



Department for  
Communities and  
Local Government

Our ref: APP/D2510/W/15/3005975

Mr D Hardy  
Squire Patton Boggs (UK) LLP  
6 Wellington Place  
Leeds  
LS1 4AP

25 October 2017

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY ENERGIEKONTOR UK LTD  
LAND TO THE SOUTH OF FEN LANE, WEST OF LOUTH CANAL, NORTH OF  
FULSTOW, LINCOLNSHIRE  
APPLICATION REF: N/056/01036/14**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Jessica Graham BA (Hons) PgDipL, who held a public local inquiry from 12 to 15 and 19 to 21 January 2016 into your client's appeal against the failure of East Lindsey District Council's to determine your client's application for planning permission for the installation of 7 wind turbines, ancillary equipment and associated on site infrastructure, in accordance with application ref: N/056/01036/14, dated 30 May 2014.
2. On 2 December 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

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

**Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted

before the inquiry opened. Having taken account of the Inspector's comments at IR4.1-4.6, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Policy and statutory considerations**

6. In reaching his decision, 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.
7. In this case the development plan consists of the saved Policies of the East Lindsey Local Plan Alteration (1999), the Lincolnshire Minerals Local Plan and the Lincolnshire Waste Plan. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR5.2-5.3.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as National Policy Statements for Energy (EN-1) and for Renewable Energy Infrastructure (EN-3), and his Written Ministerial Statement on Local Planning of 18 June 2015.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

### *Emerging plan*

10. The emerging plan comprises the East Lindsey Core Strategy 2016-2031. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the Secretary of State considers that the plan is at an early stage, and there are unresolved objections to it, while it is fairly consistent with the Framework, he affords it little weight, in agreement with the Inspector at IR5.11.

### **Main issues**

11. The Secretary of State agrees with the Inspector that the main issues are those set out at IR12.5.

### *Heritage assets*

12. For the reasons set out by the Inspector at IR12.11-12.27, the Secretary of State agrees that the proposal would not lead to 'substantial' harm to the significance of Thoresby Warehouse. However, for the reasons given, he agrees that the visual prominence of the warehouse would be eroded and its canalside way-marking function would be seriously diminished by the presence of the proposed development within its setting. As such he

concludes, in agreement with the inspector, that this would result in considerable harm to the significance of the building, falling not far short of 'substantial' harm.

13. The Secretary of State agrees, for the reasons given at IR12.28-12.32, that the presence of the wind turbines would have an adverse, though minor, impact upon the setting of Beesby Deserted Medieval Village (DMV) which would result in slight, and much less than 'substantial', harm to its significance.
14. The Secretary of State also agrees that the presence of the development would have an adverse, though minor, impact upon the setting of North Cadeby DMV which would result in slight, but much less than 'substantial', harm to its significance, for the reasons given at IR12.33 to 12.35.
15. For the reasons set out at IR12.36-12.40 the Secretary of State agrees that the proposal would not harm the setting or affect the significance of any part of Cadeby Hall.
16. He further concludes, for the reasons set out at IR12.41-12.43, that the impact of the proposal on Beesby DMV, North Cadeby DMV and Cadeby Hall when viewed collectively from the Silver Lincs Way, would cause harm to their setting. However, this would not amount to 'substantial' harm to the significance of any of them. As such, he agrees with the Inspector (IR12.43) that the totality of the harm the proposal would cause to the significance of Beesby DMV, North Cadeby DMV and Cadeby Hall would be at the lower end of 'less than substantial' harm.
17. The Secretary of State agrees, for the reasons given by the Inspector at IR12.44-12.50 that the harm caused by the proposal to the significance of the Church of St Mary at Ludborough would be appreciable, but would fall considerably short of 'substantial' harm.
18. He further agrees, for the reasons set out at IR12.51-12.55, that the proposed development would cause a limited amount of harm, falling far short of 'substantial', to the significance of Churchthorpe House and the Church of St Lawrence, Fulstow.
19. For the reasons given at IR12.56-IR12.59, the Secretary of State agrees that the proposal would cause a harmful impact to the contribution made by the setting to the overall significance of the Church of St Peter and St Paul, Tetney, but that this harm, while appreciable, would fall considerably short of 'substantial' harm.
20. He further agrees that the proposal would not give rise to any harm to the setting or significance of the Church of St Mary, Marshchapel. Similarly he agrees that the development would not give rise to any harm to the setting or significance of the Church of St Nicholas, North Coates, for the reasons given at IR12.61. He further agrees that the proposal would not cause any harm to the setting or significance of the Church of St Martin, Waithe, for the reasons set out by the Inspector at IR12.62.
21. For the reasons given at IR12.63, the Secretary of State agrees that the harm to the significance of the Louth Canal would be limited, and would fall far short of 'substantial' harm.
22. The Secretary of State has considered the Inspector's analysis at IR12.65-12.66, and he agrees that when considering any indirect effect on the historic environment, account should be taken of the length of time for which consent is sought. However, he concludes that a period of 25 years amounts to a generation. As such, he considers that granting permission for 25 years would be a significant amount of time and he gives limited weight to the temporary nature of the proposal..

23. For the reasons given at IR12.67-12.68 the Secretary of State agrees that the proposal conflicts with Policy C2. He further agrees that this conflict still carries some weight as the aims of the policy broadly accord with those of paragraphs 131-136 of the Framework.
24. The Secretary of State has gone on to consider the harm to the significance of the designated heritage assets against the public benefits of the proposal, in line with paragraph 134 of the Framework.
25. For the reasons set out at IR12.70, the Secretary of State gives the public benefits of the proposal substantial weight. Against the proposal he gives significant weight to the harm to Thoresby Warehouse, and further significant weight to the harm to the other listed buildings and heritage assets, for the reasons given at IR12.72-12.73.
26. For the reasons set out above, he agrees with the Inspector that the harm to the significance of the designated heritage assets would be outweighed by the public benefits of the proposed development, though not by a huge amount (IR12.74).

#### *Character and appearance*

27. For the reasons given at IR12.79-12.135, the Secretary of State agrees that the proposal would have a major adverse impact on the appeal site and its immediate surroundings (IR12.136).
28. For the reasons given at IR12.137, the Secretary of State agrees that the proposal would not accord with the Framework's aims of recognising the intrinsic character and beauty of the countryside and enhancing the natural environment. He further agrees that it would cause considerable harm to the character and appearance of the landscape of the appeal site itself, and to the substantial area around it identified by the Inspector. While agreeing that the harm would be limited to a period of 25 years, he affords this significant weight.
29. He further agrees that the proposed development would have significant and adverse visual impacts in views from a number of settlements, roads, other public rights of way, the Lincolnshire Wolds Railway and individual residences, although the proposed wind turbines would not have such an unpleasant, overwhelming and oppressive effect on the outlook of any dwelling as to make it an unattractive place in which to live (IR12.138). He further agrees that there would be a modest degree of cumulative impact. As such he concludes that the harm arising from adverse visual impacts should carry significant weight.
30. In addition he agrees with the Inspector for the reasons given that there would be conflict with Policy A5 (IR12.139).

#### *Noise*

31. The Inspector has carefully considered the Inspector's findings at IR12.140-12.173, and agrees, for the reasons given, that that the ES background noise survey was fit for purpose, and that the noise prediction calculations complied with good practice. He is satisfied for those reasons that subject to the detailed and appropriately worded condition agreed with the Council and the appellant, the noise generated by the proposed wind farm would comply with the Government's specified limits, as set out in ETSU-R-97 (IR12.174.)

### *Written Ministerial Statement*

32. For the reasons given at IR12.175-12.182 the Secretary of State agrees that residual harm remains in terms of the planning impacts identified by the local communities. He addresses these harms in the planning balance.

### *Other Matters*

33. The Secretary of State agrees with the Inspector's analysis of any impact on the safety and viability of North Coates airfield (IR12.183-12.188) and as such agrees that the proposed development would not present a danger to the safety of air traffic or the general public. He further agrees, for the reasons given at IR12.189 that possible harm to the future viability of the airfield is not a consideration to which any weight should be attached.

34. The Secretary of State agrees (IR12.190) that suitable conditions would minimise the impacts of noise and disruption due to construction work and traffic.

35. For the reasons given at IR12.191, the Secretary of State does not weigh the potential impact of the proposal on the number of visitors to the area against the scheme.

36. He further gives no weight to concerns that motorists might be distracted by the turbines, for the reasons given by the Inspector at IR12.192.

37. He similarly gives no weight to the potential impact of the proposal on wildlife, for the reasons set out at IR12.193.

### **Planning conditions**

38. The Secretary of State has given consideration to the Inspector's analysis at IR11.1-11.9, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

### **Planning balance and overall conclusion**

39. For the reasons given above and at paragraph 44 below, the Secretary of State considers that the appeal scheme is not in accordance with A4, A5 and C2 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

40. However, in the absence from the Development Plan of any policies governing renewable energy (12.199), the Secretary of State concludes that the development plan is silent.

41. As the Secretary of State has concluded at paragraph 26 above that the harm to the significance of the designated heritage assets would be outweighed by the benefits of the proposed development, and thus specific policies in the Framework do not indicate that development should be restricted, he has gone on to consider whether the adverse

impacts would significantly and demonstrably outweigh the benefits, in line with paragraph 14 of the Framework.

42. In favour of the proposal, the Secretary of State weighs the renewable energy benefits set out at IR12.70 and referred to at paragraph 25 above, to which he affords substantial weight.
43. Against this, he gives significant weight to the harm to the character and appearance of the landscape. He gives further significant weight to the adverse visual impacts of the appeal scheme. He gives further significant weight to the harm caused to Thoresby Warehouse, and significant weight to the harm to the other heritage assets.
44. The Secretary of State therefore concludes that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. As such he concludes that the appeal should be dismissed and planning permission refused. Given this conclusion, he finds that the harm to the general amenities of people living or working nearby would be unacceptable, and as such finds conflict with Policy A4 of the Local Plan.

#### **Formal decision**

45. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the installation of 7 wind turbines, ancillary equipment and associated on site infrastructure, in accordance with application ref: N/056/01036/14, dated 30 May 2014.

#### **Right to challenge the decision**

46. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
47. A copy of this letter has been sent to East Lindsey District Council and all other interested parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully,

*Philip Barber*

Authorised by Secretary of State to sign in that behalf



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# Report to the Secretary of State for Communities and Local Government

by Jessica Graham BA(Hons) PgDipL

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

Date: 1 August 2017

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TOWN AND COUNTRY PLANNING ACT 1990

**EAST LINDSEY DISTRICT COUNCIL**

APPEAL MADE BY

ENERGIEKONTOR UK LTD

Inquiry opened on 12 January 2016

Land to the South of Fen Lane, West of Louth Canal, North of Fulstow, Lincolnshire.

File Ref: APP/D2510/W/15/3005975

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**File Ref: APP/D2510/W/15/3005975**

**Land to the South of Fen Lane, West of Louth Canal, North of Fulstow, Lincolnshire.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Energiekontor UK Ltd against East Lindsey District Council.
- The application Ref N/056/01036/14 is dated 30 May 2014.
- The development proposed is the installation of seven wind turbines, ancillary equipment and associated on-site infrastructure.

**Summary of Recommendation: That the appeal be dismissed, and planning permission refused.**

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## GLOSSARY OF ACRONYMS AND ABBREVIATIONS

AM	Amplitude Modulation
AONB	Area of Outstanding Natural Beauty
CAA	Civil Aviation Authority
CAP	Civil Aviation Publication
dB	Decibel
DBEIS	Department for Business, Energy and Industrial Strategy
DCLG	Department of Communities and Local Government
DMV	Deserted Medieval Village
ELDC	East Lindsey District Council
EIA	Environmental Impact Assessment
ES	Environmental Statement
ha	Hectare
HE GPA	Historic Environment Good Practice Advice
IOA GPG	Institute of Acoustics Good Practice Guide
LCA	Landscape Character Area
LVIA	Landscape and Visual Impact Assessment
MoD	Ministry of Defence
MWAG	Marsh Windfarms Action Group
NPPF	National Planning Policy Framework
PINS	The Planning Inspectorate
PPG	Planning Policy Guidance
SEI	Supplementary Environmental Information
SoCG	Statement of Common Ground
SODAR	Sonic detection and ranging
SSSI	Site of Special Scientific Interest
SoS	Secretary of State for Communities and Local Government
TMZ	Transponder Mandatory Zone
WMS	Written Ministerial Statement

## 1.0 Procedural matters

*References in round brackets are to documents (listed in Appendix B), while references in square brackets are to paragraphs within this report.*

- 1.1 The application for planning permission was submitted on 30 May 2014, and the appeal against non-determination of that application was made on 3 March 2015. The Council reported on the application to its Planning Committee on 5 June 2015, at which Members resolved that had they been in a position to determine the application, they would have refused it. The putative reasons for refusal cited by the Council related to harm to landscape character and visual amenities; impact on heritage assets; lack of information relating to above- and below-ground heritage assets; and insufficient information concerning compliance with ETSU-R-97 (CD 10.6).
- 1.2 In an e-mail dated 1 December 2015, the Council advised that as part of the appeal process and in response to a Regulation 22 Request from the Planning Inspectorate (PINS), further information had been supplied by the appellant which enabled the Council to refine the case it would be presenting at the inquiry. It advised that some of its concerns had been addressed, such that it would not be providing evidence in relation to its putative reasons for refusal concerning below-ground heritage assets, or noise. The Council also confirmed that it was now of the opinion there would be a “non-significant impact” on the North Thoresby Conservation Area and so would not be presenting evidence on it, and that it considered the harm that would be caused by the proposed development to the Deserted Mediaeval Villages (DMVs) of Beesby and North Cadeby would be significant, but less than substantial.
- 1.3 By letter dated 2 December 2015, the Secretary of State for Communities and Local Government (“the SoS”) directed that he would determine the appeal himself. The reason given for that direction was that “the appeal involves proposals of major significance for the delivery of the Government’s climate change programme and energy policies”.
- 1.4 A local community group known as “Marsh Windfarm Action Group” (MWAG) sought, and was granted, Rule 6 status under the relevant Inquiry Procedure Rules. MWAG has engaged fully in proceedings, and was represented throughout the inquiry.
- 1.5 The Ministry of Defence (MoD) also sought, and was granted, Rule 6 status under the relevant Inquiry Procedure Rules. However, in advance of the inquiry and on receipt of additional information from the appellant concerning technical mitigation, the MoD withdrew its objection subject to the imposition of a suitably worded planning condition. It played no further part in the appeal proceedings.
- 1.6 The inquiry sat on 12, 13, 14, 15, 19, 20 and 21 January 2016. An evening session was held on 14 January, in order to hear evidence from members of the public who were unable to attend the daytime

sessions. I made accompanied visits to the site and surrounding area on 21 and 28 January, and extensive unaccompanied visits on 27 and 28 January 2016 and 20 July 2017.

- 1.7 It may be helpful to document here the position taken at the inquiry by MWAG concerning its evidence on amplitude modulation (AM). The proof of evidence provided in advance of the inquiry by its noise witness, Dr Yelland, contains a section headed "Late Addendum – Amplitude Modulation" which appears to accept that AM cannot reasonably be dealt with by planning condition (MWAG 4, 6.4.4). In the course of cross examination on day 5 of the inquiry, Dr Yelland confirmed to the appellant's advocate that he was not arguing for the imposition of a condition that sought to address AM. I asked the witness to take instruction, since he appeared at the inquiry to represent MWAG, not his own views.
- 1.8 Having taken instruction, Dr Yelland confirmed that MWAG would wish to see the imposition of a condition dealing with AM, should the appeal be allowed. I asked that MWAG put forward its suggested wording for such a condition, in order to inform discussions at the condition session scheduled for the following day. On the afternoon of day 6 of the inquiry, MWAG advised that it would not be putting forward a suggested condition in respect of AM because it had not had sufficient time to draft one. I pointed out that MWAG had made it very clear, at an early stage in the appeal process, that it would be presenting evidence on noise and had had ample time to prepare its case. In view of the facts that (a) its own professional witness does not advocate the imposition of such a condition [1.7], and (b) the Institute of Acousticians cautions against the use of such a condition (MWAG 4, 6.4.2), I saw no useful purpose in adjourning the inquiry to allow MWAG further time to devise a suggested form of wording.
- 1.9 On 24 January 2016, after the inquiry had closed, Mr R Baker wrote to PINS to express concern that he had not had the opportunity at the inquiry to make further representations in response to the appellant's response to his submissions on noise (INQ 10, INQ 11, INQ 70). In the interests of fairness, Mr Baker's further representations have been accepted (PINQ 1) and the three main parties have been given the opportunity to comment on them (PINQ 5, PINQ 6, PINQ 7). I have taken this additional material into account in my consideration of the appeal.
- 1.10 On 4 March 2016, the High Court judgment in *Forest of Dean District Council v SSCLG and Gladman Developments Ltd* [2016] EWHC 421 (Admin) (PINQ 10) was handed down. Given the relevance of that judgment for the determination of this appeal, PINS invited the three main parties to submit comments on the implications for the cases they presented at the inquiry (PINQ 11, PINQ 12, PINQ 13, PINQ 14). I have taken their responses into account in my consideration of the appeal. This exercise meant that the date by which my report was to be sent to the SoS had to be extended to June 2017.

- 1.11 Having been 4 months pregnant when the inquiry opened, I was at that time confident that I would be able to complete my report before I commenced maternity leave. Unfortunately, a series of complications meant firstly that my twins had to be delivered 2 months prematurely, and latterly that my return to employment has been considerably delayed. I would like to record here my apologies for the unprecedented delay this has caused in the production of this report, and my appreciation of the patience and understanding shown by those affected.
- 1.12 Given the lengthy delay between the date on which the inquiry closed and the completion of this report, and (importantly) my obligation to form conclusions in the light of current conditions and policy, rather than on matters as they stood at the date of the inquiry, PINS wrote to the three main parties on 3 May 2017 asking them to identify any new matters of relevance that had arisen since the inquiry closed (PINQ 15).
- 1.13 The appellant's response indicated that there was nothing further it wished to draw to my attention (PINQ 16). The Council's response identified two matters. Firstly, that paragraph A.142 of the government's Housing White Paper "Fixing the Broken Housing Market" advises that the Written Ministerial Statement (WMS) of 18 June 2015, concerning onshore wind energy, will be incorporated into the National Planning Policy Framework (NPPF). Secondly, that the Bishopthorpe wind farm had been erected and was operational, and that it might be helpful for me to re-visit the area to view it in relation to the appeal site (PINQ 17). I undertook an unaccompanied visit for that purpose on 20 July 2017, during which I also re-visited a number of key viewpoints discussed in evidence.
- 1.14 MWAG's response identified three matters. Firstly, that it agreed with the Council's statement that the WMS was to be incorporated into the NPPF. Secondly, it drew attention to the outcome of an appeal determined by the SoS<sup>1</sup>, a subsequent Court Order<sup>2</sup> refusing permission to pursue a claim for planning statutory review, and the approach taken in both to the WMS. Thirdly, it enclosed a critique by Dr Yelland of the government's *Wind Turbine AM Review Phase 2 Report* published by the Department of Business Energy and Industrial Strategy (DBEIS) in October 2016 (PINQ 18). Since that critique contained nothing specific to the current proposal, other than a sentence stating that the author's conclusions expressed in evidence to the inquiry remain, I considered that copying it to the appellant for the opportunity to comment would be disproportionate.

## **2.0 The site and surroundings**

- 2.1 The appeal site is part of the East Lindsey District of Lincolnshire. It lies to the north of the village of Fulstow, the edge of which is located approximately 1.09km from the nearest proposed turbine,

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<sup>1</sup> Ref APP/B3030/W115/3003130

<sup>2</sup> Ref CO/3995/2016

and to the east of North Thoresby, the edge of which lies some 2.5km from the nearest proposed turbine. Other nearby settlements include Tetney (2.24km), North Cotes (1.58km) and Marshchapel (1.7km). The appeal site consists of parcels of open farmland segregated by drainage ditches, some of which have limited hedging.

- 2.2 All non-involved dwellings are located over 800m from the nearest proposed wind turbine, with the closest being Bridge Farm at Thoresby Bridge at 806m, and Low Farm, Fulstow at 807m. The closest financially involved properties to the proposed wind turbines are the caravan at Brick Yard Farm (453m) and the vacant house at Brick Yard Farm (456m).
- 2.3 The Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB) escarpment is located approximately 5.1km to the west of the appeal site. The Humber Estuary Special Area of Conservation, Special Protection Area, Ramsar Site and Site of Special Scientific Interest (SSSI) are located 5km to the east. Tetney Blow Wells SSSI lies 1.4km to the north-west of the appeal site. The locally designated Area of Great Landscape Value lies about 4.4km to the west, and the Coastal Conservation Area about 2.4km to the east. The Gloucester House Ponds Local Wildlife Site lies within 800m of the appeal site, to the north-west.
- 2.4 A public right of way crosses a small area within the south-western corner of the appeal site as it runs between the B1201 at Gloucester House and St Lawrence Church, Fulstow. The Louth Canal footpath, which runs between Louth and Tetney Lock / Tetney Marshes Nature Reserve, is located 500m to the east of the proposed turbines at its closest point.

### **3.0 The proposal**

- 3.1 The proposed development would consist of seven wind turbines, each up to 115m in height to blade tip, and associated infrastructure including transformers; turbine foundations; hard-standing areas for cranes at each turbine location; a series of on-site tracks connecting each of the turbines; new water crossings; underground cables linking the turbines to the grid connection; an on-site sub-station; an improved site access on to Thoresby Road, and a new site access on to the A1031.
- 3.2 Each of the proposed wind turbines would have a generation capacity of between 2MW and 2.5MW, giving an overall rated capacity of between 14MW and 17.5MW for the scheme as a whole.
- 3.3 The overall construction period for the wind farm is anticipated to last approximately 10 months. The proposed development would have an operational life of 25 years, and that is the length of time for which planning permission is sought.

#### **4. Environmental Information**

- 4.1 The proposed development was EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (as amended).
- 4.2 On the 16 May 2017 the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations 2017) came into force. Regulation 76 of the EIA Regulations 2017 includes transitional arrangements for qualifying applications and appeals. I have considered the appeal in accordance with these Regulations and I am content that it meets the requirements of the transitional arrangements, therefore the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 will continue to apply to this appeal.
- 4.3 The planning application was accompanied by an Environmental Statement (ES) dated May 2014, which consisted of a non-technical summary, and three volumes containing, respectively, a written statement; figures and visualisations; and technical appendices.
- 4.4 In response to a Regulation 22 request by the Council, the appellant submitted Additional Environmental Information in December 2014. In response to a further Regulation 22 request made by the Planning Inspectorate, the appellant submitted Supplementary Environmental Information (SEI) in November 2015.
- 4.5 At the inquiry I heard further evidence on a wide range of environmental matters, including the characteristics of the landscape, local infrastructure, the impact on biodiversity and its habitats, and the extent to which these could be mitigated.
- 4.6 I am satisfied that all of this represents the necessary environmental information for the purposes of the EIA Regulations, and I have taken this information into account in making my recommendations.

#### **5.0 Planning policy and guidance**

##### *The Development Plan*

- 5.1 The adopted Development Plan for the area comprises the saved Policies of the East Lindsey Local Plan Alteration (1999), the Lincolnshire Minerals Local Plan and the Lincolnshire Waste Plan. It is common ground that there are no policies within the saved policies of the Minerals or Waste Plans which are relevant to the proposed development (CD 1.1).
- 5.2 The Local Plan Policies of relevance to this appeal are saved Policies A4, A5, C2 and ENV 20. Policy A4 states that "Development which unacceptably harms the general amenities of people living or working nearby will not be permitted". Policy A5 provides that development which, by its design, improves the quality of the environment will be permitted provided it does not conflict with other policies of the Plan: otherwise, development will be permitted only where (a) its design does not detract from the distinctive

character of the locality; (b) it retains or incorporates features or characteristics which are important to the quality of the local environment including important medium and long distance views; (c) it is integrated within a landscape scheme appropriate to its setting.

- 5.3 Policy C2 provides that planning permission will be given for development which is within the curtilage of, or affects the setting of, a Listed Building only where its form, scale, proportions, materials, siting, boundary treatment and associated landscaping preserves or enhances the special architectural or historic interest, viability or long term use of the Listed Building. Policy ENV 20 states that development which would lead to the loss of, or cause significant harm to, important habitats will not normally be permitted: where development is permitted, the retention and protection of wildlife habitats will be secured through planning conditions, legal agreements or unilateral undertakings.

#### *National planning policy*

- 5.1 The NPPF was published by the government in March 2012. It does not alter the statutory status of the Development Plan, and confirms the primacy of the relevant statutory provisions in the Planning and Compulsory Purchase Act 2004 and the town and Country Planning Act 1990 (as amended), which state that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. It is important to note that the NPPF is not itself a part of the Development Plan, but it is a significant material consideration in all planning decisions (CD 2.1).
- 5.2 One of the 12 core principles set out at Paragraph 17 of the NPPF is that the planning system should support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources, for example by the development of renewable energy. Paragraph 93 states that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. It identifies this as central to the economic, social and environmental dimensions of sustainable development.
- 5.3 Paragraph 14 of the NPPF states that where the Development Plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted. Footnote 9 lists examples of such policies, and includes those relating to designated heritage assets. It is common ground between the Council and the appellant that the Development Plan is silent on renewable energy policy.

- 5.4 Paragraph 97 of the NPPF states that local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable and low carbon sources. Paragraph 98 explains that applicants for energy development should not be required to demonstrate the overall need for renewable energy, and says it should be recognised that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; it goes on to say that renewable energy applications should be approved if their impacts are, or can be made, acceptable. The approach to be followed is set out in the National Policy Statements for Energy (EN-1) and for Renewable Energy Infrastructure (EN-3), per footnote 17 to paragraph 97 of the NPPF.
- 5.5 EN-1, the *Overarching National Policy Statement for Energy*, was published in July 2011 and sets out high level objectives, policy and a framework for the delivery of major infrastructure. Paragraph 2.2.4 explains that it is important for the planning system to ensure that decisions on renewable energy take account of the views of affected communities. The need for more electricity capacity to support an increased supply from renewables is set out at paragraph 3.3.10, while the urgency of that need is set out at paragraph 3.4.5 (CD 2.2).
- 5.6 EN-3, the *National Policy Statement for Renewable Energy Infrastructure*, was also published in July 2011. It describes onshore wind as the most established large-scale source of renewable energy in the UK, and states that onshore wind farms will continue to play an important role in meeting renewable energy targets (CD 2.3).

*Other guidance*

- 5.7 The *UK Renewable Energy Roadmap Update 2013* was published in November 2013. It reiterates the Government's commitment to achieving the UK's 15% renewable energy target by 2020, and paragraph 114 states that onshore wind has an important part to play in a responsible and balanced UK energy policy (CD 5.4).
- 5.8 The Government's *Planning Practice Guidance* (PPG) was issued in March 2014. The section on "renewable and low carbon energy" refers to the advice in the NPPF that all communities have a responsibility to help increase the use and supply of green energy, and explains that this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. Rather, the PPG notes: "As with other types of development, it is important that the planning concerns of local communities are properly heard in matters that directly affect them" (Ref 5-003-20140306). Subsequent paragraphs 14-31 cover the particular planning considerations that relate to wind turbines (CD 2.5).
- 5.9 The Government's Written Ministerial Statement (WMS) of 18 June 2015, concerning onshore wind, states that it sets out new considerations to be applied to proposed wind energy development

so that local people have the final say on wind farm applications. It goes on to say that where [as is the case here] a valid planning application for a wind energy development has already been submitted to a local planning authority and the Development Plan does not identify suitable sites, the following transitional provision applies. 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. (CD 2.4)

- 5.10 The Statement of Common Ground (SoCG) between the Council and the appellant sets out, at paragraph 7.2, an agreed list of energy policy documents (CD 10.5).
- 5.11 The Council is in the process of preparing a new Local Plan, to replace the existing East Lindsey Local Plan adopted in September 1999. The replacement Local Plan was submitted for examination on 18 April 2017, and Hearings commenced on 12 July 2017. The timetable published within the Local Development Scheme anticipates that adoption of this replacement Local Plan will not take place until January 2018. For the purposes of the current appeal, the emerging replacement Local Plan carries little weight.
- 5.12 It is agreed between the parties that ETSU-R-97 and the associated Institute of Acoustics Good Practice Guide (IOA GPG) provide the relevant methodology for the assessment of potential noise impacts (PINQ 8).
- 5.13 Lincolnshire County Council published, in 2012, a Position Statement on Wind Farms (INQ 63). However, it is important to be clear that this document is simply that: a "position statement", published by the County Council. It has not been subject to the formal process of consultation and examination necessary for adoption as a Development Plan document, and does not form part of the Development Plan for the area. The appellant and the District Council agree that this Position Statement should be given no weight in the determination process for the development here proposed. I share that view, noting that the Position Statement's stipulation of minimum separation distances between wind turbines and residential properties conflicts with more recent guidance published in the Government's PPG.
- 5.14 Other sources of relevant guidance are the Landscape Institute and Institute of Environmental Management and Assessment's *Guidelines for Landscape and Visual Impact Assessment* (Third edition) 2013; the publications providing guidance on landscape character and visual impact listed at paragraph 9.1 of the SOCG; and the landscape character assessments listed at paragraph 9.5 of the SOCG.

## 6.0 The case for the appellant

*The following paragraphs summarise the appellant's case, which is set out more fully in its opening and closing submissions (INO 7 & INO 73) and subsequent submission concerning the implications of the Forest of Dean v Gladman judgment (PINQ 12).*

### Introduction

- 6.1 The planning system in England and Wales is a creature of statute, and is Development Plan led. In this case, the determination must be made in line with policies that are actually in place, based upon the wording actually recorded in documents, and not upon broad-brush political statements.
- 6.2 It is right and proper that developments which are acceptable in planning terms should be granted consent. This development has been brought forward as a direct response to national energy and planning policies, which are clear and facilitative. The Council, as it accepts and acknowledges, is failing to comply with an important part of national energy and planning policy:
- it has no positive strategy to promote energy from renewable and low carbon sources in accordance with paragraph 97 of the NPPF
  - the statutory Development Plan is silent on renewable energy
  - the Council has not sought to develop Supplementary Planning Guidance on renewable energy
  - the Council has not sought to identify suitable areas for renewable and low carbon energy
  - Draft Strategic Policy 17 in the emerging East Lindsey Local Plan has been abandoned, because it would not accord with the facilitative approach demanded to meet Government expectations.
- 6.3 The appellant considers this an unacceptable shirking of responsibility by the Council on a matter which is central to the economic, social and environmental dimensions of sustainable development. It is a case of persistent failure against national objectives, which has been remarked upon by numerous Inspectors and the SoS.
- 6.4 The appellant contends that planning permission should be granted because:
- The proposal would comply with the Development Plan when read as a whole. However, while the adopted Development Plan is the starting point for decision-making, the appeal decisions at Gayton-le-Marsh (CD 7.6), Louth Canal (CD 7.12) and Bishopthorpe Farm (CD 7.27) show that it is silent on renewable energy, and out of date with the NPPF for a number of reasons. Policies in the East Lindsey Local Plan (adopted September 1999) should be given very limited weight in the determination of this appeal.

- As a result, the second bullet point of the decision-making part of the presumption in favour of sustainable development contained in paragraph 14 of the NPPF applies. Planning permission should be granted unless harm significantly and demonstrably outweighs benefits. Mr Booth (the Council's planning witness) accepts that this test means the planning balance starts clearly tipped in favour of the grant of permission. It is also the case that at Bishopthorpe , paragraph 14 of the NPPF was disengaged by reason of the need for Appropriate Assessment. In that case, the Inspector and the Secretary of State made the decision under paragraph 98 of the NPPF. Accordingly, in policy terms, the development here proposed starts from a materially stronger position than the Bishopthorpe scheme, which was granted planning permission in any event.
  - Proper application of paragraphs 132-134 of the NPPF will also mean that the statutory duty set out in s.66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 has been complied with. Both under paragraph 134 and s.66(1), there are material considerations powerful enough to rebut the strong presumption against the grant of planning permission resulting from limited harm to heritage assets.
  - There would not be unacceptable harm to landscape character, visual amenity, or the visual component of residential amenity.
  - As was agreed with Mr Booth, the other elements of harm identified by MWAG and local residents result, whether taken individually or cumulatively, in a low degree of harm which needs to go into the planning balance.
  - The proposed development would deliver a nationally significant amount of renewable energy, and contribute to the achievement of the national target of 15% of all energy to come from renewables by 2020. At 35.1%, the capacity factor for this scheme is considerably higher than the national average, which means that Fen Lane is a smart location for a wind farm designed to maximise energy output within acceptable environmental limits. This is an important material consideration in its own right, to which significant weight must attach in the planning balance.
  - The scheme would make an important contribution towards mitigating climate change, and would assist energy security through contributing to the mix of decentralised renewable resources in Lincolnshire and the East Midlands.
  - Direct economic benefits would flow, in terms of some local new employment, and indirect economic benefits would result, as recognised by the Government.
  - The proposed development is a wholly reversible form of development, which would leave the landscape character and visual resource intact.
- 6.5 This appeal is not a re-run of the Louth Canal appeal. The appellant considers it no surprise that that scheme was turned down. The

current scheme was designed with a full understanding of the heritage significance of Thoresby Warehouse, including any contribution from its setting, and has learned from the shortcomings of the Louth Canal scheme. Harm to the overall heritage significance of Thoresby Warehouse is manifestly reduced. Further, the benefits of this scheme are considerably greater at between 14 and 17.5 MW. The equation is very different, and there is every reason for a different planning decision to be reached.

#### Written Ministerial Statement

- 6.6 MWAG and local residents bring forward a long list of objections, and seek to place great reliance on the WMS of 18 June 2015 and consequential changes to the PPG. There is however very little, if anything, between the appellant and the Council on this issue. The appellant notes that the Council expressly does not agree with the interpretation placed by MWAG on the WMS and PPG, or their consequences for decision making. In summary:
- The appellant accepts that the WMS is an important material consideration in its own right
  - The purpose of the PPG is not to introduce new policy, but rather to explain how extant policy within the NPPF should be used in practice
  - The PPG is subservient to the adopted Development Plan and to the unchanged wording of the NPPF
  - The unchanged wording in paragraph 98 of the NPPF indicates that planning permission should be granted providing that impacts are (or can be made) acceptable
  - The adopted Development Plan articulates the views of a local community as to what forms of development would have its backing
  - The SoS cannot lawfully turn an immaterial consideration in law into one which is material. It is well-established law that local opinion and public approval is not, in and of itself, a material consideration. To place greater weight on local opinion following the WMS would risk undermining the objectivity of the decision-making process and would be at odds with making decisions in the public interest.
  - The views of third party objectors to proposals for developments of any kind will always be material in the decision on the application or appeal, so long as they are relevant to the land-use planning issues involved. The amount of weight to attach to any such planning objections is a matter of judgment for the decision-maker alone.
  - In this case, each and every planning impact identified by affected local communities has been addressed, which means that the lawful grant of planning permission would have their backing.
- 6.7 As always, relevant land use impacts which are identified by the local community have to be taken seriously, but residual adverse harm can be countenanced provided that it is acceptable. Paragraph 98 of the NPPF provides for this. The appellant submits that no

additional weight should be added to harmful impacts, simply because they have been flagged up by members of the affected local community.

- 6.8 The SoS has demonstrated very great inconsistency in the wording of decisions which he has made, as have Inspectors. Mr Bell, the appellant's planning witness, made the point that he can only deal with planning matters: he cannot deal with political whim. If the approach in the Stafford appeal (CD 7.31) is to be followed, there is very little point in the SoS employing professional Planning Inspectors. For political reasons a SoS who does not visit the appeal site, and does not hear any of the evidence or arguments, can simply ride roughshod over the democratic system if he chooses. That is politics and not the democratic planning system. Equally, an Inspector can choose to read the WMS in the way it was interpreted in the Newport Pagnell case (CD 7.32). If that is the right approach, then there is no need for a Local Planning Authority, proper debate or anything else. Such an approach is patently absurd, wrong and unlawful.

#### Local opinion

- 6.9 As with any case, it is important to disentangle the material planning concerns raised by local objectors from more general commentary aimed at fending off change of any sort to the local environment. Of course local residents identify the local landscape as unique, and valued by them. Just like everywhere else, the local countryside is valued, and there is nothing unusual in this. Opposition is however far from universal. A very large number of letters of support have been submitted. Notwithstanding evident personal hostility towards them in the public session, a number of supporters of the scheme from the local community felt brave enough to make oral representations.
- 6.10 The appellant is attempting to do something laudable and in the public interest, for which it should be commended rather than criticised. Of course there will be members of the local community who do not like wind turbines or want wind turbines at Fen Lane. There will be others who are ambivalent, and others who are supportive. As always with wind turbines, there will be a spectrum of response. Determination of planning applications and appeals should not be by way of public plebiscite or a show of hands. Lawful planning decisions need to be made in the public interest and not simply in furtherance of private interests under another guise.

#### The adopted Development Plan

- 6.11 For the purposes of s.38(6) of the Planning and Compulsory Purchase Act 2004, the adopted Development Plan consists of the saved policies of the East Lindsey Local Plan Alteration (adopted in 1999). This contains no renewable energy policy at all. Of the general policies, the most relevant are considered to be A4 (protection of general amenities); A5 (quality and design of developments); C1 (development and demolition affecting a

- Conservation Area); C2 (development and demolition affecting a Listed Building) and ENV20 (protection of habitats).
- 6.12 The proposed development would not conflict with Policy A4. Policy A4 is consistent with the NPPF and can be given full weight.
- 6.13 Policy A5 was not relied upon by the Council in its putative reasons for refusal. In his proof of evidence, Mr Booth concludes that the proposed development would not comply with its terms. However, he accepted that it was not at all helpful in the current appeal, and breach of it should be accorded virtually no weight.
- 6.14 Policy C1 is no longer relevant. Some conflict with Policy C2 is accepted, but the policy itself is not consistent with the NPPF because it does not allow for any sort of balance. This important shortcoming, which is at the very heart of paragraphs 132-134 of the NPPF, was accepted by Mr Booth.
- 6.15 Because the proposed development would comply with Policy A4, the proposal can be viewed as consistent with the Development Plan when it is read as a whole. The Bishopthorpe wind farm was found to comply with Policy A4, notwithstanding that it caused identified harm in a number of respects (CD 7.27). Contrary to what was suggested by the Council, the Orby Marsh scheme (CD 7.35) was not refused on landscape grounds under Policy A4, but exclusively on grounds of noise impact and limited heritage harm.
- 6.16 However, as the appellant and Council accept, that position does not take the decision maker very far. In the Bishopthorpe appeal decision, the SoS concluded that while there would be conflict with the Development Plan in some respects, the Development Plan policies were of limited assistance and weight, and the NPPF was of greater weight in the balance. Inspector Pinner in his decision on the Gayton le Marsh appeal concluded that the Local Plan does not provide a present day context for considering the impact of commercial wind farms on the character and appearance of the countryside.
- 6.17 At Louth Canal, the Inspector concluded that "In this case, the Development Plan is silent on certain matters and so the relevant policies are out of date. As such the Framework at paragraph 14 advises that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or specific policies in the Framework indicate development should be restricted (which includes reference to AONBs)" (CD 7.12, para 469). The SoS agreed with the Inspector, and went straight to the second bullet point in the decision making part of paragraph 14 of the NPPF. That is exactly what should happen in this case.

#### National Planning Policy and Guidance

- 6.18 The NPPF continues to make clear its support for renewable energy proposals in particularly trenchant terms, and the appellant draws attention to paragraphs 17, 93, 96 and 98. The decision maker is

also told to follow the approach set out in National Policy Statements EN-1 and EN-3. The appellant considers it very striking that no changes have been made to the wording of the NPPF with regard to renewable energy and the infrastructure required to generate it.

#### Ministerial Statements and the Planning Guidance

- 6.19 Properly understood the most recent WMS, when read together with the previous Ministerial Statements from SoS Davey and Pickles respectively does not constitute a change in Government planning policy in relation to onshore wind energy development and deployment (CD 2.4).

#### Energy policy context

- 6.20 Energy policy remains very clear. When the relevant documents are read together there continues to be no reasonable room for dispute regarding (1) the seriousness of climate change and its potential effects, and (2) the seriousness of the need to cut carbon dioxide emissions.
- 6.21 The Government's Renewable Energy Roadmap Update, written in November 2013, confirmed that onshore wind continues to have an important role to play in UK energy policy and a long-term investment programme underpins that commitment. As with the 2012 Update before it, the document emphasises the economic benefits presented by renewable energy. It also advised that 4.1% of energy consumption came from renewable sources in 2012, against a target of 15% of all energy by 2020; that onshore wind is one of the most cost-effective and proven renewable energy technologies, and has an important part to play in a responsible and balanced UK energy policy; and that renewable energy helps the UK achieve challenging decarbonisation targets, and a key benefit of deploying renewable energy technologies is the potential reduction in carbon emissions (CD 5.4, paras 91, 114)
- 6.22 The appellant refers to the more recent EU Progress Report on 2020 targets (CD 5.7) and the DUKES statistics published at the end of July 2015 (CD 5.9) Both documents recognise that as of the end of 2014, the UK was still only in a position of having 7% of energy from renewable sources, against the 2020 target of 15%. This is not even halfway. Recent examples such as the appeal decision at French Farm (CD 7.30) are also instructive. In the context of that scheme's 8MW contribution to the binding UK 15% energy target in terms of the EU Renewable Energy Directive, the SoS describes it as "an important consideration".
- 6.23 Advice in National Policy Statements EN-1 and EN-3 relating to the urgent and compelling nature of the need remains in place. The Written Ministerial Statement does not change extant policy; if the Government wants to change energy policy and energy-related planning policy then it is within its power to do so, clearly and transparently. It has chosen not to do so.

- 6.24 Perhaps most relevant of all for this appeal, paragraph 98 of the NPPF remains unaltered. There is no requirement for the appellant to demonstrate the overarching need for this scheme. The proposed wind turbines would produce a nationally important amount of renewable energy, and result in carbon and greenhouse gas emission saving benefits.
- 6.25 The national pipeline to 2020 in terms of renewable technologies overall, and onshore wind specifically, may be reasonably healthy but that health depends to a large extent on proposals already in the planning system, like the Fen Lane development, coming to fruition on time. Government ambitions go well beyond 2020, as was made very clear in the recent report by the Climate Change Committee on the UK's 5<sup>th</sup> Carbon Budget.

#### Landscape and visual impact

- 6.26 The landscape is not a valued landscape for the purposes of paragraph 109 of the NPPF. The Council attempted to introduce another category of "locally valued by local residents", but such a notion has no justification in policy terms.
- 6.27 Mr Russell-Vick (the Council's landscape witness) expressly stated in cross examination that he believes the local landscape has the capacity to accept further commercial wind farm development; it was just a case of making sure that the location was acceptable. This was a very important concession, because all new commercial wind turbines across the Coastal Outmarsh would have very similar effects on landscape character and visual amenity. If this is the Council's case, then it has to make very plain why the effects of this development in this location would be so much worse than elsewhere as to justify refusal. It has not done that. While there might be micro-issues about describing the effects, the Council misses the macro-point that the Coastal Outmarsh is a legible, smart location for wind farms capable of generating above average levels of renewable energy.
- 6.28 The local landscape, including the relationship between the Coastal Outmarsh and the Lincolnshire Wolds AONB, has been considered in detail on numerous occasions in the past. Indeed, it is hard to think of an area of England which has been analysed so many times for the purpose of locating commercial wind farms within it. There is nothing new at this inquiry, and reliance is placed by the appellant on the conclusions drawn at Gayton le Marsh (CD 7.6), Louth Canal (CD 7.12) and Bishopthorpe Farm (CD 7.27). Consistent findings include the following:
- All modern commercial wind farms will result in significant landscape effects, and this is acknowledged in national policy. If turbines are to be accepted then inevitable significant effects on the local receiving landscape have to be accepted.
  - The receiving landscape is flat, low-lying agricultural land created by the draining of the coastal marshes, with occasional tree groups.

- Turbines can be seen over considerable distances, but the flat terrain and huge skies has enabled existing wind farms to be successfully absorbed into the landscape for the most part.
  - Notwithstanding the height and spread of the turbines, they would appear as relatively small components in the overall view
  - The extent to which the turbines are visible changes according to the weather, natural lighting conditions, and the location of any intervening vegetation, buildings or other features that might obscure views of the turbines.
- 6.29 In the Bishopthorpe appeal, Inspector Major concluded that *Taking these matters overall, therefore, I consider that the impact on the landscape character can be briefly summarised. First, when very close to the wind farm (or when passing through the resultant array on the path between the proposed turbines and the existing turbines at Newton Marsh) it would be possible to perceive being within a localised wind farm landscape. This would be a major and adverse impact. Secondly, there would be a large scale effect within about 1km (or just over) and when combined with the susceptibility to change, this would result in major to moderate adverse impact. In simple terms, there would be a perception that the nearby landscape has a wind farm within it and is heavily influenced by its presence. Thirdly, beyond about 1km or just over, the impact begins to decline and the perception would be of a landscape 'over there' (to use the appellant's terminology) having a wind farm within it. This would result in a moderate but declining adverse impact. The essential character of the LCAs would quickly be reasserted within distance from the wind farm even though the turbines would remain as prominent features.* (CD 7.27, IR 383)
- 6.30 Almost exactly the same can be said about the local landscape surrounding the appeal scheme. The evidence of Mr Denney (the appellant's landscape witness) is entirely consistent with this description of character and likely extent of significant effects, which in turn was accepted by the SoS. Mr Russell-Vick is out of kilter with his own Enplan company report, previous decisions and what can readily be seen on the ground. The Council does not have much to rebut the repeated conclusion that the Coastal Outmarsh is capable of satisfactorily absorbing wind farm development.
- 6.31 At the Louth Canal inquiry, the Council did not even raise an objection based on the solus landscape character or visual effects of that three-turbine scheme. It was only concerned with cumulative effects, an argument which did not persuade Inspector Hill in any event. She records that the Council believed that the Louth Canal turbines "could be accommodated without harm to the landscape's character" (CD 7.12, IR 420). The appellant finds it hard to understand how the Council can move from that position with three turbines to a position of objection to the current scheme on its solus landscape effects with any credibility.
- 6.32 Inspector Hill went on to observe that when travelling through the District by car, wind farms and single larger turbines were generally

well spaced and/or screened or orientated so that there is not a perception of travelling between wind farm groups or through a wind farm landscape. She found that while there are some locations where there would be significant visual intrusion, these were not sequential views on main travelling routes but rather certain particular vantage points (CD 7.12, IR 422-423). In this case, the appellant submits that exactly the same conclusions would apply with the seven turbines proposed in virtually the same location.

- 6.33 There is a clear pattern of wind farms which are spaced evenly across the landscape of East Lindsey, rather than being confined to clusters separated by very large gaps. This can be seen by reference to the arrangement of the Gayton le Marsh, Conisholme Fen and Bishopthorpe/Newton Marsh schemes, spread across a distance of 20km. The proposed development would complement this pattern by virtue of its separation from Bishopthorpe/Newton Marsh to the north, and Conisholme Fen to the south. This spacing helps to create an even sense of rhythm, and prevents the creation of unacceptable cumulative effects in terms of landscape or visual amenity when viewed from the vicinity of any of the schemes, or in longer distance views from the Wolds.
- 6.34 It is now accepted by the Council that there would be no unacceptable harm to the special qualities of the Wolds AONB. Given that one of these special qualities is views out from the AONB, which the Council says would not be undermined, Mr Russell-Vick's attempt to argue for significant visual effects from viewpoints on the scarp edge (at odds with the report on the LVIA produced by his own firm, which confirmed that there would be no significant landscape character or visual effects on the Wolds) is difficult for the appellant to understand.
- 6.35 As was concluded by Inspector Major at Bishopthorpe, cumulative impacts would be most obvious from the higher ground of the Wolds. In paragraphs 395-397 of his decision he found that
- The nearest schemes to Bishopthorpe would be Fen Lane, Fulstow Top and Damwells. If any or all of these went ahead there would be an element of infilling of the gap between Bishopthorpe, Conisholme and The Limes
  - This infilling would be visible from the higher ground and the Wolds to the west, and it would be possible to see the turbines in the same view from the north, east and south, including Covenham Reservoir
  - The distance between the individual schemes and Bishopthorpe would mean that they would not be perceived to merge into one large agglomeration, because the difference in location of each would not alter their relative visual scale significantly. This would enable them to be differentiated
  - There would be some cumulative impact, but at a moderate level at worst, should development at Fen Lane and Damwells proceed.

- 6.36 Damwells has now fallen away, so it must be the case that cumulative impacts would now fall some way below this “moderate level at worst”. Inspector Major was fully aware of the current ‘gap’ into which the Fen Lane would properly slot and, notwithstanding the protestations of Mr Russell-Vick, was not misdirecting himself regarding a test of “agglomeration”. The appellant considers that what Inspector Major had to say dovetails very neatly with the conclusions of Inspector Hill at Louth Canal. In short, this is well-trodden ground. The cumulative landscape character and visual impacts of the proposed development would be acceptable.
- 6.37 The MWAG composite view from Wanderlust Way, although of great quality of reproduction, must be treated with caution as it includes developments in scoping, which cannot reasonably be included in any visual assessment given their stage of development. The ten turbines at Grainthorpe is an example of this. There is a tendency for the foreground to be lost due to the focal length of the lens used, and for the prominence of existing development to be overemphasised, as will be noticeable on the site visit.
- 6.38 The proposed development is a wholly reversible form of development. This is an important consideration referenced in paragraph 2.7.17 of EN-3. In particular, there would be no long-term consequences for landscape character.

#### Visual component of residential amenity

- 6.39 The separation between what is a private interest and what should be protected in the public interest is tolerably clear; it has been the subject of particular focus in wind farm cases since the decision at Enifer Downs in April 2009 (CD 7.4). The appellant acknowledges that the approach set out by Inspector Lavender, articulated in its fullest form at Carland Cross (CD 7.19), should not be regarded as a mechanistic “test” and has no status in terms of being part of statutory documentation or planning policy or guidance; however it is a logical, transparent and objective approach that has been recognised by the High Court as a wholly suitable way of determining a policy compliance threshold.
- 6.40 There can be no substitute for site visits to individual properties, so that any likely impacts can be judged in the particular and unique circumstances of each. Nevertheless, the appellant believes it is helpful to consider the factors and thresholds of acceptability which have guided decision-makers in other cases:
- No individual has the right to a particular view but there comes a point when, by virtue of the proximity, size and scale of a given development, a residential property would be rendered so unattractive a place to live that planning permission should be refused. The public interest is engaged because it would not be right, in a civil society, to force persons to live in a property which, viewed objectively, the majority of citizens would consider to be unattractive. At Burnt House Farm, the SoS framed the question as “would the proposal affect the outlook of these residents to such an extent i.e. be so unpleasant, overwhelming and oppressive that this

would become an unattractive place to live?" (CD 7.3). The same position was adopted by the SoS in the Nun Wood decision of December 2013 (CD 7.2).

- The test of what would be unacceptably unattractive should be an objective test, albeit that judgment is required in its application in the circumstances of a particular case
  - There needs to be a degree of harm over and above an identified substantial adverse effect on a private interest to take a case into the category of refusal in the public interest. This was expressly endorsed by the SoS in his decision on Burnt House Farm [CD 7.3, para 10]. Changing the outlook from a property is not sufficient. Indeed, even a fundamental change in outlook is not necessarily unacceptable.
  - The visual component of residential amenity should be assessed "in the round".
  - Each case has to be decided on its merits, but other appeal cases provide a useful benchmarking exercise.
- 6.41 At no dwelling would the proposed turbines be visually overbearing, overwhelming or oppressive such that they would be rendered unattractive places in which to live. Given the scale of the development, spacing of the turbines, separation distances involved, orientation of properties and amenity spaces and openness of view, any effects on outlook would not cross the public interest line.

#### Cultural heritage

- 6.42 In order to assist the inquiry, the appellant provided detailed legal submissions on cultural heritage (INQ 13). Their content has not been challenged.
- 6.43 The Court of Appeal in Barnwell Manor has made plain that the statutory duty is separate to the planning policy position. Once the decision maker finds some harm to a heritage asset, the effect of s.66(1) is that the harm must be given "considerable weight" in the balance, creating a strong presumption against the grant of planning permission (CD 6.6).
- 6.44 However, there is a sliding scale, and this is essential to understanding how the s.66(1) duty links across to the planning balance. Sullivan LJ found that where harm is properly assessed as less than substantial, "it does not follow that the 'strong presumption' against the grant of planning permission has been entirely removed". (CD 6.6, paras 28-29). The appellant considers this must mean that a presumption which is "strong" in the case of substantial harm to a Grade I Listed Building becomes less strong in the case of less than substantial harm, down to somewhere close to its strength being entirely removed. The "strong" presumption must also be less strong in the case of a lower grade designated asset, and lowest of all in the case of less than substantial harm to a Grade II listed asset.

- 6.45 The position is helpfully summarised in the Molesworth appeal decision, which post-dates the Court of Appeal judgment in Barnwell Manor: *In each case, the acknowledged harm to setting would need to be accorded considerable weight, but moderated according to the amount of harm in each case. Just less than substantial harm to a Grade II\* Listed church would not merit equal weight to minor harm to the setting of a listed milestone or telephone box. Whilst the avoidance of all harm would be desirable, as section 66 confirms, it does not follow that permission must be refused as it would still remain necessary to weigh the harm with any benefits of the development. The English Heritage document "Wind Energy and the Historic Environment" acknowledges that change within the setting of historic sites may often be acceptable although in certain instances development will be considered inappropriate.*
- 6.46 The appellant contends that Mr Walker, the Council's cultural heritage witness, consistently finds a greater degree of harm to significance of the various assets than is justified because (1) he places too much emphasis on being able to see the turbines and (2) his calibration of what constitutes harm is too sensitive.
- 6.47 Using Beesby Deserted Medieval Village (DMV) as an example, for his assessment to be tenable, first of all he would have to allocate the majority of the overall heritage significance of Beesby DMV to its setting. Secondly, he would then have to allocate the majority of the overall heritage significance which he says is wrapped up in setting to those elements of setting which would be affected by the turbines. Thirdly, he would have to demonstrate that visibility of the turbines in those elements of setting would be so harmful that it was capable of significantly harming the heritage significance of Beesby DMV to an unacceptable level.
- 6.48 That simply is not right, in terms of policy or a properly conducted assessment. In each and every case, he has placed too much reliance on simple visibility which has led him to an exaggerated conclusion of harm. On each occasion he was asked, he was not able to articulate realistically what contribution was made to the overall heritage significance of each asset by setting, and what actual harm the turbines would cause to it.
- 6.49 Mr Walker's calibration of what constitutes harm is too sensitive. His assessment at Churchthorpe House, Fulstow, is that views from a first floor window equate to a "significant harm" which would be "unacceptable" and justify refusal. He confirmed that any reference to a significantly harmful effect should be interpreted in the same way. His overly sensitive approach can be easily tested by his example of Manby air base. In his view, the Gayton le Marsh turbines have a significant and therefore unacceptable impact on the heritage significance of the Grade II Listed buildings within the complex. On any sensible, rational, proportionate basis they do not.
- 6.50 By way of contrast, Mr Bourn (the appellant's cultural heritage witness) (1) correctly focused on the heritage asset as the receptor,

rather than the person viewing the asset (2) correctly identified what made up the overall heritage significance of each asset (3) realistically identified what proportion of overall heritage significance was derived from setting and (4) in a measured way, identified what harm would properly be caused by the introduction of the wind farm.

#### Beesby DMV, Cadeby DMV and Cadeby Hall

- 6.51 The background to the monuments and Listed Building, their position on the edge of the Wolds and marshes, and the use of the land for sheep movements is not in dispute.
- 6.52 Mr Walker's objection is that the proposed development would introduce distracting, prominent and discordant features, industrial in character, into the otherwise unspoilt setting of the heritage assets. This is accepted to be a visual effect, but Mr Walker was unable to demonstrate how such a change in the view would actually reduce heritage significance. The turbines would be visible at some considerable distance, but they would not prevent or even really reduce the ability of a person to experience the heritage significance of the sites, the Wold edge setting, or how the use of the Wolds over time has shaped the landscape.
- 6.53 The appellant contends that the presence of the wind farm together with other wind farms would not prevent an appreciation of the location of the Beesby DMV within the wider medieval settlement, and the exploitation pattern on the Wold edge and the Middle Marshes. It would result in a minor effect on the contribution of the setting to overall significance, and low-level harm to significance.
- 6.54 In a similar way and for similar reasons, the wind farm would have no more than a minor effect on the contribution made by setting to the overall significance of Cadeby DMV, and a low level of harm to its significance.
- 6.55 At Cadeby Hall, the wind farm would result in a minor effect on the contribution made by setting to overall significance when seen from the viewing mound. There would be no impact on views back towards the house. The appellant contends that the viewing mound is a garden feature, not a building, object or structure, and so is not Listed by association.

#### Church of St Mary, Ludborough

- 6.56 There is no disagreement regarding the importance of the church, and its historical role as a marker in the landscape.
- 6.57 The church is no longer as prominent as it was in the past, largely because it is cloaked in tall trees. The wind farm would be experienced within one element of its setting only, that is in views from a limited area to the south west of the church, as shown in Viewpoint 16. The turbines would be seen to the left of the trees that shroud the village in this view. The impact on the contribution made by setting to overall significance would be minor.

- 6.58 The photomontage from the church demonstrates that only one turbine would be visible from the graveyard. The appellant contends that as matters stand currently, the degree of impact on overall heritage significance would be minor indeed. There is no real evidence of disease to the trees, or planned felling, and any assessment of impact should be made on the basis that the trees will continue to exist in the view.

#### Church of St Lawrence and Churchthorpe House, Fulstow

- 6.59 The Council's objection reduces down to visual intrusion in the inter-relationship between the house and the church. Visibility would be restricted to some views from the first-floor windows. This would do little to impair an understanding and experience of the relationship between the two buildings in which the bulk of the heritage significance resides.
- 6.60 The intimate immediate setting is the most important element of setting which feeds through to significance. The wind farm would be well beyond that. Again, Mr Walker has to rely on the potential die-back of trees to suggest that harm could increase. This is theoretical and the opposite is just as possible, as is the maintenance of the status quo.

#### Thoresby Warehouse

- 6.61 Thoresby Warehouse is the nearest Listed Building to the appeal site, and is Listed Grade II. The heritage significance of the warehouse has been well traversed in the Louth Canal appeal (CD 7.12), and is both understood and accepted by the appellant. There is an undisputed relationship between the land, canal and warehouse. All of this was understood when the current scheme was designed, as was the Louth Canal wind farm scheme itself. It is for this very reason that the proposed development was designed to be sufficiently different to the Louth Canal scheme to warrant a different decision being reached.
- 6.62 As a starting point, the Council recognises that the proposed development causes less harm to the significance of Thoresby Warehouse than did the Louth Canal turbines. At the previous inquiry, it argued that substantial harm to significance would be caused. That was known to be a high test, which the Council obviously thought was breached. The current scheme is acknowledged to cause less than substantial harm.
- 6.63 It is quite clear that at the previous inquiry, following extensive research, Mr Walker's view was that (1) the western elevation of the Warehouse was the principal elevation; (2) the setting of the warehouse extended to the adjacent agricultural land to the west; (3) views of the warehouse from the west are extensive, and (4) views from the west were particularly important. Adjacent agricultural land to the west implies close proximity and intimate association. In other words, while the setting extends in all directions, Mr Walker considered that there was something of

heightened importance about the relationship of the warehouse and the adjacent land to the west.

- 6.64 This is not because the Louth Canal turbines lay to the west and that is why the focus of the inquiry was there; that would be a complete misunderstanding of the position. The orientation and design of the building does not change. Descriptions of heritage significance, and how setting may contribute to understanding and experience of such significance, are not scheme-specific. Any assessment of impact on those elements of setting which go to significance would come in at a later stage, once significance has been established. The Council cannot escape from this very important point, and change its case, just because the Fen Lane turbines would not lie in the same place. It was in full knowledge of the importance of the adjacent land to the west that the Fen Lane scheme was designed and promoted.
- 6.65 The appellant contends that it is clear, from the evidence and as represented graphically in the two photomontages from the A1031 (INQ 65) that the proposed Louth Canal turbines would have harmed those elements of setting much more severely than would the currently proposed Fen Lane turbines. In spatial terms, the Louth Canal turbines would have lain in that adjacent land to the west where they would have been an inescapable presence, veiling the heritage significance of the building. Even though the distance of the two schemes from the asset may be similar, their impact and effect would be substantially different.
- 6.66 Inspector Hill was concerned with the rarity of the warehouse, in that it remains intact and in a largely undisturbed setting, and as such acts as a way marker and feature of the canal route (CD 7.12, IR 411). The spatial separation point is important again here. It is accepted that this is the remaining location on the Louth Navigation where a largely intact historic warehouse can be seen in relatively unaltered setting. The photomontages demonstrate that this aspect of significance would be satisfactorily preserved by the current scheme.
- 6.67 Inspector Hill was also concerned about vertical scale and visual dominance (CD 7.12, IR 412). The warehouse when built would have been an imposing and dominant structure, with primacy in scale, and it remains the tallest significant built feature when seen from the A1031 and from the Louth Navigation. As was accepted by Mr Booth, the immediate juxtaposition of the proposed turbines of the Louth Canal scheme in views from the A1031, travelling both east and west, would have meant that the vertical dominance of the warehouse would have been challenged in a way that simply would not be the case with the Fen Lane turbines now proposed. It is exactly the same position in views up and down the canal. The harm to setting, by potentially detracting from the warehouse 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, is manifestly much less.

## Louth Navigation

- 6.68 Louth Navigation is an undesignated heritage asset. Mr Walker suggests that the setting of the canal extends to the drained marshland in which the turbines would be sited. Clearly the level of the canal was set below the level of the marshes, and the more recent raised flood banks tend to merge into the background. The canal does not dominate views across the land, only views along its course. It is a long, linear feature and the proposed turbines would only characterise a limited length of it.
- 6.69 Experience of the functional relationship between the warehouse and elements such as the Grundy sluices; the Louth Navigation itself; the drainage function of the surrounding land; and the collection point of goods on the intersection of the road and canal would not be affected by the proposed turbines.

## Church of St Peter and St Paul, Tetney

- 6.70 The Council does not present any evidence in relation to this church. The wind turbines would be visible in some views from a small part of the church yard, and in limited views towards the church from places to the south. There would be nothing more than a minor impact on the contribution made by setting to the overall significance of the asset.

## Reversibility, and aggregation of harm

- 6.71 EN-3 directs that when undertaking an assessment of the likely impacts of wind turbines on both the landscape and cultural heritage assets, the decision maker should take reversibility into account. (CD 2.3, para 2.7.17). This echoes English Heritage's own guidance in "Wind Energy and the Historic Environment" (now archived) and carried forward into "GPA 3: The Setting of Heritage Assets" (CD 8.4).
- 6.72 The thrust of the heritage protection guidance in the NPPF is about managing change in the historic environment responsibly, not about avoiding harm altogether. Paragraph 132 highlights the importance of the "irreplaceable" nature of heritage assets, and that is why policy indicates that the reversible nature of the development, where it applies – as in this case – is a relevant factor to be taken into account when assessing the acceptability of impacts. Reversibility inevitably works in favour of a grant of permission.
- 6.73 The appellant has considered the impact of the proposed development on heritage assets individually. It is also necessary to consider whether the combined effect of those impacts would result in a greater level of harm. In the circumstances of this case, the aggregation of impacts would be no more than the sum of its parts.

## Noise

- 6.74 The Council does not raise an objection based on noise. The appellant submits that the evidence produced by Dr Yelland on behalf of MWAG contains nothing which would come close to

justifying refusal of planning permission, subject to the imposition of appropriate planning conditions.

- 6.75 Paragraphs 2.7.57 and 2.7.58 of National Policy Statement EN-3 are perfectly clear that (1) ETSU-R-97 should be used as the approved methodology for assessing the impact of noise from wind turbines and (2) providing it is demonstrated that a particular scheme would comply with an ETSU-R-97 compliant assessment, a decision maker may well decide to give limited or no weight to claimed impacts on amenity. It is open to the Inspector to consider other material considerations (where that would be justified), but perfectly lawfully and rationally to decide that ETSU-R-97 should be used for determining acceptability of impacts, and as the basis for imposing a suitably worded condition.
- 6.76 In this case, predicted wind turbine immission levels using a candidate turbine would meet the ETSU-R-97 derived noise limits under all conditions, and at all locations, for both quiet daytime and night-time periods.

#### Noise impact assessment and background noise surveys

- 6.77 The turbine supplier will ultimately determine the suitability of a consented layout, as they will be contractually obliged to meet relevant sound emission levels. The developer is an experienced wind farm developer and has designed the current scheme around the candidate turbine.
- 6.78 Detailed mode management analysis can be used to identify the optimal settings required for every wind turbine at each wind speed and direction, to ensure that the generation of electricity is maximised and that noise limits are not breached.
- 6.79 There continues to be no robust evidence to demonstrate a positive causal effect between wind turbines and health problems, including sleep disturbance, where ETSU-R-97 has been used to assess and control noise. Central Government has specifically chosen not to review the fixed minimum limits (CD 2.3, Footnote 33).
- 6.80 Wind throughout the survey period was from the predominant south-westerly direction, but this is far from untypical. The long term wind rose clearly shows the typical wind distribution, and confirms that high winds are typically recorded at this location. Data recorded during the November/December 2013 monitoring campaign fits comfortably with that.
- 6.81 Noise measurement locations were selected to provide an indication of the typical background noise environments that are representative of residential locations in the vicinity of the proposed development. Every effort was made to locate equipment within amenity areas where it would not be adversely influenced by extraneous noise sources such as streams, boiler flues and traffic. The subject properties were all agreed with the Council. The choice of exact measurement locations was made on account of a range of

professional acoustic and practical considerations. The Council was present for some of the installations.

- 6.82 The appellant maintains that for the reasons given by its noise witness, Mr Arnott, none of the criticisms made by Dr Yelland alter the conclusion that the background noise survey successfully provided an "indication of the noise environment existing at each noise sensitive property" in accordance with page 59 of ETSU-R-97.
- 6.83 The aim of doing noise surveys is to determine the baseline noise environment that exists under the different conditions during which the wind turbines may be operating, accounting both for different times and also different wind conditions. Measured levels reflect the variation actually found at the survey locations, arising from whatever cause. MWAG has offered no alternative monitoring data to substantiate any assertion that some of the selected locations overestimated the background noise. In short, there is nothing substantive to suggest that the background survey cannot be relied on to derive appropriate ETSU-R-97 limits.

#### ISO 9613-II prediction methodology

- 6.84 Considerable work has been done over many years to validate actual operating wind farm noise levels with those predicted. The results led to consensus among leading acousticians in this sector regarding the parameters which give predictions most closely related to those measured. The March 2009 IOA Bulletin was followed by the IOA GPG. The use of warranted sound power levels in combination with a ground effect factor of 0.5 provides a realistic worst case basis for assessment, assuming downwind propagation in all conditions. Field tests include the Cooper and Evans report of 2011, which showed that predictions using the same input parameters as recommended in the IOA GPG for mixed ground conditions were actually within 1dB(A) in flat topography.
- 6.85 None of the arguments put forward here by Dr Yelland are new, and the appellant considers it instructive to look at how other Inspectors dealt with them elsewhere (PINQ 8, 11.8, para 76). The IOA GPG approach does not require the decision maker to add in a 3db(A) error margin, a margin for hard ground, or any other margin.
- 6.86 Protection for the residential occupier is provided by the noise limit in the planning condition; any turbine, whatever the predictive methodology, would have to meet such a limit.

#### Other Amplitude Modulation

- 6.87 Excess or Other Amplitude Modulation ("OAM") has been discussed at length in a number of inquiries. There remains no consensus among the acoustic community regarding the definition, causes, mechanics, frequency, duration or seriousness of amplitude modulation. Government policy and guidance, notwithstanding a number of opportunities to change tack, has not changed. As recorded in the IOA GPG, current best practice is not to attempt to impose an amplitude modulation condition.

- 6.88 Inspectors and the SoS have consistently refused to impose an OAM condition. Exceptions include the Turncole and Dunsland Cross decisions (CD 7.13) but in both cases, for whatever reason, the principal parties agreed that a condition to control OAM was necessary and the wording was within Circular 11/95. No such agreement is in place here.
- 6.89 It is not possible, given the current state of knowledge, to construct a lawful condition that attempts to control OAM. Precisely because the causal mechanism is not known, it is not possible to devise a scheme to predict and abate it. In terms of the PPG, because the likelihood of OAM cannot be predicted and there is nothing credible to suggest that the appeal site would be particularly prone, or even likely, to such tendencies, the imposition of a condition cannot be necessary in the sense of mitigating foreseeable impacts. Because there is so little understanding of OAM, any condition set would be arbitrary.
- 6.90 In all the circumstances, the appellant contends that an OAM condition would be (1) unnecessary (2) imprecise (3) unenforceable and (4) unreasonable, and therefore outside the guidance now in the PPG, and unlawful. This does not mean that planning permission should be refused. The unquantifiable risk of OAM occurring at Fen Lane does not justify such a conclusion. Statutory nuisance remains available as an appropriate statutory code for dealing with OAM complaints.

#### Aviation

- 6.91 The appellant contends that the aviation objection in relation to the unlicensed North Coates Airfield is wholly without merit. Unlicensed aerodromes are not regulated by the Civil Aviation Authority (CAA). It is the sole responsibility of the pilot in command of the aircraft to avoid obstacles. It is also the sole responsibility of the pilot to understand his or her own limitations, and that of the aircraft, and to fly within those competencies.
- 6.92 The proposed development would not constitute a safeguarding issue for the North Coates Airfield. It would not breach the guidance published by the CAA on obstacles in the vicinity of unlicensed aerodromes. Even when considering the more challenging criteria applied to a Licensed Aerodrome (which North Coates is not entitled to claim), the turbines would not impinge upon any safeguarded surfaces.
- 6.93 The objection attempts to characterise the area as being highly constrained, by including some airspace constraints which lie well beyond the local area. It also tries to establish that a situation could arise where the turbines would prove a hazard to aircraft. The appellant's position is that if pilots follow the rules of the air, as they are required to do, and use good airmanship, the turbines would not pose any unacceptable threat to flying operations at North Coates. Aviation interests do not carry any special weighting.

## Conclusions

- 6.94 The consequence for this Council of not fulfilling its obligation to have an up-to-date, facilitative policy framework to maximise renewable energy generation is that in policy terms, the proposed development should be granted planning permission unless identified harm significantly and demonstrably outweighs the benefits of the scheme. The planning balance is pre-loaded in favour of the grant of planning permission. Nothing heard at the inquiry comes close to suggesting that identified harm is of sufficient weight to tip the planning scales back to a point of equilibrium, let alone tip them so far that harm clearly outweighs obvious environmental benefits which attract significant weight.
- 6.95 The landscape case put forward by the Council has been rehearsed many times before, and Mr Denney's evidence sits entirely comfortably with the findings of previous decision makers. Impacts on heritage assets have to be taken seriously, pursuant to paragraphs 132-134 of the NPPF and section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, but the degree of harm contended for by Mr Walker is exaggerated for the reasons set out above. Importantly, there are clear differences between the Louth Canal scheme and this scheme which would allow a different decision to be reached. Harm to the significance of Thoresby Warehouse and Louth Navigation is markedly lower, and the wider benefits of this scheme are markedly higher.
- 6.96 The proposal emerges as a refined development in what is a very well understood local landscape. The proposed turbines would result in localised changes to landscape character and some views, and cause minor levels of harm to the significance of heritage assets, but all such impacts would be acceptable. The proposed development would operate within acceptable environmental limits for the purposes of paragraph 98 of the NPPF. It would represent sustainable development for the purposes of the NPPF.
- 6.97 The proposed development complies with the adopted Development Plan, such as it is. It complies with national planning and energy planning policy. The appellant considers that each and every planning impact identified by affected local communities has been addressed, to a point where the local community should be able to give their backing to the scheme. The appellant contends that it can do no more to change the minds of a vocal minority who will remain intractably opposed to further wind turbines in this part of East Lindsey, whatever justification may be given.
- 6.98 Based upon a compelling narrative for why this scheme should be where it is, and of the size it is, the appellant considers it has produced evidence to show that planning permission should be granted for this sustainable development in the form in which it has been sought.

Submissions on the implications of the *Forest of Dean DC v Gladman* judgment

- 6.99 At the inquiry, the agreed position between the appellant and the Council was that paragraph 134 of the NPPF was not a policy indicating that “development should be restricted” in the terms of NPPF paragraph 14. However, in light of the judgment in *Forest of Dean DC v Gladman*, that position is no longer tenable.
- 6.100 Pursuant to paragraph 25 of that judgment, the appellant now accepts that NPPF paragraph 134 is a policy indicating that development should be restricted. The appellant also accepts that the exercise at paragraph 134 / Limb 2 of paragraph 14 needs to be undertaken when, as here, there is less than substantial harm to the significance of a designated heritage asset. This exercise involves an ordinary, unweighted, balancing of harm and benefits.
- 6.101 As the judgment sets out, the appropriate place for considerable weight and importance to be given to the desirability of preserving a listed building or its setting is as part of the ordinary balancing exercise under paragraph 134 of the NPPF. The appellant interprets paragraph 37 of the judgment to mean that if the result of this standard balancing exercise is in favour of the development, then the decision-maker should return to the broader review and weighted exercise under Limb 1 of paragraph 14.
- 6.102 Mr Bell had the foresight to deal, in his proof of evidence, with what should happen if paragraph 134 was held to be a policy indicating that development should be restricted: “Even if I am wrong and paragraph 134 is a policy of restriction, once the balance has been undertaken and the result is in favour of the proposed development, the presumption in favour of sustainable development contained within paragraph 14 will be revived.” (APP 3, para 2.4.26).
- 6.103 The judgment does, therefore, have implications for the decision-making process in this appeal. Both Limb 1 and Limb 2 of NPPF paragraph 14 need to be considered. The unweighted balancing exercise at paragraph 134/Limb 2 needs to be undertaken first because there is agreed to be less than substantial harm to the significance of the identified designated heritage assets. Based on the evidence and submissions before the inquiry, the appellant submits that the result of this unweighted balancing exercise will be for the decision-maker to come down in favour of development.
- 6.104 The appellant would point out that planning permission for the Bishopthorpe wind farm was granted notwithstanding the fact that the presumption in favour of sustainable development was disengaged by reason of the need for an Appropriate Assessment.
- 6.105 Once the exercise at paragraph 134/Limb 2 has been passed, the decision-maker then needs to undertake the weighted balancing exercise and broader review under Limb 1 of paragraph 14. For the reasons already set out in closing submissions, the appellant contends that a grant of planning permission would then be supported.

## 7.0 The case for the Council

*The following paragraphs summarise the Council's case, which is set out more fully in its opening and closing submissions (INQ 9 & INQ 71) and subsequent submission concerning the implications of the Forest of Dean DC v Gladman judgment (PINQ 10).*

- 7.1 At the start of the inquiry, the Inspector identified three main issues in this appeal: (i) the effect on the character and appearance of the area, including cumulative impacts; (ii) the effect on heritage assets; and (iii) whether the proposed development would give rise to unacceptable noise at nearby properties. The first two issues will be addressed in turn, before returning to consider the overarching policy background and planning balance. The Council presents no evidence in relation to the third issue.

### First main issue: landscape and visual impacts

- 7.2 It is agreed by the appellant and the Council that Saved Local Plan Policy A4 is relevant to the determination of the appeal, and to the consideration of the acceptability of the landscape impacts. The wording of Policy A4 and its supporting text is in line with EN3 and EN1 in accepting some landscape impacts as the inevitable consequence of development. A4, EN1 and EN3 all provide the test to be whether the impacts are acceptable or not. (CD 1.1, 2.2, 2.3)

### Character

- 7.3 The approach to the susceptibility of a receiving landscape is important, as judgments at this stage infect all later conclusions as to the significance and then acceptability of effects. It is particularly important in this case, as the main reason for discrepancies between the conclusions on landscape character reached by the appellant's landscape witness (Mr Denney) and the Council's landscape witness (Mr Russell-Vick) can be traced back to their judgments on the sensitivity and value of the landscape.
- 7.4 The Appellant's evidence on the sensitivity of the landscape is to be found wholly within the ES (CD 10.1 Appx 7.4).
- 7.5 Mr Denney agreed, as per the advice contained in GLVIA3 (CD 9.1, p88) that:
- susceptibility is to be judged by adding together judgments taken about (1) sensitivity of a landscape and (2) the value of that landscape;
  - all of these judgments are to be taken in relation to the particular development proposed;
  - when looking at sensitivity of landscape receptors, it is appropriate to derive the receptors for consideration from the Landscape Character Assessment (LCA), although it may be necessary to include further factors depending on the quality of the specific LCA in question; and

- when looking at value, LCA receptors are also relevant and whilst the host landscape is not designated, it remains of some value. Moreover, it was agreed that the East Lindsey LCA was generally up to date and detailed, bar some new wind turbines.
- 7.6 Nevertheless, in the ES Landscape and Visual Impact Assessment (LVIA), the attributes or receptors listed are generic, and not derived from the LCA. The reason stated by Mr Denney was that some attributes listed on the LCA are “difficult to judge”, but that does not hold good. The key defining attributes identified by Mr Russell-Vick are the “big skies” and “open views”, against which one could readily consider impact, but they form no part of the appellant’s LVIA. Not only are these features part of the current LCA, they have formed part of the wording of the Development Plan for the best part of 20 years, and were mentioned as being particularly valued by a number of third parties to the inquiry. Their omission from the LVIA is therefore material.
- 7.7 Where elements are used from the LCA, different judgments are taken without justification. The LVIA also places certain attributes as being “high sensitivity” or “low sensitivity” with no explanation. In particular, the categorisation of open and flat landscapes as inherently less sensitive significantly underplays the sensitivity of the relevant landscape here in a way which is flatly contradictory to the advice of the PPG on the impact of wind turbines on flat or hilly landscapes (CD 2.5 p.4).
- 7.8 It is a feature of the LVIA that the framework for the judgments made is not defined. Mr Denney stated a desire not to be “robotic” in adherence to tables, but the Council submits that tables are both recognised within GLVIA 3 as useful, and indeed are useful for transparent decision-making. Without setting out how judgments are arrived at, the appellant asks the decision-maker to take a large amount on trust.
- 7.9 This would not normally be significant, save that here, the appellant seeks to promote a view of sensitivity that is different to that of the adopted LCA, the Council, and the position taken both by other appellants at previous inquiries and subsequently adopted by Inspectors (CD 7.12 para 420). It is therefore relevant to consider the justification put forward for this position, which, the Council submits, is wholly lacking in transparency.
- 7.10 Far from presenting an outlying or extreme position as the appellant suggests, Mr Russell-Vick’s conclusions on sensitivity are wholly in line with the conclusions of Inspector Major so favoured by the appellant. Both reach a view that the susceptibility of this area to this development is moderate, and therefore, in line with the accepted position at the Louth Canal inquiry (LPA 1 para 376, CD 7.12 IR 420).
- 7.11 If indeed it is correct at all to read across Inspector Major’s conclusions on the Bishopthorpe appeal to the present site (which is doubted, particularly in light of Inspector Major’s own comments at

para 380 regarding the lack of ability to ascribe a sensitivity to the whole LCA), they must be properly understood in order to be of meaningful assistance.

- 7.12 In particular, Mr Denney's partial quote of paragraph 380 misses the key conclusion in relation to the present site. Inspector Major considers the land to the immediate north and south of the Bishopthorpe appeal site as being affected by Cleethorpes, Humberston Fitties, Thorpe Park, Tetney Oil Storage Facility and Newton Marsh wind turbines in a way which meant that the Bishopthorpe site was influenced by *a degree of development which is not characteristic of the whole area* (CD 7.27 para 376). Those industrialising elements cannot be said to apply to any characterisation of the land surrounding the Fen lane appeal site. In so far as Inspector Major does consider the land further west of Bishopthorpe, where the Fen Lane site sits, he considers that this area is of *medium* sensitivity (CD 7.27 para 380).
- 7.13 Given the particular characteristics of the Bishopthorpe site, it is submitted that the evidence of Mr Russell-Vick and the conclusions accepted by Inspector Hill are in any event to be preferred to the conclusions of an Inspector considering a quite different part of the LCA.
- 7.14 Mr Denney relies heavily on the permeability of wind turbines in reaching his conclusions that effects are of a lower order than Mr Russell-Vick considers them to be. Mr Denney accepted that the swept path could not fairly be described as slender, but maintained that the movement of the blades would not obstruct the view: in contrast to his acceptance that the movement of the blades would draw the eye. If one's eye is drawn to the movement, the Council submits that one's view beyond is thereby obstructed. The Council further submits that in line with Inspector Hill in the Louth Canal appeal decision, little weight should be attached to permeability (CD 7.12)
- 7.15 The Council contends that the conclusions of the LVIA are difficult to understand, as a result of the lack of detail provided. For example, the LVIA accepts that at distances of up to 800m the turbines would become the primary feature of the landscape character (paragraphs 7.183-184) but states that this would equate only to a substantial-moderate effect. Mr Denney explained that this was due to the low sensitivity ascribed to the landscape. That is not at all clear from the LVIA, but demonstrates the importance of sensitivity/susceptibility judgments. The same can be said for the second "band" of effects identified by the LVIA between 800m-2km – a high magnitude of effect is identified but it is assumed only to be moderate. The reader is left to assume that this is again due to the perceived lack of sensitivity of the landscape.
- 7.16 It is characteristic of the LVIA and Mr Denney's evidence that no explanation is to be found as to why certain effects of a moderate scale are considered to be significant and others are not. Moreover, this was an absence noted by PINS in their Regulation 22 request, which the appellant expressly declined to provide further detail on

(November SEI). As such, where contradictory conclusions are arrived at, there is no explanation to assist the decision-maker with why that is so (CD 10.10).

- 7.17 For example, Mr Denney states that a high magnitude of change up to 2km leads to a moderate effect which is significant (APP 1 para 7.25), but elsewhere states that a high magnitude of change up to 2km results in a moderate effect which is not significant (APP 1 para 7.17). The Council submits that such discrepancies are indicative of a lack of transparency in approach, to the extent that it is not possible for the decision-maker to have confidence in the approach taken. In such circumstances, Mr Russell-Vick's clear and transparent conclusions are to be preferred.

#### Visual impacts

- 7.18 The lack of clear expression, as to why certain effects are seen as significant or not, continues into the LVIA's assessment of visual effects.
- 7.19 Where the LVIA does set out a framework for judgments, this is regularly departed from without justification. For example, contrasting the language used at Appendix 7.5 of the LVIA in discussing Viewpoints 8 and 9 with the stated framework, there is a clear down-playing of significance. At Appendix 7.5 the change is described as the introduction of "prominent features", with movement becoming evident in a view which at present is a still landscape, and that the turbines would dictate the vertical scale of the view. This language sits alongside the language used within Appendix 7.1.25 to describe a high magnitude of change: however, the LVIA describes the magnitude as medium or low-medium, which A.7.1.25 expressly states is "not prominent" or is simply "notable".
- 7.20 This discrepancy was put to Mr Denney in cross examination, who answered that his table was merely a "starting point" after which an adjustment is made "to get the right answer".
- 7.21 In terms of visual impacts on settlements, there is a large degree of agreement between the professional witnesses in terms of significant effects on a number of residential properties in Fulstow, Tetney, Marshchapel and North Cotes. The difference between the parties is whether such impacts should be seen as acceptable.
- 7.22 Mr Russell-Vick's evidence was that the effect of this development on Fulstow is particularly severe. Other consented wind farm developments are materially further from settlements, whereas Fulstow would be only 1km from the appeal site (LPA 1 paras 5.12-5.13). Mr Denney accepted that this proximity would mean that even for those residents who do not have open views from their own windows, the turbines would be a part of their lives as they go about their daily business.
- 7.23 However, there are still notable discrepancies within the appellant's evidence. For example, Viewpoint 5 is from Ings Lane, which lies on the western edge of North Cotes. The LVIA assesses the impact

here as substantial and significant (Appx 7.5 p7), whereas when Mr Denney considers the impact on the western edge of North Cotes and Ings Lane he concludes that the impact is only moderate (APP 1 para 7.77). This is despite the sensitivity of the receptor remaining high: residential views, or those of pedestrians, and the magnitude of change, must as a matter of common sense remain the same. Again, this discrepancy goes unexplained in the appellant's evidence.

- 7.24 In terms of long distance routes, Mr Denney concludes that there would be no significant effects (APP 1 para 7.107). However, he provides no evidence as to the impact from the heritage viewpoints, despite their location on, or close to, promoted long distance routes. Instead, his conclusion is based only on Viewpoints 15 and 16. Viewpoint 15 was taken from the A18, not from any footpath nor even from within the Wolds, and even the LVIA's assessment of Viewpoint 16 finds that the magnitude of change would be medium-low. The Council submits, therefore, that such Viewpoints do not provide a sound basis for drawing a conclusion as to impacts on long distance routes and Mr Russell-Vick's conclusions are to be preferred.
- 7.25 The appellant's suggestion that the Council's case in relation to impact on visual receptors in the AONB is in some way contradictory to the accepted lack of harm to special qualities is entirely refuted. In making this criticism of the Council's case the appellant conflates harm to landscape and designation with harm to visual receptors on certain long distance routes.
- 7.26 Further, it is demonstrably inaccurate to seek to apply the conclusions of Inspector Major as to the visibility of the Bishopthorpe development from the Wolds, to the impact of the current proposal. It is no surprise and certainly not inconsistent with the Council's case at this appeal that the Bishopthorpe turbines at some 8.1km from the Wolds (as compared to 5.1km for the current appeal site) would not have a significantly harmful effect on views from the Wolds. The most comparable appeal decision is Louth Canal, where even considering a far smaller scheme, Inspector Hill did find some material harm to the AONB and this was weighed into the overall balance (CD 7.12 para 424).

#### Cumulative effects

- 7.27 The appellant and the Council take different approaches to cumulative effect. The ES LVIA and Mr Denney both approach the issue by looking at the impact of "adding in" Fen Lane to the existing situation. The Council does not take this approach, because it may underplay the impact of the present impact. Indeed, the text of the ES LVIA at 7.402 sets out the premise that once wind farms are present in the landscape, adding further turbines is less harmful. The clear inference is that the appellant's approach is that once a landscape has turbines, this is taken to "desensitise" the landscape.

- 7.28 The approach taken by Mr Russell-Vick is notably in accordance with the approach taken by Inspector Woolcock in Welham Bridge (CD 7.34 para 185) and Inspector Boyd in Causeway Bridge Farm (INQ 64). In considering the additional turbine near Manby, which would also be located in Area J1, Inspector Boyd stated that *their [the turbines at Gayton le Marsh] provision, as permitted, would result in three wind farms, broadly in a line, over the 14km long corridor from Mablethorpe to Conisholme, and a landscape which, to my mind, would be more sensitive to the addition of further large turbines within it.*
- 7.29 In relation to cumulative visual effects, the appellant has paid insufficient attention to views in more than one direction from a fixed spot. Taking impact on villages for instance, Mr Denney accepted that the only discussion on this is at ES 7.439. However, it is clear even from considering the relevant wireframes for Marshchapel, North Thoresby and Tetney that potential cumulative effects have been missed. ES 7.439 purports to consider the cumulative effect on the villages, not simply the Viewpoints. The Viewpoints are therefore a crude basis for this assessment, but nevertheless they show the clear potential for inter-visibility with Conisholme (Viewpoint 6) and Bishopthorpe and Newton Marsh (Viewpoint 9). However, inter-visibility with Conisholme is not referred to at all within this part of the ES. It is not considered but discounted: it is simply missed altogether.
- 7.30 Mr Russell-Vick puts the real harm here as the infilling of an existing gap in a way which would not meet the current pattern of development. The appeal site would be only 4km from Bishopthorpe (LPA 1 para 5.29). It is submitted that even on the appellant's accepted impacts – i.e. significant visual impact up to 3km and landscape up to 2km or just beyond – there is a likely area of overlap between the significant impacts arising from Bishopthorpe and those arising from the current proposal.
- 7.31 Further, the current appeal site is closer to the Wolds than any other consented scheme (LPA 1 para 5.28). In addition to giving rise to increased impacts on views from the Wolds, this also puts it as an outlier when looking at the line of developments in the Out Marsh from North to South.
- 7.32 The appellant's case here appears to be that Inspector Major looked at the matter and thought it was acceptable to develop Fen Lane in addition to Bishopthorpe. However, as a matter of common sense, his starting point was the impact and acceptability of the Bishopthorpe scheme. Secondly, as Mr Russell-Vick stated, Inspector Major appears to have paid too much regard to whether schemes would cause "agglomeration". Whilst agglomeration is to be avoided, it is not the relevant test.
- 7.33 Even if "agglomeration" were the test, in north-south views such as Viewpoints 7 and 13 there would, as Mr Denney accepted, be agglomeration between schemes. Both Inspector Major and Inspector Hill in the Louth Canal appeal considered "infilling" of the

gap and infilling of “breathing space” to give rise to harm. This is precisely the point made by Mr Russell-Vick (LPA 1, 5.27-5.30).

- 7.34 In summary, the Council submits that there is clear landscape and visual harm. Whether the harm is or is not acceptable is a judgment which logically falls to be addressed later as part of the overall planning balance. On the appellant’s approach the benefits of the proposal would seem to be double-counted: first in order to discount the significant landscape effects, and again later when weighed into the overall balance (APP 1 para 10.6). The Council submits that even on the appellant’s case, significant effects occur and it is later that one goes on to weigh them into the balance.

Second main issue: heritage impacts

- 7.35 The parties agree that there would be heritage impacts on seven designated heritage assets and one non-designated heritage asset. It is also agreed that the harm caused would be less than substantial harm.

- 7.36 There also appears to be a large degree of agreement between the Council and the appellant as to the proper application of the statutory duty pursuant to s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The areas of disagreement primarily relate to (i) for each heritage asset, the “level” of less than substantial harm; (ii) the “reasonable observer test”; (iii) whether *Bedford BC v SSCLG (INQ 14)* remains good law in relation to the test for “substantial harm”; and (iv) the proper approach to sensitivity and “remaining views”.

- 7.37 First, in relation to levels of harm, the Council and the appellant agree that it is helpful to assess the level of “less than substantial harm” on some sort of scale within that bracket. The appellant’s scale is set out at Table 10.2 of the ES Chapter 10. This only recognises “moderate” less than substantial harm. Nevertheless, where Mr Walker (the Council’s heritage witness) has considered the harm to be “significant” or “considerable” this would appear to tally with the appellant’s assessment of “moderate”, despite the connotations of the word “moderate”, which is in any event defined by the appellant as including “considerable harm... such that the asset’s significance would be materially affected / considerably devalued”. The appellant’s use of the word “moderate” therefore needs to be understood in this context as “considerable”.

- 7.38 Second, in relation to the “reasonable observer” test, the Council submits that both Mrs Justice Lang in the High Court and Lord Justice Sullivan in the Court of Appeal were clear that the test for harm is not to be considered against a background of whether a reasonable observer would be able to differentiate between the historic asset and the modern development (CD 6.5, CD 6.6). Language within the ES, and Mr Bourn’s evidence, in relation to “understanding and distinguishing” the assets from the turbines therefore needs to be treated with due care.

- 7.39 Third, in relation to the Bedford judgment (INQ 14), the case was decided prior to the issue of the current PPG which provides a clear test for substantial harm. The reasoning of Mr Justice Jay in that case must fall away in relation to a substantial part of that judgment in that it is pre-Barnwell Manor and his conclusions on the application of the s.66(1) duty are not in step with this reasoning. Further, his reasoning in relation to the test for substantial harm is bound up in the now revoked practice guidance, which at that time placed substantial harm squarely alongside demolition and destruction, whereas the new PPG moves away from this.
- 7.40 A draft version of the PPG included similar reference to “serious” harm which is now notably absent from the adopted PPG (CD 2.5 para 18a-017). Further, the example given within 18a-017 where the test “seriously affects a key element of its special architectural or historic interest” is posited is concerned with determining whether works to a listed building constitute substantial harm. Here, we are concerned with development within the setting, therefore the test is not an apt one as development within the setting will never affect architectural significance directly.
- 7.41 The high test in paragraph 18a-017 of the PPG nevertheless needs to be seen alongside the express acknowledgement in paragraph 05-019 that development in the setting alone may amount to substantial harm. The Council submits that Mr Bourn’s approach fails to reconcile the two. Mr Bourn expressly starts from a position that the appeal proposals would be incapable of harming the core of the significance of the assets (APP 2, para 4.2). But if the “core” or “key elements” cannot be harmed, one rules out the possibility of ever concluding that harm is substantial. Mr Bourn’s explanation that this paragraph is development-specific does not bear scrutiny; there is no rationale for why these particular assets derive the core of their significance from their form and fabric, as the proposition would surely apply to any and all listed buildings or DMVs.
- 7.42 Fourth, the heritage witnesses differed as to their approach to whether the rarity or “last remaining view” of assets should be seen as making intrusions into this view more, or less, harmful. Mr Walker’s approach is demonstrated by considering Ludborough Church. Here, significance is agreed to lie in the church’s historic connection to the surrounding lands and the designed visibility of the church tower from the marsh. Historically such views would have been uninterrupted, however trees and shrubs have since grown up in the church yard and obscure a great deal of the inter-visibility between marsh and church. Mr Walker’s view is that this means that where such connection is visible it is sensitive and must be protected, and total loss or further erosion of the planned connection should be considered as being particularly harmful.
- 7.43 This is in contrast to Mr Bourn’s approach, which ascribes no particular sensitivity to views where they are the last surviving example of such views. The Council submits that Mr Walker’s approach should be preferred. Simply as a matter of common sense, where a planned connection contributes positively to

significance and where there are only certain viewpoints left where this can be appreciated, such views must be seen as sensitive as it is a greater proportionate loss of this connection than where views are many or common place. Such an approach is in line with the Historic Environment Good Practice Advice Note (HE GPA) 3, which values rarity (CD 8.1).

#### Beesby and Cadeby DMVs

- 7.44 Mr Bourn and Mr Walker agree as to the contribution that setting makes to the significance of the assets, in terms of the historic connection between the DMVs and the marsh land below. Views out in most directions are restricted, so it is in views to the east where this connection can be appreciated. The Council therefore submits that the views which contribute the most to understanding are of particular significance, and in line with HE GPA3 and in line with Mr Walker's approach, harm to such views should be avoided.
- 7.45 It is also common ground that the turbines would be a distraction to an observer looking to understand this connection.

#### DMVs and Cadeby Hall (Grade II\*)

- 7.46 In relation to Cadeby Hall, Mr Walker and Mr Bourn differ as to whether the viewing mound comprises part of the asset itself, or part of its setting. The Council submits that in so far as anything turns on this, Mr Walker's approach is correct as all objects and structures within the curtilage take on the listing of the host building. They do not need to be capable of being listed in their own right, as s.1(5) of the 1990 Act is a deeming provision to all structures in the curtilage "forming part of the land" since before 1 July 1948. There is no doubt that the mound has "formed part of the land" since before 1 July 1948. Further, the proper interpretation of "structure" is a wide one, which the artificially constructed mound should fall within.
- 7.47 The setting of all three assets contributes to their significance by "telling a story" (LPA 2 para 7.38) as to the visual and physical relationship between the Wolds and the marshes. It is the link between the three, and views where all three can be appreciated, which adds to the assessment of all three assets. In particular, the connection is in the form of the Silver Lincs Way, a promoted route which HE GPA3 advises is a relevant factor (CD 8.1 p9).
- 7.48 Further, this connection and relationship in terms of setting is a rare one. The settings of other assets along the eastern edge of the Wolds are now affected by the presence of wind turbine developments such as Gayton le Marsh (LPA 2, 7.40-7.44), whereas here, views from the DMVs and Cadeby Hall sit in the visual "gap" or breathing space referred to above under the issue of landscape and visual impacts. Mr Bourn accepted that views out from these assets lie in a visual gap; indeed, it is part of the "positives" put forward by the appellants that this gap would be filled.

- 7.49 These issues of promotion and rarity, acknowledged by Mr Bourn in cross examination to be relevant factors, are nevertheless not considered by the appellant in the ES or by Mr Bourn in his evidence. Mr Bourn also relies heavily on the assertion that “the majority of the setting will be unaffected entirely”. It is submitted that this overly waters down the effect which should be focussed upon the impact on those parts of the setting which contribute positively, as the connection with the marsh is acknowledged to do.
- 7.50 The Council submits that the views to the east (a) are accepted by the appellant to contribute positively to the setting and thereby historic significance of the assets; (b) are sensitive in that they are rare or few; and (c) will be significantly altered by, even on the appellant’s case, the introduction of “a distraction” and movement which will affect the skyline, all of which are key criteria in the HE GPA3, as accepted by Mr Bourn in cross examination.
- 7.51 In such circumstances the harm is significant, or “moderate” to use the appellant’s scale. For these reasons, and based on the differences in approach set out above, the appellant has under-assessed the level of harm to these assets and the evidence of Mr Walker should be preferred.

#### Ludborough Church (Grade I)

- 7.52 A large degree of the difference between Mr Walker and Mr Bourn is in relation to the approach to where there are few examples of key views or key places from which a connection can be appreciated. It is common ground that all church spires are designed to be dominant in their setting. As the Court of Appeal in *Barnwell Manor* made clear, when dealing with such assets it is relevant to consider the extent to which this dominance will be eroded (CD 6.6 para 40).
- 7.53 Mr Walker’s evidence is that as there are few remaining views where this dominance can be appreciated, and where the last surviving areas of appreciation remain, they ought to be protected. The reliance on screening within the ES and Mr Bourn’s evidence should in any event be treated with a degree of caution based upon HE GPA 3 wherein it is acknowledged that less weight may properly attach to screening where it is not secured by legal agreement or similar (CD 8.1 para 29). It should also be noted that the ES is out of date on this issue, since it assessed the impact on the church based upon the assessment that the church cannot be seen outside the village, which was accepted by Mr Bourn in cross examination to be inaccurate. Mr Bourn also concluded that the harm to the church would be “minor”, rather than the ES assessment of “negligible”. The ES therefore needs to be treated with care.

#### Church of St Lawrence (Grade II) and Churchthorpe House (Grade II)

- 7.54 Again, in cross examination Mr Bourn acknowledged that he no longer stands by the ES assessment of significance or that the church cannot be seen beyond the church yard (CD 10.1, ES chapter 10 p26). The Council submits that a pattern therefore begins to emerge of the harm and visibility of assets being considerably under-played

within the ES, and as Mr Bourn becomes increasingly familiar with the assets in question, his view shifts to a position closer to that of Mr Walker, who is intimately familiar with the assets and their significance given his long service at ELDC (LPA 1 para 1.1).

- 7.55 Mr Bourn and Mr Walker agree that the enclosed, intimate and secluded setting of the two assets contributes to their historic significance. Where they differ is the extent to which an intrusion into the tranquil setting from the “outside world” would harm that significance. Mr Walker’s approach is that any intrusion into the seclusion would be particularly harmful, especially the moving, distracting influence of turbines (LPA 2 ch 9). As a matter of approach, this has to be correct: if the tranquillity of setting is important to significance, as it is accepted to be, then harm to tranquillity from any source is harm to significance.
- 7.56 Mr Bourn’s answer to this was that the turbines are not within the immediate setting, and so the harm is reduced. It is of course accepted that a turbine within the immediate enclosed setting would be very harmful, but such circumstances would enter the realm of substantial harm. Nevertheless, if the tranquillity of the setting is harmed, which again is accepted, then it is simply a matter of degree. On Mr Bourn’s approach the harm would only be unacceptable if the development were located in the immediate setting which, it is submitted, cannot be the test.
- 7.57 Furthermore, it is accepted that views from the house to the church contribute positively to the significance of the asset. This takes on particular importance in the light of Mr Walker’s evidence about the lack of significance in the fabric of the house itself. In such circumstances, harm to these views – which is also accepted (APP 2 4.58) – should be seen as significant in terms of the asset as a whole.

#### Thoresby Warehouse (Grade II) and Louth Canal

- 7.58 The ES is also deficient here as there remains no assessment whatsoever of the significance of Louth Canal as an asset in its own right, or of the impact on the significance caused by the appeal proposal. It is also notable that Mr Bell makes no finding on paragraph 135 of the NPPF in his written evidence.
- 7.59 As with church spires, the warehouse was designed to be dominant and prominent in its setting (CD 7.12 para 412). Again, as per the Barnwell Manor judgment, when dealing with such assets it is relevant to consider the extent to which this dominance would be eroded. Here, the warehouse would not be able to compete for visual dominance against turbines over ten times taller than it (LPA 2 10.13).
- 7.60 What Inspector Hill described as the “undisputed relationship between the land, canal and warehouse” (CD 7.12, IR 407) remains just that: undisputed. Therefore, the development would be located within part of the setting agreed to contribute positively to the significance of the asset. Rarity is a matter to which weight may

properly attach (CD 7.12, IR 411), and the ongoing need to secure the conservation of the asset and potential viability remain valid concerns (LPA 2 para 10.37).

- 7.61 The key point of difference between the Council and the appellant here remains whether the “degree of separation” (Mr Bourn’s phrase) is sufficient for the decision-maker in this appeal to reach any different conclusion to Inspector Hill in the Louth Canal appeal. It was at no point suggested that Inspector Hill in any way got it wrong; instead, the only point of differentiation relied upon by the appellant was “separation”.
- 7.62 However, it was accepted by Mr Bourn in cross examination that in terms of distance between the turbines and the warehouse the distances were “not too dissimilar”. Which has to be correct, given that two of the three turbines in the Louth Canal appeal were the same distance from the warehouse as the closest three turbines of this appeal scheme. It is also notable that the “separation” relied upon appears to amount to a submission that the turbines are on the other side of the road. However, the road and bridge across the canal themselves form a recognised part of the setting and historic significance of the warehouse (APP 2, 4.66). The setting is therefore recognised to encompass, as positive contributors, not only the road which is relied upon for separation but also the fields within which the turbines would sit (APP 2 4.65; CD 7.12, IR 407).
- 7.63 The Council therefore submits that conceptually, there is no separation. All elements relied upon here form part of the setting of the warehouse, which positively contribute to its historic significance. Any visual separation is limited to perception by those travelling east-west along Fen Lane, but this is by no means the only view, and in many key views (for example, from footpaths leading up to the warehouse from north or south along the canal itself) the turbines would be directly in front of or behind the warehouse, and not separated at all. This approach also places undue weight on views, rather than presence in the setting. As Inspector Hill stated in the Louth Canal appeal, the fact that there are views where the turbines would not be visually prominent does not mean they would not harm the setting, only that in certain views they would not be visually intrusive (CD 7.12, IR 410).
- 7.64 The appellant also fails to recognise the impact on the Canal as a heritage asset in its own right, which sits alongside the appeal site itself.
- 7.65 Great play was made of the Council’s case at the Louth Canal inquiry being bound up with the “land to the west” of the warehouse, i.e. the appeal site for that inquiry. Nothing turns on this. It would be a real surprise if that appeal site had not been the focus of that inquiry. However, here, neither of the heritage witnesses in any way differentiated between the contribution made by land to the north and south of Fen Lane, both being linked by their drainage by the construction of the canal as land to the east and west was drained, and both largely west of the warehouse in

any event. The land to the west, north or south of the A1031, contributes equally to the significance of the warehouse and canal.

- 7.66 The Council submits that there is no sound basis for any “separation” here, physical or theoretical. Any diminishing effect of distance is made up for by the increase in number of turbines (LPA 2 para 10.29). The impact therefore remains considerable.

#### Overall Planning Balance

- 7.67 In terms of overall approach, the Council submits that David Elvin QC (sitting as a deputy High Court Judge) in *Wynn-Williams v SoS*<sup>3</sup> (INQ 3) and Mr Justice Lindblom in *Crane v SoS*<sup>4</sup> (CD 6.13 para 62 et seq) together explain the necessary steps.

#### The Development Plan

- 7.68 The starting point must remain the Development Plan. The starting point in s.38(6) and NPPF paragraph 14 are the same: do the proposals accord with the Development Plan? An answer to that question is a necessity if NPPF paragraph 14 is to be applied properly. In considering compliance with the Development Plan and what weight can be accorded to that, consideration needs to be given to whether relevant policies are out of date.

“Out of date”

- 7.69 In considering whether relevant policies are out of date, paragraphs 211 and 215 of the NPPF set out the test and explain that “old” does not mean “out of date”. NPPF 215 dictates that, as Mr Booth (the Council’s planning witness) has done, a policy by policy exercise needs to be undertaken as to consistency with the NPPF.
- 7.70 The Council submits that the answer to whether the development complies with the Development Plan is “no”. Policy A4 can be given substantial weight and Policy C2 may be given moderate weight; the proposed development conflicts with both of those policies. Mr Bell (the appellant’s planning witness) has now departed from the approach taken in his written evidence, which was to rely on the approach of Inspector Pinner in the *Gayton le Marsh* appeal (APP 3, 2.1.6 – 2.1.9), i.e. to conduct no obvious NPPF paragraph 215 exercise, and to find that the entire plan is out of date because it is old and is silent on renewable energy (CD 7.6 para 28-29).
- 7.71 The Council submits that that approach cannot be correct. The Local Plan, by virtue of having no renewable energy policy, is “silent” but “out of date” must be judged on policy by policy consistency, as per paragraph 215 of the NPPF. The whole Plan is not rendered out of date because of the lack of one policy. The consequences of its silence are the amended balance in NPPF paragraph 14 but the policies individually, if consistent, must be afforded due weight in line with that consistency. In oral evidence Mr Bell agreed, but

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<sup>3</sup> [2014] EWHC 3374 (Admin)

<sup>4</sup> [2015] EWHC 425 (Admin)

nowhere in his written evidence is there any answer as to what weight to accord to the Development Plan policies, and nor is there a clear answer as to whether he considers that the proposed development accords with that Plan.

- 7.72 That omission was corrected in oral evidence, and the case presented by the appellant on day 6 of the inquiry was that the proposal complied with the Development Plan and Policy A4.
- 7.73 Firstly, as Mr Bell agreed, taking the Development Plan as a whole does not mean jettisoning policies and taking A4 as the sole or "lead" policy. Therefore, compliance or otherwise with Policy A4 cannot be determinative. Secondly, the appellant's approach to Policy A4 is contrary to the position taken by Inspector Hill and the Secretary of State in Louth Canal (CD 7.12, IR para 429, DL para 13); Inspector Pinner at Gayton le Marsh (CD 7.6, para 28); Inspector Boyd at Causeway Bridge Farm (INQ 64, para 15) and Inspector Baird at Orby (CD 7.35, para 12.109 and 12.123) wherein all Inspectors found conflict with Policy A4, based upon varying degrees of landscape harm.
- 7.74 Further, it appears from a proper consideration of Inspector Major's decision letter that he applied Policy A4 in so far as it related to "conditions experienced as [local residents] go about their lives" rather than in relation to landscape character. In terms of landscape proper, Inspector Major relied on Policy A5 and notably did find conflict with it. His reasoning on Policy A4 did not rest on any finding that the proposals had an acceptable landscape impact (CD 7.27, para 399). The appellant must also be careful of double counting the benefits here; Mr Denney's conclusions of significant adverse impacts do not sit comfortably alongside a conclusion that there is no conflict with Policy A4. It is one thing to say that large landscape impacts are acceptable when weighed against benefits, but it would be a surprising submission to say that they are acceptable in and of themselves.
- 7.75 It is common ground that Policy C2 is out of step with the cost/benefit approach required by the NPPF, and therefore reduced weight should apply. Nevertheless the policy is in accordance with the aims of the NPPF in terms of seeking to preserve listed buildings. Mr Booth's evidence takes account of this, and his oral evidence was that modest weight can attach to the policy.
- 7.76 The Council's case is that the proposals represent a clear conflict with the Development Plan. It should also be noted that paragraph 14 of the NPPF does not say that where "relevant policies" in the Development Plan are out of date, the plan must therefore be ignored. It does not prevent a decision-maker from giving as much weight as he or she judges to be right to a proposal's conflict with the strategy in the Plan (CD 6.13 para 74).

NPPF paragraph 14

- 7.77 Where the first question is answered in the negative, it is then appropriate to go on to consider the application of the second bullet

point in paragraph 14 of the NPPF – is the plan absent, silent, or are relevant policies out of date? Here, it is agreed between the parties that the Development Plan is silent in relation to renewable energy, and thus the test becomes the amended balancing exercise set out in NPPF paragraph 14. This requires an assessment of whether, on a spectrum of sustainability, the adverse impacts of a scheme significantly and demonstrably outweigh the benefits.

- 7.78 The question to be asked is, therefore, what are the relevant “adverse impacts” of the proposal and what are the “benefits”. The application of this balancing exercise tells the decision-maker whether a development accords with NPPF paragraph 14 and thus benefits from a presumption in its favour by a judgment that it amounts to sustainable development. If so, then in the terms of s.38(6) the result will be that the NPPF amounts to a material consideration indicating away from determining the appeal in line with the Development Plan.
- 7.79 At this stage, statutory or policy mandates as to weight to various factors can be taken into account. The presumption in favour of sustainable development is not irrebuttable, and the absence of a specific policy on renewable energy, and the need to increase energy supply, are not conclusive factors (CD 7.13, para 72, by analogy). Further, the reference in NPPF paragraph 14 to the policies of the NPPF being “taken as a whole” is important. It indicates that the decision-maker is required, when applying the presumption in favour of sustainable development, to consider every relevant policy in the NPPF.
- 7.80 NPPF paragraph 14 does not remove the general presumption in s.66(1) of the Listed Buildings Act against planning permission being granted for development which causes harm to heritage assets.
- 7.81 Here, on the “adverse impacts” side of the balance, the decision-maker is obliged to give substantial importance and weight to the desirability of preserving (or doing no harm to) heritage assets where clearly the proposal would cause harm to two SAMs, one Grade I Listed Building, one Grade II\* Listed Building, three Grade II Listed Buildings and a non-designated heritage asset. In particular, Mr Booth accepts the evidence of Mr Walker that these individual harms can be said to be “considerable” and “significant” (or “moderate”, to use the terminology of the ES) and thus there is considerable harm to be weighed into the planning balance when seeking to apply paragraphs 134 and 135 of the NPPF. This also constitutes conflict with Development Plan Policy C2, and conflict with relevant policies of the NPPF, including Core Planning Principle bulletpoint 10 at paragraph 17.
- 7.82 Also to be weighed against the proposal is landscape and visual harm to the character of the area and to visual receptors including local residents, users of PROWs and the local highway network up to around 7km on the elevated ground of the Wolds, and out to around 6km for visitors to the Humberston Fitties. This also

amounts to a conflict with Policy A4 and relevant policies of the NPPF, such as Core Planning Principle bulletpoint 5 and NPPF paragraph 114.

- 7.83 In terms of NPPF paragraph 17, it is submitted that the balance of the bullet points here indicates away from compliance with the NPPF. Mr Bell agreed that the development could not be said to “conserve heritage assets”. He disagreed that the development could not be said to respect the intrinsic character and beauty of the countryside, however, the Council submits that Inspector Pinner was correct in his view that *wind farms are becoming increasingly common in rural locations but they are clearly not structures which could properly be described as having an intrinsically rural character and their size makes them impossible to hide or assimilate into their surroundings* (CD 7.6 para 28). Accordingly, it is submitted that this core planning principle must also be found to weigh against the proposals such that it cannot be said that NPPF paragraph 17 as a whole supports the development. This is also a factor to weigh into the NPPF paragraph 14 balance.
- 7.84 Set against these harms must be the acknowledged benefits of the proposal in terms of compliance with NPPF paragraph 17 bulletpoint 6. Further, there is naturally compliance with NPPF paragraph 93. It must also be taken into account that the scheme is reversible, albeit long term.
- 7.85 On that basis the Council submits that (1) the proposal fails to comply with the Development Plan and (2) taking the policies of the NPPF as a whole, the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits. The development cannot therefore be said to be sustainable, and does not benefit from the presumption in paragraph 14 of the NPPF. Accordingly, the NPPF is not a material consideration which weighs in favour of the proposal so that the application should be determined otherwise than in accordance with the Development Plan, applying the s.38(6) test.

#### Written Ministerial Statement

- 7.86 It is also necessary to consider whether there is demonstrable compliance with the WMS (CD 2.6) as a material consideration. The wording of the WMS is very clear; impacts need to be addressed, *and* it needs to be capable of being said that the local community backs the proposal. Giving weight to these matters here does not override the higher level public interest tests as those matters are judged in terms of the overall planning balance. What the decision-maker is concerned with here is compliance or otherwise with the WMS alone and on its terms. That compliance or otherwise is then included within the overall planning balance as a material consideration weighing either in favour of, or against, the proposal. The weight to be attached to non-compliance is a matter of planning judgment, however it is notable that the SoS has invariably attached significant weight to this most recent statement of Government policy (eg CD 7.37 DL 21, CD 7.40 DL 30).

- 7.87 The Council submits that the appellant is unable to demonstrate that the proposal complies with the WMS. The approach taken by the SoS to the WMS is clear in the decision letters of Stone Park Farm and Melton Mowbray (CD 7.37, CD 7.40). The former is particularly stark, wherein the only harm identified was "limited landscape harm" and the proposal was said to comply with the relevant policy framework. However, the clear finding was that some impacts remained, were not addressed, and thus the appellant could not demonstrate compliance with the WMS which was then added into the planning balance as a material consideration weighing against the grant of permission.
- 7.88 Here, even on the appellant's case, there remains residual harm in terms of the planning impacts identified by the local communities (this includes not only many local individuals, but also Parish Councils, the local County Councillor and the District Council). Most notably those impacts are harm to heritage assets, and landscape and visual harm. Those impacts were presented clearly to the inquiry by third parties and by MWAG, and whilst the question of whether the proposal "has their backing" is a matter of planning judgment (per the penultimate paragraph of the WMS), it is submitted that here, on any sensible view, it cannot be said that the proposals are backed by the community.
- 7.89 The non-compliance with the WMS should therefore act as a further material consideration indicating against the grant of planning permission.

#### Conclusion

- 7.90 The Council's case is therefore that there are no material considerations of sufficient weight to indicate that the proposal should be determined otherwise than in accordance with the Development Plan which, properly considered, dictates refusal of this appeal.

#### Submissions on the implications of the *Forest of Dean DC v Gladman* judgment

- 7.91 At the inquiry, based upon the law as it was understood to be at that time, the position agreed between the Council and the appellant was that due to the lack of any adopted Development Plan policy dealing specifically with renewable energy proposals, the Development Plan was "silent" in the terms of, and for the purposes of, paragraph 14 of the NPPF. It was also agreed that as a consequence of this "silence", the overall test for the decision-maker was as set out at the first limb of the second bullet point within paragraph 14 of the NPPF.
- 7.92 It was further agreed that as there would be less than substantial harm to heritage assets, the relevant heritage policy to be applied from the NPPF was paragraph 134, which provided an ordinary unweighted balancing exercise and did not indicate that "development should be restricted" within the meaning of the second limb to paragraph 14.

- 7.93 In the *Forest of Dean* judgment, the High Court specifically addressed the scope of footnote 9 to paragraph 14 in the context of paragraphs 133 and 134 of the NPPF, so those previously agreed positions in this appeal need to be reconsidered in light of the law as it stands today.
- 7.94 The Development Plan is silent in relation to renewable energy, and thus the two limbs within the second bullet point of NPPF paragraph 14 need to be addressed. Pursuant to paragraph 47 of the *Forest of Dean* judgment, the second limb should be considered first. It is agreed that the development here proposed would cause less than substantial harm to a number of heritage assets, so as to fall within NPPF paragraph 134. As clarified by the *Forest of Dean* judgment, this indicates that “development should be restricted” within the meaning of the second limb of NPPF paragraph 14.
- 7.95 Accordingly, the unweighted balancing exercise set out at NPPF paragraph 134 ought to be applied to the current development proposal, and it is at this stage that the statutory duty to give considerable weight and importance to the desirability of preserving (i.e. causing no harm to) heritage assets should be applied.
- 7.96 The Council contends that when weighed against the public benefits, as required by NPPF paragraph 134, the considerable weight of the harm that would be caused to seven designated heritage assets is sufficient, in itself, to outweigh the benefits of the scheme. There is therefore no need to go on to consider the first limb of NPPF paragraph 14.
- 7.97 However, should the decision-maker determine otherwise, the balancing exercise required by the first limb of paragraph 14 is whether the adverse impacts of the scheme significantly and demonstrably outweigh the benefits. If so, the development will be deemed sustainable development and benefit from a presumption in its favour, with the result that the NPPF will amount to a material consideration indicating away from determining the appeal in line with the Development Plan.
- 7.98 The Council submits that the presumption in favour of sustainable development is not irrebuttable, and the absence of a specific Development Plan policy on renewable energy, and the need to increase energy supply, are not conclusive factors. The reference in NPPF paragraph 14 to its policies being taken “as a whole” is important in that it indicates that the decision-maker is required, when applying the presumption in favour of sustainable development, to consider every relevant policy in the NPPF. The general presumption in S.66(1) against the grant of planning permission for development which causes harm to heritage assets is not, of course, removed by NPPF paragraph 14.
- 7.99 When undertaking the weighted balancing exercise in limb 1 of paragraph 14, the decision-maker is required to include not only the harm to heritage assets but also the identified landscape harm and visual harm, harms which conflict with Development Plan policy and relevant policies of the NPPF. The Council submits that the current

proposal does not respect the intrinsic character and beauty of the countryside, such that the conflict with this core planning principle means it cannot be said that NPPF paragraph 17 as a whole supports the development.

7.100 The Council therefore contends that (1) the proposed development fails to comply with the Development Plan; (2) on the unweighted balancing exercise within NPPF paragraph 134, the balance is tipped in favour of refusal and (3) taking the policies of the NPPF as a whole, the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits. The proposed development cannot therefore be said to be sustainable, and does not benefit from the presumption in NPPF paragraph 14 either on application of the first or second limb. The NPPF is not therefore a material consideration which weighs in favour of the proposal, such that the appeal should be determined otherwise than in accordance with the Development Plan.

## **8.0 The case for MWAG**

*The following paragraphs summarise MWAG's case, which is set out more fully in its opening and closing submissions (INQ 8 & INQ 72).*

### Introduction

- 8.1 The Marsh Windfarm Action Group (MWAG) is a local organisation formed to represent the views of residents from the surrounding communities affected by this proposal. Many within the local population are concerned about the proposed construction of large wind turbines, specifically with respect to the impact on the local and wider landscape amenities; the residential amenity of local residents; and the recreational enjoyment of the countryside. Also represented are those within the communities whose livelihood is derived from tourists and visitors, who come to experience and enjoy a momentary change in the pace of life; tranquillity; the big open skies present across the Outmarsh countryside; the renowned, extensive and largely unspoilt coastline; fine beaches and highly valued panoramic views from the Lincolnshire Wolds AONB.
- 8.2 MWAG has carefully assessed the appellant's EIA and, despite considerable resource constraints due to the increasing number of wind farm planning applications across the district, have submitted proofs of evidence setting out the local communities' legitimate and material planning concerns about this proposal.
- 8.3 As is often the case throughout the country, local communities are faced with large scale planning applications submitted by developers who are perceived to have extensive resources at their disposal. Consequently, the communities feel a need to respond appropriately, to judge for themselves how these applications will impact on their communities and their residential amenities [9.51].

MWAG's main case and proof of evidence (MWAG 1)

- 8.4 In principle, MWAG supports the government's renewable energy policies, and takes account of EU Directives to increase the deployment of schemes generating electricity from appropriately sited renewable energy resources. It agrees that increasing power generation from a range of technologies is highly desirable, and is fully aware of the outcome of the COP21 UN Paris Agreement and its implications (MWAG 1, para 2.1).
- 8.5 MWAG considers there to be clear evidence that the Council takes seriously its obligations with regards to acceptable and sustainable renewable energy deployment in East Lindsey. The local communities are also fully aware of the substantial increase in the deployment of extensive large-scale offshore wind farms along the Lincolnshire coastline of East Lindsey, all of which are contributing significant levels of renewable energy to the National Grid.
- 8.6 MWAG acknowledges that in considering each planning application, decision makers have to weigh in the balance any benefits accruing, against any adverse planning impacts identified, in the context of local and national planning policy (MWAG 1, s3).
- 8.7 However, as set out throughout MWAG's evidence to the inquiry, legitimate and material adverse planning impacts have been identified and expressed by the local communities. With regards to the WMS of June 2015, MWAG's position is that the appellant has not satisfactorily addressed the planning impacts, and therefore this proposal does not have the backing of the local communities. Further, it is abundantly clear that the Council has not identified the appeal site at Fulstow as suitable for a wind farm development (MWAG 1 para 3.8).
- 8.8 At the inquiry, careful consideration was given as to how the Inspector should bring the WMS of 18 June 2015 into the overall planning balance. Attention was drawn to a recent appeal decision in which, the Inspector having considered that planning concerns identified by the local communities had not been addressed, the inquiry was curtailed. MWAG's position is that here, similarly, the local communities have raised their legitimate and material planning concerns which, when considered in the balance of the need for renewable energy against the harm identified, have not been addressed.
- 8.9 MWAG considers the appellant's suggestion that local communities are expressing their "local opinion" (APP 3, 4.3.9) is unsubstantiated, and is either a misunderstanding of the communities' legitimate and genuine concerns, or disregards the material planning impacts they identify.
- 8.10 It is certainly the case that the local communities have been subjected to a protracted succession of wind farm and wind turbine applications (to date, planning applications for 211 wind turbines across the East Lindsey District, especially within this Northern Area) which is why there was a call from within the local

communities to form MWAG in October 2012. The local communities wish to raise their legitimate planning concerns, and not be dissuaded from (or undermined while) doing so.

- 8.11 It is of great significance that only one single letter of support for this planning application was received by the Council (MWAG 1, para 3.11). Virtually all other letters of support, submitted en masse in mid-December 2015, late in the appeal timetable, were gained as a result of street canvassing by activists predominantly in Louth (8.5km from the appeal site) and Grimsby (9.7km from the appeal site). Most, if not all, of the letters were therefore signed by persons not directly affected by the proposal. (MWAG 1 para 3.12, and MWAG 2).

#### The Collaboration of Parish Councils (MWAG 2)

- 8.12 The Collaboration of Parish Councils was formed in September 2013. All of the Parish Councils bordering on the appeal site have expressed their material planning concerns, which lead them to be unable to back the proposed wind farm. The area's unique and recognised value is clearly appreciated by all of the local impacted Parish Councils who identified unacceptable adverse impacts, on legitimate grounds, at the outset of the planning application process as recorded in the Council Officer's Report (MWAG 1 paras 4.2-4.7).
- 8.13 This was again clearly endorsed and expressed in the representation made to the inquiry by Mr John Loomes, Chairman of the Collaboration of Local Parish Councils, representing all 13 local Parish Councils (MWAG 2).
- 8.14 The inquiry heard submissions from 11 Parish Councillors, all raising their legitimate planning concerns in support of those raised by their Parishioners, along with Cllr Stapleton of Saltfleetby, who highlighted dismay over the visual and landscape character impacts arising from the Gayton le Marsh wind farm, permitted on appeal in May 2012, and adverse impacts during its construction phase [9.78]. The inquiry also heard from another of the nearest affected local residents, Mr Heys [9.44 - 9.46]. MWAG shares all these concerns, along with that of the potential impacts on visitors' appreciation and enjoyment of the area over the ensuing generations.
- 8.15 The appellant's attempts, in cross examination, to imply that the local communities are objecting merely because they do not like the look of wind turbines are unsubstantiated and unfounded. The evidence presented by MWAG clearly sets out that there is consistency in the response within many communities to large-scale wind farm applications, when the local communities identify significant and legitimate adverse planning impacts that outweigh the benefits of the proposal in terms of renewable energy production.
- 8.16 It is clear to local communities that there is a targeted approach by developers, seeking out wind farm sites merely based on the loose criteria of a willing land owner and willing developer, then calibrating their EIAs to fit the sites, and bolting on their site-

selection justification by the “need for renewable energy generation”. (MWAG 1, paras 5.1 – 5.3).

### Landscape, Visual and Residential Amenity Impacts (MWAG 3)

- 8.17 MWAG has documented and reviewed the evidence on the adverse impacts of the proposal on the landscape character, visual qualities and recreational assets of the surrounding area. It has also considered the impacts on the residential amenity of the many communities living and working in the area, from the point of view of visual qualities, and other adverse impacts on their quality of life in the round. Cumulative Landscape and Visual Landscape Character impacts, including those experienced from the Lincolnshire Wolds AONB, are also addressed.
- 8.18 MWAG accepts that there is a need for professional expertise, particularly in the case of a large scale wind farm proposal, but considers that local understanding and years of knowledge of the countryside are also important. In the context of a planning application these are broadly assessed by “professionals” representing interested parties, who aim to be independent, but nevertheless are perceived to have an overriding interest in representing the position of their clients. Similarly the Council’s Planning Officers, though accepted to be professional, objective and diligent, may not necessarily be aware of or have time to consider all the environmental and landscape impacts, at all the important local viewpoint locations, and in the most appropriate weather and lighting conditions. (MWAG 3, paras 1.3 and 1.4).
- 8.19 MWAG acknowledges that there are already some built structures in the landscape, in the form of the Tetney Oil Storage Tanks, but at a distance of 2km these are contained within the landscape and do not appear above the tree line. Covenham Reservoir is also located to the south of the appeal site. By far the most prominent large-scale man made features are the existing wind turbines. (MWAG Viewpoint 1). Many residents have mentioned in their representations the local circular walk known as “The Griff”. MWAG Viewpoint 3 and Viewpoint 8 show the local primary school children and staff returning to the village school from an outdoor nature survey along this highly valued recreational amenity walk.
- 8.20 Based on the actual landscape character and visual impacts now exposed by the construction of the Gayton le Marsh wind farm, MWAG and the local communities surrounding both Gayton le Marsh and Fulstow profoundly disagree with the appellant’s assessment that the turbines of the wind farm proposed for this appeal site would be visible features in the landscape between the distances of approximately 2km to 4km from the character area boundary of the site, but at greater distances from the site, would not alter the existing characteristics or perception of the landscape (App 1, 7.28).
- 8.21 MWAG also disagrees with the appellant’s assertion that the slender, structural form of the turbines is such that a high degree of visual permeability would be maintained, and the sense of openness would not be greatly altered by their introduction (App 1, 7.10). The

large scale presence of the Gayton le Marsh turbines significantly dominates the local character landscape, and visually impacts on the wider landscape well in excess of 7-10km.

- 8.22 MWAG contends that the Gayton le Marsh wind farm has also had an unforeseen, and totally unacceptable, adverse impact on Louth Spire. In views from the A157 at Welton le Wold, the wind turbines at Gayton le Marsh 10km to the east of the church of St James at Louth are highly dominant, and compete with the prominence of its majestic spire (MWAG 3, p55). This is just one of the impacts the communities were not aware of when that scheme was allowed on appeal, and the separation distance of 10km in that case far exceeds the 8,376m separation distance between the spire and the currently proposed turbines as seen in Viewpoint 17.
- 8.23 MWAG contends that it is now clear that the Council's and local communities' case at the Gayton le Marsh inquiry were completely justified, just as they are at this inquiry.
- 8.24 MWAG does not agree with the appellant's contention that the character type of the landscape would be able to accommodate the turbines without creating a situation where one could not appreciate and understand its underlying scale (APP1, 7.13]. As at Gayton le Marsh, the turbines would become the dominant feature.
- 8.25 While there is separation distance between the appeal site and the Wolds, the introduction of 7 large scale turbines would mean that in viewpoints in the vicinity of the appeal site, looking west towards the Wolds, the turbines would be a distraction and an intrusion into the landscape that would compromise the open landscape relationship and connection between the views to and from the AONB. This would be particularly the case when walking along the Louth Canal bank in the vicinity of the appeal site, but the adverse impact would be experienced even within the wider landscape.
- 8.26 MWAG considers that the real issue is not merely whether the proposed wind turbines would be visible, but the impacts they would have within the sensitive low-lying marsh landscape, which is in effect a relatively narrow coastal strip.
- 8.27 The appellant contends that it is important to appreciate that localised significant effects on landscape character are almost inevitable as a result of commercial wind energy development anywhere in the UK (APP1, 7.18). But that is no justification for appearing to make the proposal inevitably acceptable, especially when asserting that the extent of the impacts that the local communities will experience will be less than they are in reality.
- 8.28 The local communities had virtually no confidence that the Bishopthorpe Wind Farm appeal decision was justified or acceptable when it was issued in March 2015, hence the launch of the Bishopthorpe wind farm petition that has gained 1651 signatures. Until that wind farm is constructed, local visitors and occupiers will have little appreciation of the true nature of its extensive impacts. The construction of the Gayton le Marsh wind farm has been

shocking enough to the local communities and those travelling around the wider area. MWAG regards the appellant's reliance on the cumulative landscape assessment contained within the Bishopthorpe decision letter to be unsound. Even the Council's landscape witness is reluctant to consider the cumulative impact separation distances between the Bishopthorpe wind farm and the current proposal acceptable.

#### Residential amenity

- 8.29 MWAG has not provided a detailed residential amenity assessment, but has focussed where necessary on individual properties which have not been adequately assessed. However it does have broad concerns that the appellant's Residential Amenity Survey has minimised the potential adverse impacts, by calculating separation distances for properties within a 1km radius of a proposed turbine from the corner of a building, rather than the boundary of the property. For Heelgate Farm, Gloucester House, Peacehaven and Thoresby Bridge Farm, this reduces the separation distances considerably.
- 8.30 The assessments carried out by the appellant and by the Council conclude that no residential property would be subject to overwhelming impacts when reviewed against the Lavender Test. MWAG considers those assessments to be flawed. (MWAG 3, para 4.9). The residents of a number of the properties that would be adversely affected presented submissions to the inquiry.

#### Lincolnshire Wolds AONB

- 8.31 The appellant has consistently understated the overall landscape character and visual impacts that the development would have, not only on the low-lying flat, open outmarsh countryside, but on local communities and further afield from the long views gained within the Lincolnshire Wolds AONB.
- 8.32 MWAG has substantial concerns that the open, panoramic landscape views from the eastern escarpment of the AONB across to the marsh and naturalistic coast continue to be denigrated and devalued by a succession of wind turbine developments. The currently proposed wind farm, which would be even closer to the AONB than the appellant's Gayton le Marsh wind farm, would continue to erode these highly valued vistas. To suggest that permeability helps to mitigate such impacts is unfounded, as the large scale turbines with their moving blades compromise the landscape character form. (MWAG 3, para 8.9)
- 8.33 MWAG contends that it is becoming increasingly apparent that the Gayton le Marsh wind farm is adversely impacting on the AONB. There are a growing number of views being identified within the AONB where, at a considerable distance from the site of the wind farm itself, these turbines are highly prominent and are even breaking into the skyline above the AONB. This impact is experienced on the A153 when passing Cadwell Park, and then when the A153 heads due east before the Tathwell Lane turn off the

A153. MWAG considers that the landscape and visual impacts of the current proposal have not been adequately demonstrated in the ES, and would be significantly greater than stated by the appellant.

- 8.34 The selection of the appeal site is fundamentally flawed. Rather than being sited in a location with minimal impacts, the proposed windfarm would cause substantial cumulative impacts. There would be significant impacts on the small community of Fulstow, and impacts on the community of North Cotes, especially as the residents traverse to and from their homes past the substantial Bishopthorpe and Newton Marsh turbines to the north, and this appeal site to the south. There would be impacts on the surrounding communities of Tetney, Tetney Lock, Marshchapel, Covenham, North Thoresby, Ludborough and Yarburgh. This is because the site would be highly visible when travelling along the A1031, which serves as the only main artery road through the marsh countryside, linking the local communities together.
- 8.35 The appellant sought to assert that the three turbines dismissed at the Louth Canal appeal were unacceptable because they were due west of the Grade 2 Listed warehouse at Thoresby Bridge, with a separation distance of only 550m to the nearest turbine; that turbine would have been located 180m due north of the A1031. The closest of the 7 currently proposed turbines to the south of the A1031 would be 300m, with both of these turbines virtually in a direct longitude line of sight, so the actual comparative separation distance in landscape character terms within the setting of the warehouse and the separation distance from the A1031 is a minimal 120m to the south, just over the topple distance of these two turbines.
- 8.36 MWAG considers that in reality, there is insufficient separation between the currently proposed 7-turbine wind farm at Fen Lane, and the much smaller 3-turbine Louth Canal scheme. There is no justification in any assertion that such a small separation would mitigate sufficiently to make the adverse impacts acceptable. The appellant's VP5 also reveals the wider visual and landscape impacts.
- 8.37 In addition, the currently proposed wind turbines would be highly visible from all the key significant sensitive viewpoints. To the north, they would be highly visible when walking towards them alongside the Louth Canal, on the walks publicised in "Two Sea Forts and a Canal" and "To the Sea with LNT" (INQ 41). Elevated expansive views would also be gained from Covenham reservoir Bank, where the intervisible and cumulative impacts through these 7 proposed turbines on to the 10-turbine cluster formed by the Bishopthorpe and Newton Marsh wind farms would combine to form a cumulative total potential of 17 turbines in this relatively confined area. VP 7 demonstrates this, although it should be noted that the 2 Newton marsh turbines do not appear on the cumulative montage.
- 8.38 From the south bank of the Covenham Reservoir, on LNT's "Reservoir Rover" walk, are closer views through the turbine at Yarburgh, plus the highly prominent Gayton le Marsh wind farm,

with clear intervisibility on to Bambers wind farm at Trusthorpe. From the west, the currently proposed turbines would be highly visible in the panoramic view available from the "Wanderlust Way" walk (MWAG 3 Appx1), and also in views from the east, along a considerable length of the Louth Canal and from the communities and isolated residences that would experience open, unfiltered views.

- 8.39 There would also be wider negative landscape character impacts, relating to the relationship between the open low-lying marsh countryside and the numerous Listed historic churches which, over the centuries, have had a valued prominent cultural heritage presence within the tranquil pastoral character of the landscape.
- 8.40 An example of this is the impact on the Church of St Peters and St Pauls, at Tetney. The community highly values this Parish Church, and has spent £90,000 on renovation work (INQ 49). The appellant's Viewpoint 10, taken from the north within the village playing field, and the photomontage presented by the appellant at the Bishopthorpe inquiry (INQ 57) show that the church, which is the focal point of the community, would appear sandwiched between two large-scale wind farms.
- 8.41 The appellant contends that when considering the cumulative impacts of consented schemes, there is a clear pattern of wind farms spaced evenly across the landscape of East Lindsey, rather than confined to clusters of a number of schemes separated by very large gaps. It argues that this can be seen by reference to the arrangement of the Gayton le Marsh, Conisholme Fen and Bishopthorpe/Newton Marsh schemes spread across a distance of 20km, and that the Fen Lane scheme would complement this pattern in the landscape by virtue of its separation from Bishopthorpe/Newton Marsh to the north and Conisholme Fen to the south, such that the spacing and arrangement would create an even rhythm and harmonious pattern of development (APP 1, para 9.17).
- 8.42 MWAG contends that, to the contrary, there appears to have been sequential attempts by previous appellants to complete what now appears to be a systematic and substantial re-calibration of the visual landscape character of an extensive length of the narrow coastal plain of East Lindsey. This has impacted on cherished views from the Lincolnshire Wolds AONB. In addition there are major landscape impacts arising from the offshore wind turbine arrays. This has been without any wider public consultation, or assessment, or even recognition of these overall effects. Instead the local communities have experienced continued and unfounded attempts to make them appear isolated, and cast as mere NIMBY objectors.

#### Noise (MWAG 4)

- 8.43 The evidence given by Dr Yelland, on behalf of MWAG, demonstrates that the background noise surveys carried out on behalf of the appellant were flawed by a lack of wind data from any direction outside the south west, and further flawed by inappropriate and non-compliant microphone positions. This

precludes the drafting of an effective planning condition on noise, as the background noise tables for such a condition would be flawed.

- 8.44 On turbine spacing, Dr Yelland cited a Northern Ireland Government Planning webpage which recommended spacings of 4 rotor diameters downwind by 3 rotor diameters crosswind. Mr Arnott, for the appellant, stated that this advice does not apply to England. MWAG contends that it does: it was in the recently withdrawn PPG 22, and is now in the current planning guidance of EN3, where it is advised as normal spacing.
- 8.45 The appellant has chosen a 3 rotor by 2 rotor spacing, twice the advised turbine density, which has the effect of reducing power generation and increasing noise generation. There is no dispute about this; it happens when turbines operate in the turbulent wake of other turbines. The noise emission levels guaranteed by manufacturers are always based on noise measurements from single turbines in free airflow. Dr Yelland has ignored this topic in his immission noise prediction, but the Inspector is invited to consider whether it might suggest the need for perhaps a dB or so of headroom.
- 8.46 MWAG contends that curtailment should not be a design feature of a windfarm, but should be reserved for post construction mitigation, if noise complaints are received. The evidence presented to the inquiry by a resident who lives near the Cotton Farm wind farm supports this view [9.80]. That windfarm has the same model of turbine as is proposed here, and the terrain is very similar. The same observations apply to Mr Heys' experience of noise problems caused by the Gayton le Marsh wind farm [9.44].
- 8.47 Dr Yelland considered that the background noise surveys for most of the homes assessed were flawed. This was partly because there was almost no wind data from any direction other than the SW gathered during the survey. Mr Arnott repeatedly asserted that this was representative of the wind pattern of the area. The SW wind prevails over most of the UK, but to suggest nearly 100% prevalence is absurd. The truth is that in this area, there is more wind from the east than the UK average, because of the proximity to the North Sea.
- 8.48 Surveys that exaggerate the background noise level increase the maximum permitted turbine noise level pro rata. The microphone at Heelgate Farm was to the south side of the residence, whereas the amenity area is to the north of the residence, and the site of the proposed wind farm is to its north-west. ETSU-R-97 advises that ideally, the microphone position should be one which would be exposed to noise from wind turbines while being screened from other noise sources.
- 8.49 This ideal would have been entirely possible at Heelgate Farm, but the microphone position was the other way round: exposed to the noise of the near 100% south-west wind, and on the opposite side of the house to the wind farm. It was not even in the amenity area

as defined by ETSU, which states that where possible, measurements should be made in the vicinity of a dwelling in an area frequently used for rest and relaxation. This too would have been entirely possible at Heelgate Farm.

- 8.50 This matters, because it is necessary to know the background noise in the amenity area, not in an area the resident does not use as an amenity area on account of high background noise and lack of privacy. Mr Arnott appeared to believe that the background noise would have been similar anywhere else within the curtilage of the property. MWAG contends that one may shelter behind a building when a stiff breeze is blowing because it is obviously less windy there; equally obviously, it would be less noisy.
- 8.51 The turbine noise would be highest at Heelgate Farm when the wind was from the north-west quarter. The background noise when the wind is in that direction is unknown, but would almost certainly be less than that measured in the survey. Much the same can be said of Harness Farm and Meadow Cottage, where again microphones were placed south of the residences, while the wind farm would lie to their north. The background noise at Gloucester House was surprisingly high. MWAG does not accept the background noise surveys at Heelgate Farm, Harness Farm and Meadow Cottage as ETSU-R-97 compliant, and is not confident about the survey for Gloucester House.
- 8.52 MWAG could not accept a noise planning condition based on a table half-full of unknown background noise levels.
- 8.53 MWAG accepts the turbine emission noise power data used by the appellant, and the use of ISO 9613-2 for prediction of noise levels. But when using exactly the same input data as the appellant, Dr Yelland's calculation of predicted immission noise levels at residents' homes were all exactly 3dB higher than the appellant's figures. This was because the + OR – 3dB uncertainty, clearly stated in Table 5 of ISO 9613-2, had been ignored by the appellant.
- 8.54 The IOA Good Practice Guide does state a few caveats for using the standard for prediction of wind farm noise, but nowhere does it exclude the use of Table 5. Dr Yelland provided examples of where the use of Table 5 was supported in recent appeals and determinations, and MWAG contends that until the IOA and DECC say otherwise, ignoring Table 5 is simply not an option.
- 8.55 The consequence of all this is that the immission noise levels that the appellant claims are just under or at the ETSU-R-97 limit are in fact under-predicted by up to around 4dB, and that takes no account of the flawed background noise surveys, which would add a few more dB at several homes.
- 8.56 MWAG contends that Excess Amplitude Modulation is a real problem. There are increasing numbers of wind farm victims of noise nuisance and sleep disturbance, whose clearly genuine sufferings cannot be ignored by developers and the planning system for much longer.

## Conclusions

- 8.57 The assessment of impacts in evidence and submissions presented by MWAG should be taken into account by the Inspector, in conjunction with evidence presented by the Council. MWAG's evidence will lead to the conclusion that in terms of relevant planning policy at local and national level, the renewable energy benefits to be gained do not outweigh the harm that would result. MWAG considers that paragraph 98 of the NPPF is not satisfied, in that the adverse impacts identified above have not been made acceptable. As a result, the appeal should be dismissed and planning permission refused.
- 8.58 The appellant asserts that it considers the adverse impacts to have been made acceptable in line with the SoS' WMS, but MWAG contends that this is not the case. The appellant has revealed the extensive cumulative impacts that would result from approval of the scheme, which would substantially impact on the landscape character and visual character of the Outmarsh for a distance in excess of 20km. This is totally unacceptable.
- 8.59 There would be unacceptable visual impacts to the wider Fulstow community, as the residents enjoy the community's facilities and rural outdoor recreational pursuits, along with its intact and tranquil setting. There would be potential impacts on the historic setting of Fulstow, along with local cultural heritage assets. There would be significant impacts to the highly valued non-designated Louth Canal, both to its historical setting and as an important recreational amenity both for local residents, the wider communities and visitors to the coastal Outmarsh.
- 8.60 The appellant has not adequately assessed the extent of the significant visual and landscape character impacts, which extend beyond the 2km distance promoted by the appellant in their evidence, and the impacts now arising from the constructed Gayton le Marsh wind farm are testament to this. As a consequence of this, and the consent of the Bishopthorpe wind farm adjacent to the 2 turbines at Newton Marsh, and the proximity of Conisholme wind farm, the wider visual and landscape character cumulative impacts will be unacceptably adverse.
- 8.61 MWAG considers that the appellant has failed to demonstrate to the affected rural communities that the true cumulative landscape character impact has been properly assessed, both in terms of the schemes in the vicinity of the appeal site, and in terms of the wider issue of the landscape's ability to absorb the incremental change towards creating a wind turbine landscape in combination with the backdrop of the Humber Gateway Offshore Wind Farm. The appellant's acknowledgement that this scheme, in filling the "breathing space", will create cumulative character and visual impacts for a distance of up to 20km is unacceptable.
- 8.62 There would be incremental adverse impacts to the views to and from the Lincolnshire Wolds AONB, which would compromise the open vistas that exist between the higher grounds of the AONB, the

holistic marsh landscape, and the naturalistic Lincolnshire coast and beaches.

- 8.63 Permitting this wind farm would expose residents to the outcomes arising from a non-compliant noise impact assessment. That cannot be in the interests of the residents, the Council or indeed the appellant.
- 8.64 The representations made by MWAG to the inquiry are comprehensive and provide legitimate evidence that, after careful consideration and assessment, the planning impacts identified by the affected local communities have not been fully addressed and therefore this proposal does not have their backing.
- 8.65 The proposal therefore cannot be considered sustainable development in terms of paragraph 98 of the NPPF, as the impacts are not acceptable and cannot be made acceptable, and the considerable harm arising from the proposed development would outweigh the benefits of the scheme in terms of renewable energy production. The proposal is also contrary to local policy, as set out in the Officer's report and the Council's case at the inquiry.
- 8.66 MWAG and the Collaboration of Parish Councils request that the appeal is dismissed and planning permission refused.

## **9.0 Other representations made at the inquiry**

*Oral representations made at the inquiry, in addition to those of the main parties, are summarised below. I am grateful to the many speakers who provided written notes of their representations: these are attached as Inquiry Documents, and their reference number given in round brackets.*

- 9.1 **Mr R A Baker BEM** is the Chairman of the Huttoft Community Group, and a retired engineer. He considers that the noise assessment carried out by TNEI on behalf of the appellant fails to meet the required standards. Paragraph 2.4.1 of the Institute of Acoustics Good Practice Guide (IOA GPG) to ETSU-R-97 states that noise measurement equipment should meet Class 1 / Type 1 precision standards. The equipment used by TNEI was RION NL-31 sound level meters, but these meters only comply with the precision Class 1 / Type 1 requirements for measurements above 28dB. Below this, the inherent electronic noise increases and this is added to the background reading.
- 9.2 The RION specifications (copy attached) show that the inherent noise can typically add up to 17dB to the readings. Thus readings below 28dB can be significantly higher than the actual level. Over 2000 noise data points, covering all of the 6 measurement locations, are below the 28dB threshold for accurate measurements by the equipment used. Precision measured background noise levels have not been achieved. (INQ 10)
- 9.3 The IOA GPG to ETSU-R-97 recognises the use of Sonar Detection and Ranging (SODAR) equipment as a viable alternative to conventional anemometry, and sets out guidance (in draft) for its

use. The installation and use of SODAR should be coordinated and synchronised with the noise measurements. At Fulstow, the wind data was collected by DULAS Ltd. The only coordination reference is in the TNEI document section 5 where data was supplied to TNEI. The IOA GPG makes it clear that the installation should be verified on site that the acoustic emissions from the SODAR do not contaminate the background noise measurement locations. No evidence is submitted, either by DULAS or TNEI, that this was carried out.

- 9.4 The Triton SODAR unit used by DULAS emits sound pulses at 87dB. This noise level within 800 metres from the sound monitoring location may well have influenced the measured results. It is also a requirement that SODAR equipment is subject to annual calibration to maintain conformance. No evidence of such calibration was submitted. (INQ 11)
- 9.2 **Mrs C Belton** is a recreational flyer. She advised that she was speaking not just about North Coates Airfield, but on behalf of anyone who has cause to fly as passenger or pilot of an aircraft in the area, or who might need to divert or be flown there in case of need. Her written submission contains details of the history of North Coates Airfield, and its role in the community (INQ 15).
- 9.3 The airfield abuts the Donna Nook Air to Ground Missile Range (Danger Area 307). Fast jet traffic flies at a low level along the beach and this places restrictions on flying, from the surface upwards, for any aircraft in the vicinity. The coast is also a SSSI, with an internationally acclaimed colony of rare Grey Seals.
- 9.4 To the north and north-east of the airfield are the Humber Gateway and Westernmost Rough offshore wind farms. Apart from the need to remain a safe distance above these, there is a Transponder Mandatory Zone (TMZ) in place above and around them, from the surface upwards. Many light aircraft do not carry the necessary transponder to allow them to fly through this area. The cost of fitting such equipment to a small Cessna aircraft is about £2,500. The TMZ abuts Danger Area 307, such that there is a curved wall of restricted airspace extending from the north to the south of North Coates. There are also 3 busy helicopter routes, for offshore gas rig traffic, at only 1,500 feet just to the north of the airfield.
- 9.5 The construction of the Newton Marsh and Bishopthorpe wind turbines is bad news for North Coates airfield, which has the usual "Fly Neighbourly" restraints on its flying activities. These involve avoiding overflight of local villages, certain individual "sensitive" properties, and the seals.
- 9.6 The proposed Fulstow wind farm would obstruct the approach to Runway 05 at North Coates airfield. When the Donna Nook Range is open, which is most of the time, pilots are required not only to avoid it but to fly at only 500ft when within 2nm of North Coates Airfield. The proposed wind turbines would be 2.2nm from the airfield. A safe height above the turbines would be at least 1,000ft. It would be an impossibility to pass safely above the wind farm and

be down at the 500ft height, and clear horizontally of the wind farm, only 0.2nm later.

- 9.7 North Coates Airfield has no instrument approach system, so all approaches are visual. Judging height visually while flying above moving blades cannot be done with accuracy. Just to the right and left of the approach path lie the villages of North Coates and Marshchapel, while to the north are the Newton Marsh and Bishopthorpe wind farms and to the south the Conisholme and Yarburgh wind farms, so it is not simply a question of finding another route in. Poor visibility due to weather conditions is also a factor, and while the minimum visibility for flying is 1,500m, you could fail to pick out wind turbine blades, especially if immobile and sideways on. You would not position an electricity pole in the middle of a main road just because the motorists "ought" to be able to see it.
- 9.8 The only safe decision may well be not to land at North Coates. Hence the usage and viability of the airfield would be compromised, and could result in its closure. This would be a sad loss both to the local people and the aviation community, and an insult to all who have worked hard to preserve it. (INQ 15)
- 9.9 Mrs Belton also spoke about the impact that the proposed development would have on local promoted walks, and attached leaflets detailing these walks as Appendices A-C to her second set of speaking notes (INQ 41). Those notes describe, with the assistance of photographs, the wind turbines that are already visible at various waypoints along each route; the others (including the current proposal) that would be in sight; and the impact that this would have upon the area.
- 9.10 She expressed dismay that local residents have to try, desperately, to make their voices heard against "ruthless developers" and considers that the Government must now honour its promise: firstly it must not throw any more money into the bottomless pit of onshore wind, and secondly it must give local residents the right to decide if they want wind farms. In this case, she considers local residents have demonstrated unambiguously that they do not.
- 9.11 **Mr P Butt** lives at Gloucester House. The land around Gloucester House is a designated Local Wildlife Site consisting of 3 historic self-sustaining ponds, a large important reed bed, an old orchard and wet rough grassland. He states that onshore wind is reported to be a very inefficient form of energy production and is only made possible by continued government subsidies.
- 9.12 He considers that the proposed turbines would have a massive adverse effect on the landscape character of the area, turning it into an industrial windfarm landscape. He is also concerned that the settings of heritage sites would be adversely affected; that the visual impact from his house and gardens would be immense; that the noise impact would be greater than expected due to unreliable results achieved by the noise monitoring exercise; that the route taken by heavy construction traffic associated with the development

would be unsuitable; and that the turbines would present a distraction to motorists on the A1031. His speaking notes detail the wildlife habitats and bird life of the surrounding area. (INQ 18)

- 9.13 **Mrs M L Brown** lives at Fenbridge Cottage, just over 800m north west of the proposed wind farm. She considers that the area already has enough wind farms, and the proposed development would completely and adversely change the rural character of the area, completing the industrialisation of the coastal plain. She is concerned about the impact the proposal would have on the wildlife of the area, potential damage caused by heavy construction traffic, and possible noise effects. She is also concerned that the outlook from her windows and gardens would be completely ruined by the presence of the turbines. (INQ 19)
- 9.14 **Mr and Mrs Willerton** are the owners and occupiers of Heelgate Farm, which has been in the family since 1928. The plan attached to their written submission details the boundaries of the land they own (in red) and that owned by their brother-in-law (in black), in relation to the position of the two nearest turbines (INQ 20). They are concerned that these two nearest turbines are very close to their land, at less than "topple over" distance, such that in the event of any tower or blade failure, it is likely that debris would be scattered over their land.
- 9.15 They point out that while the appellant measures the distance from the corner of their dwelling to Turbine 1 as 859m, the distance of this turbine from the boundary of their property is 250m. They state that they regularly walk their dogs along their field margins, as well as the banks of the Louth Canal, and have picnicked at the northern end of their land, next to the raised banks of the New Dyke drain. They are concerned that living and working under the shadow of the proposed wind turbines would severely compromise their current enjoyment of their property, causing Heelgate Farm to become an unattractive place to live.
- 9.16 They are concerned that the appellant has underestimated the impact the proposed turbines would have on their "field of view", and state that those proposed would result in a combined total of 38 turbines visible from either side of their property. They are also concerned about the impact the proposal would have on wildfowl, and about the siting of the noise monitoring equipment in the front garden next to the road, which is their least-used garden area, as well as being subject to the most noise from users of the adjacent lane, and the most exposed to wind.
- 9.17 **Mrs Pridgeon** lives at Thoresby Bridge Farm, which has been in her husband's family for three generations. Walkers often use the paths alongside the canal which pass the property, and she is concerned that the wind turbines would be very dominant in the landscape for anyone walking towards them from Tetney Lock, and particularly in views at and alongside Thoresby Bridge Farm, which could deter people from using the paths and visiting the area in future.

- 9.18 The year before last the property was put up for sale, and as she and her husband could not afford to buy it outright from the remaining trustees, they have taken out a loan in order to do so. The property will have to earn some income to help repay the loan. They are concerned that the imposing visual presence of the turbines, and the risk of noise pollution, would prevent people from wanting to stay in touring caravans in the paddock overlooking the pond to the rear of the warehouse, and affect possible income from people wanting to day-fish.
- 9.19 Their long term plans are to raise funding from charities so that the pond can be made safe for disabled people to come and fish, and to convert the Warehouse for use in teaching sewing and gardening to local people. They are concerned that "disabled people can have various complications health wise such as epilepsy", which they consider could be triggered by low noise frequency and blade movement from the turbines, and that this could hinder obtaining the necessary funding for their proposed projects. They are also concerned that the proposed wind turbines would detract from the pleasant atmosphere of a small garden centre created in part of their grounds, which they believe would have a drastic effect on their future finances and wellbeing, and affect newly created job prospects for local people.
- 9.20 They are also concerned that the proposed turbines would be visible in views from the front of their property and from the side of the house which, since they can see the turbines at Conisholme from the front of the house and those at Tetney Lock from the rear of the grounds, would create the feeling of being completely surrounded by turbines. Shrubs and trees on the other side of the canal near the pump house may have to be removed as they are damaging the supporting wall and bank, and this would mean that the proposed turbines would be even more visible.
- 9.21 Other concerns are the impact that the turbines would have on the safety of road users; the loss of visual amenity to both residents and visitors; that thousands of tons of concrete would be required for the erection of the turbines, and that this would increase the probability of flooding in the area; and the impact on local wildlife (INQ 21).
- 9.22 **Mr F Butt** lives at Spring Rose House in Churchthorpe, and has done for the last 40 years. Every room in the house has a window or two overlooking the marshlands. To the north was a picturesque view of Tetney Church, but then a couple of years ago 2 monstrous turbines appeared on the skyline, with 8 more recently consented. Looking east across the marshes there are views of the ships on the Humber Estuary. He described himself as more than incensed at seeing pictures of this view with 7 turbines superimposed. From every room in the house, the outlook would be of turbines. (INQ 22)
- 9.23 **Mrs F Butt** described how much she enjoyed moving to Fulstow from the south of England. She and her family enjoy the wildlife, tranquillity and views, and were shocked by the thought that they could lose all of that by finding themselves looking at wind turbines.

She expressed the view that permitting the proposed development would kill Fulstow, as nobody would want to bring their families to look out at them (INQ 23).

- 9.24 **Mr T Donovan** is the treasurer of the Fulstow Players, and described the many social events and activities which take place in Fulstow. He is concerned that the proposed development would have a massive detrimental effect on the general ambience, outlook and historic and cultural attributes of the village, and create noise pollution. He drew attention to the two circular walking routes which start and end in the village (the "big Griff" and "little Griff"), which provide uninterrupted and unspoilt views out toward the coast that are much appreciated by both visitors and locals. He described himself as devastated at the prospect of having this taken away by the construction of monstrous industrial wind turbines towering over the village.
- 9.25 He is also concerned about the potential for the turbines to cause distraction in views from the playing fields; the adverse impact on other walks in the area; and danger to wildlife. (INQ 24)
- 9.26 **Mr M Lloyd** is a musician who lives in Fulstow, relishing the peace and quiet, and is concerned about disturbance caused by the noise of the proposed turbines. He described wind turbines as akin to graffiti on a beautiful landscape, and noted that they evoke the same negative reaction in his world of sound. (INQ 25)
- 9.27 **Dr J A Smith** expressed concern that the proposed development would have a negative impact on the enjoyment of the area by cyclists, motorists, horse riders, walkers and anglers, and would detract from visitor numbers. He is concerned that horses will be impacted by the proposed wind farm, with potentially catastrophic effect on any riders. He is also concerned about the impact on the spectacular scenery of the area, bird life, other wildlife, and the detrimental impacts of noise disturbance created by the proposed turbines. (INQ 26)
- 9.28 **Mrs A R Smith** described how she and her husband moved to Fulstow in order to give their 2 daughters a better quality of life. She considers that if the wind farm were built, this would drag Fulstow into the modern, industrialised area, which would negatively impact upon the lives of its residents, who would prefer to see birdlife from their windows rather than wind turbines.
- 9.29 She is concerned that the back route from Fulstow through Tetney to Tesco would be visually completely spoilt by the proposed turbines, as would the walking route around the Griff. She is also concerned that the streets of Fulstow would be rendered unsafe for children due to the passage of construction traffic, and that this type of traffic would also make the village and its buildings dirty, and could cause breathing complaints.
- 9.30 She is also concerned about noise disturbance arising from the proposed turbines; their potential to deter visitors and holidaymakers; and the impact they would have on the history,

culture, wildlife and nature of the area. She considers it immoral and underhand of the appellant to canvass support for the proposal from people in Louth, who she considers would not be affected by the proposed development. (INQ 27)

- 9.31 **Dr M Smith** has spent much of recent years in Newcastle, but still regards Fulstow as her home. Her letter (INQ 28), read out at the inquiry, describes what it was like growing up on Fulstow. She considers that way of life would change if the wind farm were to be built; that it would not be safe to ride horses in the village; and that walking, riding or cycling round the Griff would no longer be pleasant.
- 9.32 **Mrs M E Smith** is 90 years old, and moved to Fulstow in 2012. Her letter (INQ 29), read out at the inquiry, explains that since her mobility has deteriorated she spends the day in her back room, watching birds and cats in her garden, and also the television. She stated that she does not want to see wind turbines on the horizon, and is concerned that the birds and cats will be driven away, and that television reception may be adversely affected.
- 9.33 **Mr Pocklington** noted that the reason given by the SoS for determining this appeal himself, instead of the Planning Inspector, is because the proposal has a major significance for the delivery of the government's climate change programme and energy policy. He also noted that last December, 196 governments of the world met in Paris and agreed that climate change represents an urgent and potentially irreversible threat to human societies and the planet, and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions.
- 9.34 He is concerned that the implementation of measures to reduce greenhouse gas emissions is now the critical issue, but that there is a policy paradox by the UK government. The current government was elected with a commitment to end new subsidies for onshore wind, and also to change the law so that local people have the final say on onshore wind applications, and yet the Prime Minister accepts that onshore wind is the cheapest form of renewable energy.
- 9.35 He is also concerned that Energy Secretary Amber Rudd said in June last year that as a direct result of the change to the Government's policy on onshore wind, 250 wind farms that were in the planning pipeline were unlikely to be built. While that might be a cause of celebration for some, the majority of the UK population find it a baffling turn of events, since DECC surveys consistently show support for onshore wind from 66% of those surveyed.
- 9.36 He interprets this as indicating that while the rest of the world is moving toward an acceleration of effort to decarbonise society, the UK government is spurning the opportunity to significantly reduce carbon emissions from UK electricity generation. He queried why the government was enthusiastically supporting action on global

warming, but then neutralising a key component in the energy mix, and suggested that to many people it appears nonsensical, but to future generations will appear a tragedy of political compromise on an epic scale. (INQ 30)

- 9.37 **Mrs F Steel** wanted to reiterate the opposition of the residents of Fulstow to the proposed development. She advised that the appellant had set up a stall in Louth in November 2015 to gather support for the proposal, but had not taken such action in the villages of Fulstow or North Thoresby.
- 9.38 Her objections to the development include the loss of valuable agricultural land, and the impact on the Lincolnshire Wolds AONB and adjoining villages. She is also concerned that the village school may have to close should present residents leave the village due to the proposed wind turbines, and about the possibility of accidents such as ice throw and spontaneous fire. She considers the visual harm of wind turbines to be enormous, and is also concerned about the impact on Barn Owls nesting in the area. (INQ 31)
- 9.39 **Mrs M Simons** wrote a letter concerning her experience of taking students fishing in Fulstow, which was read out to the inquiry (INQ 32). She described Fulstow as a wonderful, therapeutic place, and said that the thought of it being invaded by an industrial landscape was very sad for residents and visitors alike.
- 9.40 **Mrs R C Donovan** has lived in Fulstow for more than 30 years. She believes that the proposal will have a detrimental effect on her life, and village life in general. She is concerned that the turbine would dominate the skyline, and add to the growing concern that Fulstow residents are to be surrounded by them. She is also concerned that the development would have an adverse impact on the beauty of the Wolds and marshland, tourism, wildlife and cultural heritage. (INQ 33)
- 9.41 **Dr N Jefferies** has been a resident of Fulstow since 1999, and considers that the proposed development should be rejected. The appeal site is not a good location for a wind farm, because it is not located well away from houses. He considers that noise from the proposed wind turbines could be an appreciable nuisance for Fulstow residents, especially during summer months when people may want to leave their windows open, and given the low traffic volume and low ambient noise levels. (INQ 34)
- 9.42 **Mr JS and Mrs RE Forrest** have lived in Fulstow for 34 years, and do not want the area to become "a monstrous industrial landscape where nobody wishes to live or visit". They do not understand why the appeal has been allowed to continue, since they clearly remember a TV News programme in which the Prime Minister, David Cameron, stated that Lincolnshire has had its fair share of wind turbines and should not be subject to any more.
- 9.43 They consider that the hinterland is already blighted by more than enough turbines, and that any more would be an insult to the local population. They are also concerned about the impact the proposed

development would have on wildlife, birds, tourism, noise pollution and the wellbeing of local residents. (INQ 35)

- 9.44 **Mr T Heys** lives and farms on the eastern boundary of the recently constructed Gayton le Marsh wind farm. He wanted to tell the inquiry about the effects of that wind farm, since he considers the current proposal would have a similar effect on those living near to it.
- 9.45 His property is located 931m from the closest of the Gayton le Marsh turbines, and while there are 9 other residential properties under 1km from that wind farm, the main villages of Saltfleetby, Theddlethorpe, Gayton and Great Carlton are not as close as the majority of residential properties in Fulstow village and the surrounding area. He described the visual impact as "far worse than anyone could have imagined", and advised that "the noise is far worse than we were told".
- 9.46 He explained that when the wind is from a south-westerly to westerly direction, the low frequency noise of the turbines affects his ears, making it feel as if there is something in them, which gave cause for such concern that he has been to the doctor to have them checked. Having lived in the same house and farmed the land for 66 years he has never previously suffered from ear troubles, but now only has to go a few miles from home for them to stop hurting. (INQ 36)
- 9.47 **Mrs J Corbridge** described a recent visit to Rimac, a national nature reserve on the coast at Saltfleetby, during which she was shocked and dismayed to see that there was no view in any direction which was not blighted by a wind factory installation; even the seascape was destroyed by these ugly monsters.
- 9.48 She was critical of "men in dark suits with no faces" who "spin us the lines about their so called green image", and expressed the view that while we once had a green and pleasant land with huge skies and far horizons, now we have concrete forests. She is concerned that future generations will look at rotting stumps of concrete and steel sticking out of the ruined and vandalised land and seascape, and curse us for our short-sightedness.
- 9.49 She stated that she can see 4 wind factory installations from her home, and has witnessed a heron being swiped out of the sky by a blade of one of the turbines at Conisholme. She described the intrusiveness of wind turbines in views over the fens, and their adverse impact on such views. (INQ 37)
- 9.50 **Mr D Hallett** described the recreational use made of The Griff, and the associated walks around Fulstow and the Louth Canal. He is concerned that noise from the proposed turbines would adversely affect these recreational uses. He is also concerned about the impact the development would have upon the natural landscape; its visual impact; and its effects upon tourism. (INQ 38)
- 9.51 **Mr B Greenland** is the current Chairman of North Thoresby Parish Council. He explained that a recent survey to establish the strength

of villagers' opinion regarding the proposed wind farm elicited some 148 letters of objection and only 1 of support, and said that this presented a clear mandate for the Parish Council to represent those views to the inquiry.

- 9.52 The Parish Council is concerned that the proposed turbines would be in full view of many of North Thoresby residents' properties, and that this would have a direct and negative impact on the village. The Parish Council considers that the industrialisation of the landscape by erecting 7 wind turbines would be an affront to the rural community, and would impose many negative impacts affecting local residents and visitors alike, such as the despoliation of the rural scenery and loss of income from the tourism trade. (INQ 39)
- 9.53 **Mr S and Mrs A Lewis** have lived in Fulstow for 19 years and strongly object to the proposed development, primarily on the ground of noise. Fulstow is a very quiet village, and often the only sounds which can be heard are the sounds of nature. They are concerned that the bedrooms at the rear of their property, which would be directly in line with the turbines, would be adversely affected and this would in turn adversely affect their quality of life.
- 9.54 They are also concerned about the visual impact of the proposed turbines; their effect on wildlife; their impact on the recreational amenity of the Griff; and their effects on the landscape and tourism. They point out that the Lincolnshire County Council Wind Energy Position Statement 2012 states that no wind turbines should be constructed within 2km of a settlement boundary or residential property [5.13], and ask why developers should be allowed to contravene this and go against the wishes of the local population. (INQ 40)
- 9.55 **Mr R and Mrs M Lawson** recently moved to Fulstow because they were attracted by its rural charm and friendly atmosphere, and bought a cottage on the outskirts of the village with uninterrupted views to the north. They enjoy walks around the village and along Louth Canal. They are concerned that if the proposed turbines were erected, they would dominate views from their feature kitchen-diner window and main bedroom window, and adversely affect their enjoyment of outdoor activities. They are also concerned about the potential noise impact. (INQ 42)
- 9.56 **Dr A Samaan** has lived in the village for over 25 years. Her letter, which was read out to the inquiry, expressed concern that if it were surrounded by wind farms, Fulstow would lose its identity. She also expressed concern about the impact the proposed turbines would have upon the recreational amenity of the Griff; wildlife; the village church and the primary school. (INQ 43)
- 9.57 **Dr V Dunn** lives in Grimsby, and pointed out that she has a valid right to submit her views on the proposed development. She travels through the area, and has friends who live locally. She stated that everybody wants stable electricity bills; that the best hope for this is renewable energy, and that the cheapest type of renewable

energy is onshore wind, which will be a vital tool in lowering carbon emissions.

- 9.58 She has visited Conisholme and Tetney Marsh wind farms, and found them not to be particularly noisy. She regards wind turbines as symbols of hope, and providers of good jobs. She does not consider that wind farms have an adverse impact on tourism, and cited the example of offshore turbines, which are looked at by visitors as a point of interest rather than a deterrent.
- 9.59 She understands that local residents are upset and concerned by the proposed development, but would ask them to consider that if it goes ahead it might not be so bad. She pointed out that historic photographs of this part of Lincolnshire show that it used to contain dozens of windmills, demonstrating that the area has always harvested and used the wind power available. She likened cancelling the budget for renewable energy now to cancelling the budget for Spitfires in 1939, and considers that Lincolnshire should be ready to accept change, and step up to the plate in the move towards energy independence. (INQ 44)
- 9.60 **Ms A Good** lives in Grimsby, and enjoys seeing wind farms in the local landscape. She considers that they enhance the countryside, and encourage visitors to return, since they are eco-friendly and relaxing to watch. She advised that far from deterring her from visiting, she hopes to relocate to live in this area in the near future. (INQ 45)
- 9.61 **Mr Sheer** lives in Fulstow and goes running and cycling in the local area. He does not have any concerns about existing wind turbines or the proposed turbines. He thinks they look good in the landscape, and are the way forward.
- 9.62 **Mr M Casswell** pointed out that electricity has to come from somewhere, and expressed the view that it was disappointing that not many young people had attended the residents' evening session of the inquiry. In his experience, young people are in favour of this type of renewable energy. He described a visit to a small village in Scotland, which was powered by wind turbines, where the developers had provided a community fund to send local students to college, and this had helped to "soften the blow".
- 9.63 **Ms A Winslow** has lived in Tetney village for 5 years and is a Parish Councillor, but wished to let the inquiry know her own personal views. Her written notes explain that it took her a long time to choose where to live, and set out the specific criteria which informed that choice, such as no pylons, no factories and no motorways. She believes that one of the basic human needs for wellbeing is to have peace and quiet in our lives, and this should not be taken away. She is greatly concerned for the wellbeing of local people in Tetney and the surrounding villages should the proposed development go ahead. She considers "Turbine Syndrome", which she has read articles about, to be a real and legitimate concern. (INQ 46)

- 9.64 **Mr D Buckley** is the District Councillor for Fulstow Ward. He wanted to highlight the emotion and upset that the proposed development had caused in the village of Fulstow and surrounding areas. The visual impact of the proposed turbines on the village, and the surrounding countryside, is a running theme in the many e-mails he has received. His speaking notes (INQ 47) quote passages from the report of the Council's planning officer, which he endorses. He also requested that impacts on non-designated heritage assets and on tourism be taken into account.
- 9.65 **Mr S Flinn** is a resident of Fulstow and a Fulstow Parish Councillor. His wife's family have lived at Fulstow Hall for four generations, since 1918. In those times, trains still ran from Ludborough to Grimsby, but now, the line exists only as a model steam railway. He noted that although progress is a fact of life, it comes with great responsibility. The proposed turbines would be clearly visible from the steam train, which depends on tourists to survive. He is concerned that turbines already dominate some views, and to add more would dominate the village and create an industrial landscape. He also referred to concerns about house values, birds, road safety, the impact on the Griff, construction traffic, and whether the turbines would be left to rust away at the end of their 25 year lifespan. (INQ 48)
- 9.66 **Ms S Weller** is the District Councillor for Holton le Clay and North Thoresby Ward. She is concerned that visitors to the area, who come to see the scenery and the heritage steam railway and to enjoy walks, would be deterred by the presence of even more wind turbines and this would have an adverse impact on the local economy. She felt that while the area is resolutely committed to renewable energy, "enough is enough".
- 9.67 **Mr R Lukehurst** is a member of Tetney and Tetney Lock Parish Council, and is also a member of the group working on the Tetney Neighbourhood Development Plan. He and his family have lived in Tetney for over 40 years. He said that over 250 residents attended a meeting to discuss wind turbine applications in close proximity to the village, and without exception all attendees were opposed to the industrialised landscape which will result from these developments.
- 9.68 He advised that the Parish Council endorsed all of the concerns raised by local residents, and also raised concerns about the impact on the setting of the Tetney Blow Wells SSSI and its bats and birdlife; the recreational amenity of Tetney Lock; the impact on the setting of Tetney Parish Church; the cumulative visual impacts and effects on landscape character. (INQ 49)
- 9.69 **Mr T Bridges** is the Lincolnshire County Councillor for Fulstow. He expressed concern about the impact on the residential amenity of Fulstow residents should the proposed development go ahead, and drew attention to the Lincolnshire County Council Wind Energy Position Statement [5.12], which at section (c) sets out suggested separation distances between wind turbines and residential properties.

- 9.70 **Mr A McLaren** is Chairman of the Yarburgh Parish Meeting. He advised that local support for wind farms is low; that small villages do not have the resources to tackle large commercial organisations, and feel the system is weighted against them. He cited as an example the fact that if a turbine is granted planning permission by the local Council, the only recourse of local residents is judicial review, whereas a developer can appeal to the Planning Inspectorate if permission is refused.
- 9.71 He contended that the cumulative effect of existing wind farms means that the area is now moving from a landscape with turbines to a turbine landscape. He also expressed concerns about noise; the potential danger from turbine collapse; the impact of turbines on health; and the possibility of distraction leading to road accidents. (INQ 50)
- 9.72 Mr McLaren also wished to address the inquiry in his personal capacity. He is concerned that the area is now blighted by wind turbines, and considers the current scheme is just one in a chain of wind farms compromising views from the Wolds, and as such should be viewed not as a single entity but as part of the total scheme. He considers that the outstanding long views of the area make it totally unsuitable for wind turbine developments, which can be seen for miles. He emphasised the point that the Government has said local people will have "the final say" on wind farm applications, and expressed concern about the failure of the appellant, since the Council's failure to determine their application, to interact with local communities.
- 9.73 He queried the need for any further onshore wind development, stating that the wind farms are industrialising and damaging an area which relies heavily on tourism, while providing nothing in return, being simply cash cows for developers and land owners. He also raised concerns about noise associated with the Gayton le Marsh wind turbines, and the lighting there used, and the efficacy of the conditions attached to that planning permission.
- 9.74 His concerns about letters submitted in support of the proposed development are detailed in his speaking notes (INQ 51)
- 9.75 **Mr J Loomes** is the Vice Chairman of Ludborough Parish Council, which asked him to present its strong objections to the proposed development, on behalf of Ludborough parishioners. It is concerned that since Ludborough lies on the gradual rising land between Fulstow and the western boundary of the Lincolnshire Wolds, the turbines would be clearly visible and so would have direct negative impacts on all of its residents. It is also concerned about the impact the turbines would have on the Church of St Mary and the Manor House, both Listed Buildings: Mr Loomes' written representations set out reasons why existing tree cover is likely to reduce, increasing the potential visibility of the turbines.
- 9.76 Additional concerns are the spoiling of existing long views by the presence of visibly rotating turbines; potential noise impacts; and the cumulative impact on the landscape. (INQ 52)

- 9.77 Mr Loomes also wished to address the inquiry in his personal capacity (INQ 53). He wanted to point out that one of the people who spoke in support of the proposed development, Mr M Casswell [9.62], has the same name as that shown as "Owner/Agricultural Tenant" on Certificate B of the Planning Application.
- 9.78 **Mr B Stapleton** spoke on behalf of Saltfleetby Parish Council, of which he is a member. He stated that the visual impact of the Gayton le Marsh wind farm is horrendous, and its full extent was totally unexpected by local residents. He considers that the presence of those turbines ruins the view of the spire of St James' church when approaching Louth. He advised that the construction of the wind farm had caused disruption, frustration and inconvenience, as detailed in his speaking notes (INQ 54).
- 9.79 **Dr J Kelly** is the Vice Chairman of Covenham Parish Council, which instructed him to express the concerns of Covenham residents in respect of the proposed development. These are the number of existing wind turbines in the vicinity; the effect on birdlife hosted by the Covenham Reservoir; the effect on views over the landscape, and the consequent impact on tourism. He advised that residents and visitors are saying "enough is enough". (INQ 55)
- 9.80 **Mr B Gray** is a resident of the village of Graveley, in Cambridgeshire. He read out a detailed statement concerning noise issues experienced at the Cotton Farm wind farm, and his views on their applicability to the current proposal. (INQ 56)

## 10.0 Written representations

- 10.1 The written representations received by the Council at the application stage are collected in Folder TP 1, and the further representations received by the Planning Inspectorate at the appeal stage are collected in Folder TP 2. The concerns, comments and observations set out in these written representations are also expressed in the submissions of the three main parties set out above, and/or subsequently articulated by others who spoke at the inquiry as outlined above, so I do not repeat those matters here.

## 11.0 Conditions

- 11.1 The three main parties helpfully collaborated to produce an annotated list of suggested conditions (INQ 66, INQ 68), which then formed the basis for a discussion session at the inquiry. Following that discussion, they produced a set of conditions (PINQ 4) which, with the exception of condition 27 and the final wording of condition 4 on that list, were agreed between them.
- 11.2 Should the SoS be minded to grant planning permission for the proposed development, I consider that all of the conditions agreed between the appellant, the Council and MWAG would be necessary, relevant, enforceable, precise and reasonable. I have however amended the wording of some of those conditions, in accordance with discussions at the inquiry, to improve clarity and concision and to ensure they accord with the tests and guidance set out in the

NPPF and Circular 11/95: *The Use of Conditions in Planning Permissions* (to the extent that the latter remains extant). My list of suggested conditions is set out at Appendix C. In the following paragraphs, numbers in brackets refer to the conditions there listed.

- 11.3 It is necessary to impose the standard conditions governing the time limit for the commencement of development (1) and accordance with the approved plans (10), and since the proposed development is intended to be temporary rather than permanent, conditions are needed to secure its removal, and the restoration of the site, after 25 years (2 and 3). A condition is also needed to secure the removal or repair of any turbine which ceases to operate within that period (4). The Council and MWAG took the view that removal should be pursued in respect of any turbine that had been non-operational for a period of 6 months, to ensure that it was not stood there idle, whereas the appellant argued for a period of 12 months, given the timescales involved in diagnosing faults and manufacturing replacement parts for the specialist engineering equipment involved. At the inquiry a compromise of 9 months was mooted, and that seems to me to be, on balance, a reasonable timescale.
- 11.4 Construction traffic is likely to cause some disruption, and would require a range of measures to ensure safe access, and minimise the impact on other highway users. To this end, conditions requiring the Council's prior approval of a Construction Traffic Management Plan (5), a Construction Method Statement (6), and the details of the Thoresby Road and A1031 accesses (9) are needed. To minimise the disturbance experienced by nearby occupiers, it is necessary to impose conditions limiting the hours during which construction and deliveries may take place (7 and 8).
- 11.5 Conditions governing the design, height, finish and colour of the wind turbines (11 and 12), and details of the substation and compound (13) are necessary to ensure the visual impact of the development is minimised; for the same reason, conditions are needed to ensure that electrical cabling is laid underground (14), and to prevent external illumination (25) other than that required during the construction period and to secure aviation safety (19).
- 11.6 Conditions are needed to safeguard wildlife and its habitat (15 and 16), and to establish schemes to deal with any problems with shadow flicker (17) or television interference (18) that may arise as a consequence of the proposed development. In order to ensure the prevention of any adverse impacts on the operation of nationally important radar systems, conditions are also needed to secure appropriate mitigation in respect of the MOD Air Defence radar at Staxton Wold (20) and the NATS Air Traffic Control radar at Claxby (21).
- 11.7 A condition is required to provide some flexibility, to an agreed tolerance of 25m and 5m respectively, for the micro-siting of the wind turbines and access tracks, while maintaining a minimum

distance of 50m from ecological features to protect the habitat and foraging areas of wildlife (22). Conditions are also needed to prevent any increase in flood risk to the appeal site and surrounding area (23 and 24). Given the proximity of the wind turbines to the now disused residence at Brick Yard Farm, which is in the ownership of the appellant, and the likelihood that this proximity would give rise to an unacceptable standard of living conditions should the property ever be brought back into residential use, it would be appropriate to impose a condition preventing any such future use (26).

- 11.8 A detailed noise condition is necessary to protect nearby residents from any unacceptably adverse impact on their living conditions. The noise condition I have included (27) was agreed, in its entirety, between the Council and the appellant. MWAG agreed with the wording and approach of the condition, but not the figures set out in Tables 1 and 2, due to its concerns about the background noise surveys that informed those figures [8.43, 8.47 – 8.52]. I deal with those concerns, and their implications, below [12.142 – 12.150].
- 11.9 At the inquiry, there was some confusion as to whether MWAG did, or did not, advocate the use of an “amplitude modulation” condition [1.7 – 1.8]. For the reasons set out below [12.159 – 12.167] I conclude that such a condition should not be used.

## 12.0 Inspector's conclusions

### The decision-making process

- 12.1 The starting point for the decision-making process is, as always, the Development Plan. In this particular case, it is common ground that the adopted Development Plan contains no renewable energy policies, and so is "silent" in the terms of, and for the purposes of, the "decision-taking" section of NPPF paragraph 14. That section advises that where the Development Plan is silent, planning permission should be granted. However, it has two limbs which qualify that presumption: the first is where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole and the second is where specific policies in the NPPF indicate development should be restricted. [6.2, 7.71]
- 12.2 The agreed position at the inquiry was that since there were no specific policies in the NPPF to indicate that this particular development proposal should be restricted, the test that should be applied by the decision-maker was that set out at the first limb of NPPF paragraph 14; that is, whether the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits. [6.4, 7.71]
- 12.3 However, after the inquiry closed, the High Court judgment in *Forest of Dean DC v Gladman* (PINQ 10) found NPPF paragraph 134 to be a specific policy indicating that development should be restricted. Paragraph 134 deals with situations where, as the main parties agree would be the case with this proposal, development would lead to "less than substantial harm to the significance of a designated heritage asset". [7.35]
- 12.4 In the light of this judgment, the correct approach for the decision-maker in this case will now be to address the second limb of NPPF paragraph 14 first. That will involve undertaking the balancing exercise set out in NPPF paragraph 134, and weighing the harm to the significance of heritage assets against the public benefits of the proposed development. If the outcome of that exercise is a finding that the harm is outweighed by the benefits, the decision-maker then needs to address the first limb of paragraph 14 and carry out a wider balancing exercise, involving all of the adverse impacts and all of the benefits, considered against the policies of the NPPF taken as a whole. [6.101, 7.94]
- 12.5 At the inquiry I set out my view that there are three main issues in this appeal. Those are the effect that the proposed development would have on the character and appearance of the area, which includes any cumulative impacts in association with other wind energy development; the effect that the proposal would have on heritage assets; and whether the proposal would give rise to an unacceptable increase in noise levels at nearby residential properties.

- 12.6 In light of the important role that harm to heritage assets will have in the decision-making process for this appeal, as outlined above, it seems logical to deal with this as the first main issue.

*First main issue: heritage assets*

- 12.7 S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the duty, placed on decision-makers who are considering whether to grant planning permission for development which affects a listed building or its setting, to “have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. This is reflected in the NPPF, which explains at paragraph 17 that one of the core principles for the planning system is to “conserve heritage assets in a manner appropriate to their significance”.
- 12.8 The PPG advises that the significance of heritage assets derives not only from their physical presence, but also from their setting, and that depending on its scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset. In this case, it is common ground that no substantial harm would be caused to the significance of any heritage assets. The parties agree that “less than substantial harm” (in the terms of paragraph 134 of the NPPF) would arise; what is at issue is the extent of that harm. [7.35]
- 12.9 The proof of evidence prepared for the inquiry by the Council’s heritage witness addressed only the heritage assets “...considered by the Council to be most significantly affected”, with the caveat that this was not to say that the Council considered the significance of other assets would not be harmed (LPA 2, 1.6). However, given the duty imposed by S.66, it is incumbent upon the decision-maker to weigh in the balance ALL the harm that would be caused to the significance of heritage assets, not merely the worst affected. At my request, the Council provided the inquiry with a list of all the other heritage assets it considered would be harmed in addition to those addressed by its witness (INQ 58).
- 12.10 It will be helpful to look at all of the relevant heritage assets in turn, starting with the most contentious.

*Thoresby Warehouse*

- 12.11 Thoresby Warehouse is the nearest Listed Building to the appeal site, and is Listed Grade II. It is a three-storey, red brick building which dates from 1821. While not constructed contemporaneously with the Louth Navigation Canal, the relationship of the warehouse to the canal (itself a non-designated heritage asset), and to the surrounding agricultural land, is key to an understanding of its significance and setting (APP 2, para 4.66).
- 12.12 The purpose of the canal was to enable agricultural goods to be transported out from the countryside through which it was constructed, and to drain and irrigate the surrounding land, thereby

aiding its productivity. The warehouse was one of a number constructed along the canal in the nineteenth Century, when warehousing was a lucrative and necessary facility.

- 12.13 Architecturally, the warehouse is functional in design but imposing in scale. When built, it would have been a dominant structure with primacy of scale, and within this level landscape it still remains the tallest significant built feature when seen from the road and the canal. Similar warehouses along the route have been much altered, such that this is the remaining location on this canal where a largely intact historic warehouse can be seen in a relatively unaltered setting. This factor adds to the importance of the building and increases its significance (CD 7.12, IR 411).
- 12.14 Historically, the warehouse had social, economic and functional significance as a meeting place where goods and materials for transportation by canal were collected, and trade and other business was concluded. It is located at the point where a strategically important road through the marshes (which retains its arterial function today, as the A1031) crosses the canal. This provided an important link aiding the transportation of agricultural goods from the local communities to the canal boats. Due to its visual prominence, the warehouse has also had a historical way-marking and signposting role: in views from either direction along the road it marks the presence of the canal, and similarly in views in either direction along the canal, it marks the location of the road.
- 12.15 Drawing all of this together, the functional relationship between the warehouse, the road, the canal and the surrounding agricultural land was historically important, and is still visually evident. The setting of the warehouse therefore makes a large contribution to its significance, since it links directly to the function of the building and the importance it derives from its visual prominence.
- 12.16 In August 2014, an appeal against the Council's refusal to grant planning permission for wind turbines on land to the west of Louth Canal was refused by the Secretary of State ("the Louth Canal Scheme") (CD 7.12). The appellant in the current case does not seek to dispute any of the Reporting Inspector's reasoning or conclusions concerning the setting and significance of the warehouse, or the level of harm that would have been caused to these by the Louth Canal Scheme [6.61, 7.60]. Rather, the appellant's argument in this case is that the current scheme was designed with the failings of the Louth Canal Scheme in mind, and is sufficiently different to that scheme to warrant a different decision being reached [6.61, 7.60].
- 12.17 The appellant places considerable emphasis on the difference in spatial separation between the two schemes. The three 113.5m turbines proposed in the Louth Canal Scheme would have been sited to the west of Thoresby Warehouse, while the seven 115m turbines currently proposed would be sited to the south-west of the warehouse, on the opposite side of the A1031 to the Louth Canal Scheme site. However, as was accepted by the appellant's heritage witness, there is little difference in the respective distances between

the warehouse and the turbines: two of the three turbines in the Louth Canal Scheme were the same distance from the warehouse as the closest three turbines proposed in the current scheme [7.62, 6.65].

- 12.18 I note the appellant's contention that when presenting its case at the inquiry into the Louth Canal Scheme, the Council asserted that there was something of heightened importance about the relationship of the warehouse and the adjacent land to the west. [6.63 – 6.64]. It may well have done, but that is not a point that appears to have played any part in the deliberations of the Inspector who reported on the Louth Canal Scheme. Her conclusions on the contribution that the setting of the warehouse makes to its significance do not draw any distinction between the land to the west of the Warehouse and the rest of the surrounding land (CD 7.12, IR 407).
- 12.19 Further, as the Council observes, both the site of the Louth Canal Scheme and the current appeal site lie to the west of the canal and the warehouse, and neither of the heritage witnesses here differentiated between the contribution to significance made by land to the north of Fen Lane (the site of the Louth Canal Scheme) and land to the south of Fen Lane (the site of the current proposal) [7.65].
- 12.20 As the appellant points out, the location of the turbines in the Louth Canal Scheme would have meant that in views travelling east and west along the A1031, those turbines would have been seen in immediate juxtaposition with the warehouse. In the current scheme, the proposed turbines would lie on the opposite side of the road to the warehouse [6.67] (and see photomontages submitted as INQ 65 and INQ 66).
- 12.21 This increase in visual separation would, however, be limited to views travelling east and west along the A1031. Those are by no means the only public views, and in other key views (such as the footpaths leading up to the warehouse from north or south, along the canal itself) the turbines would be seen directly in front of or behind the warehouse, and not separated at all [7.63].
- 12.22 In any event, I am not persuaded that locating the turbines on the opposite side of the road would lead to any significant variation in spatial separation, or diminution in the harm caused to the significance of the heritage asset. The proposed turbines would be visually prominent in views east and west along the A1031, and could be seen together with the warehouse in other public views. It is common ground that the setting of the warehouse, which makes an important contribution to its significance, includes not only the road which is relied upon for visual separation but also the fields within which the currently proposed turbines would sit.
- 12.23 In my judgment, the differences between the two schemes are not sufficient to address the harm identified by the Inspector who reported on the Louth Canal scheme. She found that the scale of the three 113.5m wind turbines there proposed would dominate the

warehouse, and devalue the current visual status afforded by its height. In my judgment the scale of the seven 115m wind turbines currently proposed, at “not too dissimilar” distances from the warehouse albeit at different angles of separation in some views, would have the same, if not greater, adverse impact. [7.62]

12.24 The Inspector who reported on the Louth Canal Scheme also found that there would be visual conflict in that the current setting is low-lying, level land of drained fields, such that the strong vertical emphasis of the wind turbines would be a particularly uncharacteristic addition to the immediate surroundings. The introduction of more, and taller, wind turbines would result in similar visual conflict but of a greater order.

12.25 A further conclusion in the determination of the Louth Canal Scheme was that 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. In my judgment the introduction of more than double the number of turbines proposed in that scheme, of greater height and set at not dissimilar distances from the warehouse, would result in the same, if not marginally greater, harmful erosion of significance.

12.26 At the inquiry, concerns were raised that the presence of the proposed wind turbines might adversely affect the suitability of the warehouse for a number of possible future uses [9.17 – 9.20]. While I sympathise with the owners’ need to fund a return on their investment in the warehouse, it would not be appropriate here to prejudge which of their long-term plans might be permissible in the context of the listed status and isolated location of the warehouse, or in terms of securing its optimum viable use. Accordingly, for the purposes of this current appeal, the potential impact of the proposed development on possible future uses of the warehouse is a matter to which very little weight can attach.

12.27 Taking all of this into account, and bearing in mind that the test for “substantial harm” is a high one, I conclude that the currently proposed development would not lead to substantial harm to the significance of Thoresby Warehouse [7.41]. However, like the Inspector and the SoS in the Louth Canal Scheme, I consider that the visual prominence of the warehouse would be eroded and its canal-side way-marking function would be seriously diminished by the presence proposed development within its setting. This would result in considerable harm to the significance of the building, falling not far short of substantial harm.

Beesby Deserted Medieval Village (DMV), North Cadeby DMV and Cadeby Hall

12.28 The DMVs of Beesby and North Cadeby are part of a line of medieval settlements which developed along the foot of the scarp of the Lincolnshire Wolds. This area was the focus of the earliest settlements due to its elevated ground, which provided opportunities to exploit the coastal wetlands to the east, both

before and after that land began to be drained and reclaimed for the creation of pasture fields. The agricultural relationship between the Wolds and the Marsh is linked to the practice of running sheep on the Wolds, and driving them down to graze on the saltmarsh for the summer, using drove roads generally running east-west through the landscape. [6.51]

- 12.29 This historic practice and the pattern of settlement and occupation helped to shape the character of the landscape, which remains evident in the arrangement of the existing and former villages and the existing road pattern. However, although the medieval occupation and exploitation of the landscape is still reflected within the landscape, it is not of course a medieval landscape in itself. It has undergone significant change since the medieval period: the Middle Marshes are now predominantly large-scale modern agricultural fields, with few hedges and infrequent trees. The landscape also now includes large visible modern features, such as Tetney Oil Terminal and other industrial buildings, modern housing in and around the settlements, and onshore and offshore wind farms.
- 12.30 Beesby DMV is a Scheduled Monument, located on the side of a valley on the edge of the Wolds. The village survives as a well-preserved series of earthworks, including the clearly defined site of the church, a linear depression defining the main village street, evidence of other lanes, rectangular platforms indicating the remains of former houses, and part of the associated medieval field system. As the Council's heritage witness states, the significance of this heritage asset is its surviving archaeology, and what this can tell us about its history and culture (LPA 2, 7.17)
- 12.31 Given the historic use of the marsh lands below for the seasonal grazing of the inhabitants' livestock, the Middle Marshes and the Outmarsh form part of the setting of this DMV and contribute to its significance. The topography of the valley is such that views from Beesby DMV are restricted in all directions except to the north-east, where views out across the marshes are possible, towards the sea.
- 12.32 The currently proposed wind turbines would be clearly visible in these views, along with other modern structures discussed above. At a distance of 6.5km away, they would constitute a prominent element within the landscape, but would by no means dominate the views from this heritage asset. Nor would they alter (or occlude an appreciation of) the historic relationship between this DMV, the wider medieval settlement and exploitation pattern, and the marshes to the east. As the appellant accepts, the proposed wind turbines could act as a distraction to an observer in some views from Beesby DMV [6.52]. In my judgment their presence would have an adverse, though minor, impact upon the setting of this heritage asset which would result in slight, and certainly much less than "substantial", harm to its significance.
- 12.33 North Cadeby DMV is also a Scheduled Monument. It has surviving earthworks and buried remains, and lies in sloping fields to the east

of Cadeby Hall. Like Beesby DMV, its significance lies primarily in its surviving archaeology and what this can tell us about its history and culture: the marshes to the east form part of its setting, and contribute to its significance. From the highest point of the scheduled area, there are extensive views out over the marshes towards the sea to the north-east, east and south-east. These become more restricted by the topography as the DMV drops down the slope toward Cadeby Hall.

- 12.34 The currently proposed wind turbines would be clearly visible, but at a distance of over 6km, they would not dominate the views out from this DMV. Rather, they would form a prominent new element within a landscape which contains other existing large modern structures, and has changed considerably since medieval times to reflect, among other things, modern agricultural practices.
- 12.35 Again, there is no dispute that the proposed wind turbines could act as a distraction to an observer in some views from North Cadeby DMV [6.52]. I consider that their presence would have an adverse, though minor, impact upon the setting of this heritage asset which would result in slight, and certainly much less than "substantial", harm to its significance.
- 12.36 Cadeby Hall is a small country house, dating from the 18th Century, and listed Grade II\*. Described in its listing as empty and partially derelict, it has subsequently been renovated and is now occupied. The three-storey house is set within landscaped terraces and gardens, in a steep valley which prevents any long views of, or from, the house.
- 12.37 The significance of the house lies in its architectural and historic interest, as a high status dwelling associated with the wealth generated by farming in this area in the 18th Century. The valley setting contributes to this significance, providing seclusion from the wider world and shelter from the cold winds.
- 12.38 A viewing mound, constructed at the north-eastern end of the grounds, remains intact. The Council and the appellant could not agree whether the mound is covered by the listing of the house, or is merely part of its setting [6.55, 7.46]. My interpretation of the relevant statute<sup>5</sup> is that the viewing mound is a man-made structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948. It should therefore be treated as part of the building: that is, as a designated heritage asset, rather than as part of the setting of a designated heritage asset.
- 12.39 There is no dispute that the purpose of constructing the mound was to provide views. The designed views back towards the house were important, enabling observers to appreciate the main elevation of the Hall from a strategically located vantage point. Views outward

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<sup>5</sup> The Planning (Listed Buildings and Conservation Areas) Act 1990, s.1(5)

away from the house were more generalised, ranging across the widespread landscape of the marshes to the coast. [6.55]

- 12.40 The currently proposed development would be visible in outward views from the mound, at a distance of over 6km, but not in views from the house itself, or from any other part of its grounds. These outward views were not designed purely to encompass land within the ownership of the occupiers, but rather to provide a panorama over the extensive landscape beyond. Agricultural practices carried out on parts of the surrounding land may well have contributed to the income of the occupiers, but the important point is that they would not have had control over all of the visual elements within the extensive landscape beyond, in contrast with the carefully designed grounds of the house. The simple fact that the wind farm would form an additional visible element in these outward views would not, therefore, harm the setting or affect the significance of any part of this heritage asset.
- 12.41 An additional consideration in relation to these three heritage assets is that they can be seen and experienced collectively from a nearby public bridleway, which itself forms part of the Silver Lincs Way, a well-promoted walking route. Moving south from Beesby DMV, the bridleway passes along higher ground overlooking Cadeby Hall, and from here there are also views of both DMVs as well as extensive views across the marshes to the sea. This stretch of the bridleway, then, forms part of the setting of all three heritage assets.
- 12.42 This part of the setting of these heritage assets contributes to their significance by “telling a story” about the visual and physical relationship between the Wolds and the marshes [7.47], aiding an appreciation and understanding of how historic agricultural practices and the topography of the landscape informed the location of the DMVs and Cadeby Hall. The Council points out that the settings of other heritage assets along the eastern edge of the Wolds are now affected by the presence of wind turbine developments, such that this is the last point in the landscape from which users of the Silver Lincs Way can look out directly over the marshes towards the sea, over a landscape largely unaffected by wind turbines. [7.48]
- 12.43 The currently proposed wind turbines would be a prominent new element within these existing views. Their presence would not, in and of itself, alter or undermine the historic relationship between the Wolds and the marshes. It could, however, act as a distraction that would make it harder for observers to interpret and appreciate that relationship, from a viewpoint that had hitherto provided one of the better opportunities for doing so. In that respect, I consider that there would be further harm to the setting of these three heritage assets, but not such as would (either on its own, or in combination with the harm I have already identified above) cause substantial harm to the significance of any of them. In other words, I find that the totality of the harm the proposed wind farm would cause to the significance of Beesby DMV, North Cadeby DMV and Cadeby Hall would be less than substantial, and would be at the lower end of the scale of harm.

## Church of St Mary, Ludborough

- 12.44 The church at Ludborough is Listed Grade I. Its significance derives primarily from its architectural, historic and archaeological interest, with parts of the building dating back to the 13th Century. The churches in the Middle Marshes were built to be seen from within the wider countryside, as the symbolic and physical heart of the settlement, and also as a marker as to the location of the village. The church therefore derives some of its significance from its prominence within its setting. It is, however, located within a stand of tall trees, in the churchyard and its immediate surroundings, which obscure views of the church and its tower in many views from the wider landscape. [6.56]
- 12.45 The proposed wind turbines would be located some 4.5km to the north-east of this designated heritage asset. There would be very few views in which the turbines would be experienced within the setting of the church. The Council and the appellant agree that the harm they would cause to its significance would be less than substantial. [7.53, 6.57]
- 12.46 The photomontage provided at Heritage Viewpoint 3 shows that from the path just to the north of the church porch, one turbine would be visible beyond the intervening buildings and trees. This would introduce, in those specific views, a modern, moving structure. While this new element would not share the historic character of the church and the adjacent buildings, it would be a relatively minor alteration to an existing view. In my judgement the simple fact that a wind turbine would be visible from the churchyard, some considerable distance away, would not be harmful to the setting of the church. [6.58]
- 12.47 Viewpoint 16 illustrates how the proposed turbines would be seen to the left of the trees that shroud the village, in views from a public bridleway to the south-west which are similar to the views available from the Silver Lincs Way. While it is possible to see the church tower within the trees, it is not a prominent feature in this view. Nevertheless, it enables the church to be picked out as a signpost for itself and the village. This would not change if the proposed development were constructed; the wind turbines would not alter, or displace, the significance of the church as a landmark. There would, however, be some visual competition for prominence between the church tower and the wind turbines, along with the other wind turbines already present in the landscape, and to that extent the presence of the turbines within the setting of this heritage asset would detract from the ability to appreciate its significance. [6.57]
- 12.48 It is important to bear in mind that the setting of the church is not a primary contributor to its significance: the significance of this heritage asset resides predominantly in its historic, architectural and archaeological interest. Nevertheless, the contribution that setting does make, in terms of enabling an appreciation of the church tower's landmark function, would be adversely affected for

the reasons set out above. In the context of gauging the overall level of harm that would be caused to significance, I note that the extent to which the church tower is now obscured by trees in most views from the wider landscape means that the limited views from the south west, discussed above, are among the few remaining in which the landmark function of the church tower can still be appreciated. In my judgment, this serves to heighten the level of harm that would be caused. [7.53]

12.49 I also note that the dieback, or removal, of the trees in the churchyard and its immediate surroundings could increase the availability of views from the wider landscape, but since this would also decrease the "rarity" value of the one discussed above, this would not alter the overall level of harm.

12.50 Taking all of this into account, I conclude that the harm caused by the proposed development to the significance of the Church of St Mary at Ludborough would be appreciable, but would nevertheless fall considerably short of "substantial" harm.

#### Churchthorpe House and the Church of St Lawrence, Fulstow

12.51 The Church of St Lawrence and Churchthorpe House (also known as Manor Farm House and Fulstow Manor House) are closely related, and are both Listed Grade II. St Lawrence is the Fulstow parish church, and dates from the 13th century; the west end retains the scar of a former tower. Churchthorpe House, which lies a short distance to the west of the church, dates from the 17th century and is possibly a fragment of a larger house. It was extensively remodelled in the 19th Century.

12.52 On a map of the parish of Fulstow dated 1595 (LPA 2.0), a house in this position is recorded as the moated manor house of Northall and is shown as a moated site, with access just to the west of the west end of the church. The two buildings face each other. It is likely that the church (or at least, an earlier church on the same site) was built by one of the lords of the manor (LPA 2, 9.8). The significance of these two buildings resides largely in their historic interest and cultural connection. The screening effect of surrounding vegetation means that views of the church and house from elsewhere are very restricted. The secluded and intimate enclosure this creates around the two buildings is an aspect of their setting that makes a positive contribution to their significance.

12.53 Today, much of the moat survives on the western and northern side of the house. There is a noticeable change of level between the church and the house, and there is no dispute that the house has an unencumbered view of the church, and that the garden and churchyard "flow" into each other (LPA 2, 9.11).

12.54 The proposed wind turbines would lie to the north-east of the house, and the limited views of them that would be available from the garden of Churchthorpe house would be largely filtered by the intervening trees. However, from the east-facing upper floor windows of the house, the turbines would be visible to the north-

east of the church. The Council points out that given the historic interrelationship between the two buildings, it would have been important for the Lord of the Manor to be able to see the church from the Manor House. I agree that the intrusion of the proposed turbines into this view would disrupt the tranquil and enclosed setting shared by the church and house. This would not alter or impair their historic interrelationship, but it would hinder the experience and appreciation of that relationship, and so would have an adverse impact on the significance of the two heritage assets. [6.59, 7.55 – 7.57]

12.55 The extent of the harm caused would, however, be limited since the adverse impact on setting would be restricted to views from these particular windows. From elsewhere within the grounds, the tranquillity and intimacy of the setting, and its contribution to an understanding of the relationship between the two buildings, would remain undisturbed. I conclude that the proposed development would cause a limited amount of harm, falling far short of “substantial” harm, to the significance of these two designated heritage assets.

#### Church of St Peter and St Paul, Tetney

12.56 The Church of St Peter and St Paul is Listed Grade I. It is the parish church of Tetney, and dates from 1363. Its significance derives primarily from its architectural, historic and archaeological interest. As noted above [12.44], the churches in the Middle Marshes were built to be seen from within the wider countryside, as the symbolic and physical heart of the settlement, and also as a marker as to the location of the village. The church therefore derives some of its significance from its prominence within the landscape.

12.57 The proposed wind turbines would lie some 2.3km to the south-east of the church. Notwithstanding the photomontage provided by the appellant of the view from a location within the churchyard to the rear of the church, in which the turbines would be obscured by intervening trees, it is common ground that they would be visible from some parts of the churchyard to the rear [6.70]. However, such views would be limited by trees within the churchyard and the boundary hedge, and other intervening vegetation. Limited views out towards the wind farm from this part of the churchyard would not, in my judgment, harm the setting or significance of the church itself.

12.58 From within the wider landscape, there are some places to the south of Fen Lane (for example, the section of Louth Canal between Firebeacon Lane and Fen Lane) where the wind farm would be visible in front of the church. As the appellant acknowledges, the foreground setting of the church has importance as the land which takes in the journey towards the church, and enables the church to be picked out as a signpost for itself and the village (CD 10.10, 6.5.44). The number of places from which the turbines would be visible within this foreground setting is limited, but in such views, they would compete for visual prominence with the church tower. I share MWAG’s concern that in some views, this harmful impact

would be intensified by the concurrent visibility of the Bishopthorpe wind farm [8.40].

12.59 I conclude that in this respect, there would be a harmful impact on the contribution made by the setting to the overall significance of the heritage asset. As with the Church of St Mary at Ludborough, the harm would be appreciable, but would nevertheless fall considerably short of "substantial" harm.

#### Church of St Mary, Marshchapel

12.60 The Church of St Mary is Listed Grade I, and is located at the southern end of Marshchapel. The proposed wind turbines would lie some 2.2km to the west of the church, and would be visible behind the houses opposite the church in views from the entrance of the church and the churchyard. But while such views might arguably be described as part of the setting of the church (CD 10.1 ES Table 10.8), they do not contribute to the significance of the church. The visibility of the turbines would result in an alteration to these views but this would not, in my judgment, give rise to any harm to the setting or significance of the church.

#### Church of St Nicholas, North Coates

12.61 The Church of St Nicholas is Listed Grade II\*, and lies within the settlement of North Coates. From the churchyard, there would be some limited views of the proposed turbines, which would be located some 2.2km to the south west. However, these are not views which contribute to the significance of the church, and in them the visibility of the turbines would be restricted by intervening trees and houses to the south west of the church. The presence of the proposed turbines would result in a minor alteration to these views but this would not, in my judgment, give rise to any harm to the setting or significance of the church.

#### Church of St Martin, Waithe

12.62 The Church of St Martin is Listed Grade I. I note that in its response to consultation on the planning application now the subject of this appeal, English Heritage (as it then was) expressed concern that the proposed turbines could potentially appear behind, or close to, this church in views from the north. However, the Council did not present any evidence on this matter, and I have not seen any other material which would refute the conclusions set out in the appellant's ES that there would be no intervisibility between the church and the wind farm, and that the church cannot be seen from within the wider countryside. On that basis, I conclude that the proposed development would not harm the setting or significance of this heritage asset.

#### Louth Canal

12.63 As discussed above, Louth Canal is a non-designated heritage asset in its own right, and its relationship with the warehouse makes an important contribution to the setting, and significance, of that heritage asset. However, in terms of the impact that the proposed

turbines would have on the setting and significance of the canal itself, it is important to note that the canal is a long, linear feature and that only a limited stretch would be affected. Thus, while the erosion of the warehouse's visual prominence and diminution of its way-marking function would adversely affect the setting of Louth Canal, the harm to the overall significance of this non-designated heritage asset would be limited, and would fall far short of substantial harm.

#### Conclusions on the first main issue

- 12.64 In summary, I have found that the proposed development would harm the significance of a number of designated heritage assets. The harm caused to the significance of Thoresby Warehouse would not be far short of substantial. The harm caused to the significance of Beesby DMV, North Cadeby DMV and Cadeby Hall would in each case be less than substantial, and would fall at the lower end of the scale of harm. The harm caused to the significance of the churches of St Mary at Ludborough, and St Peter and St Paul at Tetney, would be appreciable but considerably short of substantial harm, while the harm to the significance of Churchthorpe House and the church of St Lawrence would be limited, and far short of substantial. The proposal would also result in limited harm to the significance of Louth Canal, a non-designated heritage asset.
- 12.65 As the appellant correctly points out, an assessment of the likely impact of wind turbines on heritage assets needs to take the reversibility of the proposed development into account. The Government's national policy advice in EN-3 explains that onshore wind turbines are generally consented on the basis that they will be time-limited in operation. It goes on to say that account should be taken, when considering any indirect effect on the historic environment such as the effects on the setting of designated heritage assets, of the length of time for which consent is sought. In this particular case, as is usual, permission is sought for a defined period of 25 years, after which the turbines would be removed and the land restored to its former condition. [6.71, 11.3]
- 12.66 The change in the setting of heritage assets caused by the presence of wind turbines, and any consequent harm to their significance, is both reversible and time-limited. While this consideration does not reduce the magnitude of the harm caused for the duration of the operational life of the wind farm, it does influence the weight of that harm in any assessment of acceptability.
- 12.67 In terms of the adopted Development Plan, the proposed development would conflict with Policy C2, which provides that where development would affect the setting of a Listed Building, planning permission will only be given if the development would preserve or enhance the special architectural or historic interest, viability or long term use of the Listed Building. [5.3]
- 12.68 However, it is common ground that this policy is not consistent with the approach set out in the more recent NPPF, because it does not allow for any sort of balance. Paragraph 215 of the NPPF advises

that the weight to be given to relevant policies in existing plans will depend on their degree of consistency with the policies of the NPPF. In my judgment, while it is appropriate for the decision-making process to follow the more recent approach set out in the NPPF, the fact that the proposal would conflict with Policy C2 still carries some weight as the general aims of that extant Development Plan policy broadly accord with those of paragraphs 131 – 136 of the NPPF. [6.14, 7.70]

12.69 Since the proposed development would result in less than substantial harm to each of the designated heritage assets affected, the assessment of its acceptability needs to proceed on the basis of the test set out in paragraph 134 of the NPPF: that is, the harm to the significance of the designated heritage assets should be weighed against the public benefits of the proposal.

12.70 The public benefits of the currently proposed development would be, in summary (APP 3, 6.3.8):

- Renewable electricity generation of between 14 and 17.5 MW of installed capacity. This would be a nationally significant amount, contributing to the achievement of the national target of 15% of all energy to come from renewables by 2020.
- The energy output would be the equivalent of that needed to supply an estimated 11,350 households per annum (based upon equivalent East Midlands homes).
- The development would help to combat and mitigate climate change by reducing carbon dioxide and greenhouse gas emissions, displacing an estimated 168,000 tonnes of carbon dioxide over its 25 year lifespan.
- The proposed wind farm is estimated to have a capacity factor of 35.1%, which would be considerably higher than the UK average of 26.4%
- The development would help to improve national energy diversity and security, by contributing to the mix of decentralised renewable resources in Lincolnshire and the East Midlands.
- The scheme would have direct and indirect economic benefits as recognised by the Government, such as some local new employment, and contributing economic development stimulus to the renewable energy industry sector
- The development would help to meet the urgent need for renewable energy projects, and contribute to the attainment of renewable energy policy objectives at the national and international level.

12.71 These are benefits to which I attach very great weight.

12.72 Returning to the balancing exercise set out at paragraph 134 of the NPPF, it is important to bear in mind that while the identified harm to the designated heritage assets here would be “less than substantial” in the terms of the NPPF, S.66 of the Planning (Listed

Buildings and Conservation Areas) Act 1990, as interpreted by the Courts, requires that any harm to a listed building be given considerable importance and weight; creating a strong presumption against the grant of planning permission (INQ 13).

12.73 In this case, I have found that the level of harm the proposed development would cause to the Grade I Listed Thoresby Warehouse would be not far short of substantial. That is a consideration to which I attach a great deal of weight. In addition, there would be harm to five other Listed Buildings, and two further designated heritage assets.

12.74 Weighing all of this together, I consider that the harm to the significance of designated heritage assets would be outweighed by the public benefits of the proposed development, although not by a huge amount.

12.75 The next stage in the decision-making process is to undertake the wider, weighted balancing exercise set out in the first limb of paragraph 14. I therefore continue with an assessment of the other adverse impacts and benefits of the proposed development, in accordance with the remaining issues and other material considerations identified. [6.102, 7.97]

*Second main issue: the effect that the proposed development would have on the character and appearance of the area*

12.76 There is a wealth of evidence before me concerning the effect that the proposed development would have on the character and appearance of the area. This includes the oral, documentary and photographic submissions from MWAG and from the Council's and appellant's landscape witnesses; the Landscape and Visual Impact Assessment that formed part of the ES, and subsequent updates to that material; the critique of the ES LVIA commissioned by the Council; national, regional and local assessments of the landscape character; and representations made by local residents and visitors to the area.

12.77 The conclusions of the appellant's landscape witness were criticised by the Council for lacking transparency, while the conclusions of the Council's landscape witness were criticised by the appellant for being out of kilter with previous decisions. In my view, this report would not benefit particularly from an investigation and analysis of the differences in their respective approaches. Each is entitled to exercise his own professional judgment, and I had the benefit at the inquiry of hearing the evidence of each side rigorously tested. [6.30, 7.17]

12.78 Importantly, I do not consider (and it was not suggested) that disagreement over the conclusions that may be drawn from the visual material undermines the usefulness of that material in identifying the visual and landscape effects that would be caused by the proposed development. My own assessment, then, is informed by all of this evidence, and also the observations of, and from, the

appeal site and the surrounding area that I made during my accompanied and unaccompanied site visits.

The effect on the character of the landscape

- 12.79 Landscape impacts are the effects that the proposed development would have on the landscape character and quality, and so the assessment of these concerns the degree to which a scheme would become a significant or defining characteristic of the landscape.
- 12.80 The landscape in which the appeal site lies is the subject of Landscape Character Assessments (LCAs) at three different levels; national, regional and local. At the national level, the site is part of National Character Area 42 "Lincolnshire Coast and Marshes", covering the coastal plain between the Humber Estuary and North Sea to the east, and the Lincolnshire Wolds to the West. The regional LCA subdivides the coastal plain into smaller units. The appeal site is part of the landscape character area described as settled fens and marshes, with coastal salt marshes and mudflats to the east, and fen and marsh margin farmlands to the west.
- 12.81 The East Lindsey LCA (CD 9.10) defines the relevant character areas at local level, and is generally agreed to be detailed and, while not showing some recently permitted wind energy development, up-to-date. The major part of the appeal site, where the proposed turbines would be erected, lies in the *Tetney Lock to Skegness Coastal Outmarsh* character area (LCA J1), with a small part concerning the access road in the *Holton le Clay to Great Steeping Middle Marsh* character area (LCA I1).
- 12.82 The appeal site, then, is located at the inner edge of the Coastal Outmarsh, close to the outer edge of the Middle Marsh. The key characteristics of this part of the Outmarsh include its flatness, open views and big skies, predominantly agricultural land use, and extensive network of drainage ditches and dykes around field boundaries with a strong geometric pattern. Key characteristics of the adjacent Middle Marsh character area include predominantly arable farmland with medium to large scale fields, scattered blocks of deciduous woodland, gently undulating foothills to the Wolds, ditches and dykes used as boundaries, and scattered settlements.
- 12.83 The transition between the two LCAs is gentle, and not immediately apparent on the ground. They merge into each other, and indeed share some key characteristics. Both are categorised as distinctive rural landscapes, though while the LCA I1 section of the Middle Marsh is noted to have "very few minor detractors", a key characteristic of LCA J1 is "...some man-made influences including a gas terminal, an oil storage facility and several wind farms".
- 12.84 The appeal site lies in close proximity to Louth Canal and Thoresby Warehouse, both impressive man-made structures which have historically exerted a strong influence over the character of the landscape. Other nearby infrastructure includes the 1km by 1km Covenham reservoir, which has 10m high raised embankments and lies some 2.3km to the south of the appeal site; the Lincolnshire

Wolds Railway, which runs occasional steam trains between Ludborough and North Thoresby, lies some 2.5km to the west. The oil storage tanks to the north of Tetney are further away, at around 4km to the north-east of the appeal site. Engineered drainage ditches and dykes, roads, and power lines are also visible in the surrounding landscape, as are existing wind turbines of varying size and groupings.

- 12.85 By any measure, the introduction of seven 115m high wind turbines on the appeal site would have a profound impact on the existing character of the landscape. In the immediate area, the turbines would be the defining landscape element and would be determinative in landscape character terms; in the wider surrounding area, they would remain a major contributor in defining character over some distance.
- 12.86 This is recognised by the appellant, who acknowledges that there would be some significant landscape and visual effects (APP 1, 6.28). It is also recognised in the Government's national planning policy, which states *Modern onshore wind turbines that are used in commercial wind farms are large structures and there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around a site.* (CD 2.3, 2.7.48). The key question is whether the extent of the impacts caused by this particular proposal, in this particular location, would be acceptable.
- 12.87 The Council points out that the main reasons for discrepancies between the conclusions on landscape character reached by its own landscape witness, and that of the appellant, can be traced back to their judgments on the sensitivity and value of the landscape. [7.3]
- 12.88 As to the value of the landscape, the appeal site and its immediate surroundings are not covered by any national or local landscape designation. That is not of course to say that it has no value; indeed, it was made very apparent to me at the inquiry just how much local residents, and visitors to the area, cherish and appreciate it. However, it is important to be clear that this is not a "valued landscape" in the terms of paragraph 109 of the NPPF [6.26].
- 12.89 As to sensitivity, I note that at the time the LVIA was written, there were no published landscape sensitivity or capacity studies concerning wind energy developments for the East Lindsey District; I have not been notified that any have been published since. [1.13 – 1.14]. The East Lindsey Landscape Character Assessment does provide an indication of the sensitivity of the landscape, but the Council contends that the increase in the presence of wind turbines across LCA J1 since that document was written has been such that wind farms should now be included as a key characteristic (LPA 1, 4.23).
- 12.90 I am not convinced that this is correct. Clearly there would come a point, were wind turbine developments to proliferate unchecked, at which the character of the landscape would change from one where

wind turbines could be seen within it to one where they formed a defining feature. Taking account of the number, size, location and spacing of existing wind energy development (a matter I deal with in more detail when assessing cumulative impact, below), I consider that this landscape has not yet reached that stage. The presence of wind turbines, albeit increased, remains adequately described by the key characteristic "A predominantly intact and distinctive rural character with some man-made influences including... several wind farms". Indeed, the Council's landscape witness accepted that the local landscape has the capacity to accept further commercial wind farm development, provided it is in the right place [6.27].

- 12.91 The three main parties understandably made extensive reference to previous appeal decisions concerning proposed wind energy development within this particular landscape [6.29, 7.26, 8.28]. In my view, a considerable degree of caution needs to be applied before attempting any read-across with appeal decisions in other seemingly similar cases; it is axiomatic that every development proposal must be considered on its own merits, which includes both site-specific circumstances, and the relevant policy and legal context at the time when the decision is made. That is the basis on which I have written this report.
- 12.92 Nevertheless, I appreciate that in the interests of completeness, it may assist the SoS to have regard to other appeal decisions concerning wind turbines in the same Landscape Character Area as the current proposal. The three most relevant concern eight 115m wind turbines at Gayton-le-Marsh (allowed by an Inspector in April 2013); three 113.5m turbines on land adjacent to Louth Canal, Fen Lane (dismissed by the SoS in August 2014) and eight 115m turbines at Bishopthorpe Farm (allowed by the SoS in March 2015).
- 12.93 The Inspector's consideration of the landscape impact of the Gayton-le-Marsh scheme is set out at paragraphs 55 – 65 of CD 7.6. He concluded, in summary, that the existing windfarms at Mablethorpe and Conisholme had been successfully absorbed into the landscape and there was capacity for the turbines of that scheme to be absorbed too, despite being taller to the blade tips. The Inspector's consideration of the landscape impact of the Louth Canal scheme is set out at paragraphs IR 419 – 429 of CD 7.12. She concluded that the prevailing landscape character of LCA J1 would be only marginally altered, and the SoS agreed (DL 13 of CD 7.12).
- 12.94 The Inspector's consideration of the landscape impact of the Bishopthorpe Farm scheme is set out at paragraphs IR 373 to 399 of CD 7.27. He concluded that there would be a major adverse impact on landscape character when close to the turbines, but this would reduce to moderate impact after about 1km, and quickly recede thereafter. The SoS agreed (DL 11 of CD 7.27).
- 12.95 In my judgment, the character of this appeal site accords closely with the landscape character of the Outmarsh, within which the major part of it lies. It forms part of a simple, medium-to-large

scale, working agricultural landscape, within which some man-made influences are apparent [8.19]. The massive scale of the proposed wind turbines would have a major adverse impact on the appeal site and its immediate surroundings. They would become the dominant and defining feature, completely altering the character of this localised area such that it would become a “wind farm landscape”, rather than a landscape with wind farm visible within it. This effect would extend up to a distance of around 1km from the turbines.

12.96 Beyond 1km, and up to a distance of around 2km, the turbines would remain prominent within the landscape; while not in all parts its defining feature, they would heavily influence its character and this would result in a major to moderate adverse impact. Beyond 2km, the magnitude of effect on landscape character would steadily diminish. The turbines would of course remain visible, and in some views prominent, over much longer distances and I discuss visual impacts in more detail below. The underlying character of the landscape would however be reasserted quite quickly with distance from the wind farm.

12.97 As noted above, Government Policy set out in EN 3 advises that the time-limited nature of wind farms is likely to be an important consideration when assessing impacts such as landscape and visual effects; such judgements should include consideration of the period of time sought by the applicant for the generating station to operate, and the extent to which the site will return to its original state. Here, permission is sought for a period of 25 years, after which the turbines would be removed and the land restored to its former condition. In the context of the human lifespan, 25 years is such a substantial length of time that the removal of the turbines after that period is not a consideration which would reduce the significance of any harm caused by the adverse visual impacts that residents and visitors may experience (discussed below).

12.98 However, in the context of impacts on the character of the landscape, the timespan against which the duration of the development should be measured is the length of time for which the host landscape itself has subsisted, and will endure. The change to the character of the landscape would be long-term, as distinct from permanent, and would be reversible. The time-limited period for which the turbines would subsist is not a consideration that would reduce the magnitude of the harm caused to the character of the landscape during their operational life, but it does affect the weight to be attached to that harm [6.38].

#### Visual impacts

12.99 Visual impacts concern the degree to which the proposed development would become a feature of views, and the effect this would have on the people experiencing those views. Visual impacts may therefore occur at a variety of locations where people are present, such as settlements, recreational areas, public rights of way, and individual residences.

- 12.100 As to whether identified visual impacts would be harmful, neutral or beneficial, there is a wide range of public attitudes toward wind turbines. Some admire them as elegant beacons of hope and progress: others detest them as ugly industrial machines that blight the landscape. My task, in writing this report, is to make as objective an assessment as possible of the changes to views which would occur. It is therefore appropriate to proceed on the precautionary basis that the changes would be perceived as adverse.
- 12.101 In terms of visual impacts on settlements, there was a large degree of agreement between the professional witnesses [7.21]. Significant visual impacts would occur at Fulstow, Tetney, North Cotes and Marshchapel. The village of Fulstow would be particularly affected; even for residents who did not have views of the wind farm from the windows of their houses, the turbines would be a part of their lives as they went about their daily business [7.22]. This accords with what I observed during my site visits, and there is no dispute that the consequent harm needs to be weighed in the overall planning balance to determine the acceptability, or otherwise, of the proposal.
- 12.102 More contentious is the impact on views from the Lincolnshire Wolds AONB. The AONB Management Plan 2013-2018 sets out the special qualities of the AONB, which include its expansive, sweeping views. These views are best appreciated from the network of public rights of way along the eastern edge of the Wolds, including the long distance routes known as the Wanderlust Way and Silver Lincs Way. The Council and MWAG are concerned about the impact that the proposed development would have on such views. [7.26, 8.31 – 8.33]
- 12.103 MWAG helpfully provided a composite image of wind energy developments within the landscape from a viewpoint on the Wanderlust Way (MWAG 3.1a). This stretch of the path is at an elevation of 70 – 80m above the appeal site, which is some 6.5km away, and is representative of the expansive views available from the AONB. I visited that viewpoint twice in January 2016 (accompanied and unaccompanied) and again in July 2017 (unaccompanied), and visibility was good on each occasion.
- 12.104 I saw that there is a panoramic view over the wide sweep of the coastal plain to the estuary and sea beyond. Existing wind energy development is clearly visible within the working agricultural landscape, as are church towers, the oil storage facility at Tetney, and other infrastructure and signs of human habitation such as roads, large modern barns, and houses. The proposed turbines would constitute a new addition to the existing scene. The movement of the turbine blades would draw the eye, but having done so, would not necessarily retain it at the expense of other features. The regular sweep of the blades of these and other existing turbines would not be the only moving element within the view; cars on roads are visible, as are ships at sea.

- 12.105 While the proposed development would, then, alter the content of views out from the AONB, that does not in itself equate to harm; it is the *availability* of extensive views that is a special characteristic of the AONB. At the viewing distances involved, the proposed wind turbines would not be a dominant feature but would be absorbed into the overall composition of the rural scene. The marsh landscape would still be perceived as a vast open sweep of mixed agricultural land, between the contrasting foreground character of the rolling Wolds with robust woodland, and the distant coastline strip, beyond which the sea and the sky merge into one.
- 12.106 The Council points out that the Inspector who reported on the proposed Louth Canal wind farm considered it would cause some harm, albeit of a "marginal" nature, to views to and from the AONB [7.26]. I note that her assessment of the impact the turbines there proposed would have on views from Wanderlust Way concluded that they "...would only result in a modest alteration to that scene and, as such, I consider that views out from the AONB as a whole would only be marginally changed by this proposal." (CD 7.12, IR 423). She went on to advise the SoS that "...I do not attach significant weight to landscape harm in the overall planning balance" (CD 7.12, IR 429). The SoS agreed with that conclusion, and noted that while the NPPF attaches importance to the protection of AONBs, the limited and localised harm arising from the proposal would not conflict to a material degree with the objective of protecting distinctive landscapes (CD 7.12, DL 13).
- 12.107 In my judgment, the alteration to the view from Wanderlust Way that would be caused by the current proposal would also be slight. I conclude that its visual impact on users of the long distance routes and public rights of way, and its effect on the special qualities of the AONB, would be minor and not significant.
- 12.108 As to other long distance routes, the relevant section of the ES LVIA, and the evidence of the appellant's landscape witness, conclude that there would be no significant effects for users of the Silver Lincs Way, the Lindsey Loop or the Wanderlust Way [7.24]. For the reasons set out above I agree with that conclusion. However, as the review of the ES LVIA carried out on behalf of the Council points out, there are a number of other long distance routes in the area that have the potential to be affected (CD 9.14, 2.101 – 2.108). These walks, promoted by the Louth Navigation Trust, are publicised as "To the sea with the LNT"; "The Reservoir Rover" and "Two Seaforts and a Canal".
- 12.109 "To the sea with the LNT" is a 12km walk that follows the route of the Louth Canal, and so passes the appeal site approximately 500m from the nearest proposed turbine. There would be a very high magnitude of change in the view to the immediate west of the towpath, and this would have a significant adverse impact over quite some distance either side of the appeal site. "The Reservoir Rover" is an 11km walk between Fulstow and Covenham Reservoir. The proposed turbines would be visible for the majority of the walk, and would be particularly notable in views

from the elevated circular path around the reservoir. There would be a significant impact on views from the trail as it passes around the east of Fulstow. [8.37]

12.110 The "Two Seaforts and a Canal" path utilises the collection of PROWs 1km to the north of the appeal site, on the way to Tetney. The proposed development would result in significant visual impacts for walkers on that part of the trail.

12.111 There are numerous other PROWS in the area whose users would experience significant adverse visual effects, and the associated harm needs to be weighed in the overall balance. Not least of these are the circular walks utilising the quiet country roads around Fulstow, known locally as the "Big Griff" and "Small Griff", which are clearly well-used and well-loved by residents. [8.19, 9.9]

12.112 An additional consideration is the Lincolnshire Wolds Railway. This is a section of restored line between Ludborough and North Thoresby, along which steam trains run on selected dates between March and December. The railway line passes the appeal site about 2.5km to the west of the closest proposed turbine. The steam trains move relatively slowly through the landscape, allowing for appreciation of the views. While the turbines would occupy a small part of a much wider view from the train, they would be visible for much of the length of the railway line, and would have a significant visual impact. [10.1]

12.113 A very important aspect of the visual impact of any proposed wind farm is the effect the turbines would have upon the visual amenity of residential properties. The planning system exists to regulate the development and use of land in the public interest. In most cases, the outlook from a private property is a private interest, not a public one: in other words, there is no "right to a view" that would protect private views from development that would adversely affect them. However, the question of public interest may be at issue where a development proposal would have such a severe adverse impact on the outlook from a private residence that it would render it an unsatisfactory place to live, for future as well as current occupiers. [6.39]

12.114 This point was specifically addressed by my colleague, Inspector Lavender, in an appeal decision in 2009 (CD INS/01). He wrote: *...when turbines are present in such number, size and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is every likelihood that the property concerned would come to be regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. It is not in the public interest to create such living conditions where they did not exist before.* The SoS subsequently adopted this approach in an appeal decision in 2011. He said that when assessing the effect on visual outlook, it is helpful to pose the question "would the proposal affect the outlook of these residents to such an extent, i.e. be so

unpleasant, overwhelming and oppressive that this would become an unattractive place to live?" [6.40]

- 12.115 It is common ground, between the appellant and the Council, that there are no residential properties which would suffer such effects as a result of the currently proposed development. [6.11]
- 12.116 The LVIA ES identified and assessed 16 residential properties lying within 1km of the proposed turbines, and concluded that 11 of them would experience significant visual effects. Three of these residences (Brick Yard Farm, the caravan at Brick Yard Farm, and Harness Farm) are in the same ownership as the appeal site. They are therefore classed as having a degree of financial involvement in the proposed development, such that any adverse impact the proposal might have upon them would not be considered harmful in the same way as dwellings lacking any financial involvement. I note that in any event Brick Yard Farm and Harness Farm are derelict, and uninhabited.
- 12.117 The eight other residential properties identified by the LVIA ES as likely to experience significant visual effects as a consequence of the proposed development are Bridge Farm, Ivy Cottage, Rose Cottage, Heelgate Farm, Meadow Cottage, Gloucester House, Fenbridge Cottage and Peace Haven. I visited all of these during the course of my site visits, and was kindly invited inside the majority of them. I also visited the properties of other concerned residents (Spring Rose House, Marston House, Old Cottage and Grove Cottage) which lie outside the LVIA assessment zone, but would nevertheless have views of the turbines. (INQ 59)
- 12.118 I note MWAG's concern about reliance on the recorded separation distances between the turbines and residential properties. Assessments of visual impact need to be undertaken in the round, and with careful attention to site-specific circumstances. Separation distance is important, but so too are factors such as topography; the specific layout, scale and number of turbines proposed; the orientation and layout of the dwellings; the arc of view in which the turbines would appear; the existence of any intervening screening, and the extent to which views would be available between and beyond the turbines. [8.29]
- 12.119 From all that I saw, and having had careful regard to the evidence and visual representations submitted by all parties, I am satisfied that there would be no overbearing or overwhelming effects on residential amenity at any dwelling. As noted above, eight of them would experience significant visual impacts, and it is fair to note that all would experience alterations of varying degree to their outlook; I appreciate that the occupiers may well consider that their living conditions had been made less attractive as a consequence. However, applying the "Lavender test" set out above, I conclude that the proposed wind turbines would not have such an unpleasant, overwhelming and oppressive effect on the outlook of any dwelling as to make it an unattractive place in which to live.

- 12.120 That is not of course to say that the harm caused to residential amenity by significant visual impacts should simply be disregarded. Rather, it needs to be weighed in the planning balance alongside all the other harmful impacts identified.
- 12.121 When assessing the overall weight to be attached to the visual impacts of the proposed development, it needs to be borne in mind that these would not be experienced to the same degree throughout the local area. Many of the houses in the settlements would have no views of the turbines. While there would be clear views from elevated public vantage points, views from many of the nearby roads and public rights of way would be intermittent, due to varying degrees of screening. Motorists would experience significant visual effects for relatively brief periods in the context of their overall journeys. Walkers covering a long distance along the promoted recreational footpaths would not have their overall experience characterised by the proposed wind farm, although of course the same would not hold true for residents using sections of those longer routes for walks around their local area.

#### Cumulative impacts

- 12.122 The ES LVIA prepared by the appellant contains an assessment of the cumulative impacts that the proposed development would have in conjunction with other wind turbines within 30km of the appeal site. This took into account turbines that were already operational; turbines that had consent but were not yet in place; turbines that were under construction; and turbines that were still in the planning process. However, the cut off date for inclusion in that process was April 2014.
- 12.123 The FEI prepared by the appellant reviewed the situation, and recorded that the only additional schemes which had come forward in the intervening period (and had not subsequently been withdrawn) were three applications for single turbines, each over 10km from the appeal site. A number of other schemes that had been included as being in the planning process had received consent, including the eight 115m turbines at Bishopthorpe Farm, allowed on appeal in March 2015.
- 12.124 During the same period seven of the schemes which had been included in the ES LVIA cumulative impact assessment had been either withdrawn from the planning process, or dismissed on appeal (LPA 1, 9.8). These included the application for four 125m turbines at Damwells Farm some 2.75km from the appeal site, which was withdrawn, and the Louth Canal scheme for three 113.5m turbines around 625m from the appeal site, which was dismissed on appeal in August 2014.
- 12.125 In its response to PINS' request to identify anything of relevance that had changed since the inquiry closed, the Council pointed out that the Bishopthorpe wind farm had been constructed and was operational. None of the three parties drew my attention to any other new or proposed wind energy development. I have therefore assessed the cumulative impacts of the scheme here

under consideration on the basis of the evidence as it stood at the close of the inquiry, but with the benefit of having revisited the area in July 2017 to review visualisations from key viewpoints with the Bishopthorpe wind turbines in place. [1.12, 1.13]

- 12.126 While it has not necessarily happened by design, a pattern of wind farm development, along the length of the Outmarsh, has emerged. (LPA 1, 5.30). The Bamber's Farm turbines toward the southern end of this line are some 5.5km from those at Gayton le Marsh, while the separation between the Gayton le Marsh and Conisholme wind farms is around 8km. The turbines at Bishopthorpe Farm at the northern end of the coastal Outmarsh LCA are perceived together with the Newton Marsh turbines as one cluster, and these lie some 9.5km from the Conisholme wind farm.
- 12.127 The currently proposed wind farm at Fen Lane would be set within the gap between the turbines at Conisholme and those at Bishopthorpe Farm and Newton Marsh. It would lie 6km from the former, and 4km from the latter.
- 12.128 In my judgment, the spacing of these respective schemes would be sufficient to retain "breathing space" between the different groups of turbines [7.33]. The distances between them would maintain differentiation between each grouping, and allow space for the underlying characteristics of the landscape to reassert themselves. This would prevent any overlap of the most significant landscape effects, identified as extending 1km from the Bishopthorpe Farm scheme [12.93] and 2km from the current proposal [12.95]. Thus, while the proposed development would clearly have an adverse impact on the character of the landscape as discussed above, it would not cause additional, cumulative, harm through coalescence with existing areas in which wind turbines were already the defining characteristic.
- 12.129 In terms of cumulative visual impacts, I note the Council's point that the current appeal site is closer to the Wolds than any other consented scheme, such that it would lie slightly in front of the line of wind energy developments in the Outmarsh [7.31]. However, it does not necessarily follow that it would be perceived as an "outlier" when looking at the line of existing developments. It would be clearly seen as lying within the coastal Outmarsh, along with the other onshore wind farms, rather than encroaching further inland on to the middle marsh. Further, the slight offset from what is not, in any event, a straight line of wind energy development would help to maintain the visual distinction between the separate groups of turbines.
- 12.130 As the Inspector who reported on the Bishopthorpe Farm proposal observed, the currently proposed Fen Lane wind farm would result in some 'infilling' of the gap between the turbines at Newton Marsh / Bishopthorpe Farm and those at Conisholme and The Limes. This would be visible from the higher ground and the Wolds to the west, and it would be possible to see the turbines in the same view from the north-east and the south, including from

Covenham Reservoir (CD 7.27, IR 395). While each of the groupings would remain visually distinct, a modest degree of cumulative visual impact would result.

- 12.131 Turning to sequential views, while driving and walking round the area during my visits in January 2016 and July 2017 I observed the distances between existing wind farms and single turbines to be such that while some routes involve a succession of such developments, there is no impression that turbines dominate the views. In my judgment the location and spacing of the currently proposed wind farm would maintain this situation, and would not give rise to any significant sequential cumulative visual impact.
- 12.132 I note the concern raised by the Council and MWAG about the lack of detail in the ES LVIA concerning views in more than one direction from the selected viewpoints in some of the settlements. The wireframes produced in the LVIA for Viewpoint 6 (at Marshchapel), Viewpoint 9 (North Thoresby) and Viewpoint 10 (Tetney) show that there is potential for inter-visibility with the turbines of Conisholme (at Marshchapel) and Bishopthorpe / Newton Marsh (at North Thoresby and Tetney). [7.29, 8.34]
- 12.133 However, the wireframes also show that at Marshchapel and North Thoresby the angle of separation, and the comparative distances, of the wind farms would enable clear distinctions to be made between them. The proposed development would lie some 2km to the west of Marshchapel, while the Conisholme turbines are more than twice that distance to the south-east. At North Thoresby, the proposed development would lie just over 2.5km to the east, with the Bishopthorpe / Newton Marsh turbines over twice that distance to the north-east.
- 12.134 At Tetney, the currently proposed development and the existing turbines of Bishopthorpe / Newton Marsh would be a roughly similar distance away. However, while the proposed turbines would lie to the south southeast of the settlement, those at Bishopthorpe / Newton Marsh lie to the north northeast. The width of the angle between them is such that in any views from within the settlement in which both were visible, there would be an extensive degree of separation.
- 12.135 I therefore accept the conclusion of the ES LVIA that while the proposed development would increase the presence of turbines in the surrounding landscape, the cumulative visual impacts on the settlements would not be significant (CD 10.1, 7.440). This is not to downplay the harm of the significant visual impacts that the settlements would experience, as identified above. It is simply to note that this particular type of harm would not here be intensified by cumulative effects.

#### Conclusions on the second main issue

- 12.136 I have found that the proposed wind turbines would have a major adverse impact on the appeal site and its immediate surroundings. They would become the dominant and defining

feature up to a distance of around 1km from the turbines. Beyond 1km, and up to a distance of around 2km, the turbines would remain prominent within the landscape; while not in all parts its defining feature, they would heavily influence its character and this would result in a major to moderate adverse impact. Beyond 2km, the magnitude of effect on landscape character would steadily diminish.

12.137 A development proposal that leads to this magnitude of change cannot, in my judgement, be said to accord with the NPPF's aims of recognising the intrinsic character and beauty of the countryside, and protecting and enhancing the natural environment (CD 2.1, paras 17 and 7). It would cause considerable harm to the character and appearance of the landscape of the appeal site itself, and to the substantial area around it identified above. I consider that while this harm would be limited to a period of 25 years, it should nevertheless carry great weight.

12.138 I have also found that the proposed development would have significant and adverse visual impacts in views from a number of settlements, roads, other public rights of way, the Lincolnshire Wolds Railway and individual residences, although the proposed wind turbines would not have such an unpleasant, overwhelming and oppressive effect on the outlook of any dwelling as to make it an unattractive place in which to live. In addition, there would be a modest degree of cumulative impact. In my judgment, the overall harm arising from adverse visual impacts should carry considerable weight.

12.139 In terms of adopted Development Plan policies, there would be conflict with Policy A5, which seeks to prevent development that would detract from the distinctive character of the locality. Policy A4, however, simply states that "Development which unacceptably harms the general amenities of people living or working nearby will not be permitted". Here, such harm would arise from the adverse visual impacts identified above. However, in my judgment the question of whether or not the extent of that harm should be considered "unacceptable" can only be answered when it is weighed in the balance with all the other harm, and benefits, accruing from the proposed development. I return to this balancing exercise below.

*Third main issue: noise*

12.140 The Council does not object to the proposed development on the grounds of noise: it formed no part of the Council's case at the inquiry that any local residents would experience any unacceptable increase in noise levels as a result of the construction and operation of the proposed wind turbines. [6.74, 7.1]

12.141 MWAG disagrees with the Council's position on this issue. It is concerned that the noise condition agreed between the Council and the appellant would not be sufficient to protect residents from an unacceptable increase in noise levels should the turbines be allowed because, it contends, the background noise surveys carried

out on behalf of the appellant were flawed [8.43, 8.47-8.52]. MWAG also raised concerns about the extent to which the appellant's noise prediction calculations complied with good practice; the spacing of the turbines; the need for curtailment in order to comply with the specified noise limits; and Excess Amplitude Modulation. [8.44-8.46, 8.53-8.56].

### The Background Noise Survey

12.142 The methodology for the appellant's background noise survey is set out in Chapter 11 of the ES, and the resulting data provided at section 11 of the ES Technical Appendices. Monitoring was undertaken during the period 29 November 2013 to 9 January 2014. MWAG has expressed concern that the weather during that period was atypical, as it included winter storms and exceptionally high wind speeds, and the wind was predominantly from the south west. [8.43]

12.143 The Institute of Acoustics publication *A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise* ("the IOA GPG") advises that the duration of the background noise survey will be determined only by the need to acquire sufficient valid data over the range of wind speeds (and directions, if relevant), and that it is unlikely that this requirement could be met in less than 2 weeks. No specific time of year is recommended as better for data-gathering than any other, and there is no requirement to ensure that the wind data collected during the survey covers the compass rose; rather, as recommended in ETSU-R-97 itself, the survey period should include "wind speeds over the range zero to at least 12 m/s and a range of wind directions that are typical of the site".

12.144 Data for wind speeds and direction measured at Fen Lane over the period March 2011 – July 2013 shows that high wind speeds are typically recorded at this location, and that the strongly prevailing wind direction is south-west (APP 3, 4.1.2). Data recorded during the background noise survey carried out for the appellant covers the recommended range of wind speeds, and while the wind was predominantly from the south west, the breadth of the range was from 130° around to 20°. (CD 10.1, ES App 11, Fig A1.2a – A1.2f). I therefore see no reason to doubt the adequacy of the background noise survey in this respect.

12.145 MWAG considers that the siting of the equipment for the background noise surveys carried out at Heelgate Farm, Harness Farm and Meadow Cottage renders those surveys non-compliant with ETSU-R-97, and also expresses grave doubts, for the same reason, about that carried out at Gloucester House. [8.51]

12.146 The IOA GPG advises that selecting the location for noise measuring equipment will be a matter for professional judgement; the objective is to measure "typical" or "indicative", not "absolute lowest", levels of background noise. Where there are groups of houses, a representative location within the curtilage of one property may be identified such that the background noise levels

measured there can be assigned to other houses in the group. Measurement locations outside a property's curtilage (such as an adjacent field) may be used when access to a representative property cannot be obtained, provided that such a location can be justified as being representative.

- 12.147 At Heelgate Farm, the noise monitoring equipment was sited in the front garden to the south of the property, and the ES field data records that this location was agreed with a representative of the Council's Environmental Health Department on the day of installation. MWAG contends that the equipment ought instead to have been placed in the back garden to the north of the dwelling, as this is more frequently used by the residents, and is on the side of the property that would be closest to the proposed turbines. [8.49]
- 12.148 The IOA GPG advises that where possible, equipment should be sited in areas frequently used for rest and recreation but this is not the only consideration; it is also necessary to take account of the location of other local noise sources. Here, those included a boiler flue on the western elevation of the dwelling, and large poultry sheds to the rear of the farm next door. I had the opportunity to assess the location during my site visit, and am satisfied that it would provide an appropriately indicative measurement of the existing background noise level.
- 12.149 At Harness Farm, the location of the noise monitoring equipment was an area to the south of the derelict farm house (which has no clearly defined amenity area), and I note that this was also agreed with a representative of the Council's Environmental Health Department on the day of installation. This location was chosen as a proxy for the property some 140m to the south east, known as "The Moorings", to which access was refused. I note MWAG's point that the position of the monitoring equipment was very exposed to the south and west – the prevailing wind direction – but there is nothing to indicate that this would not also have been the case had the equipment been sited on amenity land within the curtilage of The Moorings [[8.51]. I see no reason to doubt the validity of the data obtained as representative of the background noise level at both properties.
- 12.150 At Meadow Cottage, the noise monitoring equipment was located on the southern side of the dwelling. MWAG contend that it should have been located to the north, as that is the side on which the proposed wind turbines would lie [8.51]. However, as discussed above, a variety of considerations should inform the siting of the monitoring equipment. Here, the location to the south of the dwelling was chosen because it was on the side of the dwelling mainly used by the resident as an amenity area, whereas the yard area on the northern side is used for turning vehicles. I am satisfied that this location was suitable.
- 12.151 At Gloucester House, the noise monitoring equipment was placed in the main amenity area to the south-east of the dwelling, fairly close to a large deciduous tree, with a bird feeder nearby.

Since the tree had no foliage at the time of the survey it would not have been as noisy as when it was in leaf, but nevertheless, as MWAG points out, their preferred monitoring location on the eastern side of the house may well have been several dB quieter (MWAG 4, 3.7.1). However, as noted above, the objective of the background noise monitoring survey is not to measure the absolute lowest noise level, but rather typical or indicative noise levels. I am not persuaded that the data gathered from this location should be regarded as "ETSU non-compliant" (MWAG 4, 3.9.2).

#### Noise Prediction

- 12.152 MWAG contends that Chapter 11 of the ES is not fully compliant with the IOA GPG's advice on the use of International Standard ISO 9613-2 for attenuation prediction, in that it "ignores" Table 5 of that ISO. (MWAG 4, 4.3)
- 12.153 Table 5 is found in section 9 of Part 2 of ISO 9613-2, which is headed "Accuracy and limitations of the method". In summary, it states that the estimated accuracy for noise calculated using equations (1) to (10) of the ISO is  $\pm 3\text{dB}$ . This estimated accuracy range is clearly set out in the Technical Appendix to the ES (CD 10.1, ES Appx 11.2, 4.5.3), and the modelling parameters used for the assessment are detailed at sections 6.3 and 7.4 of that Appendix.
- 12.154 The IOA GPG advises that while ETSU-R-97 does not prescribe any particular method to predict the immission levels resulting from the operation of the wind farm, extensive research on the subject has demonstrated the ISO 9613-2 standard, which is widely used in the UK, can be applied to obtain realistic predictions of noise from on-shore wind turbines during worst case propagation conditions provided that the appropriate choice of input parameters and correction factors are made.
- 12.155 The IOA GPG then goes on to recommend a number of input parameters and correction factors (for example, the use of a ground factor of  $G=0.5$ , and a correction of  $+3\text{dB}$  for propagation across a concave ground profile) and there is no dispute that the ES assessment has followed all of these. The IOA GPG does not suggest that any correction should be made in respect of the potential error bands set out in Table 5 of ISO 9613-2, and in my judgment, there is no reason why it should. The purpose of Table 5 is to set out, as is good practice with any scientific or engineering model used to predict future events, the estimated accuracy of the output of the predictive calculations involved. The stated range of  $\pm 3\text{dB}$  does not mean that  $3\text{dB}$  should be added to the results, any more than it means that  $3\text{dB}$  should be subtracted. Rather, it identifies the estimated level of uncertainty inherent in the modelling process.
- 12.156 I do not, therefore, agree with MWAG's contention that the ES is not fully compliant with the IOA GPG's advice on the use of International Standard ISO 9613-2 for attenuation prediction. In any event, protection for nearby residential occupiers is provided by

the noise limit in the planning condition; any turbine, whatever the predictive methodology, would have to meet such a limit. [6.86]

#### Spacing and Curtailment

12.157 MWAG is concerned by the proposed spacing of the turbines which, it contends, will have the effect of reducing power generation and increasing noise generation. It is also critical of the appellant's proposed use of mode management to restrict the turbines' rotational speed at certain wind speeds and directions, in order to comply with the specified noise limits [8.45, 8.46].

12.158 I can understand those concerns, but the layout of a wind farm and the use of mode management are not solely informed by considerations of noise. The location and spacing of turbines must also have regard, for example, to their visual impact, and mode management is commonly used as a control mechanism; for example, to stop turbines rotating during bat foraging hours. The turbine supplier would ultimately determine the suitability of a consented layout, as they would be contractually obliged to meet relevant sound emission levels. The undisputed evidence in this case is that the required mode management would result in an overall reduction of total annual energy of less than 1%, compared with the turbines operating in full mode at all times (APP 4, 2.2)

12.159 The key point, in relation to the noise generated by any proposed wind energy development, is that it must comply with the guidance and limits specified in ETSU-R-97. The Council and the appellant agree that subject to a detailed and appropriately worded condition, that would be the case here [6.74]. I share that view.

#### Excess or Other Amplitude Modulation

12.160 Excess or Other Amplitude Modulation ("AM") is a phenomenon which is not completely understood. There is no consensus among the acoustic community regarding its definition, causes, mechanics, frequency, duration or seriousness. It is dealt with very shortly by the IOA GPG, which simply states that *The evidence in relation to "Excess" or "Other" Amplitude Modulation (AM) is still developing. At the time of writing, current practice is not to assign a planning condition to deal with AM.* (PINQ 8, 7.2.1).

12.161 The IOA GPG was published in May 2013. The Supplementary Environmental Information requested by the Secretary of State in connection with this current appeal included a request for the provision of "a commentary on any industry advances in the assessment of AM made subsequent to the submission of the original planning application that would make it possible to predict the probability or severity of AM at the site". (CD 10.9)

12.162 The commentary provided (CD 10.10) refers to a statement released by the IOA on 22 January 2014, which described research undertaken by RenewableUK as a significant step forward in understanding what causes OAM and how people react to it, but advised that the planning condition proposed by the researchers

needs a period of testing and validation before it could be considered good practice, and until that time, the IOA cautions against its use.

- 12.163 The commentary went on to advise that on 3 August 2015 the Government (DECC) awarded a contract for further research, the stated aims of which included reviewing the available evidence on OAM in relation to wind turbines, and recommending how OAM might be controlled through the use of a planning condition. At the time of the inquiry into this current appeal, that research was ongoing. The parties therefore agreed (albeit with some reluctance on the part of MWAG: see my note at paragraphs 1.7 – 1.8 above) that given the limitations on current understanding of predicting and abating OAM, it would not be possible to impose a condition which sought to control it because such a condition could not comply with the NPPF requirements that it be necessary, relevant, enforceable, precise and reasonable. [6.90]
- 12.164 In October 2016, after the inquiry closed, DBEIS (the successor to DECC) published the results of the commissioned research, as the *Wind Turbine AM Review Report*. In summary, the report concludes that there is sufficient robust evidence that excessive AM leads to increased annoyance from wind turbine noise, and that it should be controlled using suitable planning conditions.
- 12.165 The report then goes on to recommend the key elements required to formulate such a condition. While helpful, these still contain a number of uncertainties. For example, on the basis of comments in ETSU-R-97, the value of 3dB is sometimes referred to as the “expected level” of AM above which AM is deemed to be “greater than expected”. But the report notes that this value is not supported in any of the available research as being the onset of “unacceptable” AM, and more research is needed to test whether 3dB peak-to-trough is still “normal” in the context of current turbine technology (4.5.5). Another difficulty is identifying how often the chosen AM threshold would need to be breached to trigger a penalty, since there is currently no identified targeted research on which to base that decision (4.5.19).
- 12.166 The report sets out an “outline” condition which, given the acknowledged lack of ability to predict the occurrence of AM at a site, it suggests should be applied at all sites. Leaving aside the question of whether a condition can satisfy the test of being “necessary” if there is no evidence that the phenomenon it is intended to address would actually occur, I am not satisfied that it meets, in its current form, the tests of being “precise” and “enforceable”. To be fair, this is hardly surprising: the report states that the outline condition has been provided for information only, as producing a recommendation for the specific wording of an appropriate condition was not within its scope.
- 12.167 None of the three main parties in this case have, in the light of the report’s recommendations, suggested that such a condition

be applied in this case or put forward a suggested form of wording. MWAG submitted a critique of the report, which sets out Dr Yelland's view that its authorship is devoid of academic authority and that the report should be urgently withdrawn, but is silent as to the report's findings on the use of conditions to control AM. (PINQ 18, 41 and 47)

12.168 Taking all of this into account, I consider that it would not be appropriate, in the circumstances of the current appeal, to impose a condition seeking to control AM. While the AM Review Report appears to suggest that such a condition should be imposed on a precautionary basis, the "outline" form it suggests lacks precision and would not be enforceable, and in my judgment there is currently insufficient information available to derive a form of wording that would correct those failings. That does not mean that planning permission must therefore be refused; if it did, *all* wind farms (and single wind turbines) would have to be refused on the basis that excess AM may potentially occur, and that is clearly not current Government policy. In any event, there is nothing credible to suggest that this appeal site would be particularly prone, or even likely, to give rise to excess AM such that a condition would be "necessary" to mitigate foreseeable impacts [6.89].

12.169 Should the SoS disagree with this analysis, and instead take the view that a condition seeking to control AM should be imposed, then (in the event that he determines this appeal be allowed) I would strongly recommend that rather than simply adopting the "outline" condition set out in the AM Report he canvass the three main parties' views on how that condition may best be adapted to suit the particular circumstances of this site.

The equipment used in the noise assessment

12.170 Mr R A Baker BEM, a retired engineer from the airborne electronic engineering sector, expressed concern that the RION NL-31 sound level meters used in the background noise survey only comply with the Class1/Type1 precision standards, as required by the IOA GPG, for measurements above 28dB (INQ 10, PINQ1). He also raised concerns about the lack of information concerning the verification of the SODAR (Sonar Detection and Ranging) equipment used on site, and the calibration of that equipment (INQ 11, PINQ 1).

12.171 The criticism that the sound level meter was used outside its calibration range is technically correct. However, while self noise from the meter does influence low-level measurements it is only by a fraction of a dB, and the error reduces with increasing levels. ETSU-R-97 methodology provides for a fixed minimum limit of 35dBA at all wind speeds during the day, and 43dBA at night. Measurements are not utilised until the background noise is 30dBA or more, at which point any error is negligible and could not be measured (INQ 70, 2.6).

12.172 Concerns about the use and calibration of the SODAR equipment, and the potential for misapprehending American terminology, are understandable. The IOA GPG advises that while

remote-sensing methods (such as SODAR) may be used as alternatives to mast-mounted anemometers, the operator of such equipment and the person analysing the data should have appropriate experience of these operations. In this case, the operator was Dulas, a company with considerable experience and expertise. Their installation report, and the specifications for the Triton SODAR equipment used, are provided at Annex 5 of ES Technical Appendix 11.2. Further explanatory material concerning the Triton and its "calibration" is provided at PINQ 7.

12.173 On the basis of all the evidence provided, I am satisfied that the noise surveys undertaken on behalf of the appellant accord with the advice set out in the IOA GPG.

#### Conclusions on the third main issue

12.174 As a result of the considerations set out above, I conclude that the ES background noise survey was fit for purpose, and that the noise prediction calculations complied with good practice. I am satisfied that subject to the detailed and appropriately worded condition agreed with the Council and the appellant [11.8], the noise generated by the proposed wind farm would comply with the Government's specified limits, as set out in ETSU-R-97.

#### *The Written Ministerial Statement of 18 June 2015 ("the WMS")*

12.175 There was a considerable amount of disagreement at the inquiry as to the correct interpretation and application of the WMS: specifically, what is meant by the statement that planning permission can be granted if a proposal has "addressed the planning impacts identified by affected local communities and therefore has their backing". [5.9]

12.176 In summary, the appellant contends that relevant land use impacts which are identified by the local community must of course be taken seriously, but residual adverse harm can be countenanced provided that it is acceptable (per paragraph 98 of the NPPF), and no additional weight should be added to harmful impacts, simply because they have been flagged up by members of the affected local community [6.7].

12.177 The Council contends that residual harm remains in terms of the planning impacts identified by the local communities, and that it cannot here be said that the proposals are backed by the community: non-compliance with the WMS should therefore act as a material consideration indicating against the grant of planning permission. [7.88 – 7.89]. MWAG contends that the planning impacts identified by the affected local communities have not been fully addressed and therefore this proposal does NOT have their backing [8.64].

12.178 To aid discussion, at the start of the inquiry I drew the parties' attention to my own views on the intended operation of the WMS, as set out in the Lilyhall wind farm report and agreed by the (then) SoS. (CD 7.33, IR 11.66-11.67). As I said there, it seems to me that the WMS is consistent with the approach set out in the PPG,

which emphasises the need for decision makers to pay very careful attention to the concerns of local communities. In so far as those concerns are material and relevant, they must be given due weight in the overall balance of considerations. But the extent of the weight that is due to such considerations remains a matter for the decision maker. The WMS explains the need to demonstrate that the *planning impacts* [my emphasis] identified by local communities have been addressed. It is these planning impacts that are to be weighed in the balance, rather than simply the numbers of individuals, or the percentage of each community, who support or oppose the proposal in question.

12.179 Since the inquiry closed, interpretation of the WMS has been considered by the courts. MWAG drew my attention to an Order made in December 2016 in the matter of a claim for planning statutory review, which refused permission to proceed, largely on the basis that the claim sought to challenge, incorrectly, the legality of the WMS (PINQ 18). Of more assistance is the judgment in *Holder v Gedling Borough Council* [2016] EWHC 3095.

12.180 In agreeing the proposition that the Council's Planning Committee could find a proposal to be "acceptable" if it was satisfied that on balance the proposal addressed planning impacts identified by local communities, Green J said this: *In my view [the WMS] does not endorse the principle that a vocal minority has the ability to exert decisive or dominant influence in a manner which would not otherwise occur. If this were the case how would decision makers treat competing vocal minorities? Is the outcome to be determined by the most populous or the loudest group of protestors? Is a silent majority to be ignored? Does probative value become a function of degrees of ardour? If it did it would create a perverse incentive for protesters to whip up a frenzy of objections and objectors in order to win a dispute. In my view this cannot be right whether considered in terms of pure logic, the concept of localism or the principles enunciated in the NPPF.* He went on to make clear, for the avoidance of any doubt, that he was addressing the interpretation of the WMS as a matter of principle, and was not suggesting that those who objected to the turbine in that case were no more than a militant vocal minority.

12.181 That seems to me a useful summary of the interpretational difficulties caused by the statement, in the first paragraph of the WMS, that it is to be applied "...so that local people have the final say on wind farm applications." In this present case, MWAG and local residents have (quite understandably) spent a great deal of time and effort on analysing and documenting the extent to which expressions of support for the proposed development emanate from outside the settlements and residences closest to the proposed development site [8.11]. What is at issue, however, is not the number and addresses of people who support or oppose the proposal, but the material planning considerations it raises.

12.182 In this report, I have assessed those material considerations and set out my view as to the weight they should carry in the

overall balance of planning considerations. In some instances, I have found that residual harm remains in terms of the planning impacts identified by the local communities (the impact on certain heritage assets, for example, and various visual impacts). For the reasons set out above, I do not consider that any additional weight should be afforded to these particular harmful impacts by operation of the WMS.

*Other matters*

- 12.183 The proposed development would lie to the south-west of North Coates Airfield, and a local resident who uses this airfield raised detailed concerns about the impact that the proposed development would have on its safety and viability [9.2 – 9.8].
- 12.184 North Coates is an unlicensed aerodrome, so is not subject to the safeguarding regulations set out in the CAA CAP 168 (Aerodrome Licensing), but is covered by guidance contained in CAP 793 (Safe Operating Procedures at Unlicensed Aerodromes). That guidance recommends that there should be no obstacles greater than 150ft above the average runway elevation within 2000m of the runway mid-point. The closest of the wind turbines here proposed would lie some 4.7km from the mid-point of the runway, so would not breach that guidance.
- 12.185 The North Coates runway is over 14km from the TMZ (Transponder Mandatory Zone) associated with the Humber Gateway and Westernmost Rough offshore wind farms. The appeal site is not near any regular military low flying routes, and I note that while the MoD originally requested Rule 6 Status in the current appeal, it withdrew that request, and raised no objection to the proposed development, subject to conditions [1.5, 11.6]. The airfield is adjacent to the Donna Nook Range, but local procedures are in place to enable both North Coates and Donna Nook to operate in cooperation.
- 12.186 The vast majority of the flights in (and through) the area would be made by light aircraft for purely recreational purposes. I note that helicopters operate out of Humberside Airport, but the closest Helicopter Main Route is over 10km to the north of North Coates airfield. North Coates has no official instrument approach systems or radio aids, so the approach will always be visual. The minimum legal visibility for flight, as specified by the CAA, is 1500m. (INQ 61)
- 12.187 I note the concern that one cannot guarantee to see everything within that range, such that a pilot could fail to pick out wind turbine blades, especially if immobile and sideways on (INQ 15). However, the (unexamined) evidence of Sqn Ldr M Hale MBE MSc CFS RAF (ret'd), who has over 40 years of piloting, instructing and examining experience, is that wind turbines are easily seen from above against the ground, are marked on aviation charts, and are recognised in many aviation circles as ideal navigation features as they are so easy to see from range. He contends that if you are

flying in conditions when turbines are a hazard, you are flying below minimum weather conditions. (INQ 61)

- 12.188 In conclusion, I consider that concerns about the aviation safety implications of erecting seven 115m high wind turbines on the appeal site are wholly understandable; they would constitute a new obstacle, with the potential therefore to increase the risk of collision. But it is important that such concerns be kept in proportion. The proposed wind turbines would not obstruct the approach to North Coates airfield, or any designated flight paths, and would not pose any problems for the MoD. The wind farm would be marked as an obstacle on all civil and military aeronautical charts of the area, annotated with the elevation of the highest point, such that it would be clear to all pilots. I do not, therefore, find that the proposed development would present a danger to the safety of air traffic or the general public.
- 12.189 I note Mrs Belton's concern that the introduction of the proposed wind farm as an additional obstacle in the area may deter recreational flyers from using North Coates airfield, which may compromise its future viability. I have not however been provided with any evidence from other recreational flyers who feel the same way, or any indication from the operators or managers of North Coates airfield that the proposed wind farm is of concern to them. Possible harm to the future viability of the airfield is not, then, a consideration to which I attach weight in the overall planning balance.
- 12.190 Concerns were raised about the impact of construction work and traffic associated with the proposed wind farm, and I appreciate that this could be a source of considerable noise and disruption to those living and working near the appeal site. To minimise such impacts, conditions are recommended which would require the Council's prior approval of a Construction Traffic Management Plan, and a Construction Method Statement. These would require, among other things, measures to prevent damage to the dykes along the route, and the reinstatement of any verges damaged by construction traffic. To minimise the disturbance experienced by nearby occupiers, I have also recommended a condition limiting the hours during which construction and deliveries may take place [8.14, 11.4].
- 12.191 I appreciate that the area has a healthy tourist economy, and understand the concerns of local residents, and businesses, about the potential impact of the proposed development on the number of visitors to the area. However, I have seen no empirical evidence that the visibility of turbines from recreational walking, cycling or horse riding routes reduces the number of users. Given the broad range of public opinion on wind farms [12.100], it is possible that some visitors might choose to walk an alternative route in order to avoid views of turbines, but it is also possible that others may choose a route specifically to see them.
- 12.192 Concerns were raised that a motorist might become distracted by the moving blades of the turbines, and drive into one

of the drainage ditches which lie alongside many of the local roads, with potentially fatal consequences. However, these would be large, modern turbines moving at a smooth and steady speed; their huge scale means that they would be unlikely to startle drivers by catching them unawares. Similar turbines have, for many years, been sited close to motorways and to minor roads, with no identified adverse impacts on highway safety.

- 12.193 Concerns were also raised about the impact of the proposed development on wildlife, particularly birds. Extensive ecological and ornithological surveys were carried out prior to the submission of the planning application, which provide an assessment of the breeding, migratory and wintering bird assemblages as well as other species present. The methodologies and results are provided in the ES, which also sets out a wide range of creation and mitigation measures to retain and enhance habitat. I am satisfied that subject to conditions requiring the completion (and ongoing maintenance) of these measures, the proposed development would not have any significant adverse impact on ecology. It would therefore accord with Policy ENV 20 of the Local Plan [11.6].

*The overall balance*

- 12.194 For the reasons set out in my consideration of the first main issue, I concluded that the harm caused to the significance of designated heritage assets would be outweighed by the public benefits of the proposed development, such that it would not fall foul of the balancing exercise required under the second limb of paragraph 14.
- 12.195 Turning now to the wider balancing exercise set out in the first limb of NPPF paragraph 14, the totality of the adverse impacts and benefits of the proposed development need to be weighed together.
- 12.196 I found that the proposal would cause considerable harm to the character and appearance of the landscape, and that while this harm would be limited to a period of 25 years, it should nevertheless carry great weight [12.137]. I also found that the proposed development would have significant and adverse visual impacts in views from a number of settlements, roads, other public rights of way, the Lincolnshire Wolds Railway and individual residences, although the proposed wind turbines would not have such an unpleasant, overwhelming and oppressive effect on the outlook of any dwelling as to make it an unattractive place in which to live. In addition, there would be a modest degree of cumulative impact [12.138]. In my judgment, the overall harm arising from adverse visual impacts should carry considerable weight.
- 12.197 These adverse impacts need to be added to the harm that would be caused to heritage assets, which I found to carry a great deal of weight [12.73].
- 12.198 I have not found any other material considerations that would weigh significantly against the proposed development, but

neither have I identified any other benefits, to add to the public benefits already set out above [12.70], that would weigh in its favour.

12.199 In my judgment, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. Applying the guidance set out in the NPPF, which is a weighty material consideration made all the more important by the absence from the Development Plan of any policies governing renewable energy, this means that planning permission should be refused.

12.200 To conclude against the Development Plan, since I have found that the benefits of the proposed development would be outweighed by the adverse impacts to the extent that a grant of planning permission would not be justified, it follows that the harm caused to the general amenities of people living or working nearby would be unacceptable, and so would conflict with Policy A4 of the Local Plan [12.139]. For the reasons set out above, I have also found that the proposal would conflict with Policies A5 and C2 of the Local Plan.

### **13 Inspector's recommendations**

13.1 I recommend that the appeal be dismissed, and planning permission refused for the proposed development.

13.2 Should the SoS decide that the appeal ought rather to be allowed and planning permission granted, I recommend that he attach the conditions set out in Appendix C (subject, should he consider a condition to control excess AM appropriate, to referral back to the three main parties as to the wording of such a condition).

*Jessica Graham*

INSPECTOR

## Appendix A: APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Miss S Hall, of Counsel She called:	Instructed by Mr S Tym of LCC Legal Services
Mr P Russell-Vick DipLA CMLI	Director, Enplan
Mr R Walker Dip Land Admin, DipTP, Dip Constudies, MRTPI IHBC	Senior Conservation and Design Officer, ELDC
Mr A P Booth BA(Hons) MRTPI	Major Applications Officer, ELDC

### FOR THE APPELLANT:

Mr D Hardy LLB(Hons) B.C.L(Hons) He called:	Partner, Squire Patton Boggs (UK) LLP
Mr B J Denney BA(Hons) DIPLA CMLI CENV MIEMA	Landscape and Environmental Planning Director, Pegasus Group Ltd
Mr R Bourn BA(Hons) MA MCIFA	Managing Director, Orion Heritage Ltd
Mr D C Bell BSc(Hons) DipUD MCIHT MRTPI	Director, Jones Lang LaSalle
Mr S Arnott BSc(Hons) MSc MIOA	Principle Associate Consultant, TNEI Services Ltd

### FOR MWAG:

Mr M Grosvenor He called:	Chairman, MWAG
Himself	
Mr J Loomes HNC	Ludborough Parish Councillor
Mr J Yelland DPhil MInstP FIET AMASA MIOA	Acoustic Consultant

### INTERESTED PERSONS

Mr R A Baker, BEM	Chair, Huttoft Community Group
Mrs C Belton	Fulstow Resident
Mr P Butt	Fulstow Resident
Mrs M L Brown	Fulstow Resident
Mr and Mrs Willerton	Fulstow Residents
Mrs Pridgeon	Fulstow Resident
Mr and Mrs F Butt	Fulstow Residents
Mr T Donovan	Treasurer, The Fulstow Players
Mr M Lloyd	Fulstow Resident
Dr J A and Mrs A R Smith	Fulstow Residents
Mrs M E Smith	Fulstow Resident
Mr Pocklington	
Mrs F Steel	Fulstow Resident
Mrs R C Donovan	Fulstow Resident

Dr N Jefferies	Fulstow Resident
Mr J S and Mrs R E Forrest	Fulstow Residents
Mr T Heys	Theddlethorpe Resident
Mrs J Corbridge	Grainthorpe Resident
Mr D Hallett	Fulstow Resident
Mr B Greenland	Chair, North Thoresby Parish Council
Mr S and Mrs A Lewis	Fulstow Residents
Mr R and Mrs M Lawson	Fulstow Residents
Dr V Dunn	Grimsby Resident
Ms A Good	Grimsby Resident
Mr Sheer	Fulstow Resident
Mr M Casswell	
Ms A Winslow	Tetney Resident
Mr D Buckley	District Cllr, Fulstow Ward
Mr S Flinn	Fulstow Parish Cllr
Ms S Weller	District Cllr, Holton le Clay & N Thoresby Ward
Mr R Lukehurst	Tetney & Tetney Lock Parish Cllr
Mr T Bridges	Lincolnshire County Cllr for Fulstow
Mr A McLaren	Chair, Yarburgh Parish Meeting
Mr J Loomes	Vice Chair, Ludborough Parish Council
Mr B Stapleton	Saltfleetby Parish Cllr
Dr J Kelly	Vice Chair, Covenham Parish Council
Mr B Gray	Resident of Graveley, Cambs

## Appendix B: DOCUMENTS

### THE COUNCIL'S PROOFS AND APPENDICES

LPA 1	Proof (and Summary Proof) of Evidence of Mr P Russell-Vick
	Appendices to Mr Russell-Vick's Proof, comprising:
LPA 1.A	Extracts from <i>Guidelines For Landscape &amp; Visual Impact Assessment</i> (third edition)
LPA 1.B	Visual Receptor Value Criteria
LPA 1.C	Visual Receptor Susceptibility Criteria
LPA 1.D	Visual Receptor Sensitivity Criteria
LPA 1.E	Magnitude of Visual Effects Criteria
LPA 1.F	Landscape Value Criteria
LPA 1.G	Landscape Susceptibility Criteria
LPA 1.H	Landscape Sensitivity Criteria
LPA 1.I	Magnitude of Landscape Effects Criteria
LPA 1.J	Overall Assessment of Landscape and Visual Effects Criteria (Significance)
LPA 1.K	Visual Impact Assessment Table
LPA 1.L	Cumulative Visual Impact Assessment Table
LPA 1.M	Promoted Walks Leaflets
	Figures referred to in Mr Russell-Vick's Proof, comprising:
LPA 1.1	Landscape Character Areas and Viewpoint Locations
LPA 1.2a-b	Photomontage from Viewpoint PRV 1
LPA 1.3a-b	Photomontage from Viewpoint PRV 2
LPA 1.4a-b	Photomontage from Viewpoint PRV 3
LPA 1.5a-b	Photomontage from Viewpoint PRV 4
LPA 1.6a-b	Cultural Heritage Photomontage from Fen Lane
LPA 1.7a-b	Cultural Heritage Photomontage from Manor Farm House
LPA 2	Proof (and Summary Proof) of Evidence of Mr R Walker
	Appendices to Mr Walker's Proof, comprising:
LPA 2.A	Lincolnshire Character Assessment – ELDC character types and areas
LPA 2.B	Planning application consultation responses from Robert Walker (the Council's Senior Conservation and Design Officer) and David Walsh (then of English Heritage)
LPA 2.C	Supplementary EI responses from Robert Walker and David Walsh
LPA 2.D	Chapter 4: High Farming on the Wolds, by Charles Rawding, from <i>The Lincolnshire Wolds</i> , ed. David Robinson
LPA 2.E	Beesby DMV SAM designation entry
LPA 2.F	North Cadeby SAM designation entry
LPA 2.G	Cadeby Hall list entry
LPA 2.H	Silver Lincs Way – promotional walks leaflet
LPA 2.I	Kenneth Cameron's discussion of Ludborough from his book <i>The Place-names of the County of the City of Lincoln Part 4, Volume LXXI</i> , English Place-Name Society (Nottingham, 1996)
LPA 2.J	Ludborough Church list entry
LPA 2.K	Fulstow church list entry (including church cross)
LPA 2.L	Churchthorpe House list entry
LPA 2.M	1906 OS Map showing Fulstow church and Churchthorpe House

LPA 2.N	1950s photo of Churchthorpe House
LPA 2.O	1595 Fulstow parish map and enlargement on the church and manor house
LPA 2.P	Thoresby Bridge warehouse list entry
LPA 2.Q	Photo showing date of alteration to warehouse
LPA 2.R	<i>Two Sea Forts and a Canal</i> and <i>To The Sea with LNT</i> promotional walk leaflets
LPA 2.S	<i>People &amp; Boats: A History of Louth Canal</i> by Stuart M Sizer and Josephine Clarke
LPA 2.T	Thoresby Warehouse sales brochure
LPA 2.U	Photomontage – Thoresby Warehouse and turbines, Fen Lane
LPA 2.V	Photomontage – Churchthorpe House to church and turbines
LPA 3	Proof (and Summary Proof) of Evidence of Mr A Booth

THE APPELLANT’S PROOFS AND APPENDICES

APP 1	Proof (and Summary Proof) of Evidence of Mr B Denney
	Appendices to Mr Denney’s Proof, comprising:
APP 1.1	Further Considerations relevant to the decision-making process
APP 1.2	Additional information relating to residential amenity
APP 2	Proof (and Summary Proof) of Evidence of Mr R Bourn
	Figures referred to in Mr Bourn’s proof of evidence:
APP 2.1	Grade I and II* Listed Buildings within 5km of the proposed wind farm
APP 2.2	Grade II Listed Buildings within 5km of the proposed wind farm
APP 3	Proof (and Summary Proof) of Evidence of Mr D Bell
	Appendices to Mr Bell’s Proof, comprising:
APP 3.1	The Visual Component of Residential Amenity in Planning Decisions
APP 3.2	Addressing Planning Impacts
APP 4	Rebuttal Evidence – Noise, by Mr S Arnott

MWAG’s PROOFS AND APPENDICES

MWAG 1	Proof of Evidence of Mr M Grosvenor: “Main Case and Evidence”
	Appendices to Mr Grosvenor’s proof MWAG 1, comprising:
MWAG 1.1	Collaboration of Parish Council’s Boundary Map Fulstow residents letters of objection analysis Bishopthorpe Wind Farm petition analysis
MWAG 2	Proof of Evidence of Mr J Loomes: “Collaboration of Parish Councils”
MWAG 3	Proof of evidence of Mr M Grosvenor: “Landscape Visual & Residential Amenity Impacts”
	Appendices to Mr Grosvenor’s proof MWAG 3, comprising:
MWAG 3.1	MWAG Viewpoints

MWAG 3.1a	A3 copy of Wanderlust Way Photomontage (Viewpoint 10)
MWAG 3.2	Technical note about the Wanderlust Way Photomontage
MWAG 3.3	<i>Fulstow: A History of a Marsh Village</i> by the Fulstow History Group
MWAG 4	Proof of Evidence of Dr J Yelland "Wind Turbine Noise Impact Assessment Appraisal"
MWAG 4.1	Procedural note re MWAG 4 noise evidence and witness

## THIRD PARTY WRITTEN REPRESENTATIONS (submitted before the inquiry)

Folder TP1	Representations received by the Council in response to the planning application
Folder TP2	Representations received by the Planning Inspectorate in response to the appeal

## CORE DOCUMENTS

<b>1</b>	<b>Adopted Development Plan Policies</b>
1.1	Saved Policies of the East Lindsey Alteration Local Plan (adopted September 1999) (Extracts)
<b>2</b>	<b>National Planning and Energy Policy and Legislation</b>
2.1	DCLG: National Planning Policy Framework (March 2012)
2.2	Overarching National Policy Statement for Energy EN-1 (July 2011)
2.3	National Policy Statement for Renewable Energy Infrastructure EN-3 (July 2011)
2.4	Written Ministerial Statements relating to Local Planning and Onshore Wind issued by DECC and DCLG on 6 June 2013
2.5	National Planning Practice Guidance (online resource) (6 March 2014) (Extracts)
2.6	Written Ministerial Statement on Planning issued by the Rt Hon Greg Clark (DCLG) on 18 June 2015
<b>3</b>	<b>Emerging Local Plan Documents</b>
3.1	Draft Core Strategy: Consultation (October 2012) (Extracts)
<b>4</b>	<b>Regional Spatial Strategy and Evidence Base Documents</b>
4.1	The Regional Strategy for the East Midlands (Revocation) Order 2013
4.2	Land Use Consultants, Centre for Sustainable Energy and SQW: Low Carbon Energy Opportunities and Heat Mapping for Local Planning Areas across the East Midlands (March 2011)
4.3	Faber Maunsell: Reviewing Renewable Energy and Energy Efficiency Targets for the East Midlands (June 2009)
4.4	EMRA: East Midlands Regional Targets and Scenarios for Renewable Energy Report (June 2006)
4.5	DCLG: Strategic Environmental Assessment of the Revocation of the East Midlands Regional Strategy Post Adoption Statement (March 2013) (Extracts)
4.6	AECOM: Reviewing Renewable Energy and Efficiency Targets for the East Midlands (June 2009)

<b>5</b>	<b>Planning, Renewable Energy and Climate Change Documents</b>
5.1	HM Government: The UK Renewable Energy Strategy (2009)
5.2	DECC: UK Renewable Energy Roadmap (July 2011)
5.3	DECC: UK Renewable Energy Roadmap Update (December 2012)
5.4	DECC: UK Renewable Energy Roadmap Update (November 2013)
5.5	European Commission: EU 2030 Energy and Climate Change Policy (January 2014)
5.6	European Commission: Press Release in relation to EU 2030 (22 January 2014)
5.7	European Commission: Renewable Energy Progress Report (June 2015)
5.8	DECC: The Economic Impact of Onshore Wind (2012)
5.9	Digest of UK Statistics, Chapter 6, Renewable Sources of Energy (July 2015)
5.10	Amber Rudd Speech on a New Direction for UK Energy Policy (18 November 2015)
5.11	DECC: Letter on EU 2020 Renewables Targets (29 October 2015)
5.12	Committee on Climate Change, the UK's Fifth Carbon Budget 'The Next Step Toward a Low Carbon Economy' (November 2015)
5.13	Amber Rudd Statement on Ending Subsidies for Onshore Wind (22 June 2015)
5.14	COP21 Paris Agreement
<b>6</b>	<b>High Court and Court of Appeal Decisions</b>
6.1	R (Hulme) v Secretary of State for Communities and Local Government [2010] EWHC 2386 (Admin)
6.2	Michael William Hulme v Secretary of State for Communities and Local Government and RES Developments Ltd [2011] EWCA Civ 638
6.3	R (Lee) v Secretary of State for Communities and Local Government, Maldon District Council, Npower Renewables [2011] EWHC 807 (Admin)
6.4	Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Ltd [2012] EWHC 4344 (Admin)
6.5	(1) East Northants District Council (2) English Heritage (3) The National Trust v (1) Secretary of State for Communities and Local Government (2) Barnwell Manor Wind Energy Ltd [2013] EWHC 473 (Admin)
6.6	Barnwell Manor Wind Energy Ltd v (1) East Northants District Council (2) English Heritage (3) The National Trust (4) Secretary of State for Communities and Local Government [2014] EWCA Civ 137
6.7	Anita Colman v Secretary of State for Communities and Local Government, North Devon District Council and RWE Npower Renewables Ltd [2013] EWHC 1138 (Admin)
6.8	R (The Forge Field Society & Ors) v Sevenoaks District Council [2014] EWHC 1895 (Admin)
6.9	Chase Milton Energy Ltd v Secretary of State for Communities and Local Government [2014] EWHC 1213 (Admin)
6.10	North Norfolk District Council v Secretary of State for Communities and Local Government [2014] EWHC 279 (Admin)
6.11	R (Hughes) v South Lakeland District Council [2014] EWHC 3979 (Admin)

6.12	Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government[2014] EWHC 754 (Admin)
6.13	Crane v Secretary of State for Communities and Local Government [2015] EWHC 425 (Admin)
<b>7</b>	<b>Wind Farm Application and Appeal Decisions</b>
7.1	-
7.2	Nun Wood (APP/Y0435/A/10/2140401, APP/K0235/A/11/2149434 and APP/H2835/A/11/2149437)
7.3	Burnthouse Farm (APP/D0515/A/10/2123739)
7.4	Enifer Downs (APP/X2220/A/08/2071880)
7.5	-
7.6	Gayton-le-Marsh (APP/D2510/A/12/2176754)
7.7	-
7.8	-
7.9	Newton Marsh (APP/D2510/A/08/2090543)
7.10	Baumber (APP/D2510/A/10/2121089)
7.11	Cleek Hall (APP/N2739/A/12/2172629)
7.12	Louth Canal (APP/D2510/A/13/2200887)
7.13	Turncole Farm (APP/X1545/A/12/2174982, APP/X1545/A/12/2179484 and APP/X1545/A/12/2179225)
7.14	Asfordby (APP/Y2430/A/13/2191290)
7.15	-
7.16	Beech Tree Farm (APP/K1128/A/08/2072150)
7.17	-
7.18	Burnham-on-Sea (APP/V3310/A/06/2031158)
7.19	Carland Cross (APP/D0840/A/09/2103026)
7.20	Church Farm, Southoe (Common Barn) (APP/H0520/A/12/2188648)
7.21	Chelveston Renewable Energy Park (APP/G2815/A/11/2160078)
7.22	Sixpenny Wood (APP/E2001/A/09/2101851)
7.23	Starbold (APP/J3720/A/13/2193579)
7.24	Streetwood Wind Farm (Busseys Loke) (APP/L2630/A/13/2207755)
7.25	Watford Lodge (APP/Y2810/A/11/2153424)
7.26	-
7.27	Bishopthorpe (APP/D2510/A/14/2213150)
7.28	Razors Farm (APP/H1705/A/13/2205929)
7.29	Hawton (APP/B3030/A/12/2183042)
7.30	French Farm (APP/J0540/V/14/2220136)
7.31	Stafford (APP/Y3425/A/14/2212769)
7.32	Newport Pagnell (APP/Y0435/A/14/2227711)
7.33	Lillyhall (APP/H0900/A/14/2224323)
7.34	River Valley (APP/E2001/A/13/2207817)
7.35	Orby (APP/D2510/A/11/2161066)
7.36	Hemswell Cliff (APP/N2535/A/14/2212769)
7.37	Stone Park Farm (APP/Y3425/W/14/2212769)
7.38	Saxby Wolds (APP/Y2003/A/12/2180725)
7.39	Pilrow Farm (APP/V3310/13/2187098)
7.40	Melton Mowbray (APP/Y2430/A/12/2187098)
<b>8</b>	<b>Cultural Heritage Documents</b>
8.1	Historic England: The Setting of Heritage Assets (March 2015)

8.2	-
8.3	-
8.4	English Heritage: Historic Environment Good Practice Advice Notes 1-3 (11 July 2014)
8.5	Wind Energy and the Historic Environment (2005)
<b>9</b>	<b>Landscape and Visual Documents</b>
9.1	The Countryside Agency: Landscape Character Assessment: Guidance for England and Scotland (2002)
9.2	Landscape Institute: Landscape Architecture and the Challenge of Climate Change (October 2008)
9.3	Landscape Institute: Photography and Photomontage in Landscape and Visual Impact Assessment, Advice Note 01/11
9.4	Scottish Natural Heritage and Countryside Agency: Landscape Character Assessment Series: Topic Paper 9 Climate Change and Natural Forces
9.5	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance (2006)
9.6	Scottish Natural Heritage: Visual Representation of Wind Farms Version 2.1 (2014)
9.7	Scottish Natural Heritage : Siting and Designing Windfarms in the Landscape, Version 1 (December 2009)
9.8	-
9.9	Scottish Natural Heritage: Guidance Assessing the Cumulative Impact of Onshore Wind Energy Developments, Version 3 (March 2012)
9.10	ECUS Ltd on behalf of East Lindsey District Council: East Lindsey District Landscape Character Assessment (2009)
9.11	The Lincolnshire Wolds Countryside Service and Lincolnshire Wolds Joint Advisory Committee (AONB Partnership): Lincolnshire Wolds Area of Outstanding Natural Beauty Management Plan 2013-2018 (2013)
9.12	East Midlands Councils: East Midlands Regional Landscape Character Assessment, East Midlands Councils (2010)
9.13	Scottish Natural Heritage: Siting and Designing Windfarms in the Landscape, Version 2 (May 2014)
9.14	Enplan Review of the LVIA
9.15	National Character Area NCA 42 (coast and marshes)
9.16	National Character Area NCA 43 (Lincolnshire Wolds AONB)
9.17	North East Lincolnshire LCA, February 2010 (Extract)
9.18	The Lincolnshire Wolds Landscape, Countryside Agency 1993 (CCP 414)
<b>10</b>	<b>Planning Application and Appeal Documents</b>
10.1	Planning Application, including ES and Supporting Documents (filed separately)
10.2	Regulation 22 Additional Environmental Impact Assessment (November 2014) (filed separately)
10.3	Appellant's Statement of Case
10.4	Council's Statement of Case
10.5	Statement of Common Ground
10.6	Council Report to Committee 5 June 2015
10.7	Responses on Written Ministerial Statement 2015

10.8	MWAG Statement of Case
10.9	Regulation 22 Request September 2015
10.10	Regulation 22 Submission November 2015 (filed separately)
10.11	Letter from East Lindsey District Council dated 1 December 2015

(See also Document clips **PINQ 8** and **PINQ 9** as referenced below)

#### DOCUMENTS SUBMITTED AT THE INQUIRY

INQ 1	Copy of the judgment in <i>Daventry DC v SoS CLG &amp; Gladman Developments Ltd</i> [2015] EWHC 3459 (Admin), put in by the Council
INQ 2	Copy of the judgment in <i>Dartford BC v SoS CLG &amp; Landhold Capital Ltd</i> [2014] EWHC 2636 (Admin), put in by the Council
INQ 3	Copy of the judgment in <i>R (oao Wynn-Williams) v SoS CLG</i> [2014] EWHC 3374 (Admin), put in by the Council
INQ 4	List of appearances for the appellant
INQ 5	Comparative Visual Impact Assessment Table setting out the differences between the Council's and the appellant's witnesses on this point, submitted by the Council
INQ 6	Enlarged version of the 1595 Fulstow Parish Map contained in LPA 2.0
INQ 7	Opening submissions on behalf of the appellant
INQ 8	Opening submissions on behalf of MWAG
INQ 9	Opening submissions on behalf of the Council
INQ 10	Representations, and supporting attachments, put in by Mr R Baker concerning non-compliance with ETSU-R-97
INQ 11	Representations put in by Mr R Baker concerning the use of SONAR and SODAR detection and ranging equipment
INQ 12	List of local residents wishing to address the inquiry, compiled by MWAG
INQ 13	Legal submissions in relation to Cultural Heritage, made on behalf of the appellant
INQ 14	Copy of the judgment in <i>Bedford BC v SoS CLG &amp; Nuon UK Ltd</i> [2013] EWHC 2847 (Admin)
INQ 15	Representations put in by Ms C Belton concerning aviation issues
INQ 16	MWAG's Note to the Inquiry concerning INQ 15
INQ 17	Clip of 4 letters of objection put in by MWAG on behalf of local residents: Mrs M L Brown, Mrs P and Mr T Vessey, Mr R Willson, Mr C and Mrs C Thompson
INQ 18	Speaking notes of Mr P Butt
INQ 19	Speaking notes of Mrs M L Brown
INQ 20	Speaking notes of Mr & Mrs Willerton
INQ 21	Speaking notes of Mrs Pridgeon
INQ 22	Speaking notes of Mr F Butt
INQ 23	Speaking notes of Mrs F Butt
INQ 24	Speaking notes of Mr T Donovan
INQ 25	Speaking notes of Mr M Lloyd
INQ 26	Speaking notes of Dr J A Smith
INQ 27	Speaking notes of Mrs A R Smith
INQ 28	Letter from Dr M Smith
INQ 29	Letter from Mrs M E Smith
INQ 30	Speaking notes of Mr Pocklington

INQ 31	Speaking notes of Mrs F Steel
INQ 32	Letter from Mrs M Simons
INQ 33	Speaking notes of Mrs R C Donovan
INQ 34	Speaking notes of Dr N Jefferies
INQ 35	Speaking notes of Mr & Mrs Forrest
INQ 36	Speaking notes of Mr T Heys
INQ 37	Speaking notes of Mrs J Corbridge
INQ 38	Speaking notes of Mr D Hallett
INQ 39	Speaking notes of Mr B Greenland
INQ 40	Speaking notes of Mr and Mrs Lewis
INQ 41	Further speaking notes of Mrs C Belton, concerning a trip down the Louth Canal, with appendices A-C
INQ 42	Personal Statement of Mr & Mrs Lawson
INQ 43	Letter from Dr A Samaan
INQ 44	Speaking notes of Dr V Dunn
INQ 45	Speaking notes of Ms A Good
INQ 46	Speaking notes of Ms A Winslow
INQ 47	Speaking notes of Mr D Buckley
INQ 48	Speaking notes of Mr S Flinn
INQ 49	Speaking notes of Mr R Lukehurst
INQ 50	Speaking notes of Mr A McLaren (on behalf of Yarburgh Parish Meeting)
INQ 51	Speaking notes of Mr A McLaren (personal statement)
INQ 52	Speaking notes of Mr J Loomes (on behalf of Ludborough Parish Council)
INQ 53	Speaking notes of Mr J Loomes (personal statement)
INQ 54	Speaking notes of Mr B Stapleton
INQ 55	Speaking notes of Dr J Kelly
INQ 56	Speaking notes of Mr B Gray
INQ 57	Copy of the photomontage put in at the Bishopsgate wind farm inquiry, provided by MWAG
INQ 58	List of Listed Buildings which the Council consider would be harmed by the proposed development, but which were not included in its reasons for refusal
INQ 59	Agreed Itinerary for Inspector's accompanied site visit on Thursday 21/01/16
INQ 60	Dr Yelland's written response to the appellant's rebuttal of noise evidence, submitted by MWAG
INQ 61	The appellant's response to Mrs Belton's submissions concerning aviation issues (Document INQ 15)
INQ 62	Mrs Belton's response to Document INQ 61
INQ 63	Copy of Lincolnshire County Council's Wind Energy Position Statement
INQ 64	Copy of appeal decision ref: APP/D2510/A/13/2205932
INQ 65	Two photomontages showing the respective positions of the turbines proposed in the dismissed Louth Canal scheme, and the currently proposed turbines, in conjunction with Thoresby Warehouse (looking east, and looking west) submitted by the appellant
INQ 66	List of conditions agreed between the Council and the appellant (save for those highlighted in yellow)
INQ 67	Note from MWAG concerning the noise condition proposed in Document INQ 66
INQ 68	Note from Council providing alternative wording for the proposed condition requiring an Ecological Mitigation Scheme

INQ 69	Amended copy of Mr Loomes' proof of evidence (MWAG 2), submitted by MWAG
INQ 70	Further rebuttal evidence concerning noise, submitted by the appellant (specifically relating to Documents INQ 10 & 11)
INQ 71	Closing submissions made on behalf of the Council
INQ 72	Closing submissions made on behalf of MWAG
INQ 73	Closing submissions made on behalf of the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

PINQ 1	Rebuttal of the appellant's noise evidence, submitted by Mr R Baker in response to Document INQ 70
PINQ 2	Three extracts from Ordnance Survey maps and location notes, intended to assist the Inspector's site visits, submitted by the Council
PINQ 3	Amended version of PINQ 2 showing MWAG viewpoints included, and additional map showing location of MWAG viewpoint 4, submitted by MWAG
PINQ 4	Updated list of the conditions agreed between the Council and the appellant, reflecting discussions at the Inquiry
PINQ 5	The Council's response to Document PINQ 1
PINQ 6	MWAG's response to Document PINQ 1
PINQ 7	The appellant's response to Document PINQ 1
PINQ 8	A list of the "additional Core Documents" referred to by the appellant in its noise evidence as presented to the inquiry, with copies of those documents
PINQ 9	A list of the "additional Core Documents" referred to by MWAG in its noise evidence as presented to the inquiry (copies of the documents themselves were not provided, with the exception of the final document on the list: a copy of the Isle of Wight Council's refusal of planning permission for 2 wind turbines on land at HMP Camp Hill)
PINQ 10	Copy of the High Court Judgment in <i>Forest Dean District Council v SSCLG and Gladman Developments Ltd</i> [2016] EWHC 421 (Admin)
PINQ 11	Copy of e-mail from PINS dated 23 March 2016, inviting the three main parties to comment on any implications of PINQ 10 for their cases
PINQ 12	The appellant's response to PINQ 11
PINQ 13	The Council's response to PINQ 11
PINQ 14	MWAG's response to PINQ 11
PINQ 15	Copy of e-mail from PINS dated 3 May 2017, inviting the three main parties to bring to the attention of the Inspector and the SoS anything of relevance that had arisen since the inquiry closed
PINQ 16	The appellant's response to PINQ 15
PINQ 17	The Council's response to PINQ 15
PINQ 18	MWAG's response to PINQ 15, with enclosures

## **Appendix C: SUGGESTED CONDITIONS**

### *Time limits and site restoration*

- 1) The development hereby permitted shall begin not later than three years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority no later than 14 days after the event.
- 2) This permission shall expire no later than 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be given to the local planning authority and Humberside International Airport within one calendar month of its occurrence.
- 3) Not later than 12 months before the expiry of the 25 year period referred to in condition no. 2 above, a decommissioning and site restoration scheme shall be submitted to the local planning authority for its written approval. The scheme shall make provision for the removal of the wind turbines and the associated above ground equipment and turbine foundations to a depth of 1 metre below ground level. The scheme shall also include proposals for the management and timing of any works, a traffic management plan and restoration measures. The approved scheme shall be implemented as approved.
- 4) If any wind turbine ceases to export electricity to the grid for a continuous period of 9 months, a scheme for the repair or removal of that turbine shall within 3 months of the end of that 9 month period (unless otherwise agreed in writing with the local planning authority) be submitted to the local planning authority for its written approval. If repairs to the turbine are proposed, the scheme shall include a programme and timetable of remedial works. If removal of the turbine is proposed, the scheme shall include a programme and timetable for removal of the turbine and associated above ground works and the removal of the turbine foundation to a depth of at least 1m below ground and for site restoration measures following the removal of the relevant turbine. The scheme shall be implemented in accordance with the approved details and timetable.

### *Construction Traffic Management Plan and Construction Method Statement*

- 5) No development shall commence on site until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The approved CTMP shall be adhered to throughout the construction period. The CTMP shall provide for:
  - a) the routing of construction traffic, scheduling and timing of movements;
  - b) management of junctions to and crossings of the public highway and other public rights of way;

- c) details of escorts for abnormal loads;
  - d) temporary warning signs and temporary removal and replacement of highway infrastructure/street furniture;
  - e) reinstatement of any signs, verges or other items displaced by construction traffic;
  - f) works required to enable large vehicles to manoeuvre around a corner;
  - g) works required to protect dykes along the route;
  - h) banksman/escort details; and
  - i) any other improvements or works necessary to accommodate construction traffic along the route.
- 6) No development shall commence on site until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall be adhered to throughout the construction and post-construction restoration period, subject to any variations approved in writing by the local planning authority. The CMS shall include:
- i) details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
  - ii) details of the proposed storage of materials and disposal of surplus materials;
  - iii) dust management;
  - iv) a Pollution Prevention Plan, to include details of measures to protect the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage;
  - v) temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting, including methods to prevent light pollution;
  - vi) details of the phasing of construction works;
  - vii) details of surface treatments and the construction of all hard surfaces and tracks;
  - viii) details of emergency procedures and pollution response plans;
  - ix) siting and details of wheel washing facilities;
  - x) details of cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to

- prevent spillage or deposit of any materials on the highway;
- xi) a site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and their habitats;
  - xii) details of areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;
  - xiii) details and a timetable for post-construction restoration/reinstatement of the temporary working areas and the construction compound;
  - xiv) details of working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities; and
  - xv) the survey of the public highway before and after construction between the site entrance on Thoresby Road and the B1201 and along Grainsby Lane between the A16 and the A1031 in terms of its condition along with details and a timetable for dealing with any repairs that might be necessary as a result of comparing the before survey with the after survey.

#### *Construction hours*

- 7) Construction work shall only take place between the hours of 07:00 – 19:00 Monday to Friday inclusive and 08:00 – 13:00 on Saturdays with no such work on a Sunday or Public Holiday. Work outside these hours may be carried out with the prior written approval of the local planning authority. Wind turbine erection works delayed due to the weather and emergency works may be carried out at any time provided that the operator retrospectively notifies the local planning authority in writing of the emergency and works undertaken within 24 hours.
- 8) The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be restricted to the hours of 07:00 – 19:00 on Monday to Friday inclusive, 08:00 - 13:00 on Saturdays with no such deliveries on a Sunday or Public Holiday.

#### *Highways*

- 9) No development shall commence until details of the proposed accesses from Thoresby Road and the A1031 into the site, and a timetable for their construction, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with these approved details.
- 10) With the exception of any changes made in accordance with the provisions of condition no. 23 below, the development hereby

permitted shall be carried out in accordance with the following approved plans:

- 3.1 Site layout plan (1:10,000)
  - 3.1 Site layout plan AO (1:5000)
  - 3.2 Track layout
  - 3.4 Temporary construction compound
  - 3.4a Substation and main temporary construction compound layout
  - 3.4b Secondary temporary construction compound layout
  - 3.7 Substation elevations
  - 3.8 Field drain crossing detail
  - A084703-SPA026C A1031/site access - existing layout
  - A084703-SPA026D A1031/site access remedial works
  - A084703-SPA028C Thoresby Road/site access - existing layout
  - A084703-SPA028D Thoresby Road/site access - remedial works
- 11) The wind turbines shall each have 3 blades, and the blades of all of the turbines hereby permitted shall rotate in the same direction. The overall height of each wind turbine shall not exceed 115m to the tip of the blades when the turbine is in the vertical position, and the hub height of each turbine shall be between 60m and 70m. Details of the wind turbines erected shall be provided to the local planning authority within one month of their being erected on site.
- 12) Prior to the erection of any wind turbine, details of the colour and finish of the towers, nacelles and blades and any external transformer units shall be submitted to and approved in writing by the Local Planning Authority. No name, sign, or logo shall be displayed on any external surfaces of the wind turbines or any external transformer units other than those required to meet statutory health and safety requirements. The development shall thereafter be carried out and operated in accordance with the approved details.
- 13) Prior to commencement of the construction of the electricity substation details of the design and the external appearance, dimensions and materials for the building and any associated compound or parking area and details of surface and foul water drainage from the substation building shall be submitted to and approved in writing by the local planning authority. The development of the substation building and any associated compound or parking area shall be carried out in accordance with the approved details.
- 14) All electrical cabling between the individual wind turbines, and between the wind turbines and the on-site electricity substation, shall be installed underground.

### *Ecology*

- 15) No development shall take place until an Ecological Mitigation Scheme (EMS) has been submitted to and approved in writing by the local planning authority. The EMS shall
- include the mitigation and enhancement measures referred to in sections 8.150 – 8.159 and 9.157 – 9.166 of Volume 1 of the Environmental Statement and as shown on Figure 8.2 in Volume 2 of the Environmental Statement, or as otherwise agreed in writing by the local planning authority
  - provide full details of the means by which these measures will be secured and delivered, as well as mechanisms for their long-term maintenance and management.

The development shall be carried out in accordance with the approved details.

- 16) No development shall commence until a pre-construction survey in relation to the presence of water vole has been undertaken. The survey results and a programme of any mitigation measures identified as being required shall be submitted to and approved in writing by the local planning authority prior to any works associated with the development taking place. The same requirement for the commission of a survey and the identification and approval of any mitigation measures required as a consequence, together with a programme for their delivery, shall apply prior to any works associated with the decommissioning of the development taking place. In each case the programme of mitigation measures (if required) shall be implemented as approved.

### *Shadow flicker*

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

### *Television interference*

- 18) Prior to the First Export Date a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial television caused by the operation of the wind turbines shall be submitted to and approved in writing by the local planning authority. The scheme

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

*Aviation safeguarding*

- 19) Each wind turbine shall be erected with MOD-approved infra-red warning installed at the highest practicable point, and that lighting shall remain operational throughout the duration of that turbine's presence on site.
- 20) None of the wind turbines hereby permitted shall be erected until an Air Defence Radar Mitigation Scheme (ADRMS) has been submitted to and approved in writing by the local planning authority. The ADRMS shall constitute a detailed scheme to mitigate adverse impacts of the development on the air defence radar at Staxton Wold and the air surveillance and control operations of the MoD associated with the use of this radar. The scheme shall set out the appropriate measures to be implemented to that end. No turbines shall become operational until such mitigation measures as the approved scheme requires to be implemented prior to the operation of the turbines have been implemented. The operator shall thereafter comply with all other obligations contained within the ADRMS.
- 21) None of the wind turbines hereby permitted shall be erected until an Air Traffic Control Radar Mitigation Scheme (ATCRMS) has been submitted to and approved in writing by the local planning authority. The ATCRMS shall constitute a detailed scheme to mitigate adverse impacts of the development on the NATS radar at Claxby and the airspace surveillance and control operations associated with the use of this radar. The scheme shall set out the appropriate measures to be implemented to that end. No turbines shall become operational until such mitigation measures as the approved scheme requires to be implemented prior to the operation of the turbines have been implemented. The operator shall thereafter comply with all other obligations contained within the ATCRMS.

*Micro-siting*

- 22) The wind turbines hereby permitted shall be erected at the following grid co-ordinates:

T1: 533789 398690  
T2: 533398 398684  
T3: 532983 398632

T4: 532745 398789  
T5: 533661 398947  
T6: 533340 398984  
T7: 533091 399120

Save that notwithstanding the terms of this condition and condition no. 10 above, the wind turbines and associated crane pads may be micro-sited within 25 metres and the access tracks may be micro-sited within 5 metres of the positions shown on Figure 3.2 of Volume 2 of the Environmental Statement subject to the prior written approval of the local planning authority, but no turbine shall be located within 50m of a water feature, tree or hedge. The relevant 50m distance shall be measured in accordance with Natural England's 'Interim Guidance TIN051 Bats and onshore wind turbines. The local planning authority shall be advised in writing of the final position of the turbines within one month of their erection.

*Flood prevention*

- 23) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment produced by WSP dated 7 March 2014.
- 24) No piling or other foundation designs using penetrative methods shall commence until a scheme for such works has been submitted to and approved in writing by the local planning authority

*External lighting*

- 25) There shall be no external lighting anywhere on the site other than
- lighting required during the construction period as detailed by condition no. 6 above;
  - lighting required for aviation safety in accordance with condition no. 19 above;
  - temporary lighting required for maintenance or emergencies; and
  - a PIR-operated external door light for the sub-station building door to allow safe access.

*Occupation of Brick Yard Farm*

- 26) Without prejudice to any determination as to whether the use of the property known as Brick Yard Farm would be lawful, the property shall not be occupied as a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order 1987 (as amended)) from the date of commencement of the development hereby permitted.

*Noise*

- 27) The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant

integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:

- (A) Prior to the First Export Date, the wind farm operator shall submit to the local planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority.
- (B) Within 21 days from receipt of a written request of the local planning authority, following a reasonable complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).
- (C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.
- (D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess

compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.

- (E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol setting out the following:
- the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
  - a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

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

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

- (G) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.

- (H) The wind farm operator shall continuously log nacelle wind speed, nacelle orientation, power generation and nacelle wind direction for each turbine in accordance with this consent, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the local planning authority on its request within 14 days of receipt in writing of such a request.

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

**Table 1 - Between 07:00 and 23:00 - Noise level dB LA90, 10-minute**

Location(easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	1
	LA90 Decibel Levels											
H1 - Low Farm (534251, 398050)	35	35	35	35	35	36	38	41	45	49	53	57
H2 - Brick Yard Farm (533806, 398274)	45	45	45	45	45	45	45	45	45	45	46	50
H3 - The Moorings (533418, 397877)	35	35	35	35	35	36	38	40	43	46	49	53
H4 - Meadow Cottage (532769, 397783)	35	35	35	35	36	37	39	41	43	46	49	52
H5 - Peace Haven (532063, 399176)	37	37	37	37	38	39	41	43	46	49	53	57
H6 - Thoresby Bridge Farm (533619, 399749)	35	35	35	35	37	40	43	47	51	55	58	61

**Table 2 - Between 23:00 and 07:00 - Noise level dB LA90, 10-minute**

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	LA90 Decibel Levels											
H1 - Low Farm (534251, 398050)	43	43	43	43	43	43	43	43	44	48	52	56
H2 - Brick Yard Farm (533806, 398274)	45	45	45	45	45	45	45	45	45	45	46	49
H3 - The Moorings (533418, 397877)	43	43	43	43	43	43	43	43	43	45	48	52
H4 - Meadow Cottage (532769, 397783)	43	43	43	43	43	43	43	43	43	45	48	52
H5 - Peace Haven (532063, 399176)	43	43	43	43	43	43	43	43	44	48	52	55
H6 - Thoresby Bridge Farm (533619, 399749)	43	43	43	43	43	43	43	45	50	54	57	60

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

### Guidance Notes for Noise Condition

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled “The Assessment and

Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

**Note 1**

- (a) Values of the  $LA_{90,10\text{-minute}}$  noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting IEC 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling and be not more than 35 metres from it. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The  $LA_{90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean nacelle wind speed (duly corrected for the presence of the rotating blades) arithmetic mean nacelle orientation, nacelle wind direction and arithmetic mean power generated during each successive 10-minute periods for each wind turbine on the site. The hub height wind speeds recorded from the nacelle anemometers or as calculated from the power output of each turbine shall be standardised to a reference height of ten metres assuming a reference roughness length of 0.05 metres and using the equation given on page 120 of ETSU-R-97. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. Standardised 10 metre height wind speed data shall be correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c).
- (e) Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format with the exception of data collected to assess tonal noise (if required) which shall be provided in a format to be agreed in writing with the Local Planning Authority.

- (f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

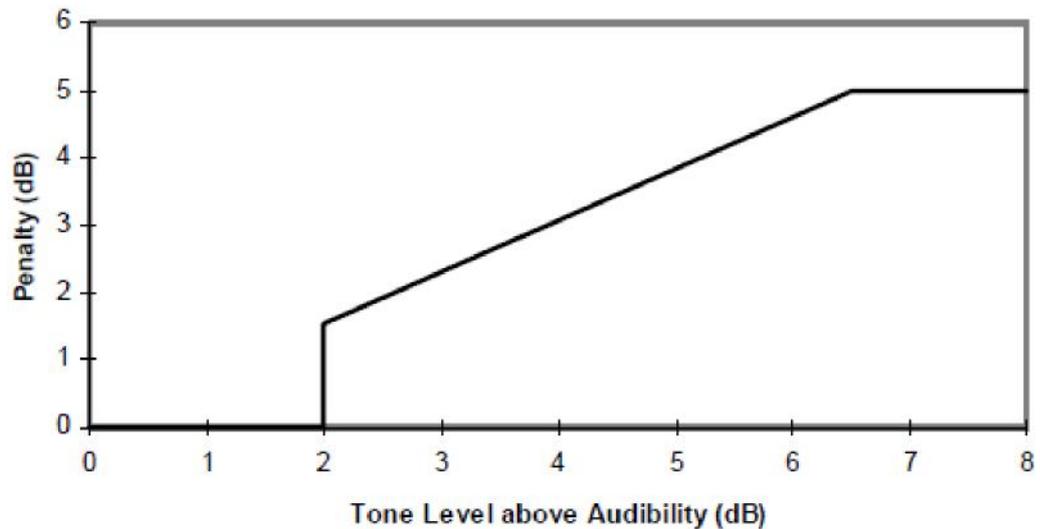
**Note 2**

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the  $LA_{90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed. If anything other than a 3<sup>rd</sup> order polynomial is used, a full explanation must be provided as to why the polynomial order has been used.

**Note 3**

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which  $LA_{90,10\text{-minute}}$  data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.
- (c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

- (e) A least squares "best fit" linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line fitted to values. If there is no apparent trend with wind speed then a simple arithmetic mean per wind speed bin shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



**Note 4**

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

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise ( $L_3$ ) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
- ii. The wind farm noise ( $L_1$ ) at this speed shall then be calculated as follows where  $L_2$  is the measured level with turbines running but without the addition of any tonal penalty:

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

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

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



## **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).

#### **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 day after 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 day after 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.