of both, very much so in respect of Cotesbach.

Amplitude Modulation

106. The industry does not argue that Excess Amplitude Modulation (EAM) is rare and causes no nuisance. The detailed study commissioned by Renewables UK indicates the level of commitment to this issue. To date the only robust survey of sites where it does and does not occur or its extent when it does is that carried out by Salford University in 2007. ASWAR does not advance any specific evidence of cases involving EAM complaints at operating windfarms³⁴.
107. 'Other' or 'Excess' amplitude modulation (OAM or EAM) arises when, under high wind shear conditions, blades go into 'stall' at their highest point of rotation causing a repetitive instantaneous stall noise. Blade stall is the dominant cause which has been successfully controlled at a number of wind farms leading to significant reductions in EAM where the problem has occurred. ASWAR concede the ability in some cases to control EAM through management of turbine operation and that it would be a bold operator who would refuse to deploy such available steps in the face of AM complaints, even more so if those complaints were being made under the threat of a statutory nuisance action. The comparison of wind shear at Swift with that at Winwick and Kelmarsh has to be seen in the light of neither having an AM condition, and where there is such a condition at Swinford, no history of AM complaints.
108. A possible planning condition has been proposed imposing controls recommended by the RUK study incorporating a quantitative assessment methodology for AM, criterion levels for acceptability and a possible penalty scheme. As things stand this is not a planning condition that has been widely accepted or has an established record of successful operation so an option is included to take account of any relevant update endorsed by the Institute of Acoustics. This is the chief balancing consideration in whether to impose such a condition and is the reason why, in the absence of a strong case that an AM condition is required at all, the appellant submits that no condition need be applied here.

³⁴ Following Inspector's question

Need for the development

109. The R6 parties make clear they do not challenge the need for this development. There is no form of cap or ceiling on the future deployment of each type of renewable technology. In no recent windfarm decision has it been asserted that the need for renewable electricity to be generated has lessened, and in every case it has been accepted that the benefits of the scheme are significant matters to be weighed in the balance against any harmful aspects that arise from the proposals. Changes to subsidy that are taking place do not alter this position on need and should not feature in the balancing of benefit and impact when deciding whether permission should be granted.

The Development Plan

110. Consideration is required of the extent to which the proposal is consistent with the objectives of the CS and LP and in the event of conflict the key material considerations are national policy including the NPPF. The wording of policy GP5 that "The provision of renewable energy schemes will be encouraged where careful consideration has been given to design, layout and siting in the landscape. Planning permission will be granted where no material harm would result in relation to residential amenity and the environment." has been answered in that wind energy development will always give rise to some significant landscape and visual effects, particularly in the immediate area around the development. Here, careful consideration has been given to design, layout and siting. There is no reference in those planning criteria to any balance of the wider benefits of renewable energy against any local environmental, social or economic harm, although there is in the supporting text which is relevant to consistency with the NPPF.

111. The wording of policy GP2 that "The landscape aspects of a development will be required to form an integral part of the overall design and that ...the landscape character of the area is retained and, where possible, enhanced..." has also been answered in that the wind farm has been designed so as to retain landscape character as far as possible. GP5 is the dominant policy here, being directed at renewable energy so general policy like GP2 should be read to be consistent. CPC accept that benefits have to be considered as a balancing factor in the application of these policies, even if that wording is not found in policy GP5 itself, and that the plan should be read together as a whole to achieve consistency with the NPPF.

112. CS policy CS16 on "Sustainable Design" is aimed at development such as housing and employment and refers to developments not causing any material harm to the qualities, character and amenity of the local area while avoiding any significant impact on heritage assets but contains no balancing exercise. RBC sees a conflict with this policy, but in its assessment that conflict is overcome by balancing consideration of the benefits from the scheme.

113. The Green Infrastructure (GI) policies CS14 and CS15 were not considered determinative by RBC and they are directed to functional

corridors that do not follow any obvious landscape criteria or landform. Renewable energy development that does not interrupt or block use of those linkages (as might occur with a large warehouse, for instance) does not present any obvious conflict. GI is often juxtaposed with other development, which is not seen as inappropriate. Against this we have CPC's case is that the development could stop people enjoying use of those linkages. Any force in this argument falls away if it is considered the visual impacts of the development are acceptable.

114. CPC accept that the Council saw no conflict with it and also that the idea of compensatory provision of could have no application to the harm they allege is being caused here. That said, the ecological enhancement to the site and Swift valley proposed as part of the scheme would further the aims of the GI policy in some respects.

The NPPF

115. Paragraph 14 of the NPPF is of crucial importance in setting out a clear threshold for striking the balance between harm and benefits from sustainable development that supports the transition to a low carbon future in a changing climate, encourages the development of renewable energy as well as recognising the intrinsic character and beauty of the countryside; seeking a good standard of amenity for existing occupiers of dwellings; and to conserving heritage assets. Paragraphs 97-98 provide that applicants should not be required to demonstrate the need for the development. It also states that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. CPC accept this policy is unchanged by the WMS.
116. The responsibility on all communities to contribute to energy generations from renewables on paragraph 97 is accepted by CPC, but only where impacts are addressed satisfactorily. CPC argues that if impacts are unacceptable there is conflict with paragraph 98, which might be overcome by looking at the benefits. The appellant argues that if the benefits are weighed up when applying local plan policy, by the time paragraph 98 is applied one knows already if the impacts are acceptable. The latter approach was used by the Inspector in the Hawton appeal. It is quite likely that one would get to the same result either way, but it is important not to identify conflict with the NPPF where there is none.

The Written Ministerial Statement

117. The advice issued on June 18 by the Communities Secretary³⁵ is that local planning authorities should only grant planning permission for wind turbines on sites which have been identified as suitable for wind energy development in a Local or Neighbourhood Plan, and where, following consultation it can be demonstrated that the planning impacts identified by affected local communities have been fully

³⁵ CD D11

addressed and therefore the proposal has their backing. The first part of this advice does not apply to this appeal that was already in the planning system at the date of the WMS. CPC's argument that this policy must be saying something new does not help with interpretation. The identification of areas suitable for wind energy is new, but much planning policy relies on themes from previous guidance being repeated.

118. The Inspector could ask first "what are the planning impacts that have been identified by local communities during consultation?" and then second "to what extent has it been demonstrated that these have been fully addressed?". It is from this material that the judgment on local backing should be made. That judgment must relate to matters that go to the heart of the normal planning decision-making process. This approach would appear to be what has been adopted in the Rossendale decision³⁶ reasoning that has very recently approved the Scout Moor windfarm extension.
119. ASWAR's case is that there is no local backing so the policy cannot be met and permission cannot be granted. However, within that overall position some concessions were made. It is accepted there has been adequate consultation, there has been adequate assessment of impacts and that only material planning considerations should feature in the judgement on local backing. That said, ASWAR proposed that the means of determining local backing will not be found in the wording of the policy itself, but that it involves a broader issue of "actual support". This is dangerous territory if the wording of any policy is left behind in the pursuit of its meaning.
120. Consultation responses serve a useful and important material planning purpose in the way the specific content of them help inform the planning judgements to be made about the impacts that are likely from the development and the extent to which these have been adequately addressed by the developer. Added voice was given to these letters and e-mails in the public sessions. ASWAR draw attention to the numbers of objections rather than the content. In essence, CPC take the same stance. Whilst pointing you to the evidence that objections from local people make reference to planning grounds the rider was then attached that even if these had been answered on objective criteria, if there was no local backing planning permission should be refused.
121. The appellant is urging that the planning judgment on local backing is derived from the manner in which impacts have been addressed. The R6 parties say that despite doing so, it remains in essence a question of how many people object. The appellant's view pays closer attention to the wording of the policy. "Affected local communities" are not comprised only of those who consider that they are the "most affected". Neither the WMS nor PPG use the word "most" here. All those whom the wind farm could in some way impact

³⁶ Doc 14

on their daily lives, where they live or as they travel and take recreation, cover a very significant area of the countryside around the site of the proposal.

122. CPC reject this suggestion saying that everyone would agree that the local community here is Churchover and Cotesbach, not places like Rugby and Lutterworth. That still leaves a lot of people in between where objection levels are markedly less than those two villages. Even CPC's figure of 30-50% of the residents of Churchover village being opposed leaves a question mark over the remainder who it would appear from the publicity surrounding the objections have made some sort of conscious decision not to join that objection group. That is allowing for the opportunities the Parish Council gave to potential supporters to comment before it resolved to object.
123. CPC advanced the argument that "backing is more than ambivalence" which as a stand-alone proposition was not disputed. However, we do not know that it means those people do not care. The background context to 95% of all people consulted raising no opposition is that renewables such as this carry around 70% approval ratings with the general public. That evidence is not negated by saying general national support does not equate with support for a windfarm at Churchover. It may go a very long way to explaining why 6000 consultation letters in a 5km radius yield objections of some 3-4%. "Not opposed" and "Do not object" were seen as synonymous by the appellant's planning witness. It is difficult to see why local backing, in principle cannot be based upon those who do not object, despite ASWAR rejecting this. It is fair comment that the planning system, including the deliberation of Parish Councils, has always elicited objection as the main form of consultation response rather than support.
124. The responses to RES local exhibitions also stand as evidence of expressions of support. There is no suggestion that these, albeit only 12 or so in number showing various levels of support, were not genuinely given. ASWAR confirm no pressure was put on its members whether or how to make such comment. The suggestion is just left that these people were not local, on the premise that ASWAR members would not express support. Percentages would vary depending on where boundaries are drawn and how many people (as opposed to addresses) are within those areas. For the figures in Mr Stewart's Appendix 1 (endorsed by CPC) the appellant commends those in relation to the initial determination of the planning application (rather than ASWAR's preference for the objections numbers on the reapplication up to August this year) as the best figures to see the public response uninfluenced by appeal considerations, the WMS and preparation for the inquiry. RBC's conclusion that permission ought to be granted remains very relevant to compliance with the WMS and consent being granted.

Aviation safety

125. The only reason for refusal raised by RBC has now been addressed through negotiations with the aviation safety bodies.

Conclusions

126. The proposal complies with the Development Plan when the balancing tests referred to in the supporting text to policy GP5 are considered, as envisaged in the NPPF. With regard to heritage impact, given the effects are less than substantial, the weight of benefit needed to overcome that presumption is reduced, and need for the development expressed through national planning and energy policy can be judged to outweigh the level of harm that has been identified. The s66 duty, separately applied, allows the same conclusion to be reached. Landscape and visual impacts are within levels of acceptability and are no more than would be expected anywhere such a cluster of turbines was sited. Noise impacts are similarly well within objective standards of acceptability.

127. Matters raised by the affected local communities have been fully addressed even if not fully overcome, it never having been and still not being part of the planning system in England that all objections have to be completely eliminated in order to grant planning permission. For all these reasons the Inspector is asked to recommend, and the Secretary of State to grant, the planning permission sought for this development.

The case for Rugby Borough Council

The main points are:

128. RBC's position regarding the impact on heritage assets is the same as that of HE and the Parish Council, namely that there will be harm to both of these assets and that the level of harm will fall within paragraph 134 of the Framework ("less than substantial harm"). It will be recalled that RBC has taken specialist heritage advice on the identical application which it received but which was not validated. This advice confirms that the level harm will fall within the "less than substantial" category.

129. This harm must be placed into the overall planning balance, to be weighed against the public benefits of the proposal. That balancing exercise is the responsibility of the decision - maker, not of HE. The latter is not equipped to carry out the planning balance, because it has no specialist knowledge or insight into the benefits of the proposal in terms of its contribution towards the generation of renewable energy, when assessed against the overarching policy framework relating to energy production.

130. The next question that arises is "what weight should be attached to this less than substantial harm to designated heritage assets?" This question is easily answered because the courts have confirmed that

any harm to designated heritage assets must be given “considerable importance and weight”³⁷.

131. Ultimately, whether this level of harm (when added to landscape and visual harm) is sufficient to outweigh the environmental benefits delivered through the generation of renewable energy is now a matter of planning judgement for the Secretary of State. Mr Lowde attached “considerable weight” (as required by Barnwell) to the heritage harm and (despite this) concluded that permission should be granted. His recommendation was accepted, and it follows that this is also the judgement of the planning committee of this Council.
132. CPC asserted that Mr Lowde had not given considerable weight to the harm. Mrs Down for CPC was given an opportunity to point to what more he could have done other than expressly state that he was attaching considerable weight to the harm. She was unable to identify anything tangible. CPC’s advocate suggested to him that he had not applied the strong statutory presumption against the grant of planning permission mentioned in Barnwell. But this is to miss the central point that the way in which the Court said one applies the strong statutory presumption against the grant of planning permission if there would be harm to a designated heritage asset is by attaching considerable weight to that harm. There is nothing more a decision - maker can do other than to state that in coming to his overall planning judgement he has attached considerable weight to the harm to designated heritage assets.
133. All Mrs Down can correctly state is that having given considerable weight to the harm to designated heritage assets she came to a different overall planning judgement as to whether permission should be granted. That is a professional opinion to which she is entitled. What she is not entitled to do is to assert (without evidence) that a fellow professional has not done what he said he has done.
134. The Inspector raised the issue that in the conclusion to the report to committee the church is referred to as Grade II rather than Grade II*. However, it is correctly categorized in the remainder of the report and in the responses from Historic England, as well as in all the evidence and reports that were submitted to the Council by the applicant. There is no evidence to suggest members were misled by this one typographical error, and certainly no - one has asserted that the report was misleading in this respect. Had any member of the planning committee felt that they were misled they had every opportunity to write in to the inquiry or appear to say so.

Landscape and Visual Harm

135. The White Study and its update specifically identified the site as one of the least restrained areas in terms of landscape and visual impact to host wind turbine development. The study was also specific about

³⁷ Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council and Others [2014] EWCA Civ 137, at paragraphs 24 and 29

the amount of development that was likely to be able to be accommodated without undue harm, and the proposals accord with the scale mentioned in that study. The evidence of the specialist landscape and visual consultants who carried out the LVIA on behalf of the appellants, and the review of the LVIA by Mr Collett, a qualified landscape consultant with years of experience of carrying out and reviewing LVIA's, was that the scheme was acceptable.

136. The only evidence put forward to dispute any of those conclusions is that by CPC. Mr Down is not an expert in landscape and visual assessment, either by qualification and training or by experience. He accepted that he had not carried out LVIA's or indeed appraised them because he does not have the necessary expertise to do so (his experience is in assessing planting schemes). Whilst RBC accepts that he is clearly a very learned gentleman who has applied a lot of time and effort to carrying out a critical appraisal of the LVIA submitted in this case, the fact is that his evidence cannot be accorded the same weight as that of independent professional expert witnesses. It is precisely because Inspectors and the SoS cannot be expert in all fields that expert evidence is called at inquiries on matters that benefit from expertise. This is all the more reason for a non - expert decision maker to give greater weight to professional expert opinion as compared with lay opinion – a lay person brings nothing more to the debate over and above what an Inspector can observe for himself.

137. Mr Down asserted that he had been objective, but the decision on whether someone has been objective cannot be made on the basis that they claim to be objective. The fact is that he lives locally and is an objector to the scheme. He has unavoidably surrounded himself with other such people, and his judgement cannot but be influenced by the views of such people. On his own admission he has become desensitized to the detractors in the existing landscape. He has no experience of understanding and evaluating a variety of different landscapes, or of judging the magnitude of impact of different scales and forms of development on the landscape. His assessment of the magnitude of visual change in particular must be treated with caution because this is the aspect that is most likely to become partial and subjective in the case of a local objector who lives in the area and has become accustomed to seeing it as it is.

Whether the environmental benefits outweigh the harm

138. Once the weight to be attached to adverse heritage impact is fixed (as it is by law), and it is accepted that there will be a significant amount of landscape and visual harm (which is also accepted, although all the experts are agreed that it is less than that asserted by the CPC), whether these harms are outweighed by the environmental benefits of renewable energy is a matter of planning judgement. In this regard the Inspector and the SoS are requested to bear in mind that read as a whole, all of the Government's policy on renewable energy makes clear that substantial weight must be attached to the environmental benefits of reducing our reliance on fossil fuels and

tackling climate change. It was this benefit that RBC concluded outweighed the harms identified.

The WMS

139. CPC and ASWAR rely on the WMS. It is accepted that the transitional provisions apply. The first part of the condition requires a demonstration that “the planning impacts identified by affected local communities have been fully addressed.” All of the planning impacts identified by local people were fully addressed in the report to committee and taken into account by RBC in reaching its decision. CPC and ASWAR may disagree with the overall conclusion, but no suggestion has been made to the effect that there has been a failure to have regard to any material planning considerations. In any event, the position of RBC has become somewhat academic: the onus is now on the Inspector/SoS to address fully the impacts identified by local people.
140. If, having regard to all issues relevant to planning, the Inspector/SoS concludes that on balance the impacts are acceptable, this will mean that the first condition set out in the PPG has been met – namely, all of the planning impacts identified by local people would have been “fully addressed”. “Fully addressed” cannot mean “fully addressed” to the satisfaction of local people because they are not the decision makers under the legislative regime. The decision maker is now the SoS. It cannot be lawful for a person given legislative responsibility to make a decision to fully address all of the impacts to his satisfaction, but nonetheless refuse planning permission because he does not think that the issues have been addressed to the satisfaction of local people. That would render nugatory the process of seeking to persuade the SoS that the impacts are or can be made acceptable, because (under this analysis) his judgement on whether or not they have been fully addressed would become irrelevant. It is submitted that it would be unlawful for the SoS to thus divest himself of his role as decision maker.
141. Moreover, refusing permission on the basis that the impacts have not been addressed to the satisfaction of local people is a temporal impossibility. Local people themselves will not know whether the impacts they have identified have been fully addressed to their satisfaction until they receive the decision letter from the SoS. Their satisfaction cannot be gauged until after they have read and considered the decision of the SoS. If the SoS concludes that the impacts have been fully addressed, there is no process for gauging the reaction of local communities to that assessment. Having read the SoS’s decision, the “local communities” may well conclude that their concerns have been fully addressed. Even assuming some process for identifying who the “local communities” are for these purposes, there is no process for gathering their reaction to the SoS’s decision. And even if both of these fairly insuperable problems could be overcome, there is no process for the matter to go back to the SoS for him to revoke permission on the basis that (having read his consideration of

the issues) local communities still take the view that the concerns have not be fully addressed to their satisfaction.

142. The second condition assumes that if concerns are fully addressed the proposals will have the support of local communities. This condition can be interpreted in two ways. The first is that once the concerns have been fully addressed (in the sense set out above) and the impacts found to be acceptable by the decision maker, there should be a presumption that they have the backing of local communities. This may or may not be a legal fiction (for the reasons set out above, there is no process for determining what the position of local communities will be post - decision).
143. The second interpretation is that it is an additional hurdle to the grant of planning permission (not only must the concerns be fully addressed, but there must be evidence that the proposals have local backing prior to an affirmative decision). In this case RBC has made the judgment that as matters stand these proposals do not have local backing. This raises the question as to whether it would be lawful for the SoS to reach the conclusion that although the impacts are or can be made acceptable as required under the NPPF, permission should nonetheless be refused on the basis that the proposal lacks local backing.
144. It is submitted that a refusal based solely on local opposition would be unlawful. If the conclusion is reached that the impacts are (or can be made) acceptable, the application must be approved. That is what NPPF requires. This policy has not been amended, and if the PPG (as amended) drives a different result, it must give way to the NPPF. PPG, as mere guidance that has not be through the formal consultation process and parliamentary approval to which the NPPF was subject, cannot be accorded greater weight than the NPPF in the case of a conflict.
145. More fundamentally, it is well understood that public opposition per se is not a material planning consideration, a position endorsed by the courts. Although the interpretation of planning policy and guidance is ultimately a matter of law, the qualified planners appearing on behalf of the Council and the appellant were firm in their understanding of the position that although the views of local people had to be considered (provided those views were on matters related to planning), permission could not be refused merely because local people are opposed to a development.
146. That is an observation as old as the planning system itself. The planning witness on behalf of CPC refused to give an opinion on this important and relatively self - contained point.
147. In *Newport BC v Secretary Of State For Wales* [1998] Env LR 174 the Court of Appeal was asked to consider whether public fears over safety (even if not founded on any scientific or logical basis) could be a material planning consideration. The court ruled that they could, but that opposition per se (opposition not based on anything related to planning impacts) could not be a material consideration. The matter

was also considered in the more recent case of Lark Energy³⁸ in which the High Ct upheld the decision of the SoS to have “regard” to local concerns. But it is clear that the decision would have been different if the SoS had treated himself as bound to accept those concerns: *“Sometimes the general public interest in permitting or rejecting a proposal which is opposed or supported by a local community will override the views of that community. The fact that objections have been made by local people does not compel the decision maker to accept those objections. There will be many occasions when a planning permission is properly granted despite strong local opposition. The planning guidance reminded the decision maker to pay attention to local views. It did not give those views a significance they would not otherwise have had, beyond the fact that they are the views of people who will have to live with the development if it goes ahead”* (paragraph 71).

148. The evidence on landscape and heritage impact has to be considered on its own merits. The harm occasioned, or the weight to be given to that harm does not become greater; merely the harm is one identified by local communities as opposed to anyone else. If the SoS places that harm into the planning balance (which he must) and comes to the conclusion that the harmful impacts are or can be made acceptable, he cannot then refuse permission merely because there is local opposition to the proposals. To do so would be amount to double counting (that is, having factored in the harms identified by local people and having decided that they are insufficient to warrant refusal it cannot be right to bring the opposition based on those harms back into the equation).
149. Finally, interpreting the PPG as mandating refusal in all cases where there is no local backing would have the effect of predetermining the outcome (the harms identified by local communities, even if addressed and the impacts found to be acceptable, can never be outweighed by other considerations). Such an approach would amount to replacing the current planning system, which is based upon a balancing of planning benefits against planning harms, with one based on public veto.

The position of RBC

150. ASWAR and some members of the CPC have criticized RBC for supporting these proposals. RBC refused permission based on a technical objection from NATS. In all other respects members were satisfied that, having regard to all the planning benefits and disadvantages, the proposal represented sustainable development. RBC has a duty to assist the SoS to explain how and why it reached this decision. “Support” or “opposition” are not words that are particularly helpful in this regard. Certainly, RBC has a right to appear before the Inspector and defend itself against those who have sought in a public forum to criticize its decision and attack the professionalism

³⁸ Lark Energy Ltd v SOSCLG and others [2014] EWHC 2006 (Admin)

of its officers. Those who choose do so must expect to have their evidence robustly tested.

Conclusion

151. It is the Council's judgment that the planning benefits outweigh the planning harms having regard to the Development Plan and all other material considerations. That being its judgment, it does not resist this appeal.

The case for Churchover Parish Council

The main points are:

152. An important part of the context for this appeal is that this is not a proposal that has local community backing. That is of significant importance in light of recent guidance published by the Secretary of State, because unless the proposal demonstrates, following consultation, that the planning concerns of the local communities have been addressed, and therefore it has their backing, permission should not be granted.

Heritage

153. It is accepted by the appellant that the development will result in harm to a Grade II* listed building deserving of the highest level of protection. In those circumstances, the s66 duty applies with particular force. The appellant also identifies less than substantial harm in respect of the CA (an asset that it regards is of high value) and while there is no statutory protection for the setting of a CA, the NPPF steps in to plug the gap through the operation of paragraph 132 because:

(i) The "great weight" to be given to an asset's conservation is akin to the test of considerable importance and weight to be applied where section 66 is triggered as agreed with the appellant's heritage witness; and

(ii) The NPPF does not discriminate between assets – it applies with as much force to listed buildings as it does to conservation areas.

154. Accordingly, following the Barnwell Manor and Forge Field judgments, the 'strong' presumption against the grant of planning permission is engaged and considerable weight attaches to the harm that has been identified in this case.

155. Turning then to what the harm actually is, the appellant's heritage witness never fairly assessed the effects on the relevant assets and did not actually identify what the harm is and how it arises. His answer to the point was that the effect was "obvious" – the impact of turbines on heritage assets such as this are well known and did not need to be rehearsed. That is an entirely incorrect approach; it was incumbent upon him to carry out the process of identifying harm to

the significance of the asset, because without doing so, his conclusions on the level of harm are inexplicable.

156. The appellant argues that the harm to Holy Trinity Church is minimal, because there will be many elements of the Church's significance that remain unchanged, and there will still be many views where the Church can be appreciated without turbines interrupting the view such as closer to the Church and within the CA itself. However the appellant also accepted that harm to just one key element of an asset's significance could give rise to less than substantial harm and even substantial harm in some circumstances, and so it is of no assistance to repeat the mantra that other elements of the Church's significance remain unchanged. The appellant further recognised that while more value could be placed on the architectural features of the church that can be appreciated in close proximity, local people may place greater value on the spire acting as a landmark in the wider landscape. There is no evidence before the Inquiry that would suggest one element of significance is more important than the other – both are elements of the significance of the broader whole.
157. In closer views where the architecture of the church for example can be better appreciated, then the prominent landmark effect of the church spire is not. In views where that is appreciated, the appellant's heritage witness had to concede there would not be many more unaffected views than affected views. That must be right – on all approaches to Churchover, the village stands out in a landscape that has changed little in several hundred years, Mrs Down's appendix 2 demonstrates a range of views around 360° where the turbines will be seen in the same view as the spire, competing with and diminishing its current prominence in the landscape.
158. By concentrating on elements of the church's significance that are not going to be impacted by the scheme, the appellant dilutes the effect with which the Inquiry should be really concerned. That is a remarkable failing when the ES accepts the spire is "prominent" (paragraph 10.8.26, page 244) albeit the appellant sought to modify the word to "apparent" at the Inquiry. Moreover it was accepted in cross examination that:
- (i) The Church was built as a landmark
 - (ii) It is the main landmark in the area;
 - (iii) It is a focal point that was intended to be seen from a distance and functions as a waymark (albeit the function has declined over time); and
 - (iv) There are no other landmark structures in the vicinity.
159. The interaction between the Church and the Swift Valley, in which the appeal site lies, should be recognised. It was alluded to in the text of Joseph Ashby's 'Victorian Warwickshire'; "*The quaintly built church, with its unpretentious tower and steeple, which lift themselves aloft as though to watch maternally over the valley below, stands*

upon the highest ground, and form in warm sunshine, which lights it slumbering masonry into every shade of brown and silver, a delightful picture.”³⁹

160. In light of the particular characteristics of the church and the nature of this development, a strong theme emerges from the guidance, that careful regard should be had to the form, appearance and proximity to heritage assets of wind development. In particular, the now archived English Heritage Guidance on “Wind Energy and the Historic Environment”⁴⁰ explains “*Visual dominance: Wind turbines are far greater in vertical scale than most historic features. Where an historic feature (such as a hilltop monument or fortification, a church spire, or a plantation belonging to a designed landscape) is the most visually dominant feature in the surrounding landscape, adjacent construction of turbines may be inappropriate.*” The appellant fairly observed that “adjacent” is unlikely to mean “next to”, but more likely to mean “proximity”. That is precisely the situation that pertains here, and not just from viewpoint (VP) 18, but from a number of places.
161. The latest guidance from Historic England (HE) also provides a list of factors that are useful in elucidating the implications of development for the significance of the heritage asset in question⁴¹ under the general heading ‘the form and appearance of the development’ two examples of which are prominence, dominance, or conspicuousness; and competition with or distraction from the asset. The appellant’s heritage witness conceded that he had not made an assessment in those terms despite being aware of the guidance that was published earlier this year, accepting that the turbines will undermine a person’s ability to appreciate the spire as a landmark feature. Again, the position taken by him, that the effects are “obvious” might be true, but it is inadequate nonetheless.
162. The appellant relies on the Hawton decision⁴² to support the proposition that a finding of less than substantial harm even to an asset of the highest significance is not necessarily fatal to a scheme. The opposite is also true. Less than substantial harm to an asset of lower value can, and indeed has been fatal to a wind farm scheme that was proposed adjacent to the Louth Canal in Lincolnshire⁴³. The Hawton appeal was in a very different context and not one that was readily comparable. However, in the Louth Canal decision, a number of comparisons can be drawn in terms of the particular effect of the turbines on the asset in question, albeit not in respect of the landscape. In that case, the relevant asset was a Grade II listed warehouse, and the proposal was for three turbines, the closest of which was within 500 m of the asset. At paragraph 412 the Inspector observed the following: ‘*Whilst the proposed development would not harm the listed building’s fabric, I have no doubt that it would*

³⁹ Doc 27

⁴⁰ CD G7

⁴¹ CD G1 p 11

⁴² CD E9 ref APP/B3030/A/12/2183042

⁴³ APP/D2510/A/13/2200887

adversely impact upon the setting of the listed building. The wind turbines would be significantly taller structures than the warehouse. The warehouse when built would have been an imposing and dominant structure with primacy in scale. Moreover, it remains the tallest significant built feature when seen from the road and from the canal. Thus, the scale of the turbines would dominate the warehouse and devalue its current visual status afforded by its height. Furthermore, the contrasting, and conflicting, modern materials and rotational movement of the turbines would draw the eye away from the warehouse which, as a consequence, would lose its visual significance and way marking role. There would also be a visual conflict in that the current setting is of low lying, level, land of drained fields such that the strong vertical emphasis of three turbines would be a particularly uncharacteristic addition to the immediate surroundings. The harm to that setting, by detracting from the presence of the building as a key feature in the landscape, which has a clear way-marking function for the canal and which links the canal to the surrounding land, would harm the significance of this designated heritage asset.'

163. The appellant agreed that many of the effects experienced in that instance would also be seen at Churchover; like the warehouse (which is significantly smaller than the spire) the Church is the tallest built structure in the area at present, and while the landscape in which it sits is not comparable to that of the warehouse, the turbines in this instance would dominate the Church in many views, and detract from its presence as a key feature in the landscape in the same way as turbines at Louth Canal would have.
164. Accordingly, the Inspector concluded that there would be *'considerable harm to the significance of the building which falls not far short of substantial harm, largely because of the erosion of the prominence of the building and its canal side way-marking function which would be seriously diminished by the proposed development.'* CPC consider the same conclusions flow here.
165. With regard to the CA, the appellant's evidence to the Inquiry is that the effects are broadly the same as for the Church. That conclusion is based, in part, on an understanding that the Church is a key element of the CA, and that harm to the setting of that asset is harm to the CA as a whole. It follows then that if the appellant is wrong about the level of harm to the Church, which it says is "minor" then it is wrong about the harm to the CA. The appellant does not suggest that the proposal will conserve or enhance the character or appearance of the CA as a whole. There is no evidence that any views other than VP18 have been taken into account. Saying that the harm will be limited to specific views, and that the majority of the setting will be preserved, fails to engage with the harm that will be occasioned to the CA, and can be experienced when in the church yard (VP3) as well as when moving out of the CA to the north of the village.

166. Insofar as it is claimed by the appellant that the Council's decision not to pursue a heritage reason for refusal is some sort of endorsement of the proposal, it should be noted that:

(i) While the s66 duty received a cursory mention in the committee report, there is no evidence of it being rigorously applied in the way it should be;

(ii) There is no evidence that any advice was taken from a conservation or heritage specialist on behalf of the Council or that the officer understood that the harm to the Church created a strong presumption against the grant of planning permission – the Council officer accepted he had not been aware of the presumption created by s66; and

(iii) The conclusions of the ES in respect of harm to the Church and the CA seem on their face to have been accepted by the officer. The appellant's heritage witness departs from those conclusions, considering the impacts of the proposal were underestimated in the ES. The officer did not have the benefit of that insight when he drafted his recommendation.

167. The appellant relies heavily on the time limited nature of the development to mitigate the harmful impact. A number of points arise:

(i) 25 years is an unacceptable amount of time for the level of harm identified by CPC and HE to persist;

(ii) If weight is to be given to the limited duration of the development in principle, there has to be some likelihood that the harm will be removed after 25 years. There is not. There is no guarantee that the harm will cease because the appellant has confirmed that it will review the situation and determine whether to seek a further permission.

(iii) The harm to the non-designated heritage asset – the ridge and furrow - will not be extinguished after the development is removed; that harm is permanent.

(iv) There is a number of recent examples of appeal decisions where both Inspectors and the Secretary of State have considered that little weight should be given to the reversibility of the scheme⁴⁴.

168. In conclusion, the impact of the scheme is obvious, and it is obviously harmful. While it falls within the 'less than substantial harm' category, it is nonetheless harm to a most valuable asset – the Church as well as the CA. They both share an intimate connection with the valley – that connection will be affected by the presence of wind turbines which far exceed the modest scale of the Church spire, and the effect of the spire as a key landmark in this area will be lost; not through physical destruction, but because of the dominating and distracting presence of the very much larger turbines that do not sit

⁴⁴ CDs E11, E32, E33

easily amidst this historic context, and interfere with the peace and tranquillity.

Landscape

169. There will be significant landscape and visual effects, but that is not what makes the effects of the scheme acceptable or unacceptable. The acceptability of the effects depends on the particular characteristics of the individual landscape – its sensitivity to this sort of development, its interaction with surrounding landscape features and the impact on the value of the landscape as well as the visual receptors who use it.
170. The Council is not fighting the case on landscape grounds, but that does not provide very much support for the appellant's case because the Councils' approach to landscape matters throughout the application process is frankly unclear. The RBC scrutiny of the landscape elements of the ES had been less than thorough, perhaps because of an observation in respect of the previous 9 turbine scheme that 4 turbines could be acceptable.
171. The Council failed to appropriately scrutinise this application. The consultation response by their landscape expert Mr Collett to the case officer⁴⁵ discloses no analysis of the scheme and its landscape and visual effects. There is no acknowledgment of the warnings given in the White Reports and the conflicts between the scheme and the recommendations in those Reports and while the Council might argue Mr Collett has the relevant expertise and reviewed the application, there is no evidence that he applied those skills and expertise in an appropriate manner on this occasion.
172. The site is designated as High Cross Plateau/Open Plateau, but it is clear that the character and sensitivity of the area varies throughout, and in order to arrive at a proper judgment as to the landscape effects of a proposal such as this, the assessor needs to be aware of the characteristics which both increase and decrease the landscape's sensitivity to wind development. The appellant has not provided such a balanced assessment. Neither the appellant's expert landscape witness assessment of the landscape capacity, nor the LVIA submitted as part of the ES, are balanced in the way they should be. While the appellant is keen to point out features of the landscape that might be said to detract from its sensitivity, it does not recognise so readily the features that enhance its sensitivity.
173. In particular the appellant relies on a number of features that either ought not to be regarded as detractors at all, or which do not exert the influence over the landscape it says they do:
- (i) The existing anemometer that will be removed should not be taken into account in the baseline;

⁴⁵ Included in Dr Down's proof paragraph 38

(ii) The Magna Park development which is some way from the appeal site, does not exert any significant effect over the landscape around Churchover, which is bounded by a comprehensive landscaping scheme that will continue to mature in any event;

(iii) The farm silos exert very little influence over the landscape and are screened in many views. Despite the presence of major road infrastructure, the area maintains a sense of tranquillity and calm;

(iv) The spinneys which the appellant says are robust landscape features that will help absorb the turbines into the landscape will merely serve to accentuate the great height of the turbines that are out of scale with them and the nearby spire and the Swift valley, which the turbines would span.

174. In any event, of the detractors identified by the appellant, many have a strong horizontal focus; none of them are close to the scale of a turbine, and none of them usurp the function of the spire as the tallest landmark feature in the vicinity of the proposed wind farm.

175. There is a detractor that the appellant did not mention and that is the cement works at Rugby, which can be seen alongside the Church in views from the north. The appellant's landscape witness had not reviewed the impact of the scheme from Moorbarns prior to the evening before the Inquiry. Upon seeing it, she commented that its juxtaposition with the Church was "unfortunate." CPC agree, but the cement works are about 5km away and its 100m tower stands at 195 AOD. That is to be contrasted with the turbines that will reach up to 236 AOD; the effect will be most unfortunate.

176. In terms of "value" of the landscape, the appellant's assessment stopped at determining the site was of "local value", on the basis that it has no national designation, and all landscapes are locally valued by the communities who live in them and use them. That assessment is plainly inadequate, it does not meet with the guidance⁴⁶, and that assessment impacts on the overall view of sensitivity of this particular landscape because the judgement in respect of value feeds into sensitivity⁴⁷. Neither does it explain how this site is more or less valuable than any other landscape upon which turbines might be built, so there can be no comparative exercise. The appellant's landscape witness eventually accepted that there is no specific assessment of value in the terms recommended by the GLVIA.

177. Accordingly, CPC's comprehensive analysis of the criteria is commended⁴⁸. It was suggested to Dr Down of CPC that he might have a different perception of the landscape because he is a local resident; that he is de-sensitised to the detracting elements. That might be the case, and Dr Down was perfectly proper in accepting that it might be so. However, it is the local people who have a more

⁴⁶ CD F3 Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA), p84

⁴⁷ Ditto, p 71

⁴⁸ Dr Down's appendix 11

intimate knowledge of the landscape and in many instances are better placed to comment on its value. Further, given they are the ones who have to live with the effects of the wind farm, their perception of the value of the landscape and how it might change are highly relevant.

178. Likewise, it might be said that the appellant's landscape witness's view of the wind farm proposal was not as comprehensive as it might be. The landscape was not seen at any time other than summer when the trees and hedges are in full leaf and the potential for screening is at its maximum. Insufficient time was spent in and around the site to understand its value to the local community and its use for recreation. There is no dispute that the footpaths (which would be well within 100m of the turbines) are well used; and the appellant further accepted that local people had an important insight into the value of the landscape that could not possibly be achieved after just one visit.
179. The appellant's landscape witness has relied on past assessments of landscape character in the district. These provide a good starting point but are too broad in nature to relate to the appeal site and surrounding landscape in the level of detail. Accordingly, existing assessments should be viewed critically to ensure a balanced picture.
180. The appellant's landscape witness agreed that she had placed "notable weight" on the two White Reports that she considers support development of the appeal site, but neither is a ringing endorsement of the proposal. In particular the reports recognise the differing sensitivities of the character area and urge caution in respect of siting turbines near Churchover. The 2011 Report⁴⁹ says that "Wind turbine development is more compatible with the large scale, less settled parts of the area, possibly associated with Magna Park, although proximity to Newnham Paddox could be an issue." The report clearly draws a distinction between land within the vicinity of the appeal site, and land of lower sensitivity elsewhere in the character area.
181. In addressing the capacity of the area for wind development, the report notes that it has "some capacity for wind farm development – preferably one but one other may be possible." (emphasis added) The report is noting that there are better places than the appeal site, notably the upper plateau in the north of the character area, and that while one other development might be possible, it is not the preferred option. Pertinently, a number of features are mentioned to which particular regard should be given in the siting of a second cluster, and those include Churchover, its spire, and the character of the Swift Valley. The appellant's landscape witness eventually agreed that the 2011 Report recognises that the closer one gets to Churchover, the less able the land is to accommodate wind development.
182. The authors of the reports were clearly concerned to ensure that any development did not have unacceptable effects on those interests. In particular, at Appendix A;

⁴⁹ CD C1, page 5

(i) Under the heading 'landform scale and enclosure' the authors' comments are that wind development is more compatible with the broader plateau than the Swift valley. The turbines in this instance span the valley on the eastern and western slopes, and so depart from the recommendation in that respect. The appellant does not refer to the Swift Valley as a feature of sensitivity in evidence. It should have;

(ii) The next section of the report notes that "[T]here are some pockets of pasture and fields with ridge and furrow which are sensitive." It is concluded that wind farm development is less compatible with the complex lower areas and elements such as ridge and furrow which would include the appeal site and surrounding land. Again the appellant neglected to comment on those sensitivities;

(iii) The report notes that the Church spire is the most notable focus and that wind energy could diminish the spire and replace this as a focal point in the landscape. The report is highlighting a potential adverse effect that is to be avoided, and which has had a bearing on the conclusion that wind energy development is better placed elsewhere.

183. Appendix B which contains the capacity worksheets specifically addresses Landscape Description Unit (LDU) 106 which includes the appeal site and Churchover at page 5, again referring to the small church spire as the main landmark in the area.

184. The report then goes on to make recommendations about where wind development might be accommodated and should be read with reference to the plans contained earlier on at Figures 7 and 8. These show that Scenario B includes 1 scheme towards the north of the character area (the preferred option), and one scheme to the north east of the appeal site. Based on that scenario, pages 7, 8 and 9 raise a number of concerns including:

(i) The potential for dominance;

(ii) A recommendation that development avoid the eastern side and the floor of the swift valley (the scheme does not do this); and

(iii) The report warns that a cluster within 2 km of Churchover "would affect views to the listed church and spire diminishing its scale and affecting its context including the conservation area.." (emphasis added)

185. In the second 2013 report⁵⁰ White Consultants focused on the specifics of the scheme before the Inquiry. It was not there to provide a recommendation as to whether the scheme was acceptable or not, but it is clear that the caution arising from the 2011 Report about development in the area of the appeal site continues. Page 4 accepts that the proposal is within the size limit recommended in the 2011 report, but acknowledged that it lies within the Swift Valley so is on the more sensitive fringes of the landscape character area, and is

⁵⁰ CD C2

within 1km of Churchover. Those are features which are undoubtedly less desirable, and the report acknowledged that.

186. In assessing how the proposal conformed with the criteria set out in the 2011 report, it observes:

(i) That the close proximity to Churchover means that the issue of dominance needs to be addressed;

(ii) There would be an effect on footpaths;

(iii) The potential for dominating the valley is less with 4 rather than 7 turbines, but the report does not say the potential is avoided; and

(iv) Importantly, "The turbines are seen in juxtaposition with the Churchover church spire located closer to the village than the report scenario position. They are significantly larger structures than the church and would diminish its scale and affect its context becoming the dominant foci..."

187. The Parish Council agree with the last comment which presents a severe hurdle for the scheme, and while the appellant's landscape witness agreed that the Church was the dominant focus at present, and an important waymarker that is important to preserve as part of the character of the area, she would not accept that the proposal would replace the spire in that regard. Her evidence was that it would simply add other foci. Nor did she agree that the turbines would diminish the scale of the spire. That position is unsustainable when the relative heights and proximity of the structures are considered. Moreover, guidance⁵¹ states that a key design objective is to place wind farms where they are of a minor size compared to other key features and foci within the landscape.

188. That guidance goes on⁵² '*Wind farms, because of their very nature and typical location within open landscape, often become major focal points. Their interaction with the existing hierarchy of foci needs to be considered in their siting and design, in order to minimize visual conflicts or avoid compromising the value of existing foci*'. Below that a diagram is given explaining how wind farms can, if sited inappropriately, reduce focal prominence and distinction of the original foci. The diagram is of a small church. The scheme will challenge the dominance of the spire as an important landscape feature, and this part of the character area will be the worse for it. The scheme does not respect the scale of the Church or the interaction between Churchover and the valley the turbines spans – building on the eastern slopes which the White Report cautioned against.

⁵¹ CD F1 Siting and Designing Windfarms in the Landscape Version 2 (Scottish Natural Heritage) paragraph 33

⁵² Page 22

Visual effects

189. It is agreed that significant visual effects can extend to up to 5km, which will undoubtedly affect people in and around Churchover as well as Cotesbach. There is a well used network of footpaths extending from Churchover, around the site and along the valley, and the area is covered by a Green Infrastructure designation. It is remarkable that the appellant's landscape witness should consider it "inappropriate" to assess the impact of the proposal on the designation when the guidance issued by the Landscape Institute itself says at paragraph 2.10 that: "*Green Infrastructure is not separate from the landscape but is a part of it and operates at what is sometimes referred to as the 'landscape scale'. It is generally concerned with sites and linking networks that are set within the wider context of the surrounding landscape or townscape. LVIA will often need to address the effect of proposed development on green infrastructure as well as the potential the development may offer to enhance it.*"
190. The GI designation is intended to promote the protection, restoration and enhancement of the land it covers⁵³ and encourage people to use it. To the extent it succeeds in the final aim, it exposes more visual receptors to the impacts of the turbines which the appellant fairly accepted should be considered as a negative effect. That can only increase the level of visual harm of the scheme because there are more receptors to experience the effect.
191. VP3 from the area of the Church burial yard is of particular note. As a place where active burials take place, those who use the churchyard are entitled to expect peace and tranquillity when they visit, and while the full array of turbines will not be visible, they will be obvious to the north of the church, and the rotating of the blades is bound to intrude on the experience of the very high sensitivity users of the church yard.

Residential Amenity

192. It is surprising that none of the representatives of the appellant have been in touch with any of the occupants of properties who might be adversely impacted. Judgments have been arrived at as to the impact of the proposal on individual homes without any knowledge of how those homes are used.

Written Ministerial Statement⁵⁴

193. CPC perfectly understand why in the face of overwhelming local community opposition to the scheme, the appellant has little choice but to argue that the WMS means something other than what it says it means. It is noted at the outset that it is agreed that the WMS is a material consideration, but the way it is interpreted and how it should be applied in this particular matter was a topic of extended discussion. The text of the WMS as transposed into the PPG is quite plain that in

⁵³ Policy CS14 CD/B2

⁵⁴ CD 10.11]

relation to this scheme, the scheme will only be acceptable if following consultation, the decision maker is satisfied that (i) the planning impacts of the affected local communities have been fully addressed; and (ii) therefore, the proposal has the “backing” of the local community.

194. The conjunctive “and” is fundamentally important in the drafting of the guidance. It means that both (i) and (ii) above are requirements, and satisfaction of the first is not enough to pass the test. Despite agreeing that:

- a. the guidance was intended to bring about a significant change in the way that decisions in respect of wind farms are taken;
- b. “backing” can fairly be equated with support. It is a positive act;
- c. “backing” does not mean ambivalence; and
- d. the guidance should be approached in a common sense way;

the appellant’s planning witness refused to approach the matter in a common sense way. He would not take a common sense view of who the local community were, and insisted that “backing is to be inferred” if the information submitted by the appellant assessed the planning impacts identified by the local community; and the local authority were content to approve the scheme.

195. If the only requirements of the guidance were to consult with the local community and then submit sufficient information to allow the local authority to arrive at a decision as to whether the adverse impacts of a scheme were outweighed by the benefits, then there would be no change in the decision making process. That is what is expected anyway, and yet he recognises that the guidance is a “major change”⁵⁵. Moreover, in the PPG the guidance appears under the heading “Do local people have the final say on wind farm applications?” The implication is clearly “yes” – it is intended to signal a change, whereby Council officers, planning committees, Inspectors and the Secretary of State cannot permit a scheme that they consider to be acceptable in all other respects if the local community do not support it.

196. Accordingly, the following questions need to be answered;

- (i) Who is/are the relevant local community/communities?
- (ii) Are their concerns “planning concerns”;
- (iii) Have those concerns been fully addressed?
- (iv) Does the proposal have local community backing?

197. Dealing with these in turn, the two most affected local communities are Churchover and Cotesbach. That follows whether one looks at the

⁵⁵ Mr Stewart’s proof paragraph 5.2.9

proposal in plan form, at the settlements most visually affected. Responses from those places in respect of the initial application, the re-application, and the appeal are consistently higher than from elsewhere. Moreover, in relation to the re-application ref R15/0908, the appellant wrote a circular letter dated 21 April (attached to the closing submissions) to announce the application was being made. At page 2 is the statement: "LEDS (RES's Local Energy Discount Scheme) offers neighbours within 1.4km of the proposed windfarm an annual discount of £180 off their electricity bills – paid directly to the supplier". This pre-dates the WMS and can be very fairly taken to indicate RES' view prior to the WMS of what constitutes the "local community", namely the only people deserving of subsidy. That rather undermines the appellant's entirely unworkable test of including all the communities within a 5km radius⁵⁶.

198. With regard to planning concerns, there will inevitably be responses during a planning application process that raise matters that cannot properly be regarded as material considerations. However, it has not been alleged that the fundamental concerns and objection raised by the local community and residents of Churchover in particular, are not planning concerns for the purpose of the guidance. Moreover, the concerns relate to the array of the turbines – this is not a case where it is one turbine that is objected to such that its removal would remove the objection.
199. In any event there has been no change to the scheme whatsoever since the appellant proposed 4 turbines. CPC strongly resists any suggestion by the appellant that this scheme should be taken to be a mitigation of the previous 9 turbine scheme. Firstly, the previous scheme was entirely inappropriate. Secondly, the applicant for this scheme is different, and proposes the present layout as a result of environmental constraints rather than any specific consultation with the local community as to how many turbines they thought appropriate. In other words, the proposals do not relate to carefully considered consultation responses. It was also clear from the analysis of responses⁵⁷ that they overwhelmingly dwelt on legitimate planning concerns and almost none were concerned with non-planning issues such as property values.
200. Fully addressing the planning concerns of the local community cannot just mean providing evidence and reports dealing with those issues by way of environmental information because the appellant is bound to do that anyway, and there would be no need for the WMS to re-state it. The concerns of the community still remain such that Churchover Parish Council as well as ASWAR and a number of individual speakers attended the Inquiry to give evidence objecting to the scheme. Further, the sustained objection of HE seems to provide

⁵⁶ This point was not put to the appellant's witnesses and the appellant stated in closing that there is nothing in the content of that letter or the LED scheme that indicates that only those people within it constitute affected communities

⁵⁷ Mr Stewart's appendix 1

an objective measure that the concerns over heritage have not, as a matter of fact, been fully addressed.

201. The final requirement, that there must be community support, cannot be ignored. The words are there because they mean something. If they were not intended to establish a test, then the guidance might have stopped at saying "following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed." On any view, this proposal cannot be said to attract community support. The elected Parish Councillors, Borough Councillor, County Councillor and Member of Parliament all oppose it. The appellant's planning witness was keen to point out that there was not total opposition - not everyone is opposed to the proposal - there are an amount of people who expressed no view either way. However, quite apart from the fact that "total opposition" is not the test expressed in the guidance, the contention that those people who do not express a view should be taken to support the development is entirely wrong.
202. There was some suggestion during the Inquiry that those who wanted to support the scheme might worry about voicing their opinion in a village that was generally opposed. That cannot be right. It was explained how 'drop-in' confidential surgeries were held in the village so that the Parish Council could receive all views from the local community. Moreover, members of the public are perfectly entitled to write to either RBC or the Inspectorate to give their views on a scheme and ask that their details remain confidential. There was a speaker in support of the scheme from Churchover who spoke at the public session.
203. Those who have not expressed a view are entitled to hold no view, or indeed, rely on their Parish Council as elected representatives to make the case against the wind farm on their behalf. Certainly, none of those people can be said to be "backing" the proposal. As the appellant agreed, ambivalence is not "backing"; "backing" suggests something positive. It is not something that can be inferred from silence. Moreover, just because people support the generation of electricity from renewable sources nationally, does not translate into support for a specific scheme. If national support were the intended measure of "community backing", the guidance would have said so.
204. There may of course be cases where there is a number of people against and also in support of a proposal from the same community such that it becomes difficult to discern who has the majority and whether the proposal has the backing of the local community, but there is no such difficulty here. RBC has stated twice in written evidence and in their response to PINS on a request for submissions concerning the WMS that there is significant local objection. Bearing in mind paragraph 98 of the NPPF, the impacts of the proposal cannot be made "acceptable" if the proposal does not have local community support. It is understood that the Council seek to rely on

the Newport case⁵⁸. Insofar as the Council seek to rely on the case to argue their interpretation of the WMS, it is noted that it concerns the public perception of risk arising from a development. That may be a part of local opposition to the wind turbines, but not necessarily so. The objections that have been raised by CPC, particularly landscape and heritage, do not arise from a fear about the safety of the turbines. Also, the context in that decision was different - there was no WMS that explicitly elevates public opposition to a scheme to the status of material consideration that is capable of leading to the refusal of a scheme where it does not have the backing of the local community.

The planning balance

205. CPC acknowledges and accepts the benefits of renewable energy generation. Chief among those benefits is the contribution the scheme makes to the generation of renewable energy as part of the UK's binding targets, as well as increased energy security. There are some short-term economic benefits. These have to be weighed into the balance with the strong policy support for the generation of renewable energy. That benefit however is significantly and substantially outweighed by the numerous harms that have been identified as arising from this scheme, not least a strong presumption against the grant of planning permission arising from the harm to nearby heritage assets, and the lack of community support.

206. It is right to note that wind power is an important part of the energy mix, but such development must be sited appropriately. Churchover is not an appropriate place to put a wind farm. Despite the presence of significant road infrastructure, the Swift valley remains a rural and intimate landscape that would be unacceptably damaged by the introduction of turbines on either side of it. Moreover, the valley retains a historic link with Churchover Church that overlooks it and would be entirely dominated by the presence of structures that tower at over five times its height. It is for those reasons that CPC identify conflict with both the development plan and the NPPF, both of which aim to secure sustainable development that protects the historic and natural environment as well as respecting the character and amenity of the area in which development is situated.

207. The appellant agreed that if policies CS16 and GP5 are taken at their word, then there is a conflict with the development plan because the proposals will undoubtedly cause "material harm". The appellant says that when read together with the explanatory text, GP5 can be interpreted so as to encourage a balance to be struck in the assessment of a particular project, such that development such as this will be permitted where there is no "unacceptable" harm. Frankly, CPC does not mind how the policy is read, the harm is significant and is unacceptable in any event and there is a conflict whether "material harm" means "any harm" or "unacceptable harm."

⁵⁸ Newport BC v. The Secretary of State for Wales [1998] Env. L.R. 174

208. CPC also identify a conflict with policy GP2, and it has never been the appellant's case that the proposals will retain the character of the landscape or even enhance it; the significant adverse effects are acknowledged and that harm weighs against the scheme.
209. Likewise, there is an undeniable conflict with policy E17, because there is harm to the setting of heritage assets. The weight to be given to that policy may be reduced because it does not incorporate a balance in the same way that the NPPF does. The development plan, together with the statutory duty under s66 of the LBCA is the starting point, and the policies of the plan reflect the same laudable aims the NPPF is seeking to secure. In respect of Green Infrastructure Policy, there has been no assessment by the appellant as to whether there is a conflict or not. However, the scheme will neither protect, restore nor enhance the Green Infrastructure around the site, and the harm to the landscape will lead to harm to that asset because its value is bound up in the landscape. The text accompanying policy CS14 at paragraph 6.11 recognises that the intrinsic value of the asset might be lost and CPC's case is that harm will arise here if the appeal proposals are constructed and will cause a conflict with that policy.

Conclusion

210. In conclusion, the proposals give rise to a number of conflicts with the development plan. They fail to meet with the aims of the plan policies as well as the NPPF in bringing forward development that respects the natural and historic environment. The generation of electricity through renewable means might be sustainable, but the development proposed here is not. The harm associated with a wind farm at this particular location significantly and demonstrably outweighs the benefits of the project as a whole, and the adverse impacts of the proposal cannot be made acceptable.

The case for ASWAR

The main points are:

211. ASWAR believes that the local community's trust in the democracy operating within the local planning process has been undermined by how Rugby Borough Council (RBC) has conducted itself. ASWAR regrets this loss in confidence in the apparatus of local government and suggests below at the end of this section 1, a way that the Secretary of State can help repair the trust. RBC's opening submission states that "the professional opinion of Mr Lowde was endorsed by the members of the Council's planning committee". ASWAR is unaware of when that endorsement took place. The discussion around Mr Lowde's opinion was cut-off and the committee was not given the opportunity to endorse it on 23 April 2014 when the application was unanimously rejected. There were some 60 members of the public and some councillors who witnessed this.

212. Churchover and Cotesbach are not wealthy communities and it is only because the village has had people living within it with an ability and motivation to find an inordinately large amount of unpaid time, bringing with them professional experience of the local planning process, and many other skills, that this community has so far prevailed in the face of the most sustained attacks.

213. The new Secretary of State now has the opportunity of dismissing this appeal and in so doing hopefully restoring at least some of the trust of the local community in the democratic planning process.

Heritage, landscape and amenity

214. ASWAR supports HE and CPC's technical planning arguments on these issues and consider a lot of the appellant's evidence to be fitted to its own objectives rather than taking a truly objective balance. The comments from members of the community come from the heart, are truthful and instinctive, and are from people who will be most affected. Accordingly they should be recognised as very important.

215. The village heritage assets are a comfort to the community and an important reason for many for living in Churchover. They are importantly linked to the surrounding countryside that creates the wide and open setting for the church. The church spire, a dominating landmark from almost 360 degrees, is an image representing the community and welcomes one home after a hard days work in the town or city to the tranquillity and beauty of the conservation area. Its setting is an integral part of the value of living in Churchover which would be ruined by an over domination by eye-catching and vertically-out-of-scale rotating turbines.

216. Villagers mentioned growing up playing in the surrounding countryside, as it should be in a rural village. The countryside is enjoyed in many different ways where children feel safe to explore and adults enjoy. It is reflective of the connection of the community with the surrounding countryside and it continues the historic relationship of the Upper Swift Valley with the settlement. The type of undisturbed grassland along the river and the upland slopes of ridge and furrow on the east side gives value to all ages as well as numerous walking groups, and riders, whose amenity will be restricted by overbearing turbines.

217. The ridge and furrow may be deeper south of Ryehill Spinney but it is of 'very exceptional quality' and has not been eroded in the field in which T1 and its associated roadways are proposed. They would be 'a disastrous intrusion into this landscape', 'giving permanent adverse visual effect' 'and extensive damage' as noted by the UK's pre-eminent historian and expert on ridge and furrow.

Noise

218. ASWAR considers the attached Hassocks appeal is relevant⁵⁹. It deals with another quite technical subject, air quality, but is comparable to the noise case in planning terms. A R6 party, a chartered engineer with significant experience [IR38] presented detailed evidence to cast doubt upon the appellant's evidence. He was a "highly credible witness" [IR40]. The Inspector did not question the methodology used by the appellant's consultant [IR41] but "could not be fully confident in the conclusions drawn from it". Therefore, "I consider that the evidence ... is at best equivocal. I cannot conclude with confidence that the proposed development would not have a negative effect on air quality..." [IR43]. She went on to conclude that "I cannot be certain that the development would not be detrimental to air quality" [IR48] and, despite the appellant winning on traffic and social and economic roles of sustainable development, and including provision of affordable housing, she dismissed the appeal [IR50].

219. This is highly transferrable to the issue of noise here, bearing in mind the defects identified by Professor David Unwin in the underlying datasets:

- Data gathered in May-June 2010 for a 9-turbine scheme were not refreshed for 2014/15. In addition it was agreed they may not have taken into account the regulations concerning things like correct maximum and minimum distances for monitoring stations from facades;
- The 4 easternmost turbines of the 9-turbine scheme are not in the same locations as the 4 appeal turbines;
- The monitoring locations employed for the 9 turbine scheme are not well adapted to the 4 turbine scheme, with only Streetfield Farm and Northfield Farm House even partially relevant;
- Cotesbach in particular is not well represented by any background data and Ringwood, Moorbarns has a particularly open aspect and is down the prevailing wind unlike any of the monitors;
- There is a lack of fit through the scattered points on many of the polynomial graphs and the line should be shown as horizontal in a number of cases. There has been a lack of consideration of directionality of wind. All of these factors leave ASWAR not knowing whether the base data is reliable or not;
- There is a difference between experts as to the statistical treatment of the data, especially as the appellant presented no correlation coefficients nor measures of uncertainty;
- There is a further difference between experts as to Excess Amplitude Modulation, including its environmental significance, risk of occurrence, and any possible mitigation. ETSU allows for a small swish

⁵⁹ Attached to ASWAR closing statement

EAM but not when it turns to a thump. At certain atmospheric conditions and when wind shear is happening, the Renewables UK condition does not adequately protect. ASWAR is concerned about illnesses connected to sleep deprivation from the swish and thump of EAM and health concerns associated with low frequency noise, which particularly affects sensitive receptors such as people with autism, epilepsy and pregnancy, (note evidence submitted by Camilla Smith and attached is the Flixborough appeal decision on autism)⁶⁰. People have had to move out of their homes due to wind turbine noise. The Australian Senate Inquiry gave its final report on 3 August 2015. This report had three critical findings: First, there is no dispute that wind turbines emit infrasound; second, since 2009 the federal government has known and reported that inappropriate levels of infrasound cause adverse health impacts, whatever the source; and, third, wind farm guidelines and regulations do not require the measurement or restraint of infrasound levels. ASWAR calls for a 'Den Brook' noise condition or at least the Swinford noise condition to be added, should the turbines be ever built. These differences and uncertainty are being played out nationally as well as at Swift.

220. Overall, ASWAR submits that the Secretary of State cannot be certain that the development would not be detrimental to the noise environment" and that uncertainty provides a reason to dismiss the appeal.

Level of support

Exhibition numbers

221. The three exhibitions did not generate the support for which RES were looking. The actual figures of the views of those attending the exhibitions (see Appendix 1 of ASWAR's Proof of Evidence⁶¹) support the view of ASWAR that over 90% of the affected local community are against this proposal.

Intimidation and spin

222. The suggestion was made that a reason why there was so little support for the turbines in the affected local community was because of intimidation and people being afraid to speak up in support. The appellant's planning witness said the only evidence he had of this was that ASWAR had used the term 'picket' of the exhibition and he was quite eloquent in seeing this as a mass crowding of the door and stopping entry, something like in the manner of Scargill's miners in the 1980s. He could not have been further from the truth. ASWAR explained that the gathering was a five minute photo opportunity and

⁶⁰ The appellant notes the submission of new material in ASWAR closings in respect of ASD (the Flixborough decision), air quality (the Hassocks decision as some form of comparator to noise modelling) and a series of internet extracts of reports from Australia, Canada and briefly the UK on noise issues, and notes that this is all material that could have been put to the appellant's experts during the inquiry sessions but was not and upon which they have had no opportunity to comment. Accordingly the appellant submits that this is not material upon which should be placed any substantial weight.

⁶¹ see Appendix 1 of ASWAR's Proof of Evidence

was meant to be seen as an indicator to RES that they were up against a community determined to defend itself. They were being given notice not to waste any more time or money pursuing their application. The Rugby Advertiser editorial also described how it was good to see people power in action.

223. It took place outside the Village Community Centre, next to but away from the door to the Village Hall. One or two people throughout the day had sat near the door to the exhibition and asked people their view as they came out. If a rally had not been organised the chances were that the numbers attending the RES exhibition would have been considerably smaller as a good number from the rally then went into the exhibition. In respect of the one person who spoke in favour of wind turbines at the evening session it will have been noted that there was and is no intimidation against him. Indeed he is a long-standing and respected member of the Churchover community who has been particularly involved in fund raising to improve facilities at Holy Trinity so that it may be used for a wider range of functions. His views are respected by the community and ASWAR has never claimed 100% objection. It is testament to the courteous way in which the people of Churchover conduct themselves that he felt free in a room of objectors to express his views. It will not have gone unnoticed that there was not one word or sound of criticism against him.

224. To put the correct balance it should be mentioned that RES's leaflets, press releases and radio interviews contain a catalogue of spin. For example:

- A press release announcing that the Planning Application had been 'accepted', when all that had happened was that it had been registered. Many people were misled by this and interpreted it to mean that the turbines had gained approval to be built;
- Stating that the LPA had said the site was 'suitable' when trying to influence Monks Kirby Parish Council to be in favour and at other times;
- Saying RES is an independent company, when it is wholly owned by McAlpines;
- Making little mention of Cotesbach, with it not even appearing on their leaflet map;
- Saying that 70% of the local community was in support on local BBC Coventry and Warwickshire radio.

Definition of 'affected local communities'

225. Churchover is a tiny village of about 100 dwellings (similar to Cotesbach) including the outlying houses. In a village such as Churchover most people know most other people and though we do not live in each others pockets, there is a true community that is linked across its social and economic structure. It is not surprising that this type of community spirit creates a strong awareness of the concerns around issues like turbines, solar parks and renewable

subsidies, that attack their way of life. When defining what the words of the Secretary of State 'affected local communities' means, those living in Birmingham, Bristol or London need to understand that local people talk to each other and we have a real living connection with the surrounding countryside. It has always been 'theirs'. It is not a park to which one travels.

226. The good turn-out to the Inspector's evening session in Churchover village hall, with people from Churchover, Cotesbach and Montilo Lane present, and each trying, as advised, not to repeat what others had said, showed the emotional togetherness of the whole community on this issue. ASWAR is not saying this is an idealised community. What it is saying is that the argument that RES was fostering, for the need to define 'local' as some nebulous area within a 4 km to 5 km circle, is wrong, unworkable and in our view not what the Secretary of State means by 'local'. This is not because those living in Rugby or Lutterworth will not be affected to some extent when driving around the area and even from some of their houses, as well as having to live in an area becoming known as windfarm alley. This rural community, sitting between Rugby and Lutterworth around the Upper Swift Valley, has a common spirit and is geographically well defined as Churchover, Cotesbach and Montilo Lane. These people naturally feel an affinity for the Upper Swift Valley. It fits within the local Parish boundaries of Cotesbach, Churchover, Monks Kirby, Pailton and Harborough Magna each with its representative democratic process of parish councils, Borough and county councillors and MPs, all of whom are against this appeal. This is the 'local affected community' that the Secretary of State logically wants to have 'the final say'.

Summary

227. The individual numbers in support and against can be defined in different ways. Exhibition numbers, those attending rallies, objection/support letters/emails are all part of that calculation. ASWAR continues to say that over 90% of the local affected community is not in support of this appeal and calls for the Secretary of State to dismiss it.

Interested parties

228. In this section, where speakers made similar points, they have not necessarily been included in this summary. In general, people who spoke at the Inquiry raised similar matters to the main parties.
229. **Nicholas Molyneux** spoke to written submissions from HE provided at the consultation stage and provided a new statement⁶². He emphasised the historical importance of the medieval Holy Trinity church and spire, its relationship to the village and the surrounding landscape; and its function as the centre of communal life and as a spiritual focus. The spire has a local prominence in a 'bowl' in which the turbines would be an unwelcome intrusion. They would be

⁶² See Doc 22

inappropriate in scale, in principle. He offered no advice on where the level of harm might lie within the overall band of 'less than substantial'.

230. **Councillor Leigh Hunt** drew attention to the depth of feeling amongst local people and the number of letters of objection. Churchover is a small rural community that sits in a landscape that emphasises the compact nature of the village. The turbines will significantly damage the attractive landscape for an entire generation, which for many will be the rest of their lives. Government announcements have stated that wind farms should not be allowed unless there is clear support from the local community. There is none except from the landowners who stand to gain. **County Councillor Phillip Morris-Jones** supports all the objections of local people but is also concerned about the cost and sustainability of future power supply. Wind power is inherently unreliable and dependant on variable weather. It requires constant back-up by other forms of generation. Government targets for wind generation have already been satisfied by developments approved.
231. **Kate Mulkern** is Chair of the Parochial Church Council at Holy Trinity Church and is concerned about the effect of turbines on the heritage value of the church and the impact on those visiting the graveyard. **Dr Edmund Hunt** represented the residents of Cotesbach and pointed out that at a local meeting, 57 residents objected, 2 abstained and 1 voted for the wind farm. Four other wind farms are visible from Cotesbach and local roads and footpaths are all affected by their industrial appearance which add to the effect of warehouses and busy roads. Cotesbach is a very small village of about 180 persons with 13 listed buildings. **Lesley Browne** said that turbines occupy the four points of the compass and the area generally has a large number. This scheme in the meandering Swift valley would represent a tipping point. **Robert O'Callaghan** has difficulty understanding why the very large roofs of recent warehousing schemes at Magna Park, Rugby Gateway and DIRFT on the M1 and M6, totalling 18 million square feet, do not have solar panels which would have no impact on the landscape.
232. Many residents draw attention to the self contained unchanged nature of the Swift valley at Churchover, its tranquil rural character and the wildlife that it contains. Some specifically moved to Churchover because of these attributes, which they now feel would be threatened. The development of industry in the area, including distribution warehousing at Magna Park, visible to the north, is already seen as a threat. A few have serious concerns about the health effects of turbines, expressed by **Camilla Smith**. The Chair of Churchover Parish Council, **Dennis Watson**, said that the vast majority of villagers who expressed an opinion rejected the scheme. **David Archer** is a resident of Harborough Magna and objects on sustainability grounds, pointing out the poor load factors experienced at existing wind farms, even in Scotland; and the lack of any effective means of storing large amounts of electrical energy generated at times of low demand. He considers the net benefit of these 4 turbines

to be insignificant in the national picture. **Kevin Baker** is concerned about the effect of wind turbine vibrations on the gas supply infrastructure that lies around Churchover.

233. **Roger Chesson** is a resident of Churchover of some 35 years standing. He is in favour of the scheme, saying that alternative power sources are essential in the future.

Written representations

234. Written representations are submitted mainly against the proposal⁶³. The points made generally fall in line with those made by others at the Inquiry. The following points reflect concerns that are not already summarised above or are of particular interest.

235. **Mark Pawsey MP** specifically raises the WMS and says it is clear that the application does not have the backing of the local community; and that this is essential if the development is to be deemed acceptable.

236. The Warwickshire branch of the **Campaign for the Protection of Rural England** (CPRE) says Churchover is a rural village which has retained its character by strict planning control despite the building of the M6 motorway and the spread of Rugby. The landscape between the A5 and the M6 which is unspoiled at present is all the more important because of the expansion of Rugby up to the M6 at Junction 1. Because of these past developments, protection of the intervening area of open countryside is all the more important. The village of Churchover is wholly a CA. The extent of the CA including land beyond the built up boundary emphasises the importance of Churchover's rural character⁶⁴.

237. The proposed site is on high ground, the High Cross plateau between the Avon valley and the basin of the Soar to the north. At up to 130m AOD it is only 10m lower than the highest point in this landscape, the 140m point on Fosse Way south of the historic High Cross crossroads between the Fosse and Watling Street. The area has a general historic value as a crossing point of the original Roman colonisation. The Warwickshire Landscape Guidelines⁶⁵ (WLG) apply to this location. The more recent Rugby Borough area landscape assessment of 2006⁶⁶ goes into more detail but does not alter the principles of the WLG. The WLG describes the High Cross plateau as 'a sparsely populated agricultural region distinguished by wide rolling ridges and valleys and a strong rural character'. Its overall character is defined as 'A large scale, open rolling landscape characterised by wide views and a strong impression of 'emptiness' and space'. The features are:

- A rolling plateau dissected by broad valleys

⁶³ The numbers at application stage are confirmed at Doc 19

⁶⁴ CD G3 Map 1

⁶⁵ CD C4

⁶⁶ CD C5

- A medium to large scale, often poorly defined field pattern
- A sparsely populated landscape of hamlets and isolated manor farmsteads
- Deserted medieval village sites surrounded by extensive areas of 'empty' countryside
- Pockets of permanent pasture often with ridge and furrow
- Prominent belts of woodland.

238. The Guidelines also state 'Field pattern tends to be a relatively minor element in this landscape as the eye is naturally drawn to distant skylines rather than foreground views. The impression is particularly noticeable from the Watling Street in the vicinity of High Cross and again around Churchover'. The Management strategy and landscape guidelines for planning decisions for the High Cross plateau landscape is set out⁶⁷. The key aims are:

- Maintain and enhance the distinctive historic character of the landscape
- Conserve the historic pattern of large hedged fields, with priority given to strengthening and restoring primary hedgelines
- Conserve the wooded character of mature hedgerow and roadside oaks
- Restocking of plantation ancient woodlands.

239. The proposed windfarm would conflict with the Landscape Guidelines. These give no support to such intrusive and discordant features. The openness and large-scale views that give the High Cross plateau its fundamental character would be lost over all of its eastern part if wind turbines are permitted at Churchover. An indication of the impact can be gained from the way in which existing turbines harm the landscape east of Rugby. The Swinford turbines three miles away can be seen from a number of viewpoints, and intrude in valuable views in some directions. The proposed Churchover turbines would be more intrusive. CPRE supports the objections made from the locality which analyse impacts in more detail.

240. **Mr and Mrs Robert Boyes** live at Ringwood, Moorbarns, north-north west of the turbines. They say that the Swift valley is one of Warwickshire's beauty spots. They would have a direct view of the development from the rear of the house looking toward Churchover, and consider that they would devastate a beautiful valley. Health effects are a concern to some including **Mr and Mrs Gardner** in Churchover, who consider that they would be affected by the sun reflected off the blades⁶⁸. **John Philpott** and others consider it vital that this stretch of countryside remains free from the creeping

⁶⁷ Pages 34-35

⁶⁸ Doc 31

industrialisation has disfigured much of the landscape south of the M6 and that encroaching urbanisation of the land between Rugby and Lutterworth should be resisted.

241. **The Ramblers Association** recognises the threat posed to cherished landscapes by climate change and support reasonable measures to mitigate this threat, but consider this scheme to be inappropriate and damaging to the landscape. It would be detrimental to the beauty of or anyone's enjoyment of the surrounding countryside. They also draw attention to safety concerns relating to the proximity of T1 and T2 to PROWs.

Conditions

242. The wording of the suggested conditions is generally that agreed at the Inquiry and is covered here without prejudice to my consideration of the issues. I report only on conditions that attracted controversy and drew comments at the Inquiry, or because they require explanation or important rewording. All other conditions are necessary and should be imposed for the reasons stated. I have considered the suggested conditions in the light of planning guidance and Appendix A to Circular 11/95 *The Use of Conditions in Planning Permission: Suggested Models of Acceptable Conditions for Use in Appropriate Circumstances*. They have been adapted in accordance with the recommendations therein where appropriate, to ensure the wording is precise, necessary, relevant and enforceable.
243. **Condition 3** is clarified to include a requirement to remove the turbines in accordance with the decommissioning and site restoration scheme. **Condition 4** is altered to ensure that the decommissioning and site restoration scheme includes removal of the turbines at the end of the project lifetime. Removal of the whole of the foundations is not necessary for the land to be put back into productive use. **Condition 6** shortens the period during which an individual turbine may continue without supplying electricity without it being removed to 6 months, as an incentive to repair any defective turbine and in the interests of the supply of renewable energy. For the same reason, the Local Planning Authority (LPA) may also request information on the performance of any turbine and such information must be provided within 1 month of any such request. **Condition 13** is adjusted to provide for micro-siting of T1 and T4 no closer to Churchover and to provide a minimum fall over distance from adjacent rights of way.
244. **Conditions 20 and 21** are adjusted to ensure that bird and bat monitoring could lead to restrictions on turbine operation if the LPA agrees an unacceptable impact is occurring. Suggested **Condition 30** is designed to provide a remedy in the event of 'excess' or 'other' amplitude modulation effects (EAM), usually caused by blade stall in conditions when wind speeds vary significantly across the turbine with height (high wind shear). A degree of amplitude modulation is already taken into account in ETSU. Evidence was provided that EAM is a rare feature of wind farms in the UK, but that it is not unknown and has been reported at recently constructed developments. Work on

establishing a measurable threshold is ongoing and the Institute of Acoustics is preparing further advice for issue shortly. In light of the progress of research in this area⁶⁹ and the potential for harm due to EAM when it does occur (potentially affecting dwellings to the north east at Moorbarns), and bearing in mind the imposition of conditions seeking to control EAM in other cases including one by the Secretary of State at Swinford, the nearest wind farm to the appeal site⁷⁰ a condition is included which would reasonably address any unacceptable AM. The wording follows that used at Swinford.

245. An additional suggested **condition 42**, canvassed after the Inquiry closed, requires removal of the temporary meteorological and communication masts within a period of 12 months of the First Export Date. This period allows for measurements to be confirmed throughout a calendar year.

Inspector's conclusions

In this and subsequent sections, numbers in brackets [] refer to the main paragraphs in the Report that are of relevance

246. The main considerations that will be of interest to the Secretary of State are:

- The effect of the proposed development on the settings of heritage assets including, in particular, the Grade II* listed Holy Trinity Church, Churchover and the Churchover Conservation Area;
- The effect on landscape character and visual amenity; and
- Whether the environmental and economic benefits of the scheme would be sufficient to outweigh any harm that might be caused.

Policy matters

247. The most relevant Core Strategy policy CS16, which was adopted in 2011, does not incorporate a balancing exercise. National policy recognises that wind energy development inevitably has significant effects; and the NPPF of 2012 recognises the need for harm to be balanced with the public benefits of development where renewable energy and heritage assets are concerned. This lessens the weight that can be given to it. LP policy GP5, dealing specifically with renewable energy, read as a whole, recognises the need for a balance to be struck and is, in general, in conformance with the NPPF.[112,207]

The effect of the proposed development on the settings of designated heritage assets

Holy Trinity Church (GII)*

⁶⁹ See Hoare Lea Acoustics 2014 paper at Dr McKenzie's appendix ARMcK-C

⁷⁰ Swinford, CDs E1 and E2

248. There would be no direct impact on the fabric of the church, which stands at a prominent location in the centre of the village on the edge of the southern valley slope. However, as acknowledged in the ES, the church is a prominent building seen from the Swift valley, as it sits on an outcrop within a 'bowl'; and its 15th century spire⁷¹, whilst only 25m high, is a noticeable feature on the skyline above the trees in the village. The valley itself is not much more than around 25m deep and the tip of the spire is little higher above sea level than the highest land to the north west around the Pailton masts on Montilo Lane⁷². Seen from here, where the viewer would be near to 139m AOD, the tip of the spire does not quite reach the southern horizon. However it is easily seen on the skyline from the highways that pass by, the A5 and the M6 (briefly but conspicuously), Montilo Lane and the A426; and on all the approach roads to Churchover. It is most appreciated from the valley itself, from parts of which the whole tower can often be seen.
249. The village was founded on agriculture⁷³. The church has a longstanding association with the surrounding land; as such, the rural setting appreciably adds to its historical significance. Historic maps provided in the ES and by CPC indicate that apart from the loss of elm trees, local farmland has changed little for at least 200 years and is largely uncompromised by modern development (modern warehousing at Magna Park is hard to perceive and invisible from much of the valley; and Rugby Cement is a distant feature). Though some hedges have been lost, the valley remains a mixture of relatively small and medium scale fields⁷⁴. Architectural, archaeological and artistic aspects of significance of the church would not be harmed by the proposal, but all the turbines would be visible together with the spire in views from a wide swathe of the valley to the south west and west, including from the M6 which is briefly exposed on an embankment where it crosses the Swift. Turbines would also interfere with views of the spire seen from the north east, especially from the footpath through Moorbarns. In a proportion of these views, all 4 of the turbines would be spread directly behind or in front of the spire in an uncomfortable, out of scale manner that would noticeably diminish the significance of the church in its landscape setting. The spire is currently unchallenged. This is best appreciated in VP18 which is taken from footpath R101 (the gas installation in the foreground is low lying and does not challenge the spire), but similar juxtapositions would be obvious from footpaths R98 and R297 which connect Churchover to Harborough Magna, crossing the valley; and from the footpath between Cotesbach and the A5⁷⁵. Having said that, the turbines would be distinct and separate from the spire and the village seen from many other footpaths and viewpoints. [36,63,80-90,173,180,231-2,249]

⁷¹ Rebuilt in the 19th century

⁷² See VP6, height of viewer 122m AOD

⁷³ See CD G4

⁷⁴ Doc 29 shows agreed state of hedgerows

⁷⁵ VP4 indicates this. The spire is right of Ryehill spinney and appears significantly larger as one progresses along the footpath

250. The heritage significance of the church is agreed to be high. Having regard to the suggested methodology set out in the ES, the magnitude of change is considered to be 'medium' '*Changes to setting of historical building assets, such that it is noticeably modified*'. This leads to a major adverse magnitude of change in table 10.3. However, the significance of effect would not breach the threshold of 'major adverse' in table 10.4; such tables and descriptions are intended as a tool to assist in judgement, not a rigid process. In these circumstances, the NPPF says at paragraph 134 that the 'less than substantial' harm should be weighed against the public benefits of the proposal. [15,37,39,52,61,85,156-8,160-1,163,168,173,182,184,187-8,215]
251. The Churchover Conservation Area includes not just the village but adjacent land⁷⁶ generally not open to view. HE guidance⁷⁷ indicates that conservation areas include the settings of listed buildings and have their own setting. The text of the Conservation Area Appraisal (CAA)⁷⁸ notes that the density of buildings is relatively high and few glimpses of countryside are obtained from the street. Those that are available generally provide long views, such as those across the churchyard to the north west, and south west near the former public house. The CAA identifies these as key views⁷⁹. Turbines would not be seen in these views. [82,91-2,153-4,165-6,184,215]
252. The aspect over open countryside from the end of Church Street, experienced after being hemmed in by buildings for a considerable distance, is attractive, but obscured by trees⁸⁰. Turbines would be conspicuous from here, at a distance of just under 1km, after leaving the village, in an otherwise small scale pastoral view. I conclude from this that the qualities of the CA are appreciated mainly from the streets within the settlement and close to buildings. That is not to say that the proposed turbines would not affect visual amenity, but they would not impinge to any great extent on appreciation of the heritage significance of the CA. [236]
253. Other aspects of value are relevant. HE draws attention to advice issued in *Conservation Principles*⁸¹ which includes communal, evidential and aesthetic categories. Cultural associations and tradition can be important contributors to the way an asset is experienced. The church has value as the centre of communal life throughout its history. Whilst turbines would not be seen from the main entrance to the church, they would be prominent from parts of the graveyard extension⁸² to various degrees. However there would remain a broad and tranquil aspect across the valley to the north west and the level of harm to this aspect of value would be slight.[165,191,231]

⁷⁶ See CA Appraisal CD G3 map 1

⁷⁷ CD G1 *The Setting of Heritage Assets*, March 2015

⁷⁸ CA Appraisal CD G3

⁷⁹ CD G3 page 23

⁸⁰ At Ivy House. CD G3 page 6 (trees in full leaf)

⁸¹ CD G5

⁸² VP3

254. Ridge and furrow is evident in the area. Ridge and furrow is not a designated heritage asset. The NPPF says at paragraph 135 that *'the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset'*. The access track and crane pads to T1 and T2 would cut across elements of remaining ridge and furrow which characterise sloping local fields north east of Churchover⁸³. It was apparent at the site visit that the areas affected have been compromised by ploughing and are not the best examples in the area, some of which are near to Ryehill Spinney. Nevertheless there would be a degree of harm; the access tracks and pads would be partially cut in and partially above the contours if they are to be level⁸⁴ and this would appear unsympathetic adjacent to the ridge and furrow that characterises the southern slopes. This needs to be considered in the overall balance.[48,93-95,167,217]

Other heritage assets

255. In accordance with the statutory duty, the effect on other listed buildings within a 5 km radius have been considered including those listed in the ES at section 10⁸⁵. I have also considered all other heritage assets, designated and non-designated, including the Georgian farmhouse at Streetfields farm (the nearest to the development). For reasons of distance, orientation and/or screening, there would be no more than a neutral magnitude of effect on their heritage significance as a result of the proposal.

Landscape

256. The site lies within the Leicestershire Vales National Landscape Character Area (LCA) which extends into Warwickshire across the A5. In terms of local landscape character, the area west of the A5 is designated as the *High Cross Plateau, Open Plateau* Landscape Character Type (LCT) described in the 1993 WLG⁸⁶ as an area of wide rolling ridges and valleys characterised by wide views and a strong impression of emptiness and space. It says that around Churchover, the eye is drawn to distant skylines rather than foreground views. The most important feature of the Open Plateau is the remote rural quality of the landscape with extensive areas of largely inaccessible countryside, relating to medieval village desertion, particularly around Cestersover amongst other places. The Guidelines go on to note that the farmed landscape is characterised for the most part by large hedged fields; smaller fields in pockets of permanent pasture are a feature in places, often associated with ridge and furrow. However, the WLG are of some age and do not anticipate the development of wind turbines or renewable energy. Landscape change and current

⁸³ ES Fig 10.6

⁸⁴ In answers to Inspectors questions, having regard to application drawings ES Fig 4.4 and 4.6

⁸⁵ See ES Fig 10.3

⁸⁶ Warwickshire Landscapes Guidelines CD C4

trends are identified including the influence of new roads and urbanisation.

257. After more than 20 years, that pressure has not diminished; new industrial development mainly associated with distribution and storage has become a feature of the area associated with major lines of communication⁸⁷. The roof of a large building at Magna Park is visible over trees to the north east seen from parts of the southern slopes (trees that are likely to completely obscure the roof in time), but very little other modern development can be seen. The NATS Pailton communication lattice masts are small scale structures on the north west horizon. A line of electricity pylons crosses from north to south more or less parallel to Montilo Lane but does not cross the main part of the valley seen from Churchover. Built development is not a defining feature of the Swift valley.[37,40,173,180,231]
258. Moreover, the influence of nearby major roads on much of the valley is subdued due to embankments and screening. The M6 is more easily heard than seen and depending on weather conditions and wind direction, does not greatly influence the valley except when close to it. Commercial traffic on the A5 is more obvious as it descends the hill from Cross in Hand but the road itself can only be perceived through surrounding vegetation from fairly close quarters. The closest wind farm at Swinford (approximately 6 km from the appeal site) is a dominating influence on the horizon seen from the northern slopes and the Montilo Lane area⁸⁸, but from the valley is mostly hidden behind trees. The site visit demonstrated a high degree of tranquillity around Churchover itself combined with an unusual sense of isolation, especially in the valley bottom, given the intensity of surrounding uses beyond about 2 km in every direction except north west. That is helped by not being on any major traffic through routes. This is an aspect of the area that is highly valued by local residents.[32-3,172,176]
259. In greater detail, the proposed locations of the turbines themselves span the valley and would be in different sized fields⁸⁹. T3 and T4 would be in larger arable fields close to the river itself on the west bank. T1 and T2 would be on the opposite side in a more intimate, pastoral, hilly area with more evidence of ridge and furrow; and bordering on an area east of Churchover with significantly smaller, and ancient, field boundaries.
260. The 2011 White Report identifies landscape sensitivity to commercial scale wind farm development and gives the High Cross Plateau/Open Plateau a medium rating because of its large scale simple intensively farmed mainly arable landscape. It goes on to say that wind turbine development is more compatible with the large scale less settled parts of the area. Capacity is identified in the north of the LCT but is significantly constrained there by being in an area

⁸⁷ See Dr Down's appendix CPC/1/3/1 for a plan of existing and proposed development

⁸⁸ Visible on VP6

⁸⁹ See Doc 29

designated as Green Belt (LDU 73). A small cluster of 1-4 turbines is considered possible in the area to the east if its effect on Churchover, its spire and the character of the Swift Valley can be minimised⁹⁰. This area is shown as less constrained on Figure 8⁹¹. The proposed development understandably follows this lead.[42-49,135]

261. The 2013 update considers the appeal proposal specifically and voices the same cautionary note. Although not designated, the landscape of the Swift valley between the M6 and the A5 including the village of Churchover on its projecting eminence is largely of small scale grain and pattern, almost completely undeveloped, attractive because of its scale and meandering river, and mostly tranquil. This raises it above the description of the appellant's landscape witness of the valley as a 'relatively ordinary English landscape'. There is no question as to its value to local people. Whilst the turbines would be in a part of the valley affected by the presence and noise of the A5, their height and movement would have a substantial magnitude of effect in the whole valley, the most sensitive part of which is only just over 3 km long, well within a zone in which 125m high turbines would be recognised as having a significant effect. The height of the turbines would be about 5 times the depth of the valley which is the defining landscape feature. Local spinneys and trees would do very little to mitigate for their height, and would be more likely to provide a direct comparison in scale terms which would enhance their discordance. Using the methodology in the White Report, I find that the level of sensitivity for the Swift valley around Churchover is more inclined towards high/medium than medium: *'Key characteristics of landscape are vulnerable to change and development can be accommodated only in limited situations without significant character change. Thresholds for significant change are low. Few aspects of commercial scale wind energy development relate to landscape character'*⁹². This is acknowledged in the ES.[37-8,42-53,171-2,176,182]
262. Moreover, the scale of the proposed wind turbines in this location would not minimise the effects on Churchover and its spire or the landscape character of the Swift valley. It is recognised that the applicant has followed planning guidance, but the White reports are clear: *'Wind energy development would be compatible with the broader plateau areas although less so in the valleys especially where juxtaposed with defined changes in level'*⁹³. This scheme would be juxtaposed with the valley sides, T1 and T2 particularly being located in steeper areas⁹⁴. This is not just a direction to avoid the settlement of Churchover, as the appellant suggests; but an indication that the valley as a whole is more sensitive. The turbines would not be seen as being on the plateau or any of the higher areas of the valley sides and this is apparent from VP5, VP6 and VP8. Accordingly the magnitude of

⁹⁰ Constraints shown on White Report Figure 2

⁹¹ CD C1, 2 cluster option

⁹² CD C1 page 18

⁹³ CD C1 appendix A page 10 and CD C2 appendix A page 10

⁹⁴ See OS extract at ES Fig 4.1

effect would extend for a greater distance than the ES suggests. [46-7,77-8]

263. I give little weight to the map showing the Swift valley to be in the lowest category of 'fragility of inherent character' in the 2006 Landscape Assessment of the Borough of Rugby Sensitivity and Condition Study⁹⁵. The whole valley has been farmed for centuries and much of it retains a coherent historic field pattern. In any case, this study is not specific to wind energy development.[42]
264. CPC draw attention to the impact on the Strategic Green Infrastructure Network. It is apparent from the wording of policy CS14 that the term 'green infrastructure' is multi-functional and has many facets that contribute to it, landscape being one as well as river corridors, canals, disused railway lines and biodiversity sites. The essential function of green infrastructure is connectivity. The proposals map⁹⁶ shows a zone each side of the river Swift which is a strong connective element. The 2009 Entec Final Report on Green Infrastructure provided for RBC⁹⁷ lists GI functions at page 6 and includes 'providing recreational space for healthy exercise and a relatively tranquil environment' and 'contributing an attractive green element to the image of an area'. Environmental benefits include reinforcing and enhancing landscape character and local distinctiveness. Policy recommendations on page 67 discourage the compromise, degradation or reduction in the quality and/or function of GI. The turbines would not fit in with these objectives. [113,189,190,209]
265. Turning to cumulative impact, ES Figure 6.10 shows a 'bare ground' theoretical visibility analysis including schemes with hub heights above 40m. This graphically indicates the location of the Swinford group about 6 km to the east. Tree and vegetation cover substantially alters the perception of cumulative impact on the ground, but Swinford, Yelvertoft and Lilbourne (approved but not completed) would be prominent seen from the northern slopes of the swift valley, turbine blades and hubs turning above the trees on the horizon. The potential for cumulative effects lies with these schemes, Gilmorton being too far to the north. VP6 (Fig 6.19.6 PM) indicates the visibility of the Swinford turbines behind the Swift development (note that Swinford and Yelvertoft are not identified on the associated wireframe at Fig 6.19.6 WF). In this view, there would be a clear impression of a significant extension of a wind farm landscape; moreover one that is expanded into a distinct valley. This effect would be enhanced by the proposed but not yet approved 119m Redland Roof Tiles turbine at Shawell, within 1km. Ms Oxleys Appendix 3 was prepared to show the effect on residential properties but is also helpful in illustrating potential cumulative impact; attention is drawn to VP5. I conclude that there would be a degree of cumulative landscape and visual harm seen from the west.[66,239]

⁹⁵ CD C5 Map 1

⁹⁶ Doc 17

⁹⁷ CD C3

266. To conclude on the impact on landscape character, the sensitivity of the Swift valley is higher than the medium level ascribed to the LCT as a whole in the White reports. The turbines would be located in an area that is more constrained due to the limited valley depth and more intimate small scale setting each side of the river; and because of the strong valley landform which seen from within it and other locations, is substantially unaffected by any modern influences. The turbines would have highly significant adverse landscape effects which would extend at least twice as far as the 1 km that the ES suggests. Moreover the development would distract attention from and significantly diminish the importance of the Holy Trinity spire, a modest yet locally dominant landscape feature. The proposal would conflict with the landscape protection aims of CS policies CS14, CS16 and LP policy GP5. It would not conserve or enhance remote rural character, as set out in the management strategy of the Warwickshire Landscape Guidelines.

Visual amenity

267. Visual receptors include local residents, people working locally, travellers, holidaymakers and recreational users such as cyclists, walkers and horse riders. For travellers on the busy A5 and main trunk roads, the turbines would be no more than a brief experience in a wider mixed landscape which is already affected by major development including other wind energy schemes. For local residents, the turbines would become a dominant feature of the local landscape which would re-define the experience of it for them in coming and going from their houses.

268. The ES rightly identifies a high magnitude of effect for those using PROWs within a 2km radius with a major/moderate significance of adverse impact. Because of the close proximity of T1 and T2 to a BOAT and the closeness of all 4 turbines to a popular network of PROWS enhanced by visibility along a meandering river bottom, I consider the adverse visual impact to be major within 1-2 km. This would affect almost all of the people who set out to use these footpaths because of the circular nature of the walks that are possible from Churchover. The effect on those using the path and BOAT between Cotesbach and Churchover would be particularly marked. Although there is no publicity to encourage walking in the area, it was apparent at the site visit and at other times that the Swift valley is a popular destination for recreational walkers, being so close to urban areas.[35,57-8,64-5,67,137,160,162,189-191,216]

Other considerations

Noise

269. The Council does not object on grounds of noise and the predicted noise levels set out in the ES indicate that there would be no

properties where the ETSU⁹⁸ limits would be exceeded. ETSU seeks to achieve a level of noise which is reasonable and which would allow the nearest neighbours acceptable living conditions. What it does not seek to do is reduce wind farm noise to a level which would always be inaudible to local occupiers or such that no-one would ever be disturbed by it. Road traffic noise is a feature of the area and this varies with weather conditions and wind direction. It may be that from time to time, turbine noise might be heard in properties at the eastern end of Churchover, in an easterly breeze, when traffic levels on the A5 are low. However, the village and all other residential properties lie outside the 35dB zone⁹⁹. ASWAR make submissions that the data cannot be relied upon which was explored at the Inquiry but nothing firm is put forward to cast persuasive doubt on the appellant's methodology or conclusions. It has not been shown that the anticipated turbine noise levels would cause a level of undue disturbance at any existing dwellings, all of which suffer from a degree of background traffic noise. I have taken into account the proposed noise limits, which are enforceable and ensure reasonable living conditions for local occupiers. A condition is suggested to provide mitigation in the event of EAM arising. Turbine noise does not weigh against the scheme.[99-108,218-220]

Residential amenity

270. Residential amenity was not a reason for refusal. The appellant carried out Residential Visual Amenity Studies¹⁰⁰. It is an accepted principle in planning that there is no 'right to a view' in the way that a particularly cherished view from a private property can be protected from development that would have an adverse effect on it. In this case, wind turbines would be visible from a number of private properties to a greater or smaller extent dependant on distance and orientation. Residents are assessed as having a high level of sensitivity in their homes, generally higher in main living and outdoor relaxation areas than utility rooms or hallways. In some cases, a direct view from a bedhead or bath could be significant, as could a focussed view through a stair window. Whether the wind turbines would be unacceptably intrusive or overbearing is a matter of fact and degree at each property.
271. Due to a combination of room use together with screening by buildings or vegetation, orientation and distance, there would be no properties where the visual impact of the turbines would make any property an unpleasant place to live or where the turbines would have an unacceptably overbearing presence. That is not to say that some occupiers will not find their main outlook significantly altered. The occupiers of Ringwood at Moorbarns farm would notice a very distinct change in their existing rural view from all the main living areas across the Swift valley in which turbines would become a new,

⁹⁸ ETSU-R-97: The Assessment and Rating of Noise from Wind Turbines (September 1996) and subsequent Good Practice Guide at CD H1 and H2

⁹⁹ See ES Vol 3 Fig 7.1

¹⁰⁰ Figs 6.1.1-6.1.4 and Ms Oxley's Appendix 3

distracting focus¹⁰¹. Despite this, the turbines would not be so close, at about 950m to T3, as to dominate their day to day lives. Heavy goods traffic on the A5 is also partially visible and this also detracts. The change would be detrimental but would not be unacceptable.[67-70,175,192]

Subsidies

272. Some objectors raise the Government's approach to renewable energy subsidies, the likely wind energy capacity on the site and the principle of using wind as a resource, but the Government has set out in policy the manner in which it intends to address the need to mitigate for climate change and reduce CO₂ emissions. These are not matters to which I can ascribe any significant weight.[230,232]

Health concerns

273. Recognising that there is much material available on the health impact of wind turbines going back to the 1990s, there is no firm evidence to show that in the United Kingdom, any unacceptable health effects have been experienced as a result of a wind energy development. Whilst some individuals have reported significant effects due to noise, there is nothing to indicate a widespread problem or to suggest that planning conditions are not adequate to control unacceptable noise. Whilst anxiety about health itself can be a material consideration, there is no evidence available to suggest that such a fear has had any harmful effect on anyone living in the vicinity of an existing turbine in the UK.[219]

Safety

274. T1 lies close to the BOAT (R334) and T2 lies close to PROW R63. Planning guidance indicates that fall over distance (the height of the turbine to the tip of the blade) plus 10% is often used as a safe separation distance. T1 would be 74m from the BOAT which would be a concern to passers-by, especially horse riders. T2 would be 83m from R63. It is possible to relocate these turbines within the micro-siting allowance to put it beyond fall-over distance and a suggested condition covers this point.[64,241]

Whether the environmental and economic benefits of the scheme would be sufficient to outweigh any harm that might be caused

275. The NPPF says that it is the responsibility of all communities to contribute to energy generation from renewable sources. There is no dispute from the main parties that there is strong support at all levels of policy for large scale renewable energy development. Onshore wind remains a key technology in the development of the renewable energy sector. Supporting the transition to a low carbon future in a changing climate is one of the core planning principles of the NPPF. Whilst the current pipeline of development has the potential to fulfil the Government's ambition for onshore wind, there is no certainty and

¹⁰¹ Ms Oxley's Appendix 3 VP1

at the present time there is still no lessening in the desire to increase onshore wind capacity. There are no technology specific targets, only illustrative 'central ranges' which do not restrict the Government's ambition.

276. There is a need for new renewable energy including onshore wind projects in order to reach the level necessary for energy security and renewable energy goals. In principle, new renewable energy proposals are to be welcomed. The proposed energy generation of the scheme would supply approximately 5400 homes¹⁰² and would contribute substantially to the supply of electricity as part of a mix of renewable resources in Rugby. The ongoing saving in CO₂ emissions over the lifetime of the project and consequent contribution to combating climate change for the life of the scheme is an important consideration. Added to that is ecological enhancement and the potential to provide some economic stimulus to the local area through jobs in construction and maintenance over the project's lifetime.
277. Moreover, the development would be sustainable in principle, according to the definition of sustainability in the introduction to the NPPF and at paragraph 93. Very significant weight attaches to these benefits. However, paragraph 7 of the introduction to the NPPF states that the environmental dimension of sustainable development includes contributing to protecting and enhancing the natural and historic environment. In the process of making decisions, the impacts must be acceptable, or capable of being made acceptable.
278. An important aspect of this proposal is the extent of involvement of the local population and the volume of representations. The PPG says that it is important that the planning concerns of local communities are properly heard in matters that directly affect them; and protecting local amenity is an important consideration which should be given proper weight in planning decisions. The WMS of 18 June includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. [117-124]
279. There is a significant amount of local objection in this case and a distinct community that would be directly affected. Those 'affected' by the proposal, however, must include those living in a much wider area and who may benefit from the renewable energy produced. Whilst local opinions are a very important consideration, it would be unusual for public views to override the relevant planning policies. It must be wrong to interpret the WMS as mandating refusal in all cases where there is no local backing, as this would have the effect of

¹⁰² RES figures

predetermining the outcome (in other words, the harm identified by local communities, even if addressed and the impacts found to be acceptable, can never be outweighed by other considerations). Such an approach would amount to a public veto, as far as onshore wind turbine development is concerned. I therefore ascribe little weight to the assertion that the opposition of a large number of Churchover residents, as the affected local community, must automatically lead to a recommendation of refusal. [117-124, 127, 139-149, 152, 193-4, 203-4]

280. The Council was aware of strong opposition to the scheme on landscape, amenity, heritage and noise grounds when it decided that aviation safety was the only ground on which permission could be refused. That must have been in the full knowledge of the NPPF and the Coalition WMS of June 2013, which encouraged onshore wind while engaging better with local communities. The officer's report gives weight to the previous Planning Practice Guidance for Renewable and Carbon Energy (PPGRCE) of July 2013, advice on which was carried forward into PPG on 7 March 2014. Read as a whole, the officer's recommendation was that, on balance, the benefits outweighed the harm.

281. I find that the degree of harm to landscape, visual amenity and heritage interests is considerably greater than the appellant or the Council acknowledge. The existing detractors in the landscape in particular are given a wholly undue degree of emphasis and influence, particularly by the Council. The unusual degree of tranquillity and largely unaltered form and appearance of the Swift valley in this location is demonstrable in the evidence and was apparent at the site visit. The sensitivity of, and degree of harm to landscape character, particularly as perceived from the Swift Valley, is a very significant factor that is also underestimated. The caveats in the White Report are not properly addressed. Harm to visual amenity, as perceived from much of the valley but also from Montilo Lane and Cotesbach, is accentuated because of the close proximity of popular public rights of way. Cumulative harm arises in views looking across the Swift valley from the west and north west because of the backdrop provided by the Swinford development and others, giving the impression of an extended windfarm landscape. The adverse impacts of the proposed turbines on the setting of Holy Trinity Church, a heritage asset of the highest significance, together with the impact on the setting of the Churchover Conservation Area, constitute differing levels of harm to heritage significance in this case that are 'less than substantial', but nevertheless attract considerable importance and weight, as clarified in the Barnwell judgment of February 2014¹⁰³, of which the Council was unaware¹⁰⁴. The permanent harm to surviving areas of ridge and

¹⁰³ And subsequent judgments; see CD section E

¹⁰⁴ In cross-examination. Acknowledging that the Council gave the harm to the setting of the spire 'considerable weight' this was in the overall conclusions and in the same sentence as the incorrect reference to a Grade II listing

furrow has to be considered, along with its associated landscape impact.

282. The degree of harm identified cannot be made acceptable. The reversibility of the proposal needs to be taken into account but carries little weight in view of the adverse effects of the turbines on visual amenity in particular, which would last for a generation. Taking all the proposed benefits into account and balancing them against the disadvantages, I conclude that the adverse impacts would significantly and demonstrably outweigh the benefits. The scheme would conflict with the relevant parts of CS policies CS14 and CS16 and LP policy GP5; national planning policy in the NPPF and policy guidance. [56,76,167]

283. Notwithstanding my conclusion that the scheme conflicts with development plan policy, there is also a great deal of written and vocal objection to the scheme. I give little weight to the suggestion that those in favour generally do not put their views forward or that supporters might have been put off by objectors. There is nothing to suggest that those who did not object in writing or verbally are likely to be supporters; some will have relied on their local Parish Council to represent them. It was open to supporters of the scheme, across the whole of Rugby and adjoining parts of Leicestershire, to attend the public Inquiry, which was not subject to public demonstration or any form of intimidation. Only one person in support attended who was fairly and politely heard. I conclude that the proposal has been overwhelmingly shown to not have the backing of the communities directly affected. That adds to the weight of argument against the proposal. [222-3]

Formal recommendation

284. I recommend that the appeal should not be allowed to succeed. Should the Secretary of State disagree, then I recommend that the conditions set out in Annex 2 to this Report should be attached to any permission.

Paul Jackson

INSPECTOR

Annex 1
APPEARANCES

FOR RUGBY BOROUGH COUNCIL:

Satnam Choongh	Of Counsel, instructed by the Senior Solicitor- Planning, Legal Services, Lincolnshire
He called Nathan Lowde BSc MSP	Senior Planning Officer, Rugby Borough Council

FOR RES UK & Ireland:

Patrick Robinson	Partner and Solicitor, instructed by Burges Salmon
He called	
David Stewart MA (Cantab) Dip TP MRTPI	David Stewart Associates
Samantha Oxley MA BSc CMLI	Land Use Consultants
Dr Jonathan Edis BA MA PhD MIFA IHBC	Heritage Collective LLP
Dr Andrew McKenzie PhD BSc FIOA	Hayes MacKenzie Partnership Ltd

FOR CPC:

Thea Osmund-Smith	Of Counsel, instructed by Churchover Parish Council
She called	
Dr Christopher Down BSc PhD	Local resident
Karen Down MA (Oxon) MSc MRTPI	Local resident

FOR ASWAR:

Lorne Smith	
He called	
Professor David J Unwin BSc MPhil FRGS	Emeritus Chair in Geography, Birkbeck College

INTERESTED PERSONS:

Nicholas Molyneux	Historic England
Sue Betts	Local resident
Darren Scott	Local resident
Winston Lunn	Local resident

Roland Leonard	Local resident
Kevin Baker	Local resident
Cllr Leigh Hunt	Member for Clifton, Newton and Churchover, RBC
Phillip Morris Jones	Warwickshire County Councillor and resident of Pailton
Kat Ellerker	Local resident
Janet Ellerker	Local resident
John Ellerker	Local resident
Dr Edmund Hunt	Resident of Cotesbach
Kate Mulkern	Chair of Parochial Church Council, Holy Trinity, Churchover
Sara Wills	Local resident
Karen Busfield	Local resident
Roger Chesson	Local resident
Justine Friggens	Local resident
Lesley Browne	Local resident
Robert Cooper	Local resident
John Washington	Local resident
Robert O'Callaghan	Local resident
Martin Bradford	Local resident
Chris Cooper	Local resident
Louisa Cooper	Local resident
Camilla Smith	Local resident
Dennis Watson	Chair, Churchover Parish Council
David Archer	Resident of Harborough Magna
Michael Wills	Local resident
Amy Down	Local resident

DOCUMENTS

- 1 ASWAR statement
- 2 Submission from Phillip Morris Jones
- 3 Submission from Robert & Mary Boyes
- 4 Comments of Joe Mitson, Rugby Borough Council Officer, on application ref 15/0908, submitted by the Council
- 5 Errata to C G Down proof of evidence
- 6 Cornwall Council refusal notice ref PA15/01117, submitted by CPC
- 7 Pendle refusal notice ref 13/15/0242P, submitted by CPC
- 8 Draft LVIA for 67m Orchard Farm wind turbine, Cotesbach, submitted by CPC
- 9 ZTV and viewpoint plan for 67m Orchard Farm wind turbine, Cotesbach, submitted by CPC
- 10 Viewpoint 8 for 67m Orchard Farm wind turbine, Cotesbach, submitted by CPC
- 11 Comparison of R12/2009 scheme turbines with location of R10/2303 eastern turbines, submitted by CPC
- 12 Extract from Basingstoke Gazette of 13 July 2015 concerning the withdrawal of a wind farm application at Bullington Cross, submitted by CPC
- 13 Minutes of Churchover Parish Council meetings 3 November and 15 December 2014
- 14 Rossendale Officers Report ref 2015/0112 regarding Scout Moor wind farm extension, dated 1 September 2015, submitted by the appellant
- 15 Statement from Sue Betts

- 16 Green Infrastructure Proposals Map, provided by the Council
- 17 Judgment ref [2014] EWHC 2006 (Admin) *Lark Energy* submitted by CPC
- 18 Email from Neil Collett on application ref R10/2303, submitted by the Council
- 19 Confirmation by the Council of numbers of letters in support and objecting to application ref R15/0908
- 20 References and notes relating to Karen Down's proof of evidence
- 21 Letter from Cotswold Archaeology to Historic England dated 8 January 2014, supplied by CPC
- 22 Statement from Historic England
- 23 Statement of Darren Scott
- 24 Updated Noise Assessment sheets, supplied by the appellant
- 25 Copy of ES Figure 7.1 and layout for application ref R10/2303 provided by Professor Unwin for ASWAR
- 26 Bundle of copies of written statements provided by those who spoke at the Inquiry
- 27 Extract from Joseph Ashby's Victorian Warwickshire (1892) supplied by CPC
- 28 Bundle of information submitted by Camilla Smith following verbal submissions, requested by the Inspector
- 29 Extent of hedgerow removal agreed by the parties (not verified by inspection) submitted on Thursday 10 September and for use at the site visit, requested by the Inspector
- 30 Bundle of late representations from Stephen Wilcox, James Lakey, Graham and Karen Harvey and Rob Higgins
- 31 Bundle of letters submitted at the evening public session
- 32 Letter from Mark Pawsey MP
- 33 Statement of Common Ground between the appellant and the Rule 6 parties, dated 14 September 2015

Annex 2

Schedule of suggested conditions

Condition	
(1) Permission Period	<p>The development hereby permitted shall be begun before the expiration of 3 years from the date of consent. Written confirmation of the commencement of development shall be provided to the LPA no later than 14 days after the event.</p> <p>Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004</p>

Condition																																																													
<p>(2) Approved Plans</p>	<p>The development shall be carried out in accordance with the following approved plans:</p> <p>Reason: For the avoidance of doubt and in the interests of proper planning.</p> <table border="1" data-bbox="608 454 1469 1010"> <thead> <tr> <th>Drawing</th> <th>ES Figure Number</th> <th>RES Internal Ref</th> <th>Size</th> </tr> </thead> <tbody> <tr> <td>Planning application boundary</td> <td></td> <td>03010D2505-03</td> <td>A3</td> </tr> <tr> <td>Site location plan</td> <td>1.1</td> <td>03010D2206-02</td> <td>A1</td> </tr> <tr> <td>Turbine location plan</td> <td>1.3</td> <td>03010D0001-09</td> <td>A3</td> </tr> <tr> <td>Infrastructure layout</td> <td>4.1</td> <td>03010D1001-08</td> <td>A3</td> </tr> <tr> <td>Typical elevations of a wind turbine</td> <td>4.2</td> <td>03010D2901-02</td> <td>A3</td> </tr> <tr> <td>Wind turbine foundation (gravity)</td> <td>4.3</td> <td>03010D2301-01</td> <td>A3</td> </tr> <tr> <td>Crane hardstanding general arrangement</td> <td>4.4</td> <td>03010D2302-01</td> <td>A3</td> </tr> <tr> <td>Masts</td> <td>4.5</td> <td>03010D2223-04</td> <td>A3</td> </tr> <tr> <td>Access track typical details</td> <td>4.6</td> <td>03010D2227-01</td> <td>A3</td> </tr> <tr> <td>Control building compound – elevation</td> <td>4.7</td> <td>03010D2229-02</td> <td>A3</td> </tr> <tr> <td>Control building compound – layout</td> <td>4.8</td> <td>03010D2224-04</td> <td>A3</td> </tr> <tr> <td>Reduced size construction compound</td> <td>N/A</td> <td>03010D2238-01</td> <td>A3</td> </tr> <tr> <td>Northern Site Entrance</td> <td>4.11</td> <td>03010D2403-03</td> <td>A3</td> </tr> <tr> <td>Southern Site Entrance</td> <td>4.12</td> <td>03010D2403-03</td> <td>A3</td> </tr> </tbody> </table>	Drawing	ES Figure Number	RES Internal Ref	Size	Planning application boundary		03010D2505-03	A3	Site location plan	1.1	03010D2206-02	A1	Turbine location plan	1.3	03010D0001-09	A3	Infrastructure layout	4.1	03010D1001-08	A3	Typical elevations of a wind turbine	4.2	03010D2901-02	A3	Wind turbine foundation (gravity)	4.3	03010D2301-01	A3	Crane hardstanding general arrangement	4.4	03010D2302-01	A3	Masts	4.5	03010D2223-04	A3	Access track typical details	4.6	03010D2227-01	A3	Control building compound – elevation	4.7	03010D2229-02	A3	Control building compound – layout	4.8	03010D2224-04	A3	Reduced size construction compound	N/A	03010D2238-01	A3	Northern Site Entrance	4.11	03010D2403-03	A3	Southern Site Entrance	4.12	03010D2403-03	A3
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<p>(3) Project Lifetime</p>	<p>Other than in respect of the temporary construction compound, which must be removed within 2 months of the completion of the construction works and the land restored, the permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from a wind turbine within the site to the electricity grid network (the 'First Export Date') after which the turbines shall be removed in accordance with the decommissioning and site restoration scheme. Written confirmation of the First Export Date shall be provided to the Local Planning Authority (LPA) within one month of it occurring.</p> <p>Reason: In recognition of the expected lifespan of the wind farm and in the interests of safety and amenity once the plant is redundant</p>																																																												
<p>(4) Decommissioning</p>	<p>Not later than 24 years after the First Export Date a decommissioning and site restoration scheme shall be submitted for the written approval of the LPA and implemented as approved. Such a scheme will include for:</p> <ol style="list-style-type: none"> i. The removal of all surface elements of the development and one metre of the turbine bases below ground level within 6 months of the end of the 25 year project lifetime; ii. Confirmation of the management and timing of works; iii. A Traffic Management Plan (TMP) to address highway issues during the period of the decommissioning works; and iv. Restoration and aftercare works. 																																																												

Condition	
	Reason: To ensure the development is decommissioned and the site restored at the expiry of the permission
(5) Decommissioning Fund	<p>No development shall take place on the site until the developer has submitted to the local planning authority details of a financial instrument, and arrangements which will ensure that funds sufficient to cover the completion of the decommissioning and site restoration costs, in accordance with Condition 4, are available to the local planning authority prior to the commencement of decommissioning and site restoration. The financial instrument shall include arrangements for funds to increase with inflation and shall include a review provision upon the 10th anniversary of the first export to ensure that the funds remain sufficient to cover the completion of the decommissioning and site restoration costs in accordance with Condition 4.</p> <p>Reason: In the interests of the character and appearance of the area following expiry of the permission</p>
(6) Removal of Inoperative Turbines	<p>If any wind turbine hereby permitted fails to produce electricity for supply to the electricity grid for a continuous period of 6 months, the wind turbine and its associated ancillary equipment shall be removed from the site in accordance with a scheme submitted to and approved by the LPA within three months of the end of that 6 month period. This shall provide for the removal of the relevant turbine and associated above ground works approved under this permission and the turbine foundation to a depth of at least one metre below ground. Such a scheme must include management and timing of the works required under this condition and a Traffic Management Plan (TMP) and shall be implemented as approved within 6 months of the date of its approval by the LPA. At any time, the wind farm operator shall provide proof of operation for individual turbines at the request of the LPA within 1 month of any such request.</p> <p>Reason: To ensure appropriate provision is made for repair or decommissioning of the turbines</p>

Construction Management

Condition	
(7) Construction Method Statement (CMS)	<p>No development shall take place until a CMS, including details of on-site construction works, post-construction reinstatement, mitigation, and other restoration, together with details of their timetabling has been submitted to and approved in writing by the LPA. The scheme shall be implemented as approved. The CMS will include:</p> <ul style="list-style-type: none"> i. A full drainage scheme for the management of

Condition	
	<p>surface water and foul water, to include the access tracks. This must include both the temporary and permanent drainage strategies and include details of the discharge points and hydraulic calculations to control flow rates.</p> <ul style="list-style-type: none"> ii. A scheme for the environmental monitoring and protection of local watercourses before and during the construction phase. The scheme shall include the method and frequency of monitoring and the contingency plans to be implemented should any pollution/derogation be noted. iii. Details of pollution prevention techniques to be deployed during the construction and restoration phases and the treatment and removal of suspended solids. iv. Details of the timing of works and methods of working for cable trenches and foundation works. v. Details of the timing and phasing of construction works. vi. Details of dust management. vii. Details of the disposal of surplus materials. viii. A construction noise management plan (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise). All activities associated with the construction of the development must be carried out in accordance with British Standard 5228, 2009: Code of Practice for Noise and Vibration Control on Construction and Open Sites – Part 1 – Noise, Part 2 – Vibration. ix. Details of temporary site illumination. x. Details of wheel cleaning facilities. xi. Arrangements for keeping the site entrance and adjacent public highway clean. xii. Arrangements for the parking of vehicles of site operatives and visitors. xiii. Details of the loading and unloading of plant and materials. xiv. Details of the storage of plant and materials used in constructing the development. xv. Details of the erection and maintenance of security hoarding. xvi. A scheme for recycling/disposing of waste resulting from construction works. xvii. Details of the final track alignments. xviii. Measures to prevent wildlife becoming trapped in excavation works. xix. Details of protection of public footpaths and bridleways during construction. <p>Reason: To ensure a satisfactory level of environmental</p>

Condition	
	protection and to minimise disturbance to local residents during the construction process
(8) Construction Environmental Management Plan (CEMP)	<p>The development hereby permitted shall not commence until a CEMP has been submitted to and approved in writing by the LPA. In discharging this condition the LPA expects to see details of appropriate working practices and safeguards for protected species that are to be employed whilst works are taking place on site, as well as protection of habitats through appropriate precautionary measures. The approved CEMP shall be implemented as approved Specifically, these measures include:</p> <ol style="list-style-type: none"> i. Details of the appointment and role of an Ecological Clerk of Works; ii. Appropriate working practices and safeguards for nesting birds, reptiles, amphibians, water voles, otters, badgers and bats that are to be employed whilst works are taking place on site; and iii. Protection of waterbodies and watercourses during development works, to include details of pollution avoidance measures. iv. Details for the protection of trees and hedgerows during construction (including specification and location of protective fencing if necessary). v. A plan showing habitat areas to be specifically protected during the works. <p>Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010.</p>
(9) Construction Hours	<p>The hours of work during the construction phase of the development hereby approved and any traffic movements into and out of the site associated with the construction or maintenance of the authorised development shall be 0730 to 1830 hours on Mondays to Fridays and 0730 to 1300 hours on Saturdays. No work shall take place outside these times, or on public holidays, unless otherwise agreed by the LPA. Outside these hours, works at the site shall be limited to turbine erection, turbine commissioning, foundation concrete pouring, site security, testing of plant and equipment and emergency works including any works to prevent or remedy environmental pollution or health and safety risks (provided that the developer retrospectively notifies the LPA of any emergency works within 24 hours).</p>

Condition	
	Reason: In the interests of amenity to restrict noise impact and the protection of the local environment
(10) Traffic Management Plan (TMP)	<p>No development shall take place until a TMP has been submitted to and approved in writing by the LPA. The scheme shall be implemented as approved. The TMP shall set out the timing of works and include:</p> <ul style="list-style-type: none"> i. The proposed construction route(s) and methods of enforcement; ii. The timing of construction traffic movements during the construction period, wheel cleaning/dirt control arrangements at key stages of construction; iii. Provision of temporary signs, street furniture, traffic control (including provision of any traffic signal control required during the construction phase) and any carriageway works, and their removal; iv. Informative road signage warning other road users of forthcoming construction traffic movements, days and times of proposed deliveries; v. Proposed traffic orders including removal of on street parking, temporary speed reductions and road closure orders; vi. A scheme for the permanent reinstatement of all street furniture, kerbs and any highway improvements required under (v). This scheme shall be completed in accordance with a schedule to be agreed in writing with the LPA; and vii. Predicted daily traffic flow for all vehicles during the construction phase of the development. <p>Reason: In the interests of highway safety</p>
(11) Construction Lighting Plan	<p>The development hereby permitted shall not commence until details of all external light fittings and external light columns to be installed during the construction phase have been submitted to and approved by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.</p> <p>Reason: In the interests of the character and appearance of the area</p>

Wind Farm Infrastructure

Condition	
(12) Turbine Colour	Prior to commencement of development, details of the wind turbine external finish and colour shall be submitted to and approved in writing by the LPA. No

Condition	
	<p>wind turbines other than with the approved finish and colour shall be installed on the development site.</p> <p>Reason: In the interests of the character and appearance of the area</p>
<p>(13) Turbine Dimensions & Infrastructure. Micrositing</p>	<p>The overall height of the wind turbines shall not exceed 126.5 metres to the tip of the blades. The wind turbines and their associated infrastructure including access tracks and crane hard standings may be situated within 50 metres of the positions shown on Figure 1.3 and Figure 4.1 of the Environmental Statement, except for T1 and T4 which shall be situated no closer to Churchover; and T1 and T2 which must be situated no nearer than 126.5m from BOAT (E2052) and PROW (R63) respectively. A plan showing the final position of the turbines and their associated infrastructure including access tracks and crane hard standings shall be submitted to LPA within three months of the First Export Date.</p> <p>Reason: To enable necessary minor adjustments to the position of the wind turbine and access tracks to allow for site-specific conditions</p>
<p>(14) Turbine Signage</p>	<p>Notwithstanding any design or colour approved by the LPA pursuant to Condition 12 all wind turbines shall be of a three bladed configuration, shall be of a semi-matt finish and shall not display any name, sign, symbol or logo on any external surfaces other than those reasonably required to meet statutory health and safety requirements.</p> <p>Reason: In the interests of the character and appearance of the area</p>
<p>(15) Control Building Compound</p>	<p>Prior to the construction of the temporary construction compounds, details of the external finish and orientation of the proposed control building compound, control of internal and external lighting and landscaping shall be submitted to the LPA and approved in writing.</p> <p>Reason: In the interests of the character and appearance of the area</p>
<p>(16) Turbine Rotation</p>	<p>All turbine blades shall rotate in the same direction.</p> <p>Reason: In the interests of the character and appearance of the area</p>
<p>(17) Cabling</p>	<p>All cabling between wind turbines and the control building shall be laid underground in accordance with details to be submitted to and approved in writing by the LPA, prior to erection of any turbines.</p> <p>Reason: In the interests of the character and appearance of the area</p>

Ecology and Nature Conservation

Condition	
<p>(18) Ecological Management Plan (EMP)</p>	<p>Prior to the commencement of development, a detailed EMP shall be submitted to and approved in writing by the LPA. The EMP should set out the requirement for the detailed nature conservation management objectives including the management of priority habitats and species, and shall be implemented as approved. The EMP will include a timetable of activities to cover the lifespan of the wind farm and all aspects of biodiversity enhancement outlined in the Environmental Statement. The EMP must include:</p> <ul style="list-style-type: none"> i. The aims and objectives of management; ii. The appropriate management options for achieving those aims and objectives; iii. Ecological trends and/or constraints on site that may influence management; iv. Selection of specific techniques and practices for establishing vegetation; v. Sources of habitat materials (e.g. plant stock or individual species); vi. A method statement for site preparation and establishment of target features; vii. Prescriptions for management actions; viii. Preparation of a work schedule; ix. Personnel responsible for the implementation of the plan; x. Monitoring and remedial/contingency measures triggered by monitoring, which may include restrictions on turbine operation. xi. Results of a detailed Phase 2 botanical survey and description and evaluation of the features to be managed. <p>Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010</p>
<p>(19) Pre-Construction Bat Monitoring</p>	<p>No development shall take place until details of a scheme, for surveying protected species on the site, have been submitted to and approved in writing by the LPA. The details shall include a programme for surveys to be undertaken at appropriate times during 18 months prior to the commencement of development. The scheme shall be carried out in accordance with the approved details and the surveys shall be undertaken by suitably qualified ecologists. No development shall take place until the results of the surveys, and details of any mitigation works that are required, have been submitted to and approved in writing by the LPA. Mitigation works</p>

Condition	
	<p>shall be carried out in accordance with the approved details.</p> <p>Reason: In order to protect the interests of protected species</p>
<p>(20) Bat Monitoring</p>	<p>The site shall be subject to a programme of post-construction bat monitoring in years 1, 2, 3, 5, 10, 15, and 20 after First Export Date to assess whether the impacts of the development are as predicted in the Environmental Statement. Details of the monitoring arrangements (to include provision for all surveys to be carried out by a suitably qualified independent ecologist and the results submitted to the LPA) shall be submitted to and approved in writing by the LPA. The programme shall be carried out as approved. The results of the monitoring shall be shared and discussed with the LPA and in the event that the LPA consider further mitigation is necessary, a scheme will be agreed with the LPA, which may include restrictions on turbine operation. The scheme shall be implemented in accordance with the approved details and retained for the lifetime of the development.</p> <p>Reason: In order to make appropriate provision for protected species having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010</p>
<p>(21) Bird Monitoring</p>	<p>No development shall take place until a scheme for monitoring of any impact of the development on birds, specifying the survey methodology; frequency of visits and duration has been submitted to and approved in writing by the LPA. The scheme shall be implemented in accordance with the approved details. The results of the monitoring shall be shared and discussed with the LPA and in the event that the LPA consider further mitigation is necessary, a scheme will be agreed with the LPA, which may include restrictions on turbine operation. The scheme shall be implemented in accordance with the approved details and retained for the lifetime of the development.</p> <p>Reason: Reason: In order to make appropriate provision for protected species having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010</p>
<p>(22) Water Course Construction Management</p>	<p>No development shall take place until a scheme for the provision of an 8 metre wide construction management zone alongside the watercourse has been submitted to and agreed in writing by the local planning authority.</p>

Condition	
Zone	<p>Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA. The scheme shall include:</p> <ul style="list-style-type: none"> i. Plans showing the extent and layout of the management zone; ii. Details of any proposed planting scheme; iii. Details demonstrating how the management zone will be protected during development and managed/maintained over the project duration including adequate financial provision and named body responsible for management plus production of detailed management plan; iv. Details of any proposed footpaths, tracks, fencing, lighting; and v. Details of any proposed outfalls and their construction. <p>Reason: Reason: In order to make appropriate provision for protected species along the River Swift having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010</p>

Archaeology

Condition	
(23) Archaeological Works	<p>No development shall take place until a scheme to secure the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation has been submitted to and approved in writing by the LPA. The scheme shall be implemented as approved.</p> <p>Reason: In order to protect and/or record any features of archaeological importance</p>
(24) Ridge and Furrow	<p>No development shall commence on site until a photographic and topographic record of the ridge and furrow on the application site has been obtained (in accordance with a brief to be agreed in writing by the LPA) and deposited with the Warwickshire Museum.</p> <p>Reason: In order to protect and/or record ridge and furrow features on the site</p>

Noise

Condition	
(25) Noise Condition [1]	<p>The level of noise emissions from the combined effects of the wind turbines (including the application of any tonal penalty) when calculated in accordance with the attached</p>

Condition	
	<p>Guidance Notes, shall not exceed the values set out in the attached Table 22 or Table 23. Noise limits for dwellings which lawfully exist or have planning permission for construction at the date of this consent but are not listed in the Tables attached shall be those of the physically closest location listed in the Tables. The coordinate locations to be used in determining the location of each of the dwellings listed in Table 22 and Table 23 shall be those listed in Table 24.</p> <p>Reason: In the interests of the living conditions of local residents</p>
(26) Noise Condition [2]	<p>Within 28 days from the receipt of a written request from the LPA and following a complaint to the LPA from the occupant of a dwelling which lawfully exists or has planning permission at the date of this consent, the wind farm operator shall, at the wind farm operators expense, employ an independent consultant approved by the LPA to assess the level of noise emissions from the wind farm at the complainant's property following the procedures described in the attached Guidance Notes.</p>
(27) Noise Condition [3]	<p>The wind farm operator shall provide to the LPA the independent consultant's assessment and conclusions regarding the said noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such information shall be provided within 3 months of the date of the written request of the LPA.</p>
(28) Noise Condition [4]	<p>Wind speed, wind direction and power generation data shall be continuously logged and provided to the LPA at its request and in accordance with the attached Guidance Notes within 28 days of such request. Such data shall be retained for a period of not less than 12 months.</p>
(29) Noise Condition [5]	<p>No development shall commence until there has been submitted to the LPA details of a nominated representative for the development to act as a point of contact for local residents (in connection with conditions 1-5) together with the arrangements for notifying and approving any subsequent change in the nominated representative. The nominated representative shall have responsibility for liaison with the LPA in connection with any noise complaints made during the construction, operation and decommissioning of the wind farm.</p>
(30) Excessive Amplitude Modulation	<p>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</p>

Condition	
	<p>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, such scheme to employ suitable methodology endorsed as good practice by the Institute of Acoustics. 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.</p>

Geology and Hydrology

Condition	
<p>(31) Flood Risk Assessment (FRA)</p>	<p>The development permitted by this planning permission shall be carried out in accordance with the approved FRA produced by SKM Enviros dated 4 November 2013 (revision B.2) and the following mitigation measures detailed within the FRA:</p> <ul style="list-style-type: none"> i. Demonstration that where the southern access track and car park of the construction compound encroach into Flood Zone 3, ground levels will be set no higher than existing ground levels so as not to affect floodplain storage volumes (as stated in section 3.5.2 of the submitted FRA); ii. Identification that any alteration to ground elevations within the floodplain (for the construction area of the southern temporary compound) is returned to their original elevations once the compound is decommissioned (as stated in section 3.5.2 of the submitted FRA); iii. Demonstration that concrete foundations for wind turbines will be positioned below current ground elevations to ensure overland flow paths are not altered. Once constructed, surface cover should be reinstated over the concrete turbine base to further replicate the existing drainage regime (as stated in section 4.1 of the submitted FRA); iv. Demonstration that all new access tracks and temporary compounds will be constructed of permeable material and designed at grade, based on existing ground elevations (as stated in section 4.1 of the submitted FRA); v. Confirmation that the developer will sign up to receive Environment Agency flood alerts. Use of this service should be included within the Operation and Maintenance Plan for the site to ensure all personnel are fully informed of risks when working on the site as stated in section 4.4 of the submitted FRA; vi. Provision of an appropriate evacuation plan in the

Condition	
	<p>event of flooding as recommended in section 4.4 of the submitted FRA.</p> <p>The mitigation measures shall be implemented from commencement of development, or within any other period as may subsequently be agreed, in writing, by the LPA.</p> <p>Reason: To prevent the increased risk of flooding by ensuring the satisfactory storage and disposal of surface water from the site</p>
(32) Surface Water Drainage Scheme	<p>No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the LPA. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 100 year plus climate change critical storm mimics existing runoff regimes and does not exceed the run-off from the undeveloped site increasing the risk of flooding off-site. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall include:</p> <ol style="list-style-type: none"> i. Demonstration that there will be no above ground flooding in the 30 year event; ii. Provision of a suitable number of sustainable drainage techniques to provide sufficient water quality treatment and attenuation in line with CIRIA C697; iii. Demonstration within the FRA that the surface water drainage scheme shall be maintained after completion. <p>Reason: To prevent the increased risk of flooding by ensuring the satisfactory storage and disposal of surface water from the site</p>
(33) Groundwater and Contaminated Land	<p>If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the LPA) shall be carried out until the developer has submitted a remediation strategy to the LPA detailing how this unsuspected contamination shall be dealt with and obtained written approval from the LPA. The remediation strategy shall be implemented as approved.</p> <p>Reason: To prevent potential migration of contaminants to underlying groundwater</p>

Other Conditions

Condition	
(34) Aviation	The development shall not be brought into use until the turbines are fitted with 25 candela omni-directional

Condition	
Safeguarding	<p>infrared lighting with an optimised flash pattern of 60 flashes per minute of 200-500ms duration at the highest practicable point.</p> <p>Reason: In the interests of aviation safeguarding and in accordance with the advice of the Ministry of Defence</p>
(35) Air Safeguarding	<p>Within 30 days of the First Export Date, written confirmation to the LPA shall be provided confirming that the Ministry of Defence and Coventry Airport have been given written notice of the date of completion of construction, the height above ground level and the position of each wind turbine in latitude and longitude.</p> <p>Reason: In the interests of aviation safety</p>
(36) Coventry Airport	<p>No development shall commence unless and until an agreement in writing has been entered into between the applicant, or any other wind farm operator, and Coventry Airport with respect to a Radar Mitigation Solution and the existence of such an agreement has been confirmed in writing to the LPA by both the wind farm operator and Coventry Airport. For the purposes of this condition 'Radar Mitigation Solution' means a solution to mitigate the impact of this development upon the Primary Surveillance Radar at Coventry Airport and traffic control service or any other reasonable mitigation measure identified by Coventry Airport. The radar Mitigation Solution shall include if appropriate, mitigation measures and proposals for the further maintenance of the same, including the form of notification to be supplied to the LPA on satisfactory performance of the agreement.</p> <p>Reason: To mitigate the impact of the development on the civil aviation interests at Coventry Airport</p>
(37) Shadow Flicker	<p>Prior to the First Export Date a written scheme shall be submitted to and approved in writing by the LPA setting out a protocol for the assessment of shadow flicker in the event of any complaint to the LPA from the owner or occupier of any building 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 and a timetable for its implementation. Operation of the turbines shall take place in accordance with the approved protocol, subject to any variations approved in writing by the LPA.</p> <p>Reason: In the interests of amenity for nearby residents</p>
(38) Television Interference	<p>Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to any television signal or wireless radio signal caused by the operation of the wind turbines shall be submitted to and agreed in writing by the LPA. The scheme shall provide for the investigation by a qualified</p>

Condition	
	<p>engineer, within a set timetable of any complaint of interference with television reception or wireless radio signal at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C2, C3 and C4 of the Use Classes Order) which existed or had planning permission at the time permission was granted, where such complaint is notified to the developer by the LPA within 12 months of the First Export Date. Where impairment is determined to be attributable to the wind turbines hereby approved, mitigation works shall be carried out in accordance with a scheme which has first been agreed in writing by the LPA.</p> <p>Reason: To address any issues relating to television interference</p>
<p>(39) Accommodation Works</p>	<p>No construction of the wind turbine facility or transportation of wind turbine components (via abnormal load movements) shall be carried out until all accommodation works as identified on both RES drawings Figure 4.11 and Figure 4.12 (Northern and Southern Site Entrance numbered 03010D2403-03) have been completed to the satisfaction of the LPA in consultation with the Highway Agency.</p> <p>Reason: In the interests of highway safety</p>
<p>(40) A5 Highway Buffer</p>	<p>Each turbine shall be located by micro-siting no closer than 176.5m to the A5 Highway Agency boundary.</p> <p>Reason: Reason: In the interests of highway safety</p>
<p>(41) Horse Wind Turbine Familiarisation</p>	<p>No development shall take place on site until a scheme for horse wind turbine familiarisation days to be undertaken within a period of 12 months from the date of first export has been submitted to and approved in writing by the LPA. The approved scheme shall be implemented in full thereafter.</p> <p>Reason: In the interests of equestrian users</p>
<p>(42) Temporary masts</p>	<p>The temporary guyed 80m meteorological/site calibration masts and 10m communication mast must be removed not later than 12 months after the First Export Date.</p> <p>Reason: In the interests of the character and appearance of the area</p>

Schedule of Noise Guidance Notes

These notes form part of noise conditions 1-5. They further explain these conditions and specify the methods to be deployed in the assessment of complaints about noise emissions from the wind farm.

Note 1

- (a) Values of the $L_{A90, 10 \text{ min}}$ noise statistic shall be measured at the complainant's property using a sound level meter of EN 60651/BS EN 60804 Type 1, or EN 61672 Class 1 quality (or the replacement thereof) set to measure using a 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 shall be calibrated in accordance with the procedure specified in BS 4142: 2014. These measurements shall be made in such a way that the requirements of Note 3 shall also be satisfied.
- (b) The microphone should be mounted at 1.2-1.5m above ground level, fitted with a two layer windshield (or suitable alternative approved in writing from the Local Planning Authority), and placed outside the complainant's dwelling. Measurements should be made in "free-field" conditions. To achieve this, the microphone should be placed at least 3.5m away from the building facade or any reflecting surface except the ground at a location agreed with the Local Planning Authority.
- (c) The $L_{A90, 10 \text{ min}}$ measurements shall be synchronised with measurements of the 10 minute arithmetic mean wind speed and with operational data, including power generation information for each wind turbine, from the turbine control systems of the wind farm.
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed and wind direction at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods, unless otherwise agreed in writing with the Local Planning Authority. The mean wind speed data shall be averaged across all turbines and '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 10m height wind speed data which is correlated with the noise measurements of Note 2(a) in the manner described in Note 2(c).

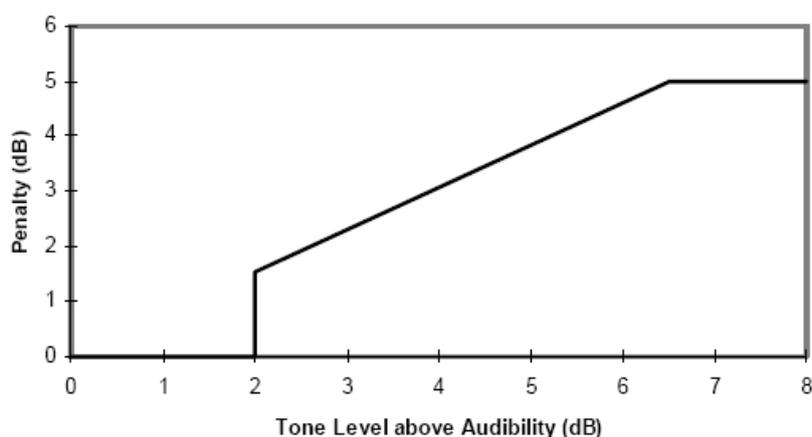
Note 2

- (a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b). Such measurements shall provide valid data points for the range of wind speeds, wind directions, times of day and power generation requested by the Local Planning Authority. In specifying such conditions the Local Planning Authority shall have regard to those conditions which were most likely to have prevailed during times when the complainant alleges there was disturbance due to noise. At its request the wind farm operator shall provide within 28 days of the completion of the measurements all of the data collected under condition 2 to the Local Planning Authority.
- (b) Valid data points are those that remain after all periods during rainfall have been excluded. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Note 1(c) and is situated in the vicinity of the sound level meter.
- (c) A least squares, "best fit" curve of a maximum 2nd order polynomial or otherwise as may be agreed with the Local Planning Authority shall be fitted between the standardised mean wind speed (as defined in Note 1 paragraph (d)) plotted against the measured $L_{A90, 10 \text{ min}}$ noise levels. The noise level at each integer speed shall be derived from this best-fit curve.

Note 3

Where, in the opinion of the Local Planning Authority, noise emissions at the location or locations where assessment measurements are being undertaken contain a tonal component, the following rating procedure shall be used.

- (a) For each 10 minute interval for which $L_{A90, 10 \text{ min}}$ data have been obtained as provided for in Notes 1 and 2, a tonal assessment shall be performed on noise emissions during 2 minutes of each 10 minute period. The 2 minute periods shall be regularly spaced at 10 minute intervals provided that uninterrupted clean data are available. Where clean 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 standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.
- (b) For each of the 2 minute samples the margin above or below the audibility criterion of the tone level difference, ΔL_{tm} (Delta L_{tm}), shall be calculated by comparison with the audibility criterion, given in Section 2.1 on pages 104-109 of ETSU-R-97.
- (c) The margin above audibility shall be plotted against wind speed for each of the 2-minute samples. For samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (d) The average tone level above audibility shall be calculated for each wind speed bin, each bin being 1 metre per second wide and centred on integer wind speeds. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) The tonal penalty at each integer wind speed shall be derived from the margin above audibility of the tone according to the figure below. The rating level at each wind speed is the arithmetic sum of the wind farm noise level, as determined from the best fit curve described in Note 2, and the penalty for tonal noise.



Noise Limits Relating to Condition 1

Table 22: The dB $L_{A90,10 \text{ min}}$ Wind Farm Noise Level Between 23:00 and 07:00 hours

House ID	House Name	Reference Wind Speed, Standardised v_{10} (ms^{-1})											
		1	2	3	4	5	6	7	8	9	10	11	12
H1	The Bungalow	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0

House ID	House Name	Reference Wind Speed, Standardised v_{10} (ms^{-1})											
		1	2	3	4	5	6	7	8	9	10	11	12
H2	Cestersover Farm	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H3	Foxholes Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H4	Godfreys Hill Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H5	Home Close	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H6	Streetfields Farm Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H7	Streetfields Farm	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H8	Spinney Close	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H9	1 School Street	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H10	Grosvenor	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H11	Harborough Fields Farm	45.5	46.0	46.9	47.7	47.9	47.9	47.9	47.9	47.9	47.9	47.9	47.9
H12	Little Walton Lodge Farm	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H13	Heath Farm	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H14	The Old Rectory	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H15	Ivy House	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H16	Long Acre	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H17	School Farm House	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H18	2 Greens Close	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H19	6 Greens Close	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H20	1 The Five Houses	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H21	5 The Five Houses	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H22	Ash Tree Barn	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H23	School Stables	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H24	Ash Tree House	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H25	Holly House	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H26	The Haybarn	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H27	Field View	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H218	Ivy Cottage	43.0	43.0	43.0	44.0	45.1	45.7	45.7	45.7	45.7	45.7	45.7	45.7
H29	Ringwood	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H30	Armdale	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H31	Lemont	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H32	Wordie House	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H33	Moorbarns Farm	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H34	Moorbarns Farm Bungalow	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H35	The Spinney	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H36	1 Moorbarns Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H37	2 Moorbarns Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
H38	Hill Farm	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H39	Northfield House	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H40	Avalon	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H41	Orchard Croft	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H42	Northfield House Farm	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H43	Cotes Acre	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H44	Farndale	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H45	The Old Barn	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H46	Hill Farm From Site Visit	44.7	45.1	46.1	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
H47	Swift Ridge	43.0	43.0	43.0	43.0	43.1	44.2	45.0	45.6	46.2	46.7	47.2	47.9

House ID	House Name	Reference Wind Speed, Standardised v_{10} (ms^{-1})											
		1	2	3	4	5	6	7	8	9	10	11	12
H48	New Build Barns	43.0	43.0	43.3	44.7	45.2	45.2	45.2	45.2	45.2	45.2	45.2	45.2
H49	St Marys Nursing Home	53.7	53.7	54.1	54.7	55.2	55.2	55.2	55.2	55.2	55.2	55.2	55.2
H50	Montilo Farm	43.0	44.5	46.2	47.2	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5

Table 23: The dB $L_{A90,10 \text{ min}}$ Wind Farm Noise Level at all other times

House ID	House Name	Reference Wind Speed, Standardised v_{10} (ms^{-1})											
		1	2	3	4	5	6	7	8	9	10	11	12
H1	The Bungalow	43.5	43.5	43.8	44.3	45.2	46.5	48.3	50.5	53.2	56.5	60.3	64.7
H2	Cestersover Farm	43.5	43.5	43.8	44.3	45.2	46.5	48.3	50.5	53.2	56.5	60.3	64.7
H3	Foxholes Cottage	43.5	43.5	43.8	44.3	45.2	46.5	48.3	50.5	53.2	56.5	60.3	64.7
H4	Godfreys Hill Cottage	39.2	39.7	40.6	41.8	43.3	45.1	47.2	49.4	51.9	54.5	57.3	60.3
H5	Home Close	39.2	39.7	40.6	41.8	43.3	45.1	47.2	49.4	51.9	54.5	57.3	60.3
H6	Streetfields Farm Cottage	40.8	41.2	41.9	42.8	44.0	45.5	47.5	49.8	52.5	55.7	59.4	63.6
H7	Streetfields Farm	40.8	41.2	41.9	42.8	44.0	45.5	47.5	49.8	52.5	55.7	59.4	63.6
H8	Spinney Close	39.2	39.7	40.6	41.8	43.3	45.1	47.2	49.4	51.9	54.5	57.3	60.3
H9	1 School Street	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H10	Grosvenor	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H11	Harborough Fields Farm	42.9	45.0	46.7	48.0	48.9	49.6	50.0	50.2	50.3	50.3	50.3	50.3
H12	Little Walton Lodge Farm	39.2	39.7	40.6	41.8	43.3	45.1	47.2	49.4	51.9	54.5	57.3	60.3
H13	Heath Farm	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H14	The Old Rectory	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H15	Ivy House	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H16	Long Acre	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H17	School Farm House	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H18	2 Greens Close	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H19	6 Greens Close	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H20	1 The Five Houses	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H21	5 The Five Houses	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H22	Ash Tree Barn	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H23	School Stables	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H24	Ash Tree House	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H25	Holly House	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H26	The Haybarn	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H27	Field View	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H218	Ivy Cottage	40.7	42.5	44.0	45.2	46.4	47.7	49.3	51.4	54.1	57.6	62.1	67.8
H29	Ringwood	40.8	41.2	41.9	42.8	44.0	45.5	47.5	49.8	52.5	55.7	59.4	63.6
H30	Armdale	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H31	Lemont	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H32	Wordie House	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H33	Moorbarns Farm	40.8	41.2	41.9	42.8	44.0	45.5	47.5	49.8	52.5	55.7	59.4	63.6
H34	Moorbarns Farm Bungalow	40.8	41.2	41.9	42.8	44.0	45.5	47.5	49.8	52.5	55.7	59.4	63.6
H35	The Spinney	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H36	1 Moorbarns Cottage	40.8	41.2	41.9	42.8	44.0	45.5	47.5	49.8	52.5	55.7	59.4	63.6
H37	2 Moorbarns Cottage	40.8	41.2	41.9	42.8	44.0	45.5	47.5	49.8	52.5	55.7	59.4	63.6
H38	Hill Farm	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H39	Northfield House	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3

House ID	House Name	Reference Wind Speed, Standardised v_{10} (ms^{-1})											
		1	2	3	4	5	6	7	8	9	10	11	12
H40	Avalon	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H41	Orchard Croft	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H42	Northfield House Farm	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H43	Cotes Acre	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H44	Farndale	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H45	The Old Barn	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H46	Hill Farm From Site Visit	51.7	52.7	53.1	53.1	53.1	53.1	53.1	53.1	53.1	53.7	55.9	59.3
H47	Swift Ridge	37.8	39.7	41.5	43.2	44.8	46.6	48.5	50.6	53.0	55.8	59.1	62.8
H48	New Build Barns	38.7	41.1	43.0	44.5	45.5	46.2	46.6	46.8	46.8	46.8	46.8	46.8
H49	St Marys Nursing Home	55.5	57.1	58.2	58.9	59.4	59.6	59.7	59.8	59.9	60.2	60.6	61.4
H50	Montilo Farm	43.3	45.1	46.7	48.0	49.1	50.2	51.4	52.6	54.1	55.8	58.0	60.6

Coordinate Locations of Properties

The geographical co-ordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

Table 24: Coordinate locations of the properties listed in Table 22 and Table 23

House ID	House Name	OSGB Co-ordinates	
		X (m)	Y (m)
H1	The Bungalow	450477	282135
H2	Cestersover Farm	450402	281952
H3	Foxholes Cottage	450420	282054
H4	Godfreys Hill Cottage	450424	282050
H5	Home Close	450365	282457
H6	Streetfields Farm Cottage	451579	282658
H7	Streetfields Farm	451251	282694
H8	Spinney Close	450356	282465
H9	1 School Street	451142	280638
H10	Grosvenor	451454	279892
H11	Harborough Fields Farm	450066	280646
H12	Little Walton Lodge Farm	450209	282812
H13	Heath Farm	451177	280573
H14	The Old Rectory	451409	280500
H15	Ivy House	451157	280912
H16	Long Acre	451096	280921
H17	School Farm House	451216	280584
H18	2 Greens Close	451358	280506
H19	6 Greens Close	451320	280523
H20	1 The Five Houses	451118	280658
H21	5 The Five Houses	451100	280667
H22	Ash Tree Barn	451106	280702
H23	School Stables	451216	280584
H24	Ash Tree House	451077	280705
H25	Holly House	451154	280597
H26	The Haybarn	451124	280817
H27	Field View	451120	280905
H218	Ivy Cottage	451157	280912
H29	Ringwood	452051	282954
H30	Armdale	453586	282173
H31	Lemont	453599	282099
H32	Wordie House	453573	282268
H33	Moorbarns Farm	452112	282944
H34	Moorbarns Farm Bungalow	452051	282954
H35	The Spinney	453595	282024
H36	1 Moorbarns Cottage	451994	282969
H37	2 Moorbarns Cottage	451994	282969
H38	Hill Farm	452877	281261
H39	Northfield House	452864	281209
H40	Avalon	453582	282208

House ID	House Name	OSGB Co-ordinates	
		X (m)	Y (m)
H41	Orchard Croft	453498	282326
H42	Northfield House Farm	452864	281209
H43	Cotes Acre	453634	281944
H44	Farndale	452745	280726
H45	The Old Barn	452697	280667
H46	Hill Farm From Site Visit	453010	281549
H47	Swift Ridge	448979	281595
H48	New Build Barns	449568	281226
H49	St Marys Nursing Home	448858	280159
H50	Montilo Farm	448693	280916

Coordinate Locations of Properties

The geographical co-ordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

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H6	Streetfields Farm Cottage	451579	282658
H7	Streetfields Farm	451251	282694
H8	Spinney Close	450356	282465
H9	1 School Street	451142	280638
H10	Grosvenor	451454	279892
H11	Harborough Fields Farm	450066	280646
H12	Little Walton Lodge Farm	450209	282812
H13	Heath Farm	451177	280573
H14	The Old Rectory	451409	280500
H15	Ivy House	451157	280912
H16	Long Acre	451096	280921
H17	School Farm House	451216	280584
H18	2 Greens Close	451358	280506
H19	6 Greens Close	451320	280523
H20	1 The Five Houses	451118	280658

House ID	House Name	OSGB Co-ordinates	
		X (m)	Y (m)
H21	5 The Five Houses	451100	280667
H22	Ash Tree Barn	451106	280702
H23	School Stables	451216	280584
H24	Ash Tree House	451077	280705
H25	Holly House	451154	280597
H26	The Haybarn	451124	280817
H27	Field View	451120	280905
H218	Ivy Cottage	451157	280912
H29	Ringwood	452051	282954
H30	Armdale	453586	282173
H31	Lemont	453599	282099
H32	Wordie House	453573	282268
H33	Moorbarns Farm	452112	282944
H34	Moorbarns Farm Bungalow	452051	282954
H35	The Spinney	453595	282024
H36	1 Moorbarns Cottage	451994	282969
H37	2 Moorbarns Cottage	451994	282969
H38	Hill Farm	452877	281261
H39	Northfield House	452864	281209
H40	Avalon	453582	282208
H41	Orchard Croft	453498	282326
H42	Northfield House Farm	452864	281209
H43	Cotes Acre	453634	281944
H44	Farndale	452745	280726
H45	The Old Barn	452697	280667
H46	Hill Farm From Site Visit	453010	281549
H47	Swift Ridge	448979	281595
H48	New Build Barns	449568	281226
H49	St Marys Nursing Home	448858	280159
H50	Montilo Farm	448693	280916

Note 4

If the wind farm noise level (including the application of any tonal penalty as per Note 3) is above the limit set out in the conditions, measurements of the influence of background noise shall be made to determine whether or not there is a breach of condition. This may be achieved by repeating the steps in Notes 1 & 2 with the wind farm switched off in order to determine the background noise, L_3 , at the assessed wind speed. The wind farm noise at this wind speed, L_1 , is then calculated as follows, where L_2 is the measured noise level at the assessed wind speed with turbines running but without the addition of any tonal penalty:

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

The wind farm noise level is recalculated by adding the tonal penalty (if any) to the wind farm noise.

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 30. 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.

Annex 3

Core Documents

Application and Appeal Documents

A1 Planning Application Form

A2 Site Ownership Certificate

A3 Decision Notice

(a) Decision Notice – 23 April 2014

(b) Statement under Regulation 24

A4 Site Plan Documents

(a) Planning Application Boundary (Ref: 03010D2505-03)

(b) Site Location Plan (Ref: 03010D2206-02)

A5 Planning Statement

A6 Statement of Community Consultation

A7 Additional Plans submitted with Application

(a) Planning application boundary (Ref: 03010D2505-03)

(b) Turbine location plan (Ref: 03010D0001-09)

(c) Infrastructure layout (Ref: 03010D1001-08)

(d) Typical elevations of a wind turbine (Ref: 03010D2901-02)

(e) Wind turbine foundation (gravity) (Ref: 03010D2301-01)

(f) Crane hardstanding general arrangement (Ref: 03010D2302-01)

(g) Masts (Ref: 03010D2223-04)

(h) Access track typical details (Ref: 03010D2227-01)

(i) Control building compound – elevation (Ref: 03010D2229-02)

(j) Control building compound – layout (Ref: 03010D2224-04)

(k) Reduced Size Construction compound (Ref: 03010D2238-01)

A8 Additional Documents

(a) Bat Surveys Additional Information

(b) Manual Bat Survey Route Figures 8.4a, 8.5a, 8.6a, 8.7a, 8.8a, 8.9a and 8.10a

(c) Noctule Registrations

(d) Technical and Operational Assessment Issue 1 - June 2011

(e) Technical and Operational Assessment Issue 2 - December 2012

(f) Technical and Operational Assessment Issue 3 - December 2013

A9 Design and Access Statement

A10 Additional Plans, Drawings and Documents (not provided as NATS' objection withdrawn)

(a) CAP 670 Air Traffic Services Safety Requirements (provided electronically only)

(b) CAP 764 CAA Policy and Guidelines in Wind Turbines

(c) International Civil Aviation Organisation Annex 10

(d) ERA Ltd Report 2008-0568 (full copy provided electronically - extracts only in hard copy)

(e) Letter from RES - 13 December 2013

(f) NATS written response to RES - 4 April 2014

(g) Appendix A to NATS written response to RES - 4 April 2014

(h) Letter JRC to NATS - 29 August 2014

A11 Correspondence

(a) Letter from RES to Rugby Borough Council dated 31 October 2013

(b) Letter from Rugby Borough Council to RES dated 12 February 2014

(c) Letter from RES to Rugby Borough Council dated 14 October 2014

(d) Email from NATS to Rugby Borough Council - 12 December 2013

A12 Environmental Statement

(a) Volume I: Non-technical summary

(b) Volume II: Chapters and appendices

(c) Volume II: Appendices

(d) Volume II: Appendix 8.7 (confidential and provided separately)

(e) Volume III: Figures - Planning Drawings

(f) Volume III: Figures - Landscape Drawings

(g) Volume III: All Other Figures

A13 Statement of Common Ground between Rugby Borough Council and RES

A14 Statement of Case of RES

A15 Statement of Case of Rugby Borough Council

A16 Statement of Case of ASWAR (Against Subsidised Windfarms Around Rugby)

A17 Statement of Case of Churchover Parish Council

A18 Swift Wind Farm SEI, May 2015, RES (which includes an updated cumulative landscape and visual assessment)

B - Development Plan Documents

B1 Rugby Borough Local Plan 2006 Saved Policies, June 2011

B2 Rugby Borough Council, Local Development Framework, Core Strategy 2011

C - Supplementary Planning Documents and other LPA documents including emerging plans

C1 Rugby Borough Landscape Capacity Study for Wind Energy Developments, White Consultants, March 2011

C2 Rugby Borough Landscape Capacity Study for Wind Energy Review, White Consultants, October 2013

C3 Rugby Borough Council Green Infrastructure Study, Final Report, ENTEC, June 2009

C4 Warwickshire Landscape Guidelines, WCC, 1993

C5 Landscape Assessment of the Borough of Rugby, Sensitivity Condition Study, WCC, 2006

C6 Renewable and Low Carbon Energy Resource Assessment and Feasibility Study, 2010

D - National Guidance and Legislation

D1 National Planning Policy Framework

D2 Overarching National Policy Statement for Energy, July 2011 ("NPS EN-1")

D3 National Policy Statement for Renewable Energy Infrastructure, July 2011 ("NPS EN-3")

D4 Sections 66 and 72 Planning (Listed Buildings and Conservation Areas) Act 1990

D5 Renewable Energy Strategy 2009, Executive Summary

D6 UK Renewable Energy Road Map 2011

D7 UK Renewable Energy Roadmap 2012 update

D8 UK Renewable Energy Roadmap 2013 update

D9 Sections 38 and 39 Planning and Compulsory Purchase Act 2004

D10 National Planning Practice Guidance, CLG, 2014 (Renewable and Low Carbon Energy section)

D11 Written Statement made by Secretary of State for Communities and Local Government (Greg Clark) on 18 June 2015.

D12 National Planning Practice Guidance, CLG, 2014 (Conserving and Enhancing the Historic Environment)

E - Appeal Decisions and Cases

E1 Swinford APP/F2415/A/09/2096369

E2 Swinford SoS decision APP/F2415/A/09/2096369/NWF

E3 Yelvertoft APP/Y2810/A/10/2120332

E4 Low Spinney APP/F2415/A/09/2109745

E5 Winwick APP/Y2810/A/11/2156527

E6 Watford Lodge APP/Y2810/A/11/2153242

E7 Kelmarsh APP/Y2810/A/11/2154375

E8 Lilbourne APP/Y2810/A/11/2164759

E9 Hawton APP/B3030/A/12/2183042

E10 Number vacated – see E25

E11 Nantglyn APP/R6830/A/08/2074921

E12 Market Drayton APP/L3245/A/08/2088742 and APP/P3420/A/08/2088745

E13 Hemsby APP/U2615/A/10/2131105

E14 Lichfield APP/K3415/A/10/2134017

E15 Tilton-on-the-Hill APP/F2415/A/10/2134781

E16 Nun Wood APP/Y0435/A/10/2140401; APP/K0235/A/11/2149434; APP/H2835/A/11/2149437

E17 Treading APP/D0515/A/12/2181777 and APP/A2525/A/12/2184954

E18 Asfordby APP/Y2430/A/13/2191290

E19 Land to the North of Tunnel Road, Galley Common, Nuneaton APP/W3710/A/13/2195900

E20 Long Furlong Farm, Catesby, Daventry APP/Y2810/A/13/2203312

E21 Land Adjacent Louth Canal, Fen Lane, Nr Tetney APP/D2510/A/13/2200887

E22 Horse Close, Church Farm, Hatcheston, Suffolk APP/J3530/A/13/2193911

E23 Land at Chase Farm, Baumber, Horncastle, Lincolnshire APP/D2510/A/10/2121089

- E24** Site at Palmers Hollow (Field No. 2700) Main Street, Normanton, Bottesford, Leics APP/Y2430/A/09/2108595
- E25** Land west of Enifer Downs Farm and east of Archers Court Road and Little Pineham Farm, Langdon APP/X2220/A/08/2071880
- E26** East Northamptonshire DC & others v SSCLG & Barnwell Manor Wind Energy [2013] EWHC 473
- E27** North Norfolk District Council v SSCLG & David Mack [2014] EWHC 279 Admin
- E28** R (on application of Forge Field Society and others) v Sevenoaks DC and others [2014] EWHC 1895 Admin
- E29** Barnwell Manor Wind Energy v East Northamptonshire DC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137
- E30** Winterton Landfill APP/Y2003/A/13/2207858
- E31** Bythorn, Cambridgeshire, APP/H0520/A/13/2197548
- E32** Thornholme Fields, Rudston, Road, Burton Agnes APP/E2001/A/13/2190363
- E33** Southwell, Nottinghamshire APP/B3030/A/13/2208417
- E34** Wind Prospect Developments Ltd v SSCLG & East Riding of Yorkshire Council [2014] EWHC 4041 (Admin)
- E35** Land North of Burnthouse Farm APP/D0515/A/2123739
- E36** Dunsland Cross APP/W1145/A/13/2194484
- E37** Turncole APP/X1545/A/12/2174982
- E38** Langham APP/D2510/A/10/2130539
- E39** Gayton-le-Marsh APP/D2510/A/12/2176754
- E40** Kingerby APP/N2535/W/14/2216163
- E41** Lee v Secretary of State for Communities and Local Government [2011] EWHC 807 (Admin)
- E42** Carland Cross APP/D0840/A/09/2103026
- E43** Common Barn APP/H0520/A/12/2188648

F - Landscape and Visual

- F1** Siting and Designing Windfarms in the Landscape Version 2 (Scottish Natural Heritage), May 2014
- F2** Visual representation of wind farms (Scottish Natural Heritage), 2006 and 2014 versions

- F3** Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape Institute and IEMA, 2013
- F4** Assessing the cumulative impact of onshore wind energy developments (Scottish Natural Heritage), March 2012
- F5** Landscape Institute: Photography and Photomontage in Landscape and Visual Impact Assessment, Advice Note 01/11
- F6** The Countryside Agency: Landscape Character Assessment: Guidance for England and Scotland (2002)
- F7** An Approach to Landscape Character Assessment, Natural England, October 2014
- F8** Natural England's LCA Topic paper 6 'Techniques and criteria for judging capacity and sensitivity'
- F9** Natural England's LCA Topic paper 9 'Climate change and natural forces - the consequences for landscape character'
- F10** Natural England, National Character Area Profiles 94, 95 and 96 Leicestershire Vales, Northamptonshire Uplands and Dunsmore and Feldon
- F11** Extract from Landscape Institute website – statements of clarification

G - Cultural Heritage

- G1** Historic Environment Good Practice Advice in Planning, Note 3
- G2** Listing for Holy Trinity, Churchover
- G3** Churchover Conservation Area Appraisal, Rugby Borough Council June 2010
- G4** C.G.Down, A brief history of Churchover with notes on Coton and Cestersover, (1997)
- G5** English Heritage (now Historic England), Conservation Principles, Policies and Guidance (2008)
- G6** Turning the Plough: Loss of a Landscape Legacy, Mike Anderton (DEFRA) and Dave Went, Inspector of Ancient Monuments, article published in Conservation Bulletin 42, March 2002
- G7** English Heritage (now Historic England), Wind Energy and the Historic Environment (2005)
- G8** English Heritage (now Historic England), Climate Change and the Historic Environment, (2008)
- G9** Seeing History in the View, 2011

H - Noise

- H1** ETSU-R-97 The Assessment & Rating of Noise from Wind Farms

H2 Institute of Acoustics' Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise (May 2013) including Supplementary Guidance Notes 1-6

I - Miscellaneous

I1 British Horse Society Advice on Wind Turbines 2014/7

I2 British Horse Society Scottish Wind Farm Advice Note

I3 Extracts from the British Horse Society – Wind Turbine Experiences 2012 Survey Results

I4 Selected Application Documents in relation to land at Orchard Farm, Main Street, Cotesbach, (Harborough District Council, 15/00800/FUL)

I5 Selected Application Documents in relation to fields south of Black Spinney adjacent to A5, Watling Street, Churchover (Rugby Borough Council, R13/1401)



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 for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

Challenges under Section 288 of the TCP Act

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: 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 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.