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# Appeal Decision

Inquiry opened on 27 September 2011

Site visits made on 10, 11 and 12 October 2011

**by Paul Griffiths BSc(Hons) BArch IHBC**

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

**Decision date: 19 December 2011**

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**Appeal Ref: APP/Y2810/A/11/2154375**

**Land to the South of the A14 and North of Haselbech, Kelmarsh**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by E.On Climate & Renewables UK Developments Ltd against the decision of Daventry District Council.
  - The application Ref.DA/2010/0100, dated 5 February 2010, was refused by notice dated 15 December 2010.
  - The development proposed was initially described as 'the construction of a wind farm comprising of 5 turbines with a maximum height of 126.5m to blade tip and 2 turbines with a maximum height of 121m to blade tip, control building, anemometer mast and ancillary infrastructure'.
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## Preliminary Matters

1. The Inquiry sat on 27, 28, 29 and 30 September 2011, 4, 5 and 6 October 2011 and closed on 18 October 2011. I carried out accompanied site visits to what has been described as the Kelmarsh Asset, and its surroundings, and the Naseby battlefield, on 10 October 2011, and to the appeal site itself, the Scheduled Ancient Monument (SAM) in Haselbech, taking in the view over Manor Farm, and a number of properties, including the Nagarjuna Buddhist Centre, Lyndale and Rectory Farm adjacent, Grange Cottage, Haselbech Grange, Pingle House and Bassett's Lodge Farm on 11 October 2011.
2. Those locations and footpaths not visited with the parties and contained in an itinerary prepared by Stop Kelmarsh Wind Farm (SKWF) were taken in on an unaccompanied basis on 11 October 2011. I repeated a significant number of those visits on 12 October 2011 having observed that SKWF had managed to fly a blimp from the appeal site. I note the points made by the appellant about the limitations inherent in the use of a blimp but it did provide a useful reference point that confirmed the observations I had made the previous days.
3. The original proposal included 7 turbines. Following the Council's decision to refuse planning permission, the appellant removed one of the turbines with a maximum height to blade tip of 126.5 metres (Turbine 7) from the proposal, with the others remaining in the same positions. At the Pre-Inquiry Meeting, I outlined that because the revised scheme would have a reduced impact there would be nothing unreasonable about the appeal proceeding on the basis of the proposal as revised. No-one has put forward a contrary view and on that basis I have treated the development on the basis that it consists of 'the construction of a wind farm comprising 4 turbines with a maximum height to blade tip of 126.5 metres and 2 turbines with a maximum height of 121 metres to blade tip, a control building, anemometer mast and ancillary infrastructure'.

4. For the avoidance of doubt, I have dealt with the proposal on the basis of the turbine disposition shown in Figure 3.1: Proposed Wind-Farm Layout included as Appendix A to the Supplementary Environmental Information, 6 Turbine Scheme, Volume 1, dated June 2011.
5. The proposal is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The originating application was accompanied by an Environmental Statement (ES) that was subsequently expanded upon through Supplementary Environmental Information (SEI), following a request from the Council under Regulation 19, and then further SEI, dated June 2011, to address the change from a 7 turbine scheme to 6.
6. The Council has made no suggestion that the ES and SEI do not meet the needs of the Regulations and accepts that, read together, they provide details of the development, an assessment of the likely environmental effects, and proposes measures to mitigate those effects. Notwithstanding that, the evidence presented by SKWF raises issues about the information provided in relation to noise and bats in particular. I return to those matters below.

### **Decision**

7. The appeal is allowed and planning permission is granted for the construction of a wind farm comprising 4 turbines with a maximum height to blade tip of 126.5 metres and 2 turbines with a maximum height of 121 metres to blade tip, a control building, anemometer mast and ancillary infrastructure on Land to the South of the A14 and North of Haselbech, Kelmarsh in accordance with the terms of the application, Ref.DA/2010/0100, dated 5 February 2010, subject to the conditions set out in Annex A to this decision.

### **Main Issue**

8. This is whether any benefits of the proposal are sufficient to outweigh any harmful impacts it may have in terms of the setting of heritage assets, the living conditions of local residents in terms of visual impact and noise in particular, the landscape and enjoyment of the countryside, biodiversity, notably bats, and other matters.

### **Reasons**

#### *Any Benefits*

9. Notwithstanding issues initially raised about the capacity factor of the scheme, as amended, it is reasonable to forecast that the proposed wind farm would have an electricity generation capacity of between 12 and 15 MW. Contrary to some views expressed at the Inquiry, key principle (iv) of Planning Policy Statement 22: *Renewable Energy* (PPS22) states that the wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, are material considerations that should be given significant weight in determining whether proposals should be granted planning permission.
10. As things stand, the development plan still includes the East Midlands Regional Plan (EMRP). EMRP Policy 40 says that in establishing criteria for onshore wind energy, amongst other things, the contribution to national and international environmental objectives on climate change and the regional renewables target, should be given particular consideration.

11. EMRP Policy 40 refers to Appendix 5 to the EMRP that sets regional targets for the production of renewable energy. The 2010 target for onshore wind is 122 MW rising to 175 MW in 2020. The evidence of SKWF is that as of September 2011, there is 124.8 MW of onshore wind operational and 128.1 MW with permission in the region. In simple terms, this means that the 2010 target has been exceeded and if sufficient of the permitted schemes are implemented and brought into operation before 2020, then that target will be met or exceeded.
12. PPS22 does say that where targets are met, they should be revised upwards. More importantly, the 2010 target for all renewable energy technologies is 324 MW, rising to 3671 MW in 2020. SKWF accepted that at the end of 2010, the region had just over 272 MW of installed capacity from onshore renewable technologies. Despite the amount of onshore wind generation operational and with permission in the region, the overall target for 2010 was missed and the 2020 target looks a long way off. Linked to that, the EMRP envisages that 3253 MW of the 2020 target will be secured through micro-generation wind and Photovoltaics. That seems optimistic and I heard that very little progress has been made with micro-generation in the region and that is unlikely to change quickly. It seems obvious that more established commercial renewable technologies, including onshore wind generation, will have to make up the resulting shortfall.
13. On top of that, the 2020 target was based on securing 20% of the region's electricity consumption by 2020 from renewable sources. The Government's Renewable Energy Strategy has raised the expectation to 30% and this has been reiterated in a succession of subsequent policy statements. In that context, the 2020 target, that already seems exacting, is clearly not going to be sufficient to secure current or future Government expectations.
14. Against that background, the 12-15 MW that would be provided by the development would make a relatively small, but tangible contribution to meeting the 2020 regional target for renewable energy and the wider UK national requirement. It would improve the diversity and security of energy supply regionally and nationally. As PPS22 clearly sets out, these considerations attract significant weight in favour of the proposal.

#### *The Impact on Heritage Assets*

15. An assessment of the impact of the proposal on the significant number of heritage assets referred to, must be made against the background of a series of statutory and policy documents. First, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that in considering whether to grant planning permission for development which affects a listed building, or its setting, the decision-maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
16. In terms of the development plan, EMRP Policy 26 sets out that sustainable development should ensure the protection, appropriate management and enhancement of the Region's natural and cultural heritage. The policy applies a series of principles. Of relevance, the Region's internationally and nationally designated historic assets should receive the highest level of protection; damage to historic assets or their settings should be avoided wherever and as far as possible, recognising that such assets are usually irreplaceable; and

unavoidable damage must be minimised and clearly justified by a need for development in the location which outweighs the damage that would result.

17. EMRP Policy 27 sets regional priorities for the historic environment. In particular, it calls for the historic environment to be understood, conserved and enhanced, in recognition of its own intrinsic value, and its contribution to the Region's quality of life. EMRP Policy 40 requires local planning authorities to give particular consideration to historic assets and their settings in establishing criteria for onshore wind energy. Saved Policy GN1 of the Daventry District Local Plan (LP) notes that the grant of planning permission for development will be guided by the need to, amongst other things, protect and enhance the environment. LP Policy GN2 is permissive of development where, of relevance, it will not adversely affect a building listed as being of architectural or historic interest and their setting or sites of archaeological importance or their settings.
18. Government advice is set out in Planning Policy Statement 5: *Planning for the Historic Environment* (PPS5). Interpretation of the policies within PPS5 is assisted by the PPS5: Planning for the Historic Environment: *Historic Environment Planning Practice Guide*. There was a good deal of discussion at the Inquiry about PPS5 and the way in which it deals with the impact of proposals on the setting of heritage assets, conceptually. It is contended by the Council, English Heritage (EH), SKWF and others, that the proposal lies within the setting of a wide range of heritage assets, and would have a harmful impact, to varying degrees, upon those settings. The appellant does not agree that the proposal lies within the setting of those heritage assets but accepts that the proposal would affect the setting of some of them.
19. Annex 2 to PPS5 defines setting as the surroundings in which a heritage asset is experienced. It goes on to say that its extent is not fixed and may change as the asset and its surroundings evolve and that elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that asset, or may be neutral.
20. This is developed in the recently published EH guidance '*The Setting of Heritage Assets*'. The PPS5 definition is repeated but the guidance goes on, in paragraph 2.2, to say that from the PPS5 definition, it can be understood that setting embraces all of the surroundings (land, sea, structures, features and skyline) from which the asset can be experienced or that can be experienced from or within the asset and that setting does not have a fixed boundary and cannot be definitively and permanently described as a spatially bounded area or as lying within a set distance of a heritage asset. Of particular relevance, the guidance notes that the construction of a distant but high building may extend what might previously have been understood to comprise setting.
21. There are many heritage assets in the surrounding area, including listed buildings, SAMs, Registered Historic Parks and Gardens, and a Registered Battlefield, that the wind turbines proposed would be seen from and in juxtaposition with. Visibility of the proposal in the manner described would affect the experience of those heritage assets and, applying the definition in PPS5 and the EH guidance, I conclude that the wind turbines would fall within, and affect, their settings.
22. That conclusion leads on to another focus of discussion at the Inquiry; whether the proposal should be assessed against PPS5 Policy HE9, Policy HE10, or indeed both. Both policies are set out as applying additional policy principles. I

- read that as meaning they are additional to PPS5 Policy HE7 that sets out policy principles guiding the determination of applications for consent relating to all heritage assets.
23. First, I would note that I take the reference to applications for consent to include applications for permission (like that before me). Footnote 10 on page 6 of PPS5 does not make that absolutely clear but notwithstanding the technical differences between them, the term consent appears to be used interchangeably with the term permission throughout the document. PPS5 can only be interpreted sensibly if that interchange is assumed. Footnote 12 on page 6 seems to bear that conclusion out.
  24. PPS5 HE7.1 sets out that in decision-making, local planning authorities (and I take that to include the Secretary of State and/or those acting on his or her behalf) should seek to identify and assess the particular significance of any element of the historic environment that may be affected by the relevant proposal (including by development affecting the setting of a heritage asset). Significance is defined in Annex 2 to PPS5 as the value of a heritage asset to this and future generations because of its heritage interest. HE7.2 adds that in considering the impact of a proposal on any heritage asset, the particular nature of the significance of the heritage asset and the value that it holds for this and future generations, should be taken into account.
  25. PPS5 HE9.1 notes that significance can be harmed or lost through alteration or destruction of the (designated) heritage asset or development within its setting; that substantial harm to or loss of a Grade II listed building, park or garden should be exceptional; and substantial harm to or loss of designated heritage assets of the highest significance should be wholly exceptional.
  26. Overall, PPS5 Policy HE9 discerns between proposals that would lead to substantial harm to, or total loss of significance of, a designated heritage asset and proposals that would have a harmful impact that is less than substantial. In relation to the former, HE9.2 suggests that consent should be refused unless it can be demonstrated that, of relevance, the substantial harm or total loss of significance is necessary in order to deliver substantial public benefits that outweigh the harm or loss. In terms of the latter, HE9.4 requires the public benefit of the proposal to be weighed against the harm, recognising that the greater the harm to the significance of the heritage asset, the greater the justification required.
  27. In considering proposals that cause harm to the setting of designated heritage assets, PPS5 HE10.1, put simply, requires that harm to be weighed against any wider benefits – the greater the negative impact, the greater the benefit required to justify approval.
  28. There does seem to be a significant degree of crossover between Policies HE9 and HE10 and it could be argued that if Policy HE9 is intended to apply to development proposals that affect the setting of designated heritage assets, then Policy HE10 is superfluous. It is apparent that other Inspectors have grappled with these difficulties in the application of PPS5 (for example APP/H0520/A/09/2119385).
  29. Bearing in mind the conclusion I have reached about the relationship of the proposal to the settings of a range of heritage assets, whatever the extent of the harm that might be found, the approach is broadly the same whether Policy

- HE9 or HE10 is applied or both. Save for the test of necessity in HE9.2 (if there is substantial harm or total loss of significance), there is a need to weigh any benefits against any harm that would be caused, whichever policy is applied.
30. In that context, the either/or argument does not lead the decision-maker very far. The pragmatic route forward, in this particular case, is to apply both. Having regard to PPS5 HE7.2, the starting point for assessment of the impact of a proposal on a heritage asset, or its setting, is the significance of the heritage asset affected. The definition in Annex 2 to PPS5 notes that heritage interest may be archaeological, architectural, artistic or historic.
  31. Of all the parties who raised the issue of the impact of the proposal on the setting of designated heritage assets, SKWF drew the net most widely. Lamport Hall and associated Registered Historic Park and Garden form an attractive group with the Church of All Saints. As one would expect from Grade I listed buildings, the Hall and the Church are of very high quality, architecturally, and have great historic and artistic interest, especially the Church which has medieval origins. This group of designated heritage assets is of national interest and of the highest order of significance.
  32. The wind turbines would be visible from within the Hall and its environs and from around the Church. Applying the definition in PPS5 and the EH guidance, the turbines would fall within their settings, therefore. However, at a separation distance of over 5 kilometres, notwithstanding their height and kinetic nature, the wind turbines would simply be a peripheral part of views across and out of the assets and would not erode from an understanding or appreciation of their significance at all. As such the proposed turbines would have no harmful impact on the setting of this group of heritage assets.
  33. The Church of All Saints in Clipston is a Grade I listed building, of medieval origin and high architectural quality. It is of national interest and of the highest order of significance. The spire is an important landmark, locally. In certain views towards the spire, the wind turbines would be seen in juxtaposition. This brings them into the setting of the Church. However, given the degree of separation involved, the noticeable presence of the wind turbines in views of, or from, the Church would not significantly undermine the ability to understand its significance or appreciate the spire as an historic landmark. As such, the harmful impact of the proposal on the setting of the Church of All Saints, Clipston would be little more than minimal.
  34. In Haselbech, a number of designated heritage assets have been referred to by SKWF. Haselbech Hall is a country house, elegant architecturally in its landscaped setting, believed to originate from the mid 18<sup>th</sup> Century, and a Grade II listed building. Manor Farm is an 18<sup>th</sup> Century farmhouse, of high architectural quality, also listed Grade II. To the south of Manor Farm is the site of a deserted medieval settlement designated as a SAM. All three assets are of national interest and of a high order of significance.
  35. An avenue of mature trees framing the main façade of Haselbech Hall is discernible from the bridleway to the south. This view is an important part of the significance of the asset. The wind turbines would be visible at relatively close quarters in the view (and therefore part of the setting of the hall) but well to the east of the frame provided by the mature trees. This, coupled with the screening offered by other trees, means that while the presence of the wind turbines, especially when moving, would act as something of a distraction to

- the observer, they would not have any great impact on an understanding of the asset or its significance. There would be a harmful effect on the setting of Haselbech Hall but the degree of harm would be marginal.
36. In terms of Manor Farm and the SAM, the wind turbines would be readily apparent, and given the degree of separation, prominent, to the east of Manor Farm, in views from the SAM. On that analysis, the wind turbines would fall within the setting of both. However, their presence, while obvious because of their prominence and movement, would not hinder someone standing on or in the vicinity of the SAM, from understanding that it constituted the archaeologically and historically important remains of a deserted medieval village. Nor would it prevent an appreciation of the special architectural interest of Manor Farm. While there would be a harmful effect on the settings of Manor Farm and the SAM, the degree of harm would again be marginal.
37. More tellingly, because of the separation distance, SKWF, the Council and EH raised concerns about the effect of the proposal on the setting of the Kelmarsh Asset. This is made up of a series of separate, designated heritage assets. Kelmarsh Hall is an architecturally sophisticated country house that dates from 1727-32, the work of James Gibbs. It is a Grade I listed building. Kelmarsh Hall is surrounded by the Kelmarsh Gardens and Parkland, included on the English Heritage Register of Parks and Gardens of Special Historic Interest at Grade II\*. It includes the Kitchen Garden, the surrounding walls of which are listed Grade II, and a significant part of the remains of the Kelmarsh Medieval Settlement, a SAM. The Church of St. Denys, lies to the south-west of Kelmarsh Hall, outside the gardens and parkland, and is listed Grade II\*.
38. As individual heritage assets within a group, these elements display degrees of architectural, archaeological, artistic and historic interest that is of national importance and the highest order of significance. The wind turbines would be visible from some parts of the Kelmarsh Asset and in some views into and over it. On the basis of the definition set out in PPS5, augmented by the EH guidance, the proposed wind farm would fall within the settings of all the assets that make up the Kelmarsh Asset as a whole.
39. Some of the places where views would be available, such as the roof of the hall, would be of no great import. However, in more accessible places within the Kelmarsh Asset, the visibility of the wind turbines would be more of an issue. In particular, they would be an obvious presence when looking out from the Kitchen Garden, from the Long Border, from the entrance drive, in views across the SAM from the Fan Rose Garden towards the Church of St Denys, and from the first floor windows of the room in the western corner of the hall (and perhaps the room below).
40. A similar situation would arise in terms of the view from the Exhibition Field (where EH stages its annual Festival of History), and from the ridge to the east. There are also points outside the Kelmarsh Asset, like the footpath passing to the north-west of Shipley Wood, and from the Brampton Valley and Midshires Ways, where views towards the asset would also take in the wind turbines.
41. Put simply, the suggestion advanced by the Council, EH and SKWF is that this visible presence would fail to harmonise with, dramatically alter the settings, and detract from an appreciation of, the individual elements, and the group, thereby causing substantial harm to the significance of the Kelmarsh Asset. That the wind turbines would fail to harmonise with the individual elements of

the Kelmarsh Asset is obvious. Wind turbines are tall, moving structures designed to capture energy from the wind. They are clearly perceived as products of the twenty-first century and a response to the prevailing need to exploit sources of renewable energy.

42. In contrast, the individual elements of the Kelmarsh Asset are perceived as a coherent group of features that make up a country estate of earlier origins. No reasonable observer could suggest that views of the wind turbines from, or in juxtaposition with, the Kelmarsh Asset would lead to confusion about the origins, or purpose of either, or both. Bearing in mind PPS5 Policy HE7, the central question is the extent to which the visible presence of the wind turbines would affect the significance of the affected heritage assets. In my assessment, their impact would be most severe in views out of the Walled Garden, from the entrance drive leading to Kelmarsh Hall, on the designed view from the Fan Rose Garden across to the Church of St Denys and from the Long Border.
43. In these views the wind turbines would rise above the tree belt that acts as a boundary to the immediate field of view. The scale and visible presence of the wind turbines, especially when turning, would distract the viewer. However, the array would not be so close, or fill the field of view to the extent that it would dominate the outlook. The intervening tree belt would contain views towards the wind turbines and make it apparent that they are not part of the immediate surroundings. Clearly an appreciation of the significance of the elements that make up the Kelmarsh Asset would be easier without the presence of the wind turbines, so some harm to their settings would be caused. However, the turbine array would not be so distracting that it would prevent an understanding or appreciation of the significance of the elements that make up the Kelmarsh Asset, or their relationship to each other. The result would be similar in other parts of the Kelmarsh Asset where the wind turbines would be present in outward views.
44. Views of the wind turbines would be possible from within Kelmarsh Hall, from the north-west and south-west facing windows of the first-floor room in the western corner, in particular. The north-west facing window in this room provides the principal view, over the Tapis Vert and the Serpentine Lake, towards Shipley Wood, and beyond. The presence of the wind turbines would be evident, but in a very peripheral way, that would not intrude significantly into the designed view to the north-west. The impact on the view from the south-west facing window would be greater, but not overbearing.
45. In wider views, such as those from the Exhibition Field, the footpath that passes to the north-west of Shipley Wood, the eastern ridge, and the Brampton Valley and Midshires Ways, the issue revolves, broadly, around the visibility of the wind turbines in juxtaposition with views into the Kelmarsh Asset. From the Exhibition Field, and the footpath that passes to the north-west of Shipley Wood, the principal views are across the Serpentine Lake, over the Tapis Vert towards Kelmarsh Hall. The wind turbines would be present in those views but peripheral and, given the degree of separation, clearly not part of the Kelmarsh Asset. They would distract but not to the extent that the contribution these views into the Kelmarsh Asset make to the significance of the separate assets within it, and their settings, would be undermined to any great degree.
46. From the eastern ridge and the Brampton Valley and Midshires Ways, and elsewhere where there are wider views of it available, it is possible to appreciate the relationship between the Kelmarsh Asset and the surrounding



- landscape. The wind turbines would be a noticeable presence in those views. However, they would not be so close to the Kelmarsh Asset, or fill the field of view to the extent that an appreciation of the way the Kelmarsh Asset sits in the wider landscape would be devalued to any significant degree.
47. To summarise, the visible presence of the turbine array would act as a distraction in views out of, and into, the Kelmarsh Asset, to varying degrees. Obviously, an appreciation of the significance of the individual elements that make up the Kelmarsh Asset, and of the group, would be easier without that visible presence. To that extent, the proposal would harm the setting of those individually designated heritage assets and of the group. However, for the reasons set out, the degree of harm would be less than substantial.
  48. SKWF, EH and the Battlefields Trust have raised concerns about the impact of the wind turbines on the Registered Battlefield of Naseby which lies to the north-west of the appeal site. Given the repercussions of the battle and its aftermath - the destruction of the field army of Charles I and the overthrow of autocratic monarchy in Britain - there can be no doubt that Naseby was one of the most important battles fought on English soil. The battlefield is of great significance as a heritage asset, in historical terms especially.
  49. Interpretation of the battlefield is greatly assisted by the existing Battlefield Trail, made up of a series of viewpoints. From some of those viewpoints, notably Rupert's Viewpoint, King Charles' Oak Viewpoint, Sulby Hedges, the ROC Look-Out Post, and Mill Hill Viewpoint (where the Living History Centre is proposed) the wind turbines would have a distinct visible presence. Bearing in mind the approach of PPS5 and the EH guidance, the array would fall within the setting of the battlefield.
  50. Interpretation of the battlefield today relies largely on an appreciation of topography (and the effect it has on the line of sight). While ridge and furrow systems are still discernible in places, enclosure in the 19<sup>th</sup> Century had a significant impact on the nature of the landscape that endures. More recently, the A14 has crossed the southern section of the battlefield (albeit in a cutting) and there is a very tall communications mast that is readily visible from and around the battlefield. Thus, visualisation of the clash of arms on 17 June 1645 already involves a degree of imagination. Any observer has to attempt to blank out the presence of the field boundaries and the A14, in particular, to gain an understanding of the battle.
  51. The wind turbines proposed would introduce another modern element into views into and across the battlefield. Notwithstanding the degree of imagination that interpretation of the battlefield already requires, their presence would act as a further distraction that would make interpretation more difficult. This would detract from the significance of the battlefield and harm its setting. However, while it would introduce movement, the turbine array would occupy a limited part of the field of view and there would be a significant degree of separation. On that basis, the degree of harm would be less than substantial.
  52. As acknowledged in the EH publication 'Wind Energy and the Historic Environment', reversibility is an important consideration. The proposal is intended to endure for 25 years and is reversible. Concern has been raised that the planning permission might be renewed or that the wind turbines might be replaced within the period of permission sought. However, both those scenarios

would, in all likelihood, necessitate further planning applications that would need to be judged, on their merits, at the time. As far as the proposal before me is concerned, once the 25 year period has elapsed the wind turbines and ancillary infrastructure will be removed and the harmful impact on the settings of the designated heritage assets identified would disappear.

53. Obviously, 25 years is a long time in relation to the human lifespan, spanning, roughly, a generation, but in terms of the age of the designated heritage assets affected, and the period that they can reasonably be expected to endure, it is relatively insignificant. As set out, harm would be caused to the setting of designated heritage assets. However, that the harm would be transient must reduce the degree of harm that would be caused, overall.
54. To summarise, the proposal would cause harm to the setting of a range of designated heritage assets. At its worst, that harm would be less than substantial and it would disappear once the period of the planning permission has elapsed. In strict terms, that means the proposal does not accord with EMRP Policies 26 and 27 or LP Policies GN1 and GN2. However, that conclusion needs to be fed into the balancing exercise set out in Statute and PPS5 HE9.4 and HE10.1. I return to that matter below.

#### *The Impact on the Living Conditions of Local Residents*

55. EMRP Policy 40 says that when assessing onshore wind energy schemes, consideration should be given to the number and size of turbines, visual impact and effects on the built environment, including noise, amongst other things. LP Policy GN2 permits development where it does not detract from the amenity of an area. Reference was made to the approach of an Inspector who set out that 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 to live. He went on to assert that it is not in the public interest to create such living conditions where they did not exist before. This so called 'test' offers a useful reference point.
56. At the Nagarjuna Buddhist Centre, the wind turbines would be visible from some rooms and they would be readily apparent from the grounds on the frontage, particularly at the vehicular access points. However, the degree of separation and the relatively limited cone of view would mean that the wind turbines would not dominate those views or appear oppressive. The situation would be similar at the neighbouring Lyndale and Rectory Farm.
57. Grange Cottage is arranged so that its main aspects face away from the appeal site. There may be views of the array from some windows and from the garden but there is a very substantial planted boundary to the road that would mask the turbines to a significant degree. In any event, the degree of separation would be such that the wind turbines would not dominate the outlook from the dwelling. Pingle House (referred to in parts of the evidence as Pingle Cottage) has a similar orientation and substantial boundary treatment. The impact would be much the same as that experienced at Grange Cottage.
58. Haselbech Grange lies at the end of a tree-lined driveway. The predominant orientation of the house is to the south, away from the array. Nevertheless, the wind turbines would be visible from the north-facing windows and from the

area around the north side of the dwelling and its outbuildings. However, these views would be filtered by the trees along the driveway. This, coupled with the degree of separation, would mean no dominant visual impact. There would be a clear view of the wind turbines from the end of the driveway but, while this viewpoint would be closer to the turbines, the degree of separation would still be sufficient to prevent any domineering impact.

59. The wind turbines proposed would be visible from within Bassett's Lodge Farm and from the area around it. However, most of these views would be broken by intervening farm buildings. That, coupled with the degree of separation, would ensure that the wind turbines did not appear overbearing.
60. Overall, while the wind turbines would have a visual impact that would change the living conditions of nearby residents, for the reasons set out, that change would not be harmful. As such, I see no departure from the requirements of LP Policy GN2 or the 'test' applied by previous Inspectors.
61. In terms of the potential impact of noise, the Council raises no issue and is satisfied that any impact on the living conditions of local residents could be controlled by suitably worded conditions. SKWF takes a different view but all parties to the Inquiry agree that ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms* forms the basis against which the proposal must be assessed. Having regard to paragraph 22 of PPS22 that must be correct.
62. It is a fundamental part of the ETSU-R-97 methodology that the data relating to background noise levels at noise sensitive properties near the site is robust so as to ensure an acceptable noise climate if planning permission is granted. The concern advanced by SKWF relates to what it refers to as anomalies in background readings at Grange Cottage, Haselbech North East and Pingle House where night-time background noise levels were found to be greater than those in the day-time, at certain wind speeds. If these readings are erroneous, they could lead to excessive noise limits being set in conditions. This would offer insufficient protection for residents' living conditions against any noise impacts resulting from the proposal. While the appellant's noise witness had no ready explanation for this perceived anomaly, neither could the noise witness appearing on behalf of SKWF point to any reason why it might not occur. Indeed, the appellant's expert maintained that it was a phenomenon that he had come across before. SKWF did not offer any alternative readings that might serve to cast doubt on those put forward on behalf of the appellant.
63. Moreover, the background noise readings were taken over what I regard as a significant period of time and this must reduce the likelihood of a rogue noise source contaminating the results. There is no good reason to believe that the data gleaned is incorrect. On that basis the ES meets the needs of the relevant regulations and allows a proper assessment of the proposal in noise terms. In carrying out that assessment, it is clear from the appellant's evidence that even considering worst-case noise predictions, a considerable margin will be maintained below the noise limits included in the conditions.
64. I can understand why local residents are concerned, but there is no good reason to believe that the use of the data put forward by the appellant to inform conditions would compromise local residents' living conditions to a degree that would bring the proposal into conflict with ETSU-R-97. The proposal complies with LP Policy GN2 in this regard.

### *The Impact on the Landscape and the Enjoyment of the Countryside*

65. EMRP Policy 40 suggests that in establishing criteria for onshore wind energy, local planning authorities should give particular consideration to the landscape, the number and size of turbines proposed, and cumulative impact. LP Policy GN2 is permissive of development where it is of a type, scale and design in keeping with the locality.
66. In terms of landscape impact, the relevant witness appearing on behalf of the appellant fairly accepted that the imposition of a wind farm on land currently in agricultural use would introduce a widely visible, incongruous element into the landscape that would have something of a harmful impact. Given the scale of the wind turbines proposed, and their number, that must be the case. However, the degree of incongruity, and consequent harm, would be limited by the proximity of the busy A14 that passes directly to the north of the appeal site and the capacity of the large fields, and the gently rolling landscape, to absorb structures of the scale proposed. There are no other wind farms, implemented or approved, so close to the proposal that there would be a harmful cumulative impact.
67. Of course, users of the many local footpaths and bridleways in the near and wider vicinity of the appeal site, and for that matter, residents in the area going about their daily lives, would be aware of the wind turbines in close up and more distant views. However, for the reasons set out, the wind turbines would not appear so incongruous in their landscape setting that the experience of those enjoying the countryside for recreational, or other, purposes would be devalued to any significant degree.
68. Linked to that, concerns have been expressed about the proximity of the proposed wind turbines to the bridleway passing to the west of the site in the context of the separation distance recommended by the British Horse Society (BHS), referred to in the Companion Guide to PPS22. While the recommended separation distance would not be met, the wind turbines would be widely visible. A rider approaching them and his/her mount would be aware of their presence from some distance away and on that basis the potential for difficulties would be much reduced. As a consequence, the failure to accord with the separation distance recommended by the BHS is not a matter of any great consequence.
69. There would be some harm to the landscape and, to an extent, this would devalue the experience of the countryside for those walking and riding in the area. For the reasons set out, the degree of harm would be limited but nevertheless, there would be a failure to accord with LP Policy GN2.

### *The Impact on Biodiversity*

70. EMRP Policy 40 says that in establishing criteria for onshore wind energy, particular consideration should be given to the natural environment, including biodiversity. There has been no objection from Natural England or the Council in relation to the impact of the proposal on biodiversity, and notably, bats. SKWF is concerned about the potential effect upon local bat populations and, with reference to Natural England Technical Information Note TIN051: *Bats and Onshore Wind Turbines* and the recently published Bat Conservation Trust's (BCT) Bat Surveys – Good Practice Guidelines 2<sup>nd</sup> Edition: *Surveying for*

*Onshore Wind Farms*, doubts whether the survey work undertaken is sufficient to provide a robust basis upon which to base an assessment.

71. The thrust of the guidance from the Bat Conservation Trust and Natural England is that the guidance should be applied appropriately and in a proportionate manner having regard to the area of habitat affected and the likely direct impact on bats. The appeal site has an open, arable nature and supports limited foraging opportunities for bats. In that context it is hardly surprising that the surveys found a low level of bat activity.
72. That the surveys carried out for bats could have been more comprehensive is clear. However, the same criticism could be levelled at almost any bat survey. The question is not whether the surveys could have been improved upon or carried out in a more comprehensive fashion, but whether in the form the surveys were carried out, sufficient information was gleaned to allow a properly informed assessment of the potential impact of the proposal on bats.
73. While the survey work (that dates back to 2008) might not comply with the latest, subsequent BCT guidance, given the nature of the appeal site I agree with the appellant that it was proportionate and provides a robust basis upon which to base an assessment. The ES contains sufficient information to meet the needs of the relevant regulations, therefore.
74. Having regard to that information, and the mitigation measures proposed, there is no good reason to believe that the proposal would have any significant impact on the local bat population. The proposal complies with the requirements of EMRP Policy 40 in that regard and advice in Planning Policy Statement 9: *Biodiversity and Geological Conservation* (PPS9) and Circular 06/2005: *Biodiversity and Geological Conservation*.

#### *Other Matters*

75. The construction phase would lead to some disruption for local residents but that can be controlled through suitably worded conditions to cover construction times and vehicle routing. Points were also raised about driver distraction given the proximity of the A14 and the presence of SOS lay-bys close to the appeal site, in particular.
76. However, like the array at Burton Latimer, along the A14 to the east, the wind turbines would be visible to approaching drivers from some distance away and would not come as any great surprise. There would be little in the way of distraction and no significant impact on highway safety as a result of the proposal.
77. Concerns have also been raised about the impact on visitors to the area and its attractions. Obviously, such visitors provide an important source of income to local businesses. However, as set out, the degree of harm to the landscape and to designated heritage assets, which are significant local attractions, would be less than substantial. Moreover, there is no empirical evidence that wind farms have such an impact on visitor numbers elsewhere in the UK and there is no good reason to suspect that such an impact would occur in this case.
78. It was suggested that the number of approvals and projects are such that the A14 is in danger of becoming what was described as 'turbine alley'. It is clear that there are a significant number of projects approved and at varying stages in the planning process along the A14 corridor. However, what I have to

concentrate on is whether the specific proposal before me would have a harmful cumulative impact. As set out, it would not.

79. Linked to that, it is clear that there is a significant body of local opinion that does not support the proposal and is concerned about its potential impact. I have taken that opposition into account, and addressed the reasons behind it. This opposition does, however, need to be seen in the context of the importance the Government attaches to renewable energy projects, clearly articulated in PPS22 and elsewhere.

### *The Balancing Exercise*

80. The proposal would cause harm to the setting of a series of designated heritage assets and to the landscape. For the reasons set out, the degree of that harm would be less than substantial. Read in isolation, there would be a failure to comply with EMRP Policies 26 and 27 and LP Policies GN1 and GN2. A point was made that EMRP Policy 27 requires unavoidable damage to be minimised and clearly justified by a need for development in that location which outweighs the damage that would result. That, it was suggested, means that the appeal site needs to be assessed against other sites that might be sequentially superior. While it pre-dates the EMRP, PPS22 clearly sets out, in paragraph 16, that such a sequential approach should not be used. I attach greater weight to that as a statement of overriding government policy.
81. Notwithstanding the failure to accord with EMRP Policies 26 and 27 and LP Policies GN1 and GN2, PPS 5 HE9.4 and HE10.1 require the identified harm to be balanced against wider benefits (as would the application of s.38(6) of the Planning and Compulsory Purchase Act 2004). Having regard to EMRP Policy 40 and advice in PPS22, the 12-15 MW that would be provided attracts significant weight in favour of the proposal.
82. Key principle (i) of PPS22 sets out that renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic, and social impacts can be addressed satisfactorily. That is the case in this instance and the significant benefit of the proposal outweigh the less than substantial harm it would cause to the setting of designated heritage assets and the wider landscape.
83. It was suggested that in the context of the provisions set out in the Unilateral Undertaking (that I deal with below), the proposal could be seen as an enabling development. This is defined in Annex 2 to PPS5 as development that would be unacceptable in planning terms but for the fact that it would bring heritage benefits sufficient to justify it being carried out, and which could not otherwise be achieved. Having carried out the balancing exercise, I have concluded that the proposal is acceptable in planning terms. On that basis, the proposal does not fall to be considered as an enabling development.

### **Conditions and Obligations**

84. A series of suggested conditions were discussed at the Inquiry and a final list of agreed conditions was submitted post-Inquiry. I have considered all those put forward in the light of advice in Circular 11/95: *The Use of Conditions in Planning Permissions*, amongst other documents. I have made amendments to the wording and arrangement of several conditions in the interests of precision.

85. As well as one to cover the period for implementation, in order to facilitate any subsequent application for a minor material amendment, a condition is necessary to set out the approved plans (leaving aside those submitted for illustrative or indicative purposes).
86. The proposal is put forward on the basis that it would remain in place for a period of 25 years. A condition is required to govern that and to deal with eventual decommissioning. I have amended the suggested condition dealing with the latter because if decommissioning is to be completed within 12 months of the expiry of the permission (a period that I regard as reasonable) then there is no need for the condition to require a timetable for the works.
87. Linked to that, the Council suggested a condition to require a decommissioning bond. I do not believe that to be necessary because there will be other options open to the Council to enforce removal at the expiry of permission in the very unlikely event that the terms of the relevant conditions are not adhered to. It seems similarly unlikely that at the time when the permission expires, there will be no landowner to enforce against, if that should be necessary.
88. Given the nature of the layout plan, the grid references where wind turbines are to be erected need to be confirmed. This can be conjoined with the micro-siting condition. An allowance of 30 metres in any direction appears reasonable and given the degrees of separation from nearby dwellings and footpaths, this should not present any particular difficulties. Paragraph 76 of the technical annex on wind to the Companion Guide to PPS22 notes that shadow flicker effects have been proven to occur only within ten rotor diameters of a wind turbine. Even accounting for the micro-siting allowance, the relationship of the array to existing properties means that shadow flicker would be very unlikely to take place. On that basis, the suggested condition is not necessary.
89. A condition is necessary to secure a Construction Management Plan and to limit working hours in order to protect the living conditions of local residents during construction and decommissioning stages. I have amended the hours put forward by the appellant to reduce the scope for working on Saturdays. Provision is necessary for deliveries to take place outside the specified hours of working subject to the approval of the local planning authority. As set out, conditions are also necessary to deal with construction traffic but I do not regard it necessary to require a baseline survey of Rectory Lane. Any damage would be for the highway authority to address with the appellant.
90. Ecological conditions are required to secure the mitigation measures set out in the ES and to deal with the need to resurvey prior to commencement. Given that some habitat loss will take place as a result of the proposal it is reasonable to apply a condition to secure replacement and management. Given the nature of the site and its surroundings, it is reasonable to apply a condition to address archaeology. I have amended that suggested to better reflect the standard format. While an offer was made in the initial SEI to upgrade the track to Tally Ho Covert in order to provide a better surface for riders, this is not necessary to make the proposal acceptable in planning terms. A condition to secure such a benefit does not meet the tests of Circular 11/95, therefore.
91. It is necessary to apply conditions to secure details of the wind turbines and other aspects of the proposal and to control various different aspects of appearance, including heights. It is reasonable to apply conditions to address the potential need for illumination (in the interests of aviation safety) and the

- necessary notifications to the CAA and the MoD. Conditions are required to secure a surface water drainage scheme, and a pollution prevention scheme.
92. The potential for interference with television signal is a matter that is necessary to address through a condition. It is reasonable to include reference in the condition to a timetable for response to any complaint but I do not regard it as necessary to require a baseline survey of signal strength. Moreover, it strikes me as disproportionate to require the wind turbines to be switched off until that signal strength is restored to pre-development level, in the event of any interference. Given the operation of telecommunications apparatus in the vicinity of the site, and the potential for interference, a condition needs to be applied to secure mitigation in the event that interference occurs.
93. To ensure that it does not have an unacceptable effect on the living conditions of local residents, a series of conditions is required to ensure that the proposed wind farm operates in accordance with the guidelines set out in ETSU-R-97. Conditions were also suggested by SKWF to address what was referred to as excess amplitude modulation.
94. However, it is acknowledged that there is no evidence to suggest that excess amplitude modulation will occur as a result of the proposal and there is no established method of accurately forecasting whether the phenomenon will occur or not. Against that background, SKWF points to Planning Policy Statement 23: *Planning and Pollution Control* (PPS23) and the advice in paragraph 6 that the precautionary principle should be invoked when: there is good reason to believe that harmful effects may occur; and the level of scientific uncertainty is such that the risk cannot be assessed with sufficient confidence to inform decision-making. That may be correct in terms of the areas that PPS23 is intended to address but PPS23 paragraph 1 is very clear that noise is covered by Planning Policy Guidance: *Planning and Noise* (PPG24). Moreover, PPS22 makes it clear in paragraph 22 that ETSU-R-97 is to be used to assess and rate noise from wind energy development. Neither of these documents suggest that conditions to address excess amplitude modulation are necessary. I recognise that PPS22 and ETSU-R-97 (and for that matter PPS23) predate more recent thinking on the issue of amplitude modulation but the Government has not seen fit to alter their advice in PPS22. Against that overall background, I see no good reason to apply the precautionary principle and attach conditions to address the possibility of excess amplitude modulation. In the light of Government guidance, such conditions would not meet the test of necessity set out in Circular 11/95.
95. The Unilateral Undertaking (UU) offered by the Kelmarsh Trust and the appellant, dated 6 October 2011, makes provision for the appellant to pay £200,000 to the Trust before operating any of the wind turbines and for the Trust to use that money, and the rent received from the appellant, to fund works to Kelmarsh Hall and other buildings under the control of the Trust.
96. That a sum of money of this magnitude would represent a significant benefit to the Trust cannot reasonably be doubted. I agree that the Community Infrastructure Levy (CIL) Regulations are not applicable but Circular 05/2005: *Planning Obligations* does set a series of tests against which the UU must be assessed. The works set out in the UU cannot be said to be directly related to the proposed development and the provisions of the UU are not necessary to make the development before me acceptable in planning terms. Nor can I sensibly conclude that the sums involved are fairly and reasonably related in



scale and kind to the proposed development. The provisions of the UU do not therefore meet the tests set out in Circular 05/2005. As set out, I have found the development proposed acceptable in planning terms. Any benefit that the Trust might derive from the terms of the UU is not something that bears upon that conclusion.

### **Conclusion**

97. For the reasons given above I conclude that the appeal should be allowed.

*Paul Griffiths*

INSPECTOR

### **Annex A**

#### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Figure 1.1: Site Boundary; Figure 1.2: Geographical Context; Figure 3.1: Proposed Wind-Farm Layout; and Figure 3.4: Proposed Site Access Arrangement.
- 3) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid network (the 'First Export Date'). Written confirmation of the First Export Date shall be provided to the local planning authority no later than 1 calendar month after the event.
- 4) Not later than 24 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority, including details of the method by which the wind turbines, ancillary equipment and buildings would be dismantled and removed from the site, the depth below ground level to which foundations would be removed, and details of site restoration. The approved scheme shall be completed within 12 months of the expiry of this permission.
- 5) If any of the wind turbines hereby permitted ceases to operate for a continuous period of 12 months, or an extended period approved in writing by the local planning authority, (unless such a cessation is due to the turbine being under repair or replacement), a scheme for the decommissioning and removal of the wind turbine and any ancillary equipment and structures relating solely to that wind turbine, and restoration of that part of the site affected, shall be submitted to the local planning authority for written approval within 3 months of the end of the 12 month period or any extended period approved in writing by the local planning authority. The scheme shall be completed, in accordance with the approved details within 12 months of the date of its approval by the local planning authority.
- 6) The wind turbines shall be erected at the following coordinates: Turbine 1: E471731 N278587; Turbine 2: E471565 N278802; Turbine 3: E471926 N278949; Turbine 4: E472145 N278394; Turbine 5: E472176 N278782; and Turbine 6: E472482 N287607. Notwithstanding that, and

the terms of condition no.2, a variation of the indicated position of any of the wind turbines, the anemometer mast, control building or access tracks (micro-siting) shall be permitted by up to 30 metres in any direction. A plan showing the final layout shall be submitted to the local planning authority within 3 months of the First Export Date.

- 7) All engineering operations, construction and decommissioning works shall be carried out only between the hours of 0700 and 1900 Monday to Friday, and 0800 and 1300 on Saturdays. No engineering operations, construction or decommissioning works shall take place on Sundays or Public Holidays. Deliveries may take place outside those hours subject to details having first been submitted to and approved in writing by the local planning authority.
- 8) No development shall take place until a Construction Method Statement (CMS) describing all works, including temporary works, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CMS. The CMS shall address the following matters:
  - i) The control of noise and vibration from construction activities including groundwork and the formation of infrastructure, along with arrangements to monitor noise emissions from the site during the construction phase;
  - ii) The control of dust including arrangements to monitor dust emissions from the development site during the construction phase;
  - iii) Measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase;
  - iv) Measures to be implemented on site to prevent the deposition of deleterious material from vehicles leaving the site;
  - v) The location and size of temporary parking, lie down, compound areas, including staff facilities, and loading, off-loading and turning facilities for vehicles;
  - vi) The control of surface water drainage from parking and hardstanding areas including the details of oil interceptors;
  - vii) The use of impervious bases and bunds for the storage of oils, fuels and chemicals on site;
  - viii) Replanting plans for turbine bases and crane operation areas subsequent to construction
  - ix) Details of the reinstatement of any areas of the site disturbed during construction;
  - x) Fencing to be erected during the construction phase;
  - xi) Reversing alarms to be used on vehicles attending the site; and
  - xii) Security lighting to be provided at the site.
- 9) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of the routing of construction traffic, the scheduling and timing of movements, the management of junctions to and crossings of the public highway and other public rights of way, escorts for abnormal loads, any temporary works, replacement of highway infrastructure or street furniture, reinstatement of any signs, verges or other items displaced by

- construction traffic, and banksmen. Development shall be carried out in accordance with the approved details.
- 10) No development shall take place until a further survey for, and details of any further works required to mitigate any undue adverse effects on, great crested newts, badgers, water voles, otters, bats or breeding birds, including a timetable, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 11) The mitigation measures set out in the Ecological and Ornithological chapters of the Environmental Statement dated February 2010 shall be implemented in accordance with a timetable first submitted to and approved in writing by the local planning authority.
  - 12) No development shall take place until details of replacement and strengthened hedgerow planting and new and enhanced habitats on the site including a timetable and provisions for future management, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 13) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
  - 14) No development shall take place until details of the wind turbines, including design, dimensions, colour, finish, sound power levels and manufacturers' warranties have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 15) No development shall take place until details of the anemometer mast including design, dimensions, colour and finish have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 16) No development shall take place until details of the siting, external appearance, including samples of materials, and dimensions of the control building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 17) No symbols, signs, logos or lettering, other than any required for health and safety or traffic management shall be displayed on any part of the turbines, anemometer mast or control building.
  - 18) All cabling within the site shall between the wind turbines and from the turbines to the substation shall be set underground.
  - 19) The blade tip height of wind turbines T1, T2, T4 and T5 when measured from the turbine base to the blade tip in the vertical position, shall not exceed 126.5 metres in height and the blade tip height of wind turbines T3 and T6 shall not exceed 121 metres in height when measured in the same way.

- 20) None of the wind turbines shall have a hub height greater than 80 metres measured from the turbine base.
- 21) All wind turbine blades shall rotate in the same direction.
- 22) No development shall take place until details of any illumination required by the Civil Aviation Authority (CAA) and/or the Ministry of Defence (MoD) for the purposes of aviation safety have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 23) Before development commences details of the date of commencement of construction, the height above ground level and the location of the tallest structure, the maximum height reached by any construction equipment, the latitude and longitude of each wind turbine and the anemometer mast, and details of any site lighting shall be notified to the CAA and MoD. Within 28 days of the commissioning of the final wind turbine details of the completion date of construction and of any alterations to the data previously submitted shall be provided to the CAA and MoD.
- 24) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 25) No development shall take place until a Pollution Prevention Plan covering the construction, operation and decommissioning phases of the development, has been submitted to and approved in writing by the local planning authority. The Pollution Prevention Plan shall be implemented in accordance with the approved details.
- 26) Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to any television signal 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 television engineer, within a set timetable, of any complaint of interference with television reception at a lawfully occupied dwelling which existed or had planning permission at the time permission was granted, 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 to be attributable to the wind turbines, details of the necessary mitigation works, including a timetable for their implementation, shall be submitted to and approved in writing by the local planning authority and completed as approved.
- 27) None of the wind turbines shall be erected until a Telemetry Mitigation Plan (TMP) has been submitted to and approved in writing by the local planning authority. The TMP shall include measures for mitigating any interference with the local regulated radio telemetry network as operated by National Grid, Western Power Distribution and the Joint Radio Company. The mitigation measures shall be carried out in accordance with the approved details.
- 28) No development shall take place until an acoustic report has been submitted to, and approved in writing by, the local planning authority. The acoustic report shall:

- i) include final details of the wind turbines to be installed along with manufacturer warranties to show maximum sound power levels from the turbines across operational wind speeds up to 12 m/s and confirm that the noise from the installed turbines shall be free from tonal characteristics as assessed by BS EN ISO61400-11:2003 or where tonal noise is present, the noise limits are met inclusive of any tonal penalty when assessed with Note 3;
  - ii) be conducted by a suitably competent and independent consultant as approved in writing by the local planning authority prior to the report being undertaken;
  - iii) comply with the provisions of ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms*;
  - iv) include an assessment of the turbine noise at the same monitoring locations as identified in Table 1 and 2 in Condition 29, and at any other location requested in writing by the local planning authority;
  - v) assess turbine noise taking into consideration site specific wind shear using data gathered from the on-site anemometer mast.
  - vi) indicate how far below the limits in Condition 29 the noise from the turbines will be, at each location, at each wind speed. It shall be sufficient to utilise the background monitoring data collected for the Kelmash Wind Farm Environmental Statement February 2010 for the purposes of this condition; and
  - vii) use proposed noise limits according with those limits specified in Tables 1 and 2 in condition 29 for a listed location which the independent consultant considers likely to experience the most similar background noise environment to that recorded at the monitoring location, where a limit value for a location does not exist, as approved in writing by the local planning authority.
- 29) The rating level of noise emissions from the combined effects of the wind turbine generators when measured and calculated in accordance with the attached guidance notes, shall not exceed the values set out in Tables 1 and 2 below. Where there is more than one property at a location, the noise limits apply to all properties lawfully in existence at the time of granting this permission, at that location. Noise limits for properties which lawfully exist or have planning permission for construction at the date of this permission but are not listed in the tables attached shall be those of the most representative location listed in Tables 1 and 2.

**Table 1: Daytime noise limit criteria 07:00hrs to 23:00hrs**

**(Maximum Noise Level  $L_{A90,10min}$  dB)**

	Measured Wind Speed at 10m height (m/s)									
	3 or below	4	5	6	7	8	9	10	11	12
Bassets Lodge	44.6	46.1	48.1	50.5	53.5	56.9	56.9	56.9	56.9	56.9
Harrington Road	50.0	51.0	52.6	54.9	57.9	61.7	61.7	61.7	61.7	61.7
Clipston Hill	46.9	48.2	50.4	53.4	57.2	61.9	61.9	61.9	61.9	61.9

	Measured Wind Speed at 10m height (m/s)									
Hospital Farm	35	35	35	35	35	35	35	35	35	35
New House Farm	35	35	35	35	35	35	35	35	35	35
Rectory Farm	50.0	51.0	52.6	54.9	57.9	61.7	61.7	61.7	61.7	61.7
Clipston Grange	46.9	48.2	50.4	53.4	57.2	61.9	61.9	61.9	61.9	61.9
Kelmarsh Hall	50.0	51.0	52.6	54.9	57.9	61.7	61.7	61.7	61.7	61.7
Haselbech Grange	47.6	47.2	47.2	47.7	48.6	49.9	51.6	51.6	51.6	51.6
Haselbech (north east)	42.6	44.2	46.0	47.9	49.9	52.0	54.3	54.3	54.3	54.3
Pingle House	47.6	47.2	47.2	47.7	48.6	49.9	51.6	51.6	51.6	51.6
Grange Cottage	47.6	47.2	47.2	47.7	48.6	49.9	51.6	51.6	51.6	51.6

**Table 2: Night-Time Noise Limit Criteria 23:00hrs to 07:00hrs**

**(Maximum Noise Level  $L_{A90,10min}$  dB)**

	Measured Wind Speed at 10m height (m/s)									
	3 or below	4	5	6	7	8	9	10	11	12
Bassets Lodge	43	43	44.2	46.4	48.8	51.6	54.6	54.6	54.6	54.6
Harrington Road	46.8	47.8	49.1	50.7	52.5	54.6	57.0	57.0	57.0	57.0
Clipston Hill	45.4	47.3	49.3	51.2	53.2	55.1	57.0	57.0	57.0	57.0
Hospital Farm	35	35	35	35	35	35	35	35	35	35
New House Farm	35	35	35	35	35	35	35	35	35	35
Rectory Farm	46.8	47.8	49.1	50.7	52.5	54.6	57.0	57.0	57.0	57.0
Clipston Grange	45.4	47.3	49.3	51.2	53.2	55.1	57.0	57.0	57.0	57.0
Kelmarsh Hall	46.8	47.8	49.1	50.7	52.5	54.6	57.0	57.0	57.0	57.0
Haselbech Grange	44.4	45.3	46.6	48.2	50.3	52.8	55.7	59.0	59.0	59.0
Haselbech (north east)	43.0	43.0	43.7	46.7	50.0	53.8	58.0	62.6	62.6	62.6

	Wind Speed at 10m height (m/s)									
Pingle House	44.4	45.3	46.6	48.2	50.3	52.8	55.7	59.0	59.0	59.0
Grange Cottage	44.4	45.3	46.6	48.2	50.3	52.8	55.7	59.0	59.0	59.0

- 30) Within 21 days of receipt of a written request from the local planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant first approved in writing by the local planning authority to assess the level of noise emissions from the wind farm at the complainant’s property in accordance with the procedures described in the Guidance Notes. The written request from the local planning authority shall set out the dates, times and location that the complaint relates to.
- 31) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with condition 30, the wind farm operator shall submit to the local planning authority for written approval an assessment protocol including:
- i) details of the independent consultant appointed to undertake the assessment;
  - ii) the limits that are to be applied at the complainant’s property;
  - iii) a justification for the limits to be applied;
  - iv) a reasoned assessment as to whether the sound is likely to contain a tonal component in accordance with guidance note 3 a); and
  - v) the proposed measurement location as identified by the guidance notes.

Measurements to assess compliance with the noise limits set out in the Tables attached to condition 29 or approved by the local planning authority shall be undertaken in accordance with the assessment protocol.

- 32) The wind farm operator shall provide to the local planning authority the independent consultant’s assessment of the rating level of noise emissions from the wind farm undertaken in accordance with the Guidance Notes within two months of the date of the written request of the local planning authority made under condition 31 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.
- 33) The wind farm operator shall continuously log wind speed and wind direction at the anemometer mast erected in accordance with this permission, and shall continuously log power production, nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 12 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to

the local planning authority on its request, within 14 days of receipt in writing of such a request.

- 34) Prior to commencement of the development the wind farm operator shall provide the local planning authority with the name and contact details of a nominated representative or representatives or replacement person(s) who shall act as a point of contact for local residents and the local planning authority both during and outside normal working hours in respect of matters arising in relation to the development. In particular the nominated representative(s) shall have responsibility for liaising regularly with the local planning authority and for dealing with any complaints made to him/her during the construction of the development, throughout the operation of the wind farm and during the decommissioning/restoration of the site. The operator shall immediately provide the local planning authority with advance notice in writing of any subsequent changes in the name(s) and contact details of the nominated representative(s).

### **GUIDANCE NOTES RELATING TO NOISE CONDITIONS 28 to 34**

These notes are to be read with and form part of the noise conditions. They further explain the conditions and specify the methods to be deployed in the assessment of complaints about noise emissions 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. 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). Measured noise emission levels from the turbines must be referenced to measured 10 metres height wind speeds.

#### **NOTE 1**

- (a) Values of the  $L_{A90,10\text{-minute}}$  noise index should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). If required, 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 should be mounted at 1.2-1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the local planning authority, and placed outside the complainant's dwelling. Measurements should be made in 'free field' conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface, except the ground, at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit



for the written approval of the local planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements, and the measurements shall be undertaken at the approved alternative representative measurement location.

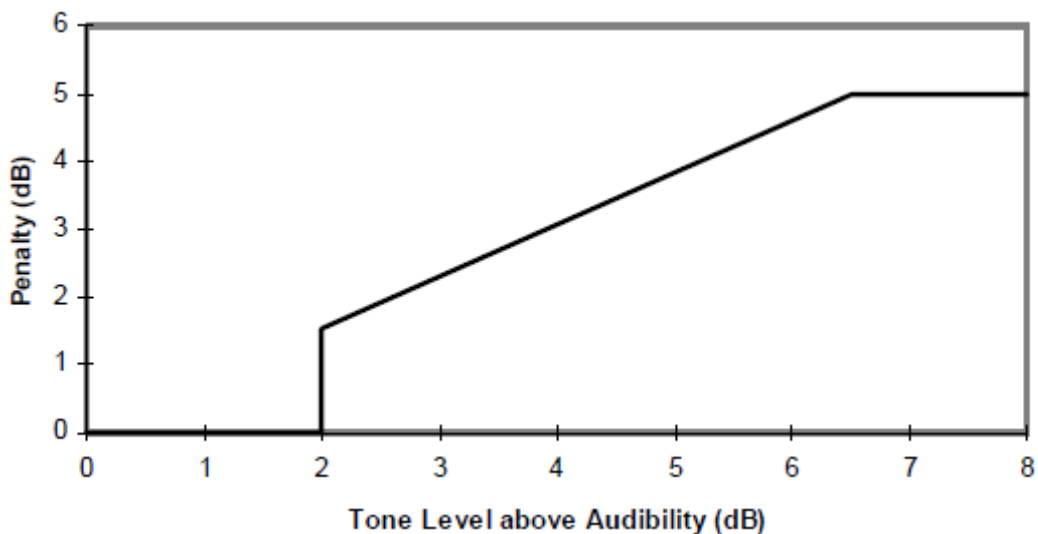
- (c) The  $L_{A90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic average wind speed, measured at a height of 10 metres, and with operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second (m/s), arithmetic mean wind direction in degrees from north and rainfall data in each successive 10-minute periods by direct measurement at a height of 10 metres on the permanent meteorological monitoring mast erected in accordance with the planning permission on the wind farm site. It is this 10 metre height wind speed data which is correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). In addition, the wind farm operator shall continuously log arithmetic mean nacelle anemometer wind speed, arithmetic mean nacelle orientation, arithmetic mean wind direction as measured at the nacelle and arithmetic mean power generated during each successive 10-minute period for each wind turbine on the wind farm. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time.
- (e) Data provided to the local planning authority in accordance with the noise conditions shall be provided in comma separated values in electronic format.
- (f) A data logging tipping bucket 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 emissions. The gauge shall record over successive 10 minute periods in accordance with the protocol detailed in Note 1(d).

## NOTE 2

- (a) The noise measurements should be made so as to provide not less than 40 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured in the conditions set out in the assessment protocol approved by the local planning authority under condition 31 of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the derived 10-minute ten metre height wind speed for those data points considered valid in accordance with Note 2 paragraph (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) should be fitted to the data points and define the wind farm noise level at each integer speed.

**NOTE 3**

- (a) Where in accordance with the approved assessment protocol under condition 31, noise emissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which  $L_{A90,10\text{-minute}}$  data has been determined as valid in accordance with Note 2 a tonal assessment shall be performed on noise emissions during 2 minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data is available ('the standard procedure'). Where uncorrupted data is not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviation from 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 or future equivalent guidance for wind farm tonal noise assessment.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. For samples where 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 within  $\pm 0.5\text{m/s}$  of each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in accordance with Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



**NOTE 4**

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 above at each integer wind speed within the range set out in the approved assessment protocol under condition 31.
- (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) In the event that the rating level in Notes 4 (a) and 4 (b) of these Guidelines 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 by the local planning authority, 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 emission only.
- (d) The wind farm operator shall ensure that all of wind turbines in the development are turned off for such period as the independent consultant or local planning authority requires for undertaking 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 assessment protocol under Condition 31.
  - ii) The wind farm noise ( $L_1$ ) at this speed shall then be calculated as follows where  $L_2$  is the measured level with turbines running but without the addition of any tonal penalty:

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

- iii) The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise  $L_1$  at that integer wind speed.
- iv) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the limits approved by the local planning authority for a complainants dwelling 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 complainants dwelling then the development fails to comply with the conditions.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

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BA(Hons)	

### INTERESTED PERSONS:

Dr Ben Robinson	English Heritage
Martin Marix Evans MA	Battlefields Trust
Andrew Day	Nagarjuna Buddhist Centre
Rod Smeaton	Maidwell with Draughton Parish Council
Mike Fowler	Clipston Parish Council
Scott Westaway	Naseby Parish Council
Simon Hunt	Haselbech Parish Council
Adrian Snook	Local Resident

Lesley Sanderson	Arthingwoth Parish Council
Anne Tilbrook	Local Resident
Eleanor Bletsoe-Brown	Local Resident
County Councillor Chris Millar	Brixworth Division
Councillor Miss Pamela Brooker	Kelmarsh Ward Member

## **DOCUMENTS PUT IN AT INQUIRY**

- 1 SoCG agreed between the appellant and Daventry DC
- 2 Kelmarsh Wind Farm – Energy Yield Prediction Report prepared for E.On Climate and Renewables UK Development
- 3 Extract from E.On UK web-site about a proposed wind farm near Kirkby Lonsdale
- 4 Draft Unilateral Undertaking by E.On Climate and Renewables UK Development and the Kelmarsh Trust
- 5 D&B Report on the Kelmarsh Trust and their audited 2010 Financial Statements
- 6 Photomontages taken from the Walled Garden at Kelmarsh Hall near the access for disabled persons
- 7 Written Submission of Martin Marix Evans of the Battlefields Trust
- 8 Details of proposed Naseby Battlefield Centre
- 9 Statement of Andrew Day, Nagarjuna Buddhist Centre
- 10 Statement of Rod Smeaton, Maidwell with Draughton Parish Council
- 11 Statement of Mike Fowler, Clipston Parish Council
- 12 Statement of Scott Westaway, Naseby Parish Council
- 13 Statement of Simon Hunt, Haselbech Parish Council
- 14 Statement of Lesley Sanderson, Arthingwoth Parish Council
- 15 Statement of Anne Tilbrook
- 16 Submission of Eleanor Bletsoe-Brown
- 17 Statement of County Councillor Chris Millar
- 18 Extract from GLVIA Appendix 6 Example 5
- 19 Draft Itinerary for Site Visits
- 20 Extract from East Midlands Regional Plan (paragraph 3.3.85)
- 21 Copy of 'Renewable Electricity in Scotland, Wales, Northern Ireland and the Regions of England 2010'
- 22 Paper on highway issues put in on behalf of appellant
- 23 Commentary on the audited accounts of the Kelmarsh Trust
- 24 Extract from APP/E2001/A/10/2137617 & 2139965
- 25 Bundle of documents dealing with suggested conditions
- 26 Final Site Visit Itinerary
- 27 Representation from Roger Helmer MEP
- 28 Representation from Chris Heaton-Harris MP for Daventry
- 29 Revised Appendix 1 to Mr Barnard's Evidence
- 30 Submission on the applicability of Regulation 122 of Community Infrastructure Levy Regulations (agreed between main parties)
- 31 E-mail put in by SKWF confirming, amongst other things, the height and location of the blimp flown on 12 October 2011.
- 32 Turbine Grid References
- 33 Statement of Councillor Miss Pamela Booker
- 34 Completed Unilateral Undertaking dated 6 October 2011
- 35 Final Agreed Draft Conditions (post-Inquiry)
- 36 Correspondence on 'The Setting of Heritage Assets' (post-Inquiry)

## **PLANS**

- A Figure 1.1: Site Boundary
- B Figure 1.2: Geographical Context
- C Figure 3.1: Proposed Wind-Farm Layout (amended 6 turbine scheme)
- D Figure 3.2: Typical Wind Turbine Structure
- E Figure 3.3: Schematic Connection of Turbine to Grid
- F Figure 3.4: Proposed Site Access Arrangement
- G Figure 3.5: Typical Turbine Foundation
- H Figure 3.6: Typical Crane Hardstanding
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- J Figure 3.8: Typical Construction Compound
- K Figure 3.9: Typical Control Building
- L Figure 3.10: Typical Cable Trench Cross-Section
- M Figure 3.11: Typical Anemometry Mast Structure

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