



Department for  
Communities and  
Local Government

Mr Darren Hendley  
Arcus Renewable Energy Consulting Ltd  
1C Swinegate Court East  
3 Swinegate  
York  
YO1 8AJ

Our Ref: APP/B3030/A/12/2183042

Your Ref: 309Hawton

29 September 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BOLSTERSTONE INNOVATIVE ENERGY (HAWTON) LTD  
THE ERECTION OF THREE no. WIND TURBINES ON AGRICULTURAL LAND  
TO THE EAST OF HAWTON, NEWARK-ON-TRENT - (APPLICATION REF:  
11/01588/FULM)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Zoe Hill BA (Hons) DipBldgCons (RICS) MRTPI IHBC, who held an inquiry on 26-28 February 2103 into your client's appeal against Newark and Sherwood District Council's ('the Council') refusal to grant planning permission for the erection of three no. wind turbines of height between 105 metres and 126.5 metres to tip and associated infrastructure including access tracks, one switchgear and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings, one new access point and one meteorological mast (application ref 11/01588/FULM).
2. On 11 October 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves a renewable energy development.

Department for Communities and Local Government  
Philip Barber, Decision Officer  
Planning Casework  
Third Floor, Fry Building,  
2 Marsham Street,  
London SW1P 4DF

Tel: 030344 42853  
Email: PCC@communities.gsi.gov.uk

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

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation, upholds the appeal and grants planning permission. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

### **Procedural matters**

4. In reaching this position the Secretary of State has, like the Inspector, taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (IR13 and 142). The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.
5. Following the closure of the inquiry the Secretary of State received representations from Councillor Roger Blaney, Leader, Newark and Sherwood District Council on 21 May 2014. Following the Inspector making her recommendations, the Secretary of State has received representations from the following parties:

Mr Peter Caswell 30 June 2014

Ms Jill Rose – Secretary, Belvoir Locals Oppose Turbines 14 July 2014

6. The Secretary of State has taken account of these responses in his consideration of the appeal before him but does not consider that they raise any new issues requiring circulation to assist his decision. He does not consider it necessary to summarise the responses here or attach them to this letter. Copies of the correspondence can be made available upon written request to the address at the foot of the first page of this letter.

### **Policy Considerations**

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, he agrees with the Inspector (IR21) that the development plan comprises the Newark and Sherwood Core Strategy (adopted 2011) and the Newark and Sherwood Local Plan (adopted 1999) (saved policies 2007 and as modified by the adoption of the Newark and Sherwood Core Strategy.)
8. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the proposals before him or their settings or any features of special architectural or historic interest which they may possess.

9. The Secretary of State agrees with the Inspector and the parties that the most relevant policies as they relate to this appeal are those set out at IR22-23; and that the documents listed at IR24-25 are also relevant.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (“the Framework”) and the planning practice guidance; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); and the Community Infrastructure Levy (CIL) Regulations 2010 as amended. The Secretary of State has also taken into account the Written Ministerial Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government and the Written Ministerial Statement on renewable energy published by the Secretary of State for Communities and Local Government in April 2014.

### **Main Considerations**

11. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR32.

#### **Heritage Assets**

12. The Secretary of State agrees with the Inspector that the issue in regard to heritage assets is the effect of the proposed wind turbines on the setting of heritage assets and whether or not this would affect their significance (IR143). In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess.
13. The Secretary of State agrees with the Inspector that the Registered Park and Garden associated with Newark Castle is unlikely to receive any significant effect from the proposed wind turbines (IR146). He further agrees that the Registered Battlefield, the Battle of Stoke Field, would not be affected by noise impacts from the proposed turbines, that the turbines would appear only as small structures when viewed from the battlefield site, that there is no evidence to indicate that the turbines would separate the site from linked features, and that the Environmental Statement indicates that the development would have a negligible impact on the battlefield site (IR147).
14. The Secretary of State agrees that, of the Scheduled Ancient Monuments within 5km of the appeal site and within the theoretical zone of visibility, only Hawton Moated Site, Fishpond, Civil War Redoubt and Ridge and Furrow would experience anything more than a negligible impact from the proposed wind turbines. For the reasons set out at IR148 he concludes that the impact of the turbines on this monument would be minor.

15. For the reasons set out at IR149, the Secretary of State agrees with the Inspector's view that only three of the five Conservation Areas within five kilometres of the appeal site were assessed as having potential to receive effects, and that these, Elston, Farndon and East Stoke, would only receive negligible impact from the proposed wind turbines.
16. The Secretary of State concludes, for the reasons set out by the Inspector at IR150, that of the 420 listed buildings within five kilometres of the appeal site, the effects on Hawton Church and St Mary Magdalene, Newark, should be the primary focus of his consideration of heritage assets. He further agrees, for the reasons set out at IR151, that the proposed development should not be prevented because of the impact upon the wider historic environment. For the reasons given at IR152 he concludes that there is no clear evidence that Belton House would have its setting substantially harmed by the proposed development.

#### All Saints Church, Hawton

17. For the reasons given at IR156 the Secretary of State agrees that the setting of All Saints Church, Hawton, when seen from the east, is not particularly significant in reflecting its historic role. For the reasons given at IR162 the Secretary of State concludes that the setting of the church when viewed from this direction would be preserved. The Secretary of State concludes, for the reasons set out at IR157-8 that while there would be some visual harm when viewed while travelling north/south from the west of the site, it would not be substantial in terms of the contribution that the setting makes to the significance of the church.
18. For the reasons given at IR159-160 the Secretary of State concludes that while the significance of the Church's setting when viewed from the Farndon/Hawton road would be harmed, it would not be substantially harmed. He similarly agrees, for the reasons given by the Inspector at IR161, that when viewed from the north and south the setting of the church would be largely preserved.
19. He agrees with the Inspector (IR163) that there would be harm in terms of the setting when viewed from the Farndon/Hawton Road, this would not be substantial. He thus agrees that when considering the setting as a whole, there would not be substantial harm to the setting of the church, but that this setting would not be preserved and as such there would be some harm to the significance of the church insofar as it is derived from its setting.

#### The Church of St Mary Magdalene, Newark

20. For the reasons given by the Inspector at IR164-169 the Secretary of State concludes, in agreement with the Inspector at IR170, that while the proposed wind turbines would not enhance the setting of Mary Magdalene, Newark, the setting would be preserved, and as such substantial harm would not arise.

### Heritage assets - conclusions

21. In considering the impact of the proposed development on heritage assets the Secretary of State has taken into account the Barnwell Manor judgement, and his statutory duty to consider the desirability of preserving and enhancing the setting of listed buildings. He agrees with the Inspector at IR171 that the desirable objective of preserving the setting of St Mary Magdalene, Newark would be achieved if the proposed development was permitted. In terms of All Saints Church, Hawton, he agrees that its setting would not be preserved, and as such the desirability of preserving the setting is a matter of considerable importance and weight, and must form part of the planning balance. As the harm is less than substantial, however, he concludes that it must be weighed against the public benefits of the proposal.

### Public benefits

22. For the reasons given at IR172-4 the Secretary of State concludes, in agreement with the Inspector, the public benefits provided by the proposed development in terms of generating renewable energy outweigh the impact of the proposal on the setting of Hawton Church. The Secretary of State has then gone on to consider the other potential impacts of the proposed development.

### Residential outlook

23. For the reasons given at IR175 the Secretary of State agrees with the Inspector that the living conditions of any of the occupiers of the properties at Quarry Farm, the nearest dwellings to the development, would not be unacceptably harmed by the effect of the proposed turbines on their outlook.

### Landscape and visual impact

24. The Secretary of State agrees with the Inspector at IR176 that while there would be significant visual impact from the turbines when seen close to, there is no landscape or visual harm which would justify withholding planning permission. However, he agrees that some weight should be attached to this visual harm, and that the development does not sit comfortably within the uses accepted in the countryside in Local Plan Policy NE1 and SC Spatial Policy 3 Rural Areas.

### Highway safety

25. The Secretary of State agrees with the Inspector that, subject to appropriate conditions being imposed, the proposed development would not raise highway safety issues (IR177).

### Tourism

26. For the reasons set out at IR178 the Secretary of State does not attach any weight to the impact on tourism or property prices posed by the proposed development.

### Land contamination

27. The Secretary of State agrees with the Inspector that, subject to suitable conditions requiring remediation works for the area, land contamination does not carry any weight in the planning balance (IR179).

### Shadow Flicker

28. The Secretary of State agrees that shadow flicker can be controlled by appropriate conditions, and as such that no weight should be attached to this issue (IR180).

### Noise

29. For the reasons given at IR181-3 the Secretary of State concludes that the change to noise levels in the vicinity of the proposed wind turbines would have limited impact on people and it carries little weight. He further concludes that there is no evidence to indicate the likelihood of amplitude modulation being an issue for the proposed development (IR184-5).

### Air Safety

30. The Secretary of State agrees with the Inspector that, subject to appropriate conditions being put in place, no weight need be attached to the matter of air safety in the planning balance (IR186).

### Ecology

31. For the reasons given at IR 187 the Secretary of State considers that there would be no material harm to local wildlife populations as a result of the proposed development. Subject to appropriate conditions being imposed the Secretary of State concludes that the potential impact on ecology is neutral in the planning balance.

### Balancing Exercise

32. The Secretary of State concludes, in agreement with the Inspector, that in this case some harm would arise to the visual amenities of the area, contrary to both LP and CS policies. He also agrees that the noise generated by the proposed turbines would be such that people would be aware of it, particularly when using nearby rights of way. He concludes, in agreement with the Inspector, that both of these harms would be modest (IR188).
33. The Secretary of State concludes that the development would be harmful to the setting of Hawton Church, Newark, but that this harm would not constitute substantial harm. This harm, and the harms identified in paragraph 32 above would result in conflict with development plan policies CS Policy 14 and LP Policy C11.

34. He has further given special regard to the desirability of preserving the setting of listed buildings, in line with s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. As such he attaches great importance to the harm he has identified to the setting of Hawton Church, Newark, in particular because this is a grade I listed building. He has also taken into account paragraph 134 of the Framework which states that 'where a proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits...', which is a significant material consideration.
35. The Secretary of State finds, in agreement with the Inspector at IR192, that the key harm identified relates to the harm to the significance of Hawton Church, Newark, arising from impact upon its setting. For the reasons given at paragraphs 17-19 above, he agrees with the Inspector that this harm related predominantly to views from one direction. He concludes that this harm is therefore limited.
36. Against this harm, and the other harms at paragraph 32 above, he weighs the significant benefits which he concludes would be derived in terms of renewable energy generation, in agreement with the Inspector at IR193.

#### Conclusion

37. The Secretary of State concludes that the proposed development is not in strict accordance with the development plan. Having weighed up all relevant considerations, the Secretary of State concludes that the factors which weigh in favour of the proposed development outweigh its shortcomings and the conflict identified with the development plan and national policy.
38. The Secretary of State concludes that, while having special regard to the desirability of preserving the setting of Hawton Church, Newark, on balance the benefits he finds at paragraph 22 above outweigh the harm identified to the listed buildings, and the other harms set out above.

#### Conditions and obligation

39. The Secretary of State has had regard to the schedule of conditions at Annex A of the IR. He is satisfied that the Inspector's proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. He agrees with the Inspector at IR197 that it is not necessary or reasonable to impose a condition in regard of Amplitude Modulation, for the reasons set out at IR184-5. For the reasons set out at IR196, the Secretary of State agrees with the alterations recommended by the Inspector to condition 35. He further agrees that the sum sought under the s106 Unilateral Undertaking planning obligation set out at IR140 is fairly and reasonable related in scale and kind to the proposed development and would thus meet the tests of paragraph 204 of the Framework.

## **Formal Decision**

40. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby upholds your client's appeal and grants planning permission for the erection of three no. wind turbines of height between 105 metres and 126.5 metres to tip and associated infrastructure including access tracks, one switchgear and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings, one new access point and one meteorological mast (application ref 11/01588/FULM), subject to the conditions set out at Annex A of the IR.
41. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
42. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
43. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

## **Right to challenge the decision**

44. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
45. A copy of this letter has been sent to the Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Philip Barber**

Authorised by the Secretary of State to sign in that behalf



---

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

by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC

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

Date 24 June 2014

---

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY BOLSTERSTONE INNOVATIVE ENERGY (HAWTON) LTD**

**NEWARK AND SHERWOOD DISTRICT COUNCIL**

Inquiry held on 26 - 28 February 2013

Agricultural Land to the East of Hawton, Newark-on-Trent, NG24 3SD

File Ref: APP/B3030/A/12/2183042

---

**File Ref: APP/B3030/A/12/2183042**

**Agricultural Land to the East of Hawton, Newark-on-Trent NG24 3SD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission<sup>1</sup>.
  - The appeal is made by Bolsterstone Innovative Energy (Hawton) Ltd against Newark & Sherwood District Council.
  - The application Ref 11/01588/FULM, dated 15 November 2011, was refused by notice dated 22 August 2012.
  - The development proposed is Erection of 3 no. wind turbines of height between 105 meters [sic] and 126.5 meters [sic] to tip and associated infrastructure [sic] including access tracks, 1 switchgear and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings. 1 new access point and 1 meteorological mast
  - **Summary Recommendation** - The appeal be allowed, and planning permission granted subject to conditions.
- 

**Procedural Matters**

1. The Secretary of State (SoS) directed by letter dated 11 October 2013 that he shall determine this appeal. The reason for this is because the appeal involves a renewable energy development.
2. The Inquiry sat on three days, 26-28 February 2013. I undertook an unaccompanied site visit prior to opening the Inquiry to familiarize myself with the site and its surroundings. In addition, an accompanied site visit was made on 26 February 2013 and an unaccompanied visit on 28 February 2013. Due to poor visibility at the time of the first visits, I made a further unaccompanied visit on 9 May 2013 taking particular time to view from more distant locations including from Belvoir.
3. Prior to the opening of the Inquiry the Council decided it would not defend its first reason for refusal which related to the inadequacy of information regarding the Growth Point site at land South of Newark. At the Inquiry the Council confirmed that it no longer considered that the Environmental Impact Assessment was inadequate in that regard. Moreover, it accepted that the development would not have a materially harmful effect upon living or working conditions for future occupiers within the Growth Point<sup>2</sup>.
4. In respect of the second reason for refusal, the Council had cited concern in respect of three listed buildings. Prior to the Inquiry the Council decided that it would not support its original position in respect of The Church of St. Michael, Cotham<sup>3</sup>.
5. The application was not advertised as affecting the setting of listed buildings at the application stage. However, the setting of listed buildings is a reason for refusal and the main issue between the Council and appellant. At the opening of the Inquiry it was agreed that the Council would undertake the advertisement of the proposed development in accordance with the provisions of s.67 of the Planning (Listed Buildings and Conservation Areas) Act 1990. As a consequence

---

<sup>1</sup> The manner in which the appeal has been dealt with is set out at paragraph 5

<sup>2</sup> DOC12 paragraph 1.2

<sup>3</sup> DOC12 paragraph 2.1

- of the deficiency in the advertisement procedure, I shall deal with the appeal on the basis of it being against non-determination, although the Council's evidence, which alters its position from the reason for refusal, clearly sets out its objections to the proposal. No further correspondence was received as a result of that advertisement.
6. Two matters were raised at the Inquiry which could not be dealt with by the witnesses available; these related to amplitude modulation (AM) and the impact on the nearest residential properties. The comments received were copied to others attending the Inquiry who had raised specific concerns at the Inquiry in this regard so that they could comment.
  7. On the 12 April 2013 the Regional Spatial Strategy for the East Midlands was revoked. Some of the policies within that document were of relevance to this case and so the main parties were given opportunity to comment upon this matter.
  8. Subsequent to that period for consultation, a written ministerial statement (WMS) was issued on 6 June 2013 regarding local planning and onshore wind. In this case I felt it was necessary to go back to the parties for their comments upon the WMS. This resulted in responses from the appellant, the Council, South Newark Oppose Windturbines 'SNOW' (the Rule 6 (6) party) and other interested parties. I shall deal with these matters below.
  9. Two additional documents resulted in the need for a further period of consultation. Those documents are the Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise prepared by the Institute of Acoustics (IoA GPG) and the Planning Practice Guidance for Renewable and Low Carbon Energy (PPG R&LCE). It was necessary to seek comment on the former document as its advice had been discussed at the Inquiry particularly in terms of conditions, and the latter Government document as it cancelled Planning for Renewable Energy: A Companion Guide to PPS22 to which the parties had referred.
  10. Following the final right of comment from the appellant, the Inquiry was closed in writing on 13 December 2013.
  11. On that same date further information was published regarding amplitude modulation and noise. Given this had been a specific issue at the Inquiry with specific submissions sought to address this matter, it was necessary to offer the main parties and the other parties who had expressed particular interest in being involved on this matter, opportunity to comment on that suite of documents. A further consultation period was therefore allowed on this matter alone and comments have been taken into account in the conclusions section of this report<sup>4</sup>. Further consultation has also taken place regarding the national Planning Practice Guidance (nPPG), which supersedes the PPG R&LCE, and the Barnwell Manor Wind Energy Limited judgement.<sup>5</sup>
  12. The representations made after the consultations outlined above have been considered in coming to my recommendation.

---

<sup>4</sup> Responses to this consultation are contained in PE8

<sup>5</sup> [2014] EWCA Civ 137

13. The application was accompanied by an Environmental Statement (ES)<sup>6</sup>. That statement included identification of heritage assets and undertook an assessment of the assets identified. There was some discussion at the Inquiry about the matrix of impacts and it was clear its arrangement resulted in greater significance being attached to all listed buildings. However, this had the effect of not giving greater significance to listed buildings in the higher grade II\* and I categories. Nonetheless, I am satisfied that those buildings upon which the proposed development would have a more than negligible impact in terms of their setting are identified. In my assessment I have focussed upon those assets where it is agreed that there would be an effect upon setting, those where interested parties have raised specific concerns in respect of a heritage asset and those other assets identified in the ES as being subject to a more than negligible affect.

### **The Reason for Refusal**

14. The reason for refusal considered by the Inquiry, as altered for the reasons set out in paragraphs 3 and 4 above and to correct typographical errors, is:

*The NPPF makes clear that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. In the opinion of the Local Planning Authority the development, by reason of its siting, height and number of turbines, would result in substantial harm to heritage assets of the highest significance, including the parish churches of Hawton (All Saints Church, Grade I listed) and Newark (Church of St Mary Magdalene, Grade I listed). It is considered that there are no wholly exceptional circumstances that would outweigh such harm, contrary to the NPPF, a material consideration.*

### **The Site and Surroundings**

15. As set out in the Statement of Common Ground<sup>7</sup>, the appeal site comprises approximately 38.7 hectares (ha) and is located approximately 1.5 kilometres (km) south of the extent of built development of Newark on Trent, 1.5km south-east of the village of Hawton and 1.7km north of Cotham. The six point grid reference for the site is SK480350.
16. The site is located on generally flat land, situated between 10-20 metres (m) in height Above Ordnance Datum. The site is used for predominantly agricultural purposes. It is a restored former open cast quarry, which was formerly used for gypsum extraction. Cotham Flash, a wetland area and local wildlife site, forms a small area in the north western portion of the site.
17. The site is bounded to the west by a minor road which connects Hawton to Cotham and to the east by strip of scrub land and National Cycle Route 64. The nearest public right of way lies approximately 540m from the nearest proposed turbine, to the west of the road between Hawton and Cotham.
18. The nearest residential properties lie at Quarry Farm, approximately 680m to the north of the site.

---

<sup>6</sup> CD1 and CD2

<sup>7</sup> CD50

19. The immediate area surrounding the site largely consists of industrial activities, including a gypsum works approximately 500m to the northeast and a landfill site situated approximately 750m to the south of the site. Lines of electricity pylons lie between 500m and 1.75km from the nearest turbines. The wider area around the site is generally flat with open views to higher ground which are interrupted by woodland, and pylons and power lines.
20. The site is also located approximately 1.1km from the edge of the as yet undeveloped, Growth Point known as Land South of Newark. The employment area for this strategic site lies to the east of National Cycle Route 64, approximately 160m from the nearest proposed turbine.

### **Planning Policy**

21. Bearing in mind the policy situation with regard to the RSS (set out at paragraph 7 above), the most relevant local policies are contained in the Newark and Sherwood Core Strategy (adopted 2011) and the Newark and Sherwood Local Plan (adopted 1999) ('Saved' policies 2007 and as modified by the adoption of the Newark and Sherwood Core Strategy). Agreement on relevant policies is set out in the Statement of Common Ground with the relevant policies set out below<sup>8</sup>.
22. The most relevant policies from the Newark and Sherwood Core Strategy adopted 2011 are agreed to comprise of:
  - Spatial Policy 3 Rural Areas
  - Spatial Policy 5 Delivering Strategic Sites
  - Spatial Policy 7 Sustainable Travel
  - Core Policy 9 Sustainable Design
  - Core Policy 10 Climate Change
  - Core Policy 12 Biodiversity and Green Infrastructure
  - Core Policy 13 Landscape Character
  - Core Policy 14 Historic Environment
  - Area policy NAP 2A Land South of Newark
  - Area policy NAP 4 Newark Southern Relief Road
23. The most relevant policies from the Newark and Sherwood Local Plan adopted 1999 are agreed to comprise of:
  - C11 Setting of Listed Buildings
  - C21 Stoke Field Historic Battlefield
  - C22 Scheduled Ancient Monuments
  - NE1 Development in the Countryside

---

<sup>8</sup> CD50

- NE3 Agricultural Land
- NE6 Farm Diversification
- NE14 Habitat Replacement
- NE15 Management of Wildlife Sites
- NE17 Species Protection
- T21 Heavy Goods Vehicles
- PU1 Washlands
- PU5 Water Environment

24. It is agreed the following supplementary planning document is relevant:

- Newark and Sherwood District Council, Supplementary Planning Guidance (SPG) – Wind Energy 1999.

25. It is agreed the following documents are relevant:

- Newark and Sherwood Local Development Framework Annual Monitoring Report for the period 1 April 2010 – 31 March 2011; and
- Publications Allocations and Development Management Development Plan Document ('DPD') – Publication DPD (2012).

### **Planning History**

26. Permission was approved on 7 December for a 60m high meteorological mast (for wind monitoring) with steel guy wires at intervals of 10m for a temporary period of 3 years at Field 6597 Cotham Road, Hawton (10/01331/FUL)<sup>9</sup>, which is the appeal site.

### **The Proposals**

27. The application was made to the Council on the 10 November 2011 by Arcus Renewable Energy Consulting Ltd, on behalf of the Appellant. The application sought planning permission for the:

*Erection of 3no wind turbines of height between 105m and 126.5m to tip and associated infrastructure including access tracks, 1 switchgear and control building with transformers and grid connection infrastructure, underground cabling, turbine foundations, crane hardstandings, 1 new access point and 1 meteorological mast<sup>10</sup>.*

28. The application was validated on 15 November 2012, and it is agreed that sufficient supporting information was provided to accompany the application. In particular, prior to determination there was no outstanding request for additional information by the Council<sup>11</sup>.

---

<sup>9</sup> CD50

<sup>10</sup> CD3

<sup>11</sup> CD50

29. It is agreed the Proposal consists of the following, as set out in Chapter 3: Project Description of the ES<sup>12</sup>:

- 3 wind turbines and associated infrastructure including transformers and crane hard-standing areas;
- New access tracks;
- A new switchgear control building;
- One meteorological mast;
- A temporary construction compound would be required during the construction period; and,
- The appellant is in discussions with the Distribution Network Operator, and it is proposed by the appellant that all new cabling will be underground.

### **Other Agreed Facts**

30. It is agreed that<sup>13</sup>, within the context of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, that the application which sought planning permission required the submission of an Environmental Impact Assessment (EIA). It is agreed that such an EIA was submitted, which conformed with the requirements of the 2011 Regulations.

31. There is no dispute between the appellant and the Council over the following planning considerations:

- Ecology;
- Ornithology;
- Hydrology;
- Noise;
- Access and Transport;
- Socio-Economics, recreation, tourism and land use; and,
- Other issues including shadow flicker, air quality, television and telecommunications, aviation and radar, on-site utilities and health and safety.

### **The Main Considerations**

32. The main issues in this case are: -

- (a) the effect of the proposed development on the setting of heritage assets and, in particular, All Saints Church, Hawton and the Church of St. Mary Magdalene, Newark which are both grade I listed buildings; and,

---

<sup>12</sup> CD50

<sup>13</sup> CD50

- (b) whether any harm to the setting of those buildings, and any harm arising from other identified matters, would be outweighed by the national objective of promoting renewable energy generation.

33. In addition to the above, a number of other material considerations were aired at the Inquiry. These are addressed insofar as they were raised or remain relevant.

### **The Case for the Council**

- 34. The Council considers that there is much in the way of common ground between the main parties to this appeal. There is broad agreement as to the extent of benefits of the appeal scheme. As with all commercial scale wind farm proposals, considerable weight attaches to the contribution made towards regional and national renewable energy targets. More limited weight applies to the limited local economic benefits that would be generated; during operation there would be a single full time job, and there would be potential (but uncertain) spin-offs for local businesses during construction.
- 35. That agreement flows from a raft of policy support which aims to combat climate change and secure the country's energy supplies. At a national level, there is a commitment to source 15% of the country's energy requirements from renewable sources by 2020.
- 36. There are no District-level targets for emissions reductions or renewable energy production but the up-to-date Core Strategy aims to reduce CO<sub>2</sub> emissions for example as set out in strategic objectives.
- 37. Whilst the Government believes that the 15% target for 2020 will be met, it is not a maximum, and it is accepted that good progress does not diminish the weight attaching to the contribution that the appeal scheme would make to the policy objective of tackling climate change. At the regional level, recent figures (albeit, excluding any data for micro-generation) show that the region is about a third of the way towards meeting its target for renewable energy production in 2020. The regional target remains challenging, but again, the precise level of progress towards meeting that target does not alter the considerable weight attaching to the scheme's benefits.
- 38. However, policy support for renewable energy schemes is not unqualified. The strategic objectives of the Core Strategy seek the protection and enhancement of historic assets, with that aim then expressed in policy 14. More aged components of local policy, the 1999 Local Plan, and SPG on Wind Energy (also 1999), are of limited weight. The former prohibits the grant of permission when any harm is caused to the setting of a listed building (policy C11) whilst the latter inexplicably omits reference to listed buildings in its list of heritage assets to be considered. Those requirements reflect, and are consistent with, national policy advice which is addressed in more detail below. As a result, it is also common ground that, where a renewable energy scheme causes unacceptable harm to heritage interests, then that scheme should not be supported: such a scheme would not comprise sustainable development, and would not benefit from the support of the Framework for sustainable development (Framework paragraph 14).
- 39. It is the Council's position in this case that the threshold of unacceptability is crossed.



40. The threshold of unacceptability is given definition by the terms of the Framework. Whilst great weight is to be given to the conservation of all designated heritage assets, enhanced weight is to be afforded to the most important and therefore most sensitive. As paragraph 132 of the Framework confirms, substantial harm to designated heritage assets of the highest significance, including grade I listed buildings, should be allowed to occur only in 'wholly exceptional' circumstances.
41. As a matter of general approach, which informed the appellant's assessment of the scheme within the ES, the Council questions whether or not that advice has been followed. Not only does the ES classify all listed buildings equally in terms of sensitivity but, it proceeds to reach findings on the significance of impact by reference to a blunt tool. Accordingly, where medium or low levels of change are found, the assessment of significance is the same for assets of very high, high or medium sensitivity. Limited factors (in effect two i.e. distance of appeal scheme from the heritage asset and the sensitivity of the asset) have been applied to formulate those findings of significance.
42. The blunt tools of a simple distance threshold from the appeal scheme together with a broad sensitivity classification, which does not distinguish between different categories of listed buildings, do not constitute a comprehensive assessment. The impact on the two churches must be looked at on a site specific basis. Accordingly, reference to findings of Inspectors in respect of the impact of other proposed wind farms on other listed buildings are of no real utility in determining the issues in this case. The appellant's heritage witness refers to several other cases, but accepts that each case turns on its own merits.
43. It is for that reason that, in addressing harm, very limited weight can be placed on the generic approach adopted by the broad-brush mapping exercise in which areas of opportunity for wind energy production were identified within the county. The exercise did not consider the attributes or setting of individual listed buildings. Those listed buildings will vary in nature, importance, and extent of settings. What the map shows, albeit in a very generic sense, is that the county enjoys considerable potential for renewable energy production.
44. As the Council sets out, the benefits associated with the scheme are those associated with all commercial renewable energy proposals. They are not wholly exceptional.
45. Accordingly, if it is found that substantial harm is caused to either or both of the churches in this case, then the balance should fall against the grant of planning permission.
46. Both churches are exceptional, of national significance and deserving of their Grade I listing. As noted in cross examination of the appellant's heritage witness, of the 420 listed buildings within a 5km radius of the appeal scheme, only 9 are listed at Grade I. It is the Council's view that both buildings derive elements of their significance from their settings.
47. As to the extent of those settings, again, there appears to be broad agreement. Newark Church enjoys a setting that extends beyond the urban limits of the town. Hawton Church enjoys a wide setting that encompasses surrounding open and agricultural land.

48. Although not assessed in his proof, the appellant's heritage witness confirmed that, if built, the turbines would fall within the setting of Hawton Church when viewed from the west and fall within the setting of Newark Church when viewed from the north.
49. The appellant's heritage witness asserts, and the Council agrees, that Hawton Church is best appreciated in views from the west. This witness also confirms his agreement with the ES, that the value of Hawton Church is not only derived from its fabric but also, importantly, draws value from its surroundings.
50. As for the appreciation of Newark Church, a drive south-west along the A46 enables understanding and appreciation of the importance of views from the north of the town (shown in viewpoint 24).
51. The fact that from both locations, viewers are likely to be in moving vehicles and located on roads of differing ages, ranging from the old A46 (Fosse Way) to the recently constructed new A46, does not diminish the quality or significance of the view. Those members of the public are, in the Council's view, important 'receptors'.
52. In particular, the Council considers that, in views from the west, whether from the Fosse Way, new A46 or Hawton Lane, Hawton Church is seen within a low-lying agricultural landscape. In views from the north (from the A46 heading south west) Newark Church is seen within a well-ordered townscape in which the topography is largely flat.
53. Whether or not the two churches can be described as landmarks in these views, and arguably they can, and notwithstanding the fact that these are not 'designed views', both are deservedly prominent.
54. The Council agrees with the Appellant's ES (p9-8) that, in views from Fosse Way, the turbines would overshadow Hawton Church. The Council does not agree that the new A46 and existing pylons dilute that overshadowing effect to any material or acceptable degree. The A46 is, itself, a low-lying (and self-evidently horizontal) component in the landscape. It is not disputed that, for much of the time, traffic on the new road will interfere with views of the Church from the old road. However, for much of the time, over a 25 year period, it would not.
55. As for the pylons, they already offer harmful competition to the view of Hawton Church from Fosse Way. Firstly, the Council considers that is no justification for compounding the harm. Secondly, as the viewer moves south along Fosse Way, whilst the turbines fall more centrally behind the Church, the separation distance between pylons and Church increases.
56. That same point may be made in respect of views from the new A46. In addition, there is no intervening road to dilute the effect of turbines on the setting of the Church from the new road, assuming such a diluting effect is possible. Large numbers of people who use the new road will have uninterrupted views of the Church with their backdrop of much taller turbines. Just because the primary motive of users of the A46 may not be to view Hawton Church does not diminish the impact of the appeal scheme on those views of the Church.
57. Views of the Church from Hawton Lane are largely free from competing pylons, with the turbines held in full and sustained view, and the limited degree of separation (20°) meaning that both turbines and Church are seen together. In

those views, the turbines would, in the Council's opinion, appear much larger than the Church.

58. There is no dispute that Hawton Church would continue to be seen in a largely rural landscape. However, in order to meet the threshold of unacceptability there is no requirement to extinguish every trace of rurality from the Church's setting. It is enough that the setting would suffer substantial harm.
59. Similarly, there are vantage points where the turbines and Hawton Church would not be seen together. The appellant's heritage witness highlights some of them (for example walking away from the Church towards the turbines or vice versa) but, if views of the Church from the west with all three turbines within its setting are important, then the fact that other views may not be harmed is of little comfort. Views from the west are important and, in respect of those important views, the impact of the turbines would not be diluted and would remain substantial (the Church would be 'over-shadowed' in the words of the ES). Although the Council was criticised for not referring to a grant of permission for a 66m high single turbine allowed on appeal at a site near Farndon, the appellant's own witness makes no reference to that decision and places no reliance on it. He is right: consideration of impact of that turbine on Hawton Church (and Newark Church) is largely irrelevant to the determination of this appeal.
60. The Council notes its conclusion accords with the final conclusions of English Heritage (EH).
61. Similar points can be made in respect of the views of Newark Church from the north. The Council has noted that the prominent spire appears within a well-ordered townscape, whereas the harmful modern structures further to Newark's north (the sugar beet factory) and west (the power station) are evident in many views of Newark Church in its wider setting, they are not from this location. In this view the Church does not suffer harmful competition from nearby tall, modern structures. That would change if the appeal scheme were to proceed. All three turbines would be seen in the view, and although at some distance, the viewer would be able to discern almost all parts of the moving blades of all 3 turbines. Those moving blades would overlap, adding a further discordant element to the view.
62. Significant harm to the setting of either church in important views from the west (Hawton Church) and north (Newark Church) would be sufficient to cause substantial loss to the significance of those heritage assets. Although 25 years can be described as 'temporary', the harm will be suffered over a long period ('a generation' as described by the Berkeley Vale Inspector). It is a loss that should only be condoned in wholly exceptional circumstances. No such circumstances are present in this case.

### **The Case for South Newark Oppose Windturbines (SNOW)**

63. The area is not heavily populated so SNOW cannot say that we represent a vast number of individuals, but we represent the vast proportion of those in our respective communities and, as such, our voice should be heard. We have a vested interest in opposing this development because we live here.
64. SNOW grew from meetings held between some of the local Parishes to resist the imposition of unwanted developments on the assumption that, together, we

would be stronger. We will always accept that we are amateurs lacking the experience, technical resources and finance to compete on a level playing field. However, the one point we have, in which we are unique in this debate, is that we are the really local voice. We have kept closely in touch with the local communities and can, unreservedly, say that we have overwhelming support within Hawton, Cotham and the surrounding area other than those directly involved in the current appeal and other proposed wind turbine developments at varying stages of their lives.

65. Various petitions were carried out prior to the application being heard. Some were more local than others as reported in the local press. We on the other hand, can say that the circa 250 responses we had were all local ones and 100% against the proposal.
66. We are wholeheartedly opposed to the placing of such installations in this area. Our objection has been kept within the boundaries on which these matters can be considered. Therefore, cost efficiency, effectiveness and so forth, all of which in the real world are very important, must be kept aside.
67. This area has had a partially industrialised past and, indeed at present, some activities continue. Some of the activities, past and present, are very unobtrusive, some are intrusive to one degree or another, but they have generally been accepted as have some green initiatives such as the Solar Generation and the Landfill Gas Generation in Cotham. It would be fair to say that we are not against green initiatives or renewable energy supply, merely that they should be from the right form of process and in the right place. We contend that neither is the case in this instance. We contend that placing such intrusive wind turbines in a rural setting that has historical connotations and heritage merit is completely the wrong approach and that the Council was right to refuse the application.
68. The Newark Growth Point Strategy will bring some housing and industry closer to Hawton and, indeed, to Cotham over the coming years and these people not yet here should also be borne in mind in terms of this appeal decision. They will be affected in very much the same way as we, the current 'locals', would be.
69. A major strand of the Coalition Government's policies was that of 'Localism'. SNOW can find no other way of describing that as taking account of local matters, people and issues and, if that were to be done here this scheme would not proceed. SNOW contends that locals who have been adequately informed of the true nature of the development would not see any positive aspect arising from it. There will be many people living in the Newark and Balderton area who currently will not perceive (from their homes or places of work) the presence of turbines such as these. There will be many who have never seen wind turbines relatively close up. SNOW counts 2000m etc. as pretty close, so these people may not, as yet, have a strong view, but SNOW considers that, if approved, once they have stepped out from their homes and workplaces they may well have a different view. In fact they would have a very different view from a wide range of locations.
70. Leaving aside the people who haven't made their views known, SNOW would like to stress the case for listening to the people who have – the ones who have asked us to put their side of the matter. SNOW asked the people what they thought and the resounding view was 'no thank you'.

71. We all have our own personal views and fears for the quality of our own lives if such a development were permitted and much has been written (and occasionally settled out of court) on the intrusion that noise, shadow flicker and other impacts can harmfully do and SNOW is very concerned about that. The fact that this is a very quiet environment, especially at night, gives rise to serious concerns of disruption in that respect. The fact that we are close to these turbines does pose a worry for those in the area. The fact that the turbines would become the most dominant feature of the landscape for many miles around deeply concerns us.
72. In respect of the environment, this area has had a chequered past to go with its present and future. This is particularly so with the Cotham Flash site where migratory birds congregate in significant numbers to the pleasure of birdwatchers from all around. Given the proposed location, it is likely that these birds would be placed at risk from the development and one of the more visible and welcome signs of recovery from gypsum mining, landfill etc. would be endangered.
73. Also endangered is the built environment. The heritage assets in the area are significant, both directly locally in Hawton and Cotham, and in Newark itself as well as in the wider area where much valuable history lies across the Trent valley and the Vale of Belvoir. Civil War artefacts have been found in fields relatively close to the proposed site, so it is not just of local importance but of some national note as well. The only height determined features in the area are the Sugar Beet Plant and the Staythorpe Power Station and these do not compete in the same way as wind turbines would.
74. The people who live here enjoy, and wish to continue to do so, the natural environment. From the walking around the site at the accompanied site visit it could be said that the immediate site isn't really that great but that is not all there is. There is an abundance of environmentally pleasing aspects to enjoy in this area that would not all survive such a development.
75. Local residents have embraced many other changes that include the green initiatives but this is one too far – SNOW feels this area has done its bit.
76. Turning to visual dominance, SNOW believe that the greatest effect on the area would be that of the visual dominance of the turbines within the landscape. That dominance has been part of the Council's reasoning for its refusal to grant permission and we wholeheartedly support that.
77. The landscape around the proposed site is relatively flat with little to break the line of sight other than general minor land undulations and some trees and hedgerows. This means that anything there would acquire greater visual significance both locally and from a distance from most perspectives.
78. Ignoring the variability requested in permission for the turbines the height of these turbines to tip of blade is very significant.
79. Assuming a height of 126.5m – that is equivalent to a 31 storey building (or to be more accurate, 3 x 31 storey buildings in a row) that height is 80% of the height of the Blackpool Tower and 36% taller than the Statue of Liberty in New York. The current mast is 60m and very slender so it is less than half the height and not representative at all.
80. In addition the buildings mentioned above don't move but the turbine blades would when the wind blows and the grid is going to accept the power.

81. Given those heights, there is no way that this installation would not be intrusive and very obvious from its surroundings.
82. The suggestion by the developers that a landscaping or tree planting programme would mitigate effects is unrealistic as no trees planted anywhere near this site would significantly diminish the visual impact. Initially, all trees start fairly small no matter what species is used. In 25 years they might start to make some slight difference but not before then. The only way the use of trees would obscure this site would be for people to stand right behind them.
83. The point about height and visibility is very important to both parties – we, the people who live here, don't want the landscape despoiled in this way and the developers have sought to underplay the sheer vertical intrusion to the extent of refusing to fly a blimp to the full blade tip height. We consider that the refusal to fly a blimp (one was done near Thorpe for a smaller turbine) is very important.
84. Photographs and scaled drawings suggest that little would be seen from many viewpoints. However, it is worth noting that the naked eye doesn't see things the way a camera lens does. About halfway between Cotham and Hawton looking north and about 10 miles distant in the vicinity of Caunton there is a turbine that is of lesser height than those proposed here yet it is visible whether in motion or not. These turbines would be visible on the skyline from an even greater distance. There is no suggestion that the images are designed deliberately to minimise impacts rather it is simply a fact that a camera lens does not always represent what the eye sees. In fact rarely would it do that.
85. Regarding the issue of amplitude modulation SNOW considers little weight should be given to the recent research by the industry because of its likely bias. The possibility of AM adds to the existing objections to this proposal. Possible mitigation for AM, which might take consideration time to resolve with associated harm, only adds to that concern.
86. SNOW considers that the Barnwell Manor Judgement indicates the scheme here should be refused. It is not feasible to visually/mentally separate out developments such as wind turbines from a view that has otherwise remained closely aligned to its historical context and thus the harm arising would be substantial. The electricity generation would be a limited benefit and not outweigh the harm to Hawton Church, Newark Church, Cotham Church and other aspects such as the civil war connectivity and impacts on the Vale of Belvoir including Belvoir Castle. The scale of turbines would be seen for many kilometres and so be particularly harmful and taken as such into the planning balance so that developments of this type should only be allowed in wholly exceptional circumstances.
87. In all SNOW considers the scheme unacceptably harmful.

### **The Case for the Appellant**

88. This is an appeal into a proposal to construct three large wind turbines to the South of Newark which have the capacity to generate 7.5 MW of renewable energy. This is enough to power up to 5,256 homes each year, and would displace more than 7,458 tonnes of CO<sub>2</sub> emissions for every year of operation<sup>14</sup>.

---

<sup>14</sup> CD1 - 1.1

Without wishing to decry those who are opposed to the proposed development, this Inquiry is remarkable for the very limited focus upon which it is opposed. That is to say that, whilst third parties have raised wide ranging issues in their written representations, the Inquiry itself has largely focused upon the very limited issue of heritage issues.

89. Thus, there is no expert evidence which takes issue with the views of the appellant, and the Council accepts that to allow the appeal would result in no unacceptable impacts in the following areas which ordinarily occupy so much time at inquiries of this nature: landscape, visual impact, residential amenity, noise, highways and ecology.
90. Indeed, the Council's planning witness unequivocally indicated that, even if there were heritage concerns, and that the appellant's heritage witness was correct in characterising them as 'less than substantial', then, in his view, the appeal should be allowed.
91. Since the appellant's heritage witness does not allege that there would be no harm in heritage terms, it follows that the focus of the debate at Inquiry has been upon whether or not the impact that has been identified is properly characterised as 'substantial' or 'less than substantial'. Therefore, but for this comparatively narrow issue between the two principal parties, there is no dispute that this is a good site for a wind farm. That is a matter of some importance given the GIS exercise at appendix 2 of the appellant's planning witness's proof which demonstrates that there are tolerably few such sites within this District.
92. The following points are significant: (i) considerable weight must be afforded to the benefits which arise from the proposed development – that is the generation of energy from renewable sources; (ii) whilst there would be an effect upon heritage assets, that effect is limited and is more than outweighed by the above-mentioned benefits; (iii) there are no other reasons upon which permission ought to be withheld.
93. In terms of the benefits of the proposed development, in the officer's report to committee the Director of Growth notes that the effect of the proposed development would be to generate the equivalent of the amount of electricity consumed per annum by 35% of the households in Newark<sup>15</sup>. Unsurprisingly, he considered that 'considerable weight' ought to be afforded to this issue in the overall planning balance.
94. The Council accepted that 'significant' weight should be given to the 'tangible' contribution that the proposed development would make to the national and regional need to increase the extent of generation by renewable means. The Council accepted that there had been no change in circumstances since the report to committee had been drafted and that, therefore, there was no reason to disagree with the Director's ascription of 'considerable weight'.
95. Thus, whilst the Council has sought to point to the fact that the Region had been doing better than anticipated in terms of the creation of on-shore wind energy (669 MW versus a 2020 projection of 175 MW), it nonetheless recognised that:
  - (i) when the overall extent of consented renewable generation in the East

---

<sup>15</sup> CD6 page 57

Midlands (just over 1000 MW<sup>16</sup>) is considered there is a need to substantially increase permissions for such development in order to meet the Regional target of 3500 MW by 2020; (ii) whilst, nationally, it is anticipated that the UK will meet its legal obligation to the European Union (EU) by 2020, that is an assessment assuming that all of the proposals within the planning pipeline (including Hawton) are allowed; (iii) the national graph of permissions to meet the 2020 target means that there is a need to seriously increase the rate of grant of permissions in order to meet the target; (iv) that the Council had mis-assessed the extent to which it had contributed to the regional target<sup>17</sup> and had only permitted 1/5th of the installed capacity that it had thought at the start of the Inquiry.

96. The appellant therefore considers that the grant of permission in this instance would help to meet an urgent need to grant such permissions in order to meet the policy of both the Government and the EU to substantially increase the capability of the United Kingdom (UK) to produce electricity by renewable means and thus help to combat climate change.
97. The Government recognises that the effects of global warming threaten this and future generations, such that it is national policy that no part of Britain is to be viewed as 'in principle' out of bounds for renewable energy projects. Indeed, it is well recognised that few large scale wind schemes will have no adverse impacts; the issue is therefore whether the adverse impacts are sufficiently serious that they outweigh the obvious benefits of the proposed development.
98. Turning to the key matter of heritage, whilst there has been some discussion regarding the impact upon the inter-relationship of Belvoir Castle and Newark, the Council's concerns have focused solely upon the impact upon the 'significance' of the churches of All Saints, Hawton and St Mary Magdalene, Newark. Both are listed grade I and both are historically and architecturally important to the District and to the nation.
99. The appellant does not allege that neither would be impacted by the proposed development, rather the firm view expressed by the appellant's heritage witness is that the impact upon the significance of each would be 'less than substantial'. If that is right then the policy approach falls under paragraph 134 of the Framework and the issue is one of weighing benefits against harms. If substantial harm arises to a heritage asset then it is agreed that the case falls upon paragraph 133 of the Framework and there would be a need for substantial benefit to be demonstrated before the appeal could be allowed.
100. The appellant's heritage witness's consideration that the impact upon both churches is less than substantial is not an isolated opinion. Rather, his view is precisely coincident with the view of the Director of Growth who, in the committee report<sup>18</sup>, explains why the impacts upon both are less than substantial.
101. The Council accepts that EH were of the view that the impact upon Newark and Cotham Churches was less than substantial, and that whilst there were substantial impacts upon some views, EH did not reach a conclusion as to

---

<sup>16</sup> APP3 page 12

<sup>17</sup> LPA1 appendix 1

<sup>18</sup> CD6 pages 50 and 51



whether the overall effect upon Hawton Church was substantial or less than substantial. Witnesses on both sides, and the Director of Growth, all conclude that the logic of EH's stance is that it has left the determination of that issue for the decision maker. Thus, it follows that the stance of the Director of Growth and the appellant, far from being at the opposite extreme, accord with the views of EH.

102. The committee considered substantial harm arose in respect of Cotham, Hawton and Newark; whereas EH considered less than substantial harm would result for Cotham and Newark and did not reach a conclusion on Hawton. When judging the expert witnesses' positions it is important to note that only the view of appellant's witness is consistent with the stance of EH.
103. The heritage witnesses agree that there would be an indirect and not a direct effect upon the significance of the two assets by reason of the introduction of the turbines within the setting of the two churches. Both also agree that setting is to be given its Framework meaning of the area within which the asset can be experienced. However, both also agree that merely being able to see the asset and the turbines in the same field of view would not, of itself, be harmful, nor that there is any expectation that the setting of an asset should remain unchanged.
104. Rather, 'harm' arises in the opinion of appellant's heritage witness because the turbines would be additional competing structures within the landscape within which the assets are viewed, albeit for only part of their setting.
105. For both churches, the immediate and even the intermediate setting of the churches would remain essentially unaltered; in many views of the assets there would be no impact from the proposal. Thus, for Newark Church, the view of concern to the Town Council (from the South) is not considered to be the principal concern of the Council, and similarly it is accepted that, from the east of Hawton, there would be little or no impact since the landscape is already a degraded one.
106. Whilst the Council's stance is that substantial harm arises in both instances, notwithstanding that much of the setting of each asset remains essentially unaltered, that lack of change is an important element in the appellant's judgment that the impact is not substantial.
107. For Newark Church, the focus has been upon view point 24, which is a view from a modern parapet, on a road which is on a modern alignment. Indeed, that latter point is of note since so many of the roads which, historically, entered Newark, focus upon the church itself. Thus, the view point is not in the direct line of sight for a traveller along this modern town centre bypass. Moreover, it is a view which is predominantly one for those travelling by vehicle since there is no real opportunity for others to access the parapet.
108. Whilst one cannot see the power station or the sugar beet factory from view point 24, the viewer would not be stopping for a look at the church at this point but would be moving through the townscape, travelling between roundabouts. On that route, the large scale vertical structures of the power station and the sugar beet factory each will have been clearly visible. Moreover, even focusing upon the view itself, the turbines would be 4km away and well to the side of the spire of St Mary Magdalene. There is, in short, no reason to take a different view

from the Inspector in the Farndon appeal<sup>19</sup> that, whilst there would be visibility within the same field of view, the distances and lateral separation would mean that there would be little or no 'competition' with the spire in the viewpoint. Had the turbines been alongside the spire or between the viewer and the church, then the position might have been different. However, as it is, there is no proper basis to conclude that EH, the Director and the appellant's heritage witness are other than correct to conclude that any impact is less than substantial.

109. Thus, it is firmly submitted that the determinant issue in this case is (and always has been) the impact upon Hawton Church.
110. The Council's heritage witness accepted that there would be no impact other than on part of the wider setting of Hawton Church. As such, the significance of the asset (set out in LPA3 at 4.6-4.9) would be wholly unaffected in close and medium views. That is of particular note, since Hawton is an architectural gem in the detail of its design and build both internally and externally (recognised in the early listing and by Pevsner). Moreover, the heritage witnesses both agree that, from the despoiled part of the setting to the east (in reality the quadrant from the NE to SE) of the church within which the turbines would actually sit, there would be no substantial impact upon setting.
111. The sole area of concern to the Council's heritage witness which tips his assessment into 'substantial harm' is the view from the west, experienced from a length of the new A46, the old A46 and part of Hawton Lane. Moreover, it is only what he characterises as the 'strategic setting' which is affected; that is well over a mile away from the church itself (view point 27 is 1.6km distant and fig 9.2 is 1.75km distant according to the calculations of the appellant's heritage witness) and if he is right, by that distance the influence of the church upon its context has manifestly declined, and whilst visible, it does not exert the influence of a 'landmark' upon the scene.
112. Thus, the impact is upon the outer part of the western part of the setting in excess of 1.6km (a mile) from the church. Whilst the Council sought to argue that the area of land to the west of the church displayed unaltered 'rurality,' it is still a modern landscape and, moreover its backdrop is, and has been over time, that of large scale industrial activity.
113. It is difficult to argue that figure 9.2, replete with its pylons and traffic intervening between the viewer and the distant church tower represents an unspoilt view which would be so seriously harmed by the turbines that the harm to the church's significance would be 'substantial'. Viewpoint 27, taken from a modern road bridge with views of metalled roads, a backdrop of pylons, and with the turbines separated from the church tower by an arc of 20° of view, as well as being 0.8km (half a mile) further away, does not portray unspoilt rurality, despite the Council's attempts in this regard.
114. EH were right in their July 2012 letter to identify fig 9.2 as illustrating the worst case scenario, not in the sense that one can imagine marginally different configurations of the relationships, but in the sense that all three turbines would be in the same field of view and larger than the church. However this is one limited aspect of a vastly more extensive setting, much of which would be

---

<sup>19</sup> DOC8

unaffected, and the remainder would be affected to a far lesser degree than illustrated in fig 9.2. The stance of the Council's heritage witness that this limited impact upon only part of the setting, and only the wider setting at that, is properly characterised as a substantial impact upon the significance of the asset is, in the appellant's view, inaccurate. There is an effect and it does weigh against the proposal, but it has been overstated by the Council in this case.

115. Turning to other issues, the analysis of the remaining issues by the Director of Growth in the report to committee, based upon the views of consultees, is to be commended. On the wide variety of issues raised by third parties, the Director's analysis provides careful explanation as to why no unacceptable impact arises which cannot be controlled either by condition or would not arise at all.
116. On the issue of the Growth Point and cumulative impact the appellant's landscape witness provides clear and cogent evidence, which went unchallenged by other parties at the Inquiry, that there would be no adverse impact.
117. It follows that there is no proper basis to withhold permission on the basis of any of those issues.
118. In terms of AM there are no circumstances at this location that indicate this phenomenon is likely to arise. The recent research by ReUK provides more information but explains that the causes of AM are not fully proven. Whilst local objectors point to linear arrangements being an issue the research indicates little or no association between this factor and AM whilst a single wind turbine exhibited AM issues. It remains questionable whether a condition would satisfy the tests of being necessary, enforceable and reasonable. The IoA GPG is clear that it is not normal practice to impose AM conditions. However, should one be considered necessary a suggested form of words is provided<sup>20</sup>.
119. In response to the consultation on the nPPG the appellant notes that the nPPG follows that former advice set out in the PPG R&LCE which the nPPG cancels. Moreover, the climate change section reaffirms the importance of combating climate change and the planning system's role in this regard. It is also clear that public benefit for the planning balance is anything which delivers economic, social and environmental progress, which the appellant believes this scheme does.
120. Turning to the Barnwell Manor judgement a key point is that in that case English Heritage objected to the scheme a situation which does not apply here. The appellant's heritage witness has provided detailed comments on the Barnwell Manner judgement and clarifies that the decision maker, in having regard to the considerable importance and weight to be attached to preserving the setting of a listed building, has to: make a judgement on the level of harm; note that the 'substantial harm' test is a high one so may not arise in many cases; be aware that an important consideration in a case involving substantial harm would be whether the adverse impact seriously affects a key element of its special architectural or historic interest; and, it is the degree of harm to the assets significance rather than the scale of the development that is to be assessed. The appellant, and their heritage witness, do not consider that the Barnwell Manor judgement alters the assessment of less than substantial harm which they arrived at and that the case has not altered from that heard at the Inquiry.

---

<sup>20</sup> PE8 (appellant response)

121. The EIA compiled a cultural heritage baseline survey to identify key heritage assets and EH were involved in identifying additional visual materials. The range of 5km was established as that with greatest likely impact and intervisibility with other assets was considered<sup>21</sup>. Given greatest harm would be at 5km there was little merit in considering heritage assets at further distance rather focus should be concentrated on those nearest as agreed with EH. The design stage involved assessment of impact and different iterations of the scheme, including as a result of considering heritage assets<sup>22</sup>. The appellant has given considerable weight to the duty established by s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. They appointed an independent, experienced, cultural heritage assessor during the course of the planning application (the same person who acted as their heritage witness). That expert undertook a separate assessment and reviewed the cultural heritage aspects of the ES, concluding it was robust and valid.
122. The appellant notes that objectors suggest any line site line of view to and from listed buildings form part of the setting and that the relationship between a listed building and this extended setting must be preserved unless there is no other option. The appellant fundamentally disagrees with this interpretation of the Barnwell Manor judgement; rather the judgement acts as a reminder of the special duty which decision makers have. That judgement does not establish a need to consider extended distances as part of setting, rather setting remains a professional judgement to be made. Objectors express concern regarding the particular relationship between Belvoir Castle and Newark (some 20km) as a historic landscape and part of setting of the castle. However that landscape is not protected, it has seen considerable change, for instance the former gypsum extraction near to the appeal site, landfill and industrial development to the south of Newark. Contrary to objectors' comments EH withdrew its objection to this scheme. Whilst the key focus was on the matters between the main parties additional heritage matters were discussed at the Inquiry, including those relating to Belvoir Castle raised by the objectors. As such, the Inquiry did not have too narrow a focus and accorded with the rules governing Inquiries. The objectors do not balance their objections in a meaningful way against the benefits of the scheme.
123. SNOW in its latest correspondence (27 March 2014) appears to have used consultation to broaden its case in terms of adding the impact on Belvoir Castle and the undesignated Vale of Belvoir, which would not normally be acceptable. Moreover SNOW consider that the wind farm should only be allowed 'in wholly exceptional circumstances with all the attendant requirements to give essential and otherwise unobtainable benefits' which is contrary to the requirement of the Framework which is supportive of renewable energy. Whilst 7.5MW installed capacity may be seen as modest in national terms, the Framework supports small schemes that will collectively contribute to legally binding requirements.
124. BLOT refer to two other appeals which lie in neighbouring authorities. However, the Inspectors in those cases did not refer to the churches which are the key heritage assets in this case. BLOT did not make representations to the Inquiry, but consider its focus was too narrow. However, as already set out full

---

<sup>21</sup> CD 2 Appendix 9.3)

<sup>22</sup> CD 1 and CD 2 – chapter 3 Section 3.4, Appendix A9.2

and proper consideration was given to all points raised and to the wider effect on relevant listed buildings. BLOT do not consider the benefits in a meaningful planning balance, unlike the appellant who has provided thorough assessment in terms of heritage and planning.

125. It is not disputed that there would be some effect on the setting of listed buildings. The planning balance must also attach weight to the legislative requirements of the Climate Change Act 2008 and the Renewable Energy Directive 2009/28/EC concerning carbon emissions reduction and renewable energy consumption with 15% to be from renewable sources by 2020.
126. The appellant concludes that all of the above matters weigh decisively in favour of the development proposed. Indeed the Council accepted that its case at Inquiry was more finely balanced than when members had considered the application last year. The scheme that is proposed comprises an entirely appropriate form of development of a scale and in a location which has been rightly recognised as appropriate for development by the Director of Growth. Thus, there is no, and never has been, proper basis to withhold permission.

### **Other Oral Submissions at the Inquiry**

127. Mr Caswell<sup>23</sup> expressed concerns about wind speed data and its implications for energy generation at the site and, in his opinion, its ability to only serve some 625 homes (based on a 25% capacity factor). He claims that on 19 February 2013 at 16:25 hours all the UK wind turbines supplied only 57MW or 0.1% of demand. Further, he was not satisfied that all heritage assets have been sufficiently considered, including reference to two appeal decisions (Palmer's Hollow- APP/Y2430/A/09/2108595 and Thackston's Well- APP/E2530/A/08/2073384). In the latter case the Inspector drew attention to the views and number of heritage assets which could be seen along with their interrelationships. In this case attention was drawn to the relationship between Belvoir Castle; St Mary the Virgin at Bottesford; St Mary Staunton; and St Mary Magdalene Newark. Mr Caswell assessed the significance of these buildings, noting the extensive views and interrelationships particularly those associated with the Civil War when St Mary Magdalene was used as a lookout by Royalist troops who captured and held Belvoir Castle. The interrelationship was, in his view, established in 1350 when the spire at Newark was built; he also sets out further historic links. St Marys Staunton, and the Hall, are linked by Royalist association to Belvoir Castle. Additionally St Mary's Bottesford, which was completed about 1410, is seen from Belvoir and by tradition the church was used to summon the men of Staunton to Belvoir Castle in times of war. In Mr Caswell's view the turbines would damage intervisibility between these heritage assets; and would undermine the development of a National Museum for the Civil War in Newark.
128. Ms Caswell<sup>24</sup> expressed particular concern at the lack of a separation distance between homes and wind turbines and their impacts on health. Attention was drawn to a new study proposed in Australia regarding low frequency noise; and to the Deeping St Nicholas case where noise caused nuisance and, it is said that, the property was eventually bought by a wind farm company. Reference was

---

<sup>23</sup> DOC2

<sup>24</sup> DOC3

also made to another case at Flixborough Grange and concerns about confidentiality clauses. Ms Caswell seeks a separation distance based on Scottish guidance of 2km or of 5-10km as called for in Australia, particularly as this development would be close to a town and future development. Attention was also drawn to numerous sources from scientific research and newspaper articles, amongst other things, all expressing concern about the health implications of windfarms. In addition shadows and shadow flicker were raised as issues. A number of 'You-tube' references were given (but not viewed).

### Written Representations

129. At application stage there was considerable interest in the proposal. The consultee responses are summarised in the Planning Officer's Report to Committee 7 August 2012<sup>25</sup>. This records statutory consultee responses and that five Parish Councils objected to the proposal, two supported it whilst another did not comment. In terms of other interested people, 626 letters were received in support of the proposal and 25 were received objecting to the proposal along with a petition of objection organised by SNOW with 297 signatures. Adjoining planning authorities were also consulted (one did not respond, two did not object but one of these set out some issues, one sent a holding objection, two set out concerns).
130. The main thrust of the objections related to landscape harm including cumulative harm; proximity to the Growth Point; intensive use of an area that has had other development such as the solar farm and the landfill gas generation site, particularly given the waste site here has just been removed; the effect on heritage assets; the proliferation of wind turbines in the area; the general harm to communities in terms of noise, shadow flicker, health issues and visual disturbance; the impact on wildlife; proximity to tourist facilities; proximity to walking, cycling, wheelchair and equestrian routes; ground contamination; impact on property prices; detracting to business investment; contrary to localism; insufficient infrastructure; inadequate local strategy for wind turbines; safety for low flying aircraft; turbine failure; distraction to traffic; inadequate roads for construction traffic; increased traffic in the area; and, compensation claims and claims for reduced Council tax.
131. The main thrust of supporters' representations were that wind power is delivering sustainable energy in good quantities; the UK has potential to be a world leader with 40% of the European wind resource; Britain is behind others in supporting wind energy; it needs to be used as part of a renewables package; climate change is a global threat; the valuable contribution of the scheme to offset CO<sub>2</sub>; improvements to health; responsibilities in terms other environmental legislation and protocols; reduced reliance on fossil fuels; Hockerton is a good example with community support; it would not harm visual amenity; it would look better than pylons; wind farms can improve the view; it poses no threat to residents, wildlife or built heritage; climate change and cats are a greater risk to birds; it will not cause noise harm; it will provide employment; more wind turbines are needed and we must address future energy needs.

---

<sup>25</sup> CD6

132. A comprehensive analysis of the consultation responses is set out in the committee report<sup>26</sup>.
133. Written representations to the Inspector were made by Mr Elliot on behalf of Cotham Parish Meeting and Mo Caswell (with sizeable attached documents). These covered many of the points raised at the application stage. However, key focus was placed on the impact on heritage assets, on the character of the surrounding area and on matters relating to specific living condition issues, including noise and health matters. In addition a letter was received from North Kesteven District Council which lodges a holding objection on the basis of landscape character concerns seeking additional photomontages showing views from the Lincoln Cliff Landscape Character Area<sup>27</sup>.
134. Following the Inquiry sitting days Belvoir Locals Oppose Turbines (BLOT) responded to consultations. In terms of AM issues BLOT considers that all wind turbine noise should be assessed as abnormal and so AM is another noise factor which is harmful and should not be played down. The risk factors for this location are cited by BLOT as being proximity to existing and proposed development, the size of populations in those areas, rotor diameter to hub height ratio being unspecified, the linear layout of the scheme and the possible interaction with other windfarms<sup>28</sup>.
135. BLOT also responded in respect of the nPPG and Barnwell Manor judgement. BLOT points out that decision makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. BLOT also draws attention to two other appeals Thackston’s Well (APP/E2530/A/08/2073384) and Palmers Hollow (APP/Y2430/A/09/2108595) both relating to wind farms where setting of listed buildings, and particularly St Mary Magdalene, Newark, were part of the considerations. In BLOT’s opinion it was wrong that the appellant had not drawn attention to them. BLOT considers that the following properties referred to in the appeals its cites are relevant in this case: Belvoir Castle; Bellmount Tower (Belton House); Harlaxton Manor Gardens; St Mary Bottesford; St Mary Staunton. BLOT notes the National Trust who care for Bellmount Tower (grade II\*) and Belton House (grade II) were not consulted on this proposal. It considers that the line of axis from Belvoir Castle to St Mary Magdalene, Newark and relationship to other buildings is of national importance. BLOT considers the parties’ evidence was too focused and so failed to consider all heritage matters fully, when there is an overarching duty to do so.
136. Also following the Inquiry Mo Caswell sent written responses to the further consultations<sup>29</sup>. These included extensive documentation regarding AM at Deeping St. Nicholas and concerns about health<sup>30</sup>. Following the ReUK research further concern was expressed that AM is a serious matter, reflected in the effort put into research by the wind industry despite them saying it is very rare. Concern is also raised by Mo Caswell at the lack of a suitable condition at this time and the need to rely on existing nuisance procedures. In this location there

---

<sup>26</sup> CD6

<sup>27</sup> These responses are in the Planning Inspectorate’s main file for this appeal (red folder)

<sup>28</sup> PE8 contains the full response

<sup>29</sup> PE3, PE5, PE6, PE8

<sup>30</sup> PE3

are concerns about proximity to existing and proposed wind turbines and therefore an AM condition is sought of the type imposed at Denbrook<sup>31</sup>.

137. Peter Caswell also responded to post event consultation, with particular reference to heritage assets and particularly Belton House<sup>32</sup>. Mo and Peter Caswell made further representation in response to consultation on the nPPG and the Barnwell Manor judgement. They draw attention to various aspects of the judgement drawing attention to the need to assess the effect of the proposed wind turbines on both the significance of the heritage asset and the ability to appreciate that significance. They also note that the assessment should not be based on whether the reasonable observer would be able to distinguish between the modern addition and historic landscape. The Caswell's consider that EH objected to the impact on 13 heritage assets and point to the appellant's heritage assessment which disputed that saying if it was so Hawton Wind Farm would be one of the most harmful on-shore wind farms to have ever been proposed in terms of heritage impacts. They go on to say that the problem with this proposal is that there wasn't full assessment of the majority of impacted heritage assets because the grounds were restricted by the main parties and as such only a few heritage assets were drawn to the attention of the Inspector. Particular note is also made of the Civil War relationship between Newark, Staunton and Belvoir and the future National Civil War Centre.

### **Conditions and Obligations**

138. Suggested conditions were set out in the Statement of Common Ground<sup>33</sup> and discussed at the Inquiry. In addition, notes were submitted to the Inquiry regarding two conditions<sup>34</sup>. Further minor changes have been made to reflect the advice in the nPPG which replaced, in part, Circular 11/95 *The Use of Conditions in Planning Permissions*. A final set is included as a Schedule to this Report (Annex A) that includes reasons for individual conditions.

139. It is agreed that the Council's adopted Community Infrastructure Levy (CIL) does not apply in this case.

140. A s.106 unilateral undertaking (s.106 UU)<sup>35</sup> was made on 5 July 2012 whereby the Owner covenants with the Council to pay a planting contribution of £10,000 (index linked) prior to the commencement of development. It is agreed that the contribution would be used to increase screen planting in the proposed green space between houses in the Growth Point and the site (shown on a plan within the s.106 UU).

### **Inspector's Conclusions**

#### **Preliminary Matters**

141. For ease of reference, the square brackets [] at the end of each paragraph relate to earlier paragraphs of this report.

---

<sup>31</sup> PE8

<sup>32</sup> PE6

<sup>33</sup> CD50

<sup>34</sup> DOC18

<sup>35</sup> CD20



142. In reaching the recommendation I have had regard to the EIA process and the ES.

### **First Main Issue – Heritage Assets**

143. The proposed wind turbines would not impact on the fabric of any known heritage asset. Thus, the issue in this regard is the effect of the proposed development on the setting of heritage assets and whether or not this would affect their significance. It is also necessary to consider the duty established by s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that when 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. Factors that may alter the significance of heritage assets can be varied but include views of, or from, such assets, the relationship between places and surroundings, historic associations and considerations such as noise. [32]
144. In this case the development plan consists of the Newark and Sherwood Core Strategy (CS) adopted in 2011 and the 'saved' policies of the Newark and Sherwood Local Plan (LP) 1999. In terms of heritage assets the key policies with these documents are: Core Strategy objective 2 'to protect and enhance the built and natural environment, heritage, biodiversity and landscape, giving additional protection to those areas and buildings of recognised importance'; Core Policy 14; LP policy C11 Setting of Listed buildings which is a restrictive policy that explains that development will not be permitted which adversely effects the setting of a listed building. [21-23]
145. In this case it is suggested that the two buildings identified in the main issue might be substantially harmed. I will deal with those buildings in detail later. [14, 40, 45, 62, 90, 91, 98-102, 106, 111, 113]
146. There is one Registered Park and Garden within 5 km associated with Newark Castle. The initial scoping appraisal concluded that it was unlikely to receive any significant effect and from my viewing I see no reason to disagree.
147. In addition, there is one Registered Battlefield, the Battle of Stoke Field 1487, within 5km. I saw that this site appears much as the surrounding fields. The proposed turbines would be some 4.7km distant so would only appear as small structures seen from this site and would not result in noise impacts. There is no evidence to indicate that proposed turbines would separate this site from linked features and the ES indicates negligible impact on this site, which appears a reasonable assessment. [73]
148. Within 5km of the site and within the zone of theoretical visibility there would be 18 Scheduled Ancient Monuments. Of these, 8 were assessed as having the potential to receive significant effects (ES 9.3.4.1). Further assessment was made and only one was identified as having other than a negligible effect from the proposed turbines. That site is the Hawton Moated Site, Fishpond, Civil War Redoubt and Ridge and Furrow. It is a site of ditches and artillery platforms close to the River Devon and is situated in arable farmland with no public access. The wind turbines would be some 1.9km distant beyond the village of Hawton with its church and trees. Given the separation and siting relative to that settlement the ES concludes minor effect on its setting an assessment that is justified.

149. There are five Conservation Areas within 5km of the appeal site, three of which were assessed as having potential to receive effects, those being Elston, Farndon and East Stoke. They were subsequently assessed as having effects of negligible impact. I visited each of these and am satisfied that the ES assessments are robust. Farndon and Elston both have significant mature tree cover and are well contained, generally inward looking Conservation Areas. East Stoke is more dispersed, with a village core that is inward facing, the Hall and the Church of St. Oswald. Given the separation, in excess of 4 km, some screening and the fact that the turbines would not interrupt the relationship between these elements of this Conservation Area, the proposed development would have a negligible effect on these assets.
150. There are some 420 listed buildings within 5km of the appeal site, of which nine are grade I and 12 are grade II\*(starred); there are only four listed buildings within 2km. This list within 5km was sifted using a matrix and seven buildings were identified as requiring further consideration. All but one related to ecclesiastical buildings, the other being the Gypsum Grinding Mill. These were each assessed in greater detail. The ES clearly identified the impact on Hawton Church as being different to the other seven key listed buildings (even if only identified as a minor effect) and so it is appropriate that this should be a focus for consideration. Whilst the ES identified negligible effect on St Mary Magdalene, Newark, given the concerns raised it is necessary to assess that building particularly carefully too. The effects on those two listed buildings reflect the focus of concern at the Inquiry and so shall be the focus of my considerations.
151. The impact upon the setting of St Mary Magdalene, Newark, seen from Belvoir and the inter-relationship of features, was raised as a particular issue by local residents and BLOT has subsequently made similar comments as has SNOW. I specifically viewed the site from that area<sup>36</sup>, looking for the other tall church spires referred to. I also went to view the church at Bottesford as requested by Mr Caswell. Whilst it is apparent that there are historical tall features within the view there are also more recent developments of note. Based upon the substantiated evidence before me, and noting the involvement of EH who did not object in terms of the broader historic environment, I do not consider that development of the type proposed should be prevented because of the impact upon the wider historic environment.
152. Mr Caswell, and BLOT after the sitting days, raised concern about the effect on the setting of Belton House. However, that property is a significant distance from the appeal site and, whilst I have noted the attached objection from the National Trust for another proposed wind turbine in relation to that listed building, no such objection exists for this appeal proposal. Moreover, there is no clear substantiated evidence that this property would have its setting substantially harmed by this proposal. My focus therefore remains as set out. [46, 86, 97, 135, 137]

#### *All Saints Church, Hawton*

---

<sup>36</sup> At the Inquiry, it was accepted by those expressing concerns about view from Belvoir Castle that this is a private property and access could not be arranged. Hence viewing took place from the nearest public high points of land. Given the distance of those views it was necessary to visit when visibility was good.

153. All Saints Hawton is a fine parish church dating from C13, C14 and C15 with restoration undertaken in the 1880s and 1970. It is constructed of coursed rubble and ashlar, with slate roofs. The tower dating from c1482 is of five stages set on a plinth with a string course over. It has four other string courses and four buttresses. The bell chamber has four pairs of 2-light openings. Further buttresses are a feature of this building as is the decorative windows (of some variety) hood moulds, gargoyles, and ornate doorways. The Church also has a fine interior with an elaborate stone carved double piscina and tripartite sedilia (carved seating), a c16 screen, tombs and monuments; the list description for this building, (CD 30) is comprehensive. [110]
154. Churches are often a prominent feature in the landscape thereby creating an extensive setting. This often reflects their role as a focus for society over long periods of history. Thus prominence, particularly of towers or spires contributes to the significance of this type of ecclesiastical building. [49, 53, 58, 103]
155. This church is situated within a broadly agricultural landscape and with a small cluster of dwellings of varied date and style. Viewed from the north the church is not a particularly imposing structure until reasonably close (e.g. ES vol 1 viewpoint 6) and then, as in more distant views from this direction, it is seen in the context of other development. From the south approaching on the road into the village, topography, road layout and landscape features screen the church so that again it is relatively close to village before it is a prominent feature. In those views from both north and south the houses of the village grouped around the church are important, taken collectively, in providing a setting for the building; they link the church visually at the heart of a small rural community and in this respect they add to the significance of this heritage asset. [50,103, 105]
156. From the east I saw that the church, because of existing landscape features and structures, is not a particularly prominent building. As such, and bearing in mind existing pylons and spoil heaps, I consider that the setting of the building as seen from this direction is not particularly significant in terms of reflecting the building's historic role. Rather, it has begun to subsume the church. Moreover, public views are more distant such that the architectural interest cannot be readily gleaned. [59, 105, 106]
157. The views from the west, including travelling in either direction from north to south, are more significant. In those views when travelling on the old A46 the setting is severely marred by existing features such as spoil heaps, pylons and the new A46, which has associated land reforming works, bridges and itself attracts vehicular movements which detract from the church's setting (e.g. ES Vol 1 Fig 9.2). Whilst there are sections of road from which a person, as the visual receptor, would see the church, it is the general sense of openness around the building, rather than any particular setting feature, which is key. From the new A46 the view to the south of the road bridge, which gives access between Fardon and Hawton, is of an isolated church within woodland. The view is somewhat altered by the highway design but in this view it is the sense of isolation derived from the setting which contributes to the significance of the heritage asset confirming it as a rural parish church. Beyond that road bridge, and towards Newark, there is a more generally cluttered appearance because of other development such as housing, within the view such that the setting does not particularly contribute to the importance of the heritage asset. [49-59, 62, 110-114]

158. The impact of the proposed development on the setting when seen from west is the area with which EH expresses particular concern. In the views when travelling, that is when moving north/south to the west of the building, the relationship of church, pylons, and the proposed turbines would vary, sometimes with other detractors in sight too. In these views the proposed wind turbines would add to visual clutter and detract from the setting of the church. However, to some degree that visual clutter already exists. Where the clutter is greatest the addition of the wind turbines would not make a significant change to the existing setting. Where there is a sense of isolation this would not be altered by the large scale turbines which would be seen as a distinct group. Indeed because of their scale and slender form they would create an unfussy appearance with a sense of visual isolation because they would be seen alone against the sky. As such, whilst there would be some visual harm and thus the setting would not be preserved, the harm from these points would not be substantial in terms of the contribution that the setting makes to the significance of the church. [50-59, 60, 110, 113, 114]
159. The most significant view towards the church is from the Fardon/Hawton road over the new highway bridge (ES viewpoints 27 and 27a). In this view the church tower is seen as a splendid structure, near enough to pick out some architectural detailing. The tower is flanked by tall deciduous trees, set slightly to each side and diminishing in stature away from the building. This natural form emphasises the tower. In the foreground there is pasture land which is not overly manicured, cluttered or domestic in appearance. The consequence is that here the setting increases the visual importance of the building as a focal structure within a rural environment. Despite changes to modern agricultural practices this is the view which feels as if it has seen least change since the church was erected. This aspect of the setting contributes to the significance of the asset because it allows for that perception of historic association between the church and the land and provides for a view of the scale of the building and height of the tower which given its date of construction remains impressive. [57, 58, 113, 114]
160. In terms of this more direct view towards the church tower the turbines would be seen with it but they would be within a 20° arc and off to one side of the church. Anyone wishing to place the church as their main focus could do so. Moreover, viewers would still see the church as described above. As such, the church would still be appreciated in its rural setting. Whilst that setting would not be preserved as at present, and the significance of the setting to the heritage asset would be harmed, it would not be substantially harmed. [57, 113, 114]
161. Viewed from the approach roads from the north and south and within the churchyard, the proposed wind turbines would be sufficiently distant from, or orientated in main views away from, or screened by existing vegetation so that they would not significantly harm these aspects of the setting of the church. The focus would remain on the ensemble created by church and the immediate dwellings, and then the church in its churchyard, or with the associated car parking area which is situated under some large, attractive, mature trees. As a consequence, from north and south the setting of the church would not appear much altered by the proposed wind turbines and thus would largely be preserved. [110]

162. Whilst views from the east have been degraded that does not justify further harm. However, the church would remain a relatively low key landscape feature, a situation that would not be altered or worsened by the proposed wind turbines, such that the setting would be preserved. [59, 105]
163. In considering the most sensitive of viewpoints in terms of the setting of this building (i.e. those from the Fardon/Hawton Road) whilst I have found harm, I have not found substantial harm. It follows that in considering the setting as a whole I do not find substantial harm to the setting of the church. Therefore, the harm to the church by virtue of impacts upon the contribution which the setting makes to the importance and significance of this heritage asset do not amount to substantial harm. Nonetheless the setting, would not be preserved and there would be some harm to the significance of the asset insofar as it derives significance from that part of the setting.

*The Church of St Mary Magdalene, Newark*

164. The Church of St Mary Magdalene, Newark, in its earliest parts dates from around 1180, the west tower from c1220, with south aisle and spire from the early c14. Since then there have been a series of additions and restorations, including notable c15 additions. The church is ornate with many decorative features within the stonework. The west tower is of four stages with angled buttresses up to the bell stage. On each side of the bell stage there is a double opening. The octagonal broach spire has four tiers of gabled lucarnes, two on each broach, with double lancet openings (the list description at CD30 is thorough).
165. I have already acknowledged the importance of towers and spires. In the case of this building the spire is a prominent feature seen in many long distance views and on approaching the town. Closer to it is also seen but this is more likely to be in glimpsed or passing views as a consequence of the tight knit development surrounding the church. The built fabric of the town, surrounding the church is important to its setting because of its historical and social links. In terms of distant views, the church can be used to locate the settlement core and act as a guide and in this respect the command over a wider area is significant to setting. It is also possible to view this spire with the spires and towers of other churches providing an indication of settlement, religious power and hierarchy between those places. These more distant interlinked buildings within the setting of Newark church add to the importance of the building, giving it status as a prime focal feature in the landscape and in terms of cultural and social history. [47,48, 61, 105]
166. However, this wider setting contains buildings and structures which detract from the prominence of the spire. For instance developments such as the sugar beet factory, the power station and the spoil heaps associated with the gypsum works. Despite those developments there are views in which the spire and town are seen without later industrial development such as from viewpoint 24. Much was made at the Inquiry of the importance of this view. However, I saw that the view at best was restricted. The photograph was taken from an elevated road bridge not designed for pedestrian access, and the bridge design and landscaping restrict views for those in vehicles. Indeed the view I saw varied significantly depending upon the vehicle I was travelling in and whether or not I was a passenger. [107,108]

167. It was also suggested that this viewpoint was an important view of the spire in which it could be seen with the town but without other detractors and that such views are limited. However, I undertook an extensive site visit looking at views towards the church as requested by the parties. In so doing, I saw that there were better views of the church and town with the river and with the medieval castle from another section of the outer town road network. In those views the large industrial buildings were not apparent. Moreover, the views were from longer stretches of road and included other focal attractors which resulted in a positive setting linking the church to the watercourse, a key to original settlement, and the historic castle and former seat of power. Those features contribute to the understanding of the importance of the church in relation to its position in the historic development of the settlement. This contrasts with the somewhat industrial, and partly recently redeveloped, approach to the town seen in viewpoint 24. I appreciate the better views I saw relate to a different section of road but they confirm that viewpoint 24, which is a modern viewpoint rather than a historic route, is not a particularly important viewpoint in terms of the setting of the church. [61]
168. The proposed wind turbines would, in some views, including viewpoint 24, appear within a narrow angle of view with the church spire. However, viewers would be aware of the perspective and that the wind turbines would be some distance away from the town. From this particular viewpoint although the rotating blades would be seen, the church tower would appear as the tallest element in viewpoint 24. As such, and given the foreground elements of the road structure, railway and so forth I do not consider that the wind turbines would significantly detract from the setting of the church from that viewpoint. Moreover, other viewpoints exist in which the wind turbines would not be seen. [61,108]
169. Other views which I saw towards the church mainly confirm that it is a building within the town centre, that town having a generally low form but with some substantial buildings and structures just beyond the settlement. The proposed wind turbines would be similar to those additions, and for instance moving plumes from the chimneys of some of those developments have some similarity with the active movement from wind turbine blades in that they attract attention. [108]
170. In terms of the effect on St Mary Magdalene, Newark, I conclude that the proposed wind turbines, whilst not enhancing the overall setting would not harm it, such that it would be preserved. Thus, I consider that substantial harm would not arise to the setting of this listed building.

#### *Heritage Assets - Conclusions*

171. The statutory test requirements are that I consider the desirability of preserving or enhancing the setting of listed buildings. Having in mind the Barnwell Manor judgement, I am reminded of the importance which should be attached to that desirability which is incumbent upon the decision maker, in this case the SoS, as it is a statutory duty. In terms of St Mary Magdalene, Newark, I have found that the proposed development would not harm the setting of the listed building, thus the desirable objective of preserving the setting of that building would be met. That is not the case for All Saints Church, Hawton, where I have identified that its setting would not be preserved. The harm would

not be substantial but, even so, the desirability of preserving the setting of listed buildings is a matter of considerable importance and weight. This matter of considerable weight must form part of the planning balance along with other factors. The Framework at paragraph 134 makes it clear that in circumstances where less than substantial harm would arise, as I have found would be the case here, the harm must be weighed against the public benefits of the proposal.

### **Second Main Issue - Public Benefits**

172. The proposed wind turbines would have an installed maximum capacity of 7.5 Mega Watts (MW). Based on this output the proposed development could generate enough electricity to power the equivalent 5,256 homes each year which the appellant points out is something in the order of the number of dwellings proposed for the Growth Point. This would displace over 7,458 tonnes of carbon dioxide per annum. [88, 125]
173. The Framework makes it clear that when determining planning applications local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and should recognise that even small scale schemes provide a valuable contribution to cutting greenhouse gases. It advises if impacts are, or can be made, acceptable an application should be approved. In this case, the Council took the view that should less than substantial harm be identified to the two heritage assets identified in the main issue then it would follow that the public benefits in this case would outweigh the harm to this listed buildings.
174. In this case the extent of harm to the setting of Hawton Church is relatively limited. That harm has a modest impact upon the significance of this asset. As such I consider the balance lies in favour of allowing the proposed development because of the benefits which would arise from the provision of renewable energy. However, other matters also need consideration. [34-39, 44-45, 90, 93-97, 123]

### **Other Matters**

175. **Residential Outlook:** There is no right to the protection of a private view in dealing with planning proposals. However, it is reasonable that development should not impinge on outlook to such a degree that it would make a dwelling an unpleasant place to live. The nearest dwellings to the proposed turbines would be the four at Quarry Farm some 670m distant. Because of existing industrial features any views towards the wind turbines would be limited such that they would not harm residential amenity. Other properties are further away. Having in mind the residential assessment which was submitted by the appellant after the Inquiry<sup>37</sup>, and having viewed the nearest properties from public vantage points (no-one requested that I view from their property so I did not access any dwelling or its curtilage), I am satisfied that the living conditions for the occupiers of any of the properties would not be unacceptably harmed because of the effect of the proposed development on their outlook. All the properties I saw appeared to be screened from the proposed development, in part or whole, be orientated away from it or be sufficiently distant with views out in multiple directions such that the presence of the proposed wind turbines would not be a dominating factor

---

<sup>37</sup> PE1

of the residential environment. As such, I do not attach weight to this matter in the planning balance. [115, 130, 131]

176. **Landscape and Visual Impact:** Local residents express concern about general visual impact, in that the proposed wind turbines would be seen for a significant distance within the landscape. Because the site is located in relatively flat, large scale landscape, where there has been landform change through development, I consider that it could accommodate these structures without landscape character harm. However, as set out in the committee report, the Council notes that the scheme will clearly have a visual impact on the landscape. Nothing I have heard or seen would lead me to a contrary view to either of those points. Whilst there would be a significant visual impact arising from the proposal when seen close to, no landscape or visual harm (here I do not refer to the visual implications for the setting of listed buildings) have been identified that would be so significantly harmed as to justify withholding planning permission. Nonetheless some weight should be attached to the visual harm which would arise and I acknowledge that the proposal would not sit comfortably within the uses accepted in the countryside in Local Plan Policy NE1, although this is a very dated policy, or the more recent CS Spatial Policy 3 Rural Areas. [2, 76-84, 89, 130, 131]
177. **Highway Safety:** Concerns have been raised about traffic impact. However, other than the construction and decommissioning phases, visits to the site would be negligible. The build and removal would require substantial vehicles and it is acknowledged that works would be needed to accommodate them. Those works and a traffic management plan, along with control over construction noise, are all matters that could be controlled by conditions. Wind turbines are now sited near to a number of main roads and there is no evidence that they cause accidents by virtue of distraction to drivers. Concerns are raised by local residents regarding proximity to National Cycle Route 64. However, there is no statutory separation distance: fall-over distance plus 10% is often used as a safety threshold. Subject to the wording of the proposed micro-siting condition, that separation could be achieved such that I do not consider that there would be a safety issue for cyclists using this route, thus this matter does not attract weight in the planning balance. [31, 113, 130, 131]
178. **Tourism:** There is no evidence to indicate that the turbines would adversely impact upon existing or future tourism in the area and impact on property prices is not a matter for the planning system; thus I do not attach weight to this matter in the planning balance. [31, 115, 130]
179. **Land Contamination:** The site has been used for varying purposes and it is acknowledged that the land may suffer from contamination. However, suitable remediation works for the area to be developed could be required by condition should it prove necessary and as such this matter carries neutral weight. [72, 115]
180. **Shadow Flicker:** Local residents express concern about possible shadow flicker. However, this is a matter which can be resolved through the use of a condition requiring that turbines are controlled to prevent such situations. Such an approach is endorsed by the nPPG. Subject to control by condition I do not attach weight to this matter in the planning balance. [31, 71, 115, 130]



181. **Noise:** The Council does not object to the proposal on grounds of noise subject to conditions. Nor is there any evidence from interested parties to demonstrate that the noise criteria set out in ETSU-97-R *The Assessment and Rating of Noise from Wind Farms* (ETSU) would not be met. Rather, interested people express concern that ETSU is outdated and doesn't account for all types of noise. However, the Framework cites and relies upon the National Policy Statement for Renewable Energy (NPS) (in this case EN-3) as being the key document in respect of assessing the likely impacts of wind energy development and EN-3 in turn places reliance on ETSU. Moreover, the recent nPPG places reliance on ETSU and supports the IoA GPG as a supplement to it. Thus ETSU is the accepted approach for assessing noise in cases such as this and there is no reason why it is not appropriate in this instance.
182. ETSU is not to be applied inflexibly but it sets out a framework for the measurement of wind farm noise. It gives indicative noise levels considered to offer a reasonable degree of protection to wind turbine neighbours, without placing unreasonable restrictions on wind turbine development or adding unduly to the costs and administrative burdens of developers or local authorities. The noise limits set out in ETSU are fixed limits of  $L_{A90,10min}$  35-40 dB during the day and 43 dB during the night (with higher limits for dwellings with a financial interest in the scheme), or 5 dB above the prevailing background level, whichever is the greater.
183. The submitted noise assessment, which forms part of the Environmental Statement, appears to have been undertaken in a robust manner, using 4 proxy locations, and there is no evidence to suggest otherwise. The calculations submitted indicate that the predicted noise levels from the proposed wind turbines, based on a candidate turbine, as is acceptable practice, would fall well below the ETSU derived limits. Nonetheless, there would be a change to noise levels in the vicinity of the wind turbines. That change would have limited impact upon people and thus I attach very little weight to that change in the planning balance. [31, 71, 115, 130, 131, 133]
184. There is local concern that the phenomenon 'amplitude modulation' (AM), the propagation of low frequency noise, might result in harm to the living conditions of nearby residents. This has been described at Deeping St. Nicholas, as a regular thumping sound that caused disturbance to the occupiers of a dwelling who were living down wind of the site. Despite the recent research by ReUK, where some factors are identified, there is no clear evidence regarding contributory factors so that this phenomenon can be predicted. [31, 85, 118, 130, 131, 133, 134, 136]
185. Moreover, although some comparisons are made by an objector with the Deeping St. Nicholas site, it seems to me that there are significant differences. In particular, unlike Deeping St. Nicholas, this site does not have low background noise levels because of existing industrial activity and road noise and the quieter area to the south of the appeal site would normally not be downwind. Additionally this proposal is for fewer turbines and they would be of a different size. However, I note that the number of turbines alone is not proven to be particularly significant, with a single turbine exhibiting AM. As research currently stands, AM remains a rare occurrence and cannot be predicted. There is no firm evidence before me to indicate the likelihood of AM being an issue for this proposal for 3 turbines. The possibility of a condition was considered in written

exchanges. However, there is nothing to indicate AM would be an issue here. As such, it is difficult to conclude such a condition would be necessary. Moreover, it would be difficult to frame a precise and reasonable condition given the lack of clarity about the issues involved. Thus, I have not proposed such a condition be imposed. However, the appellant did put forward a suggested condition in Document PE8.

186. **Air Safety:** Concerns are raised about safety in relation to aircraft. However, the Ministry of Defence and Civil Aviation Authority representatives do not object to the scheme subject to conditions in respect of illumination and notification. It seems that an illumination condition would be necessary were the appeal to be successful. However, in the interests of visual and residential amenity an infra red light would be preferable to a standard red light. There is no evidence to indicate that this would be unacceptable to the consultees seeking the illumination. In terms of notification it is not normal to notify other parties of start dates and associated information. However, the developer could be required to provide this information for the local planning authority which can pass it on to others seeking such information. Thus, the conditions set out in Annex A have been amended to reflect these matters. Subject to those conditions I do not attach weight to this matter in the planning balance. [31,115, 130]

187. **Ecology:** Natural England made a thorough assessment of the proposals and do not object to the scheme finding it unlikely to have adverse effects on local wildlife. Rather it seeks conditions particularly seeking to protect bird nesting sites by prohibiting the times when works to that habitat can be undertaken. Whilst the Nottinghamshire Wildlife Trust does not object to the scheme, expressing concern about birds, it seeks that enhancements are made and monitoring takes place. Having considered the evidence before me, and having seen the site I am satisfied that there would be no material harm to local wildlife populations. In terms of conditions it would be reasonable to require works to the hedge to improve the access only to take place outside of the bird breeding season. An ecological mitigation scheme is also necessary given the disruption of the construction phase and removal of some habitat. However, monitoring is not appropriate as a condition given that the scheme must be assessed as satisfactory or otherwise on the evidence at this stage. I consider this matter is neutral in the planning balance. [31, 72, 115, 130, 131]

### **The Planning Balance**

188. Having considered the other matters raised, I conclude that some harm would arise to visual amenities of the area, contrary to both LP and CS policies and from the noise generated by the wind turbines so that people would be aware of it, particularly when using nearby public rights of way. Those harms are, however, modest. I have concluded that the setting of St Mary Magdalene Newark would be preserved. However, the development would be harmful to the setting of Hawton Church, but not to the extent that it would constitute substantial harm. The harms identified would result in conflict with development plan policies CS Policy 14 and LP Policy C11.

189. I am mindful that s.38(6) of the Act requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise.

190. S.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that I, and in coming to his decision the Secretary of State, shall have special regard to the desirability of preserving the setting of listed buildings. The harm identified to the setting of the listed building, Hawton Church, is a matter to which I attach great importance because it is a matter to which special regard must be paid and because this is a grade I, and so particularly significant, listed building.
191. I am also mindful of the Government's guidance in the Framework, that 'where a proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits..' (paragraph 134) which is a significant material consideration.
192. In undertaking the balancing exercise I am mindful that the key harm identified relates to the harm to the significance of Hawton Church arising from impact upon its setting. I have found that, in terms of the significance of this heritage asset, the harm relates in the main to views from one direction. Whilst any harm must be carefully considered the harm in this case is therefore limited.
193. Significant benefits would be derived from the proposal in terms of renewable energy provision.
194. In having special regard to the desirability of preserving the setting of this listed building I am satisfied that the benefits of the scheme outweigh the limited harm identified. When balancing that harm in combination with the other modest harms identified against the benefits attributed to the scheme it is appropriate to recommend approval for the scheme. As the balance of material considerations weighs in favour of the proposed development, I find the harm identified to be acceptable and so, having I mind paragraph 98 of the Framework, I consider that it is appropriate to recommend that this appeal be allowed despite being otherwise than in strict accord with the development plan.

### **Localism**

195. Although there has been significant support for the scheme, including from residents on the southern side of Newark, I appreciate that there is sustained local opposition, particularly from within the Parish, which is seen in the efforts of the Rule 6 group SNOW. I am mindful of the Government's localism agenda. However, I have to determine the proposed development on the basis of local development plan policies and associated documents which form material considerations and with which there would have been opportunity for local residents and stakeholders to be engaged. I also have to determine the development having regard to national planning policies and all other material considerations. Having carefully considered the overall balance of considerations for and against, including the local opposition, I conclude that the evidence does not support refusal of the scheme. [65, 69, 70, 130, 187-189]

### **Planning Conditions and s.106 Obligation**

196. The conditions in the amended format discussed at the Inquiry, with additional minor alterations that were discussed or otherwise required to achieve a more ready compliance with advice in the nPPG which has replaced, in part, Circular 11/95, are necessary in order to achieve an acceptable development. As such, the conditions in the Schedule attached at Annex A, which is referred to above,

are recommended should the SoS decide that planning permission be granted. Where necessary, specific conditions have been addressed in the Conclusions above. The proposed condition in respect of actions to be undertaken in the event of a wind turbine ceasing to provide energy has been altered because there could have been issues regarding approval of the decommissioning and restoration scheme and its implementation. The conditions set out are relevant, necessary to make the development acceptable and otherwise comply with the necessary tests.

197. In terms of a condition relating to AM there is no clear evidence before me that this is a likely phenomenon here, as explained above. As such, I do not consider that it would be necessary or reasonable to impose a condition in this regard. [118, 134, 136, 183, 184]

198. The s.106 UU planning obligation provides for increased screen planting in the proposed green space between houses in the Growth Point and the site as set out in paragraph 140 above. This is required to mitigate adverse impacts and allow the scheme to go ahead. I have had regard to the obligation in the light of the tests set out in the Framework at paragraph 204. These state that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. The appellant expresses some doubt about the s.106 Obligation being necessary. However, I am satisfied that there is a rationale behind the sum sought and that the sum is fairly and reasonably related in scale and kind. Thus, from the information and evidence provided, I am satisfied that the obligation tests set out in the Framework would be met.

### **Recommendation**

199. I recommend that the appeal be allowed and planning permission be granted subject to conditions set out in Annex A.

*Zoë Hill*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Ponter of Counsel

Instructed by Mr Matthew Lamb, Newark and Sherwood District Council

He called  
Mr Andrew Fuller  
BA DipTP MA MRTPI  
Mr Jonathan Pennick  
MA, MRTPI

### FOR THE APPELLANT:

Mr Tucker QC

Instructed by Mr David Goodman, Bolsterstone Innovative Energy Ltd

He called  
Dr Jonathan Edis BA MA  
PhD MIFA IHBC  
Ms Susan Dodswell  
Ma BSc(Hons) CMLI  
Mr Darren Henley MRTPI

### FOR SNOW (South Newark Oppose Windturbines):

Mr Elliot  
Mr Sutton

### INTERESTED PERSONS:

Mr Peter Caswell  
Mo Caswell

## **CORE DOCUMENTS (provided at the Inquiry)**

- CD1 Hawton Windfarm October 2011 Environmental Statement Volume I – Text and Figures
- CD2 Hawton Windfarm October 2011 Environmental Statement Volume II – Technical Appendices
- CD3 Planning Application Form and Ownership Certificates
- CD4 Submitted Drawings
- CD5 Planning Decision Notice (Council ref: 11/01588/FULM)
- CD6 Planning Officer's report to Planning Committee 7th August 2012 (Council ref: 11/01588/FULM)
- CD7 Minutes from Planning Committee 7th August 2012
- CD8 East Midlands Regional Plan adopted 2009
- CD9 Newark and Sherwood Core Strategy adopted 2011
- CD10 Policy Extracts from the Newark and Sherwood Local Plan adopted 1999

- CD11 Supplementary Planning Guidance – Wind Energy (1999)
- CD12 National Planning Policy Framework (2012)\*
- CD13 Planning for Renewable Energy A Companion Guide to PPS22 (1994)\*
- CD14 Overarching National Policy Statement for Energy (EN-1) (2011)
- CD15 National Policy Statement for Renewable Energy Infrastructure (EN-3) (2011)
- CD16 HeritageCollective LLP, Heritage Assessment Hawton Windfarm, March 2012
- CD17 Letter from Arcus to the Council regarding the introduction of the Framework dated 3rd April 2012
- CD18 Letter from Arcus to the Council regarding various issues, including cultural heritage, dated 8 May 2012
- CD19 English Heritage representation dated 6 July 2012
- CD20 Unilateral Undertaking
- CD21 The Setting of Heritage Assets (2011) \*
- CD22 Wind Energy and the Historic Environment (2005)
- CD23 Conservation Principles, Policies and Guidance: For the Sustainable management of the historic environment (2008)\*
- CD24 Climate Change and the Historic Environment (2008)
- CD25 PPS5: Planning for the Historic Environment, Practice Guide (2010)\*
- CD26 Publications Allocations & Development Management DPD (submitted 10 September 2012)
- CD27 Newark Future - Growth Point Design and Access Statement, Addendum and Key Principles
- CD28 English Heritage representation dated 16 January 2012
- CD29 Berkeley Wind Farm Decision
- CD30 List Descriptions for All Saints Church Hawton and Church of St. Mary Magdalene, Newark
- CD31 Growth Point Illustrative Masterplan
- CD32 Letter from the Council to Arcus dated 21 March 2012
- CD33 Letter to appellants agent from appellant (Bolsterstone Innovative Energy (Hawton) Ltd) dated 21 December 2012
- CD34 United Nations Framework on Climate Change (UNFCCC) (1992)
- CD35 Government Response to Communities and Local Government Report Abolition of Regional Spatial Strategies: a planning vacuum (2011)
- CD36 Environmental Report on the revocation of the East Midlands Regional Plan
- CD37 UK Renewable Energy Roadmap 2011
- CD38 UK Renewable Energy Roadmap Update 2012
- CD39 Kyoto Protocol
- CD40 UK Renewable Energy Strategy (UKRES)
- CD41 Stern Review 2006
- CD42 2007 Energy White Paper
- CD43 Energy Act 2008
- CD44 Climate Change Act 2008
- CD45 UK Low Carbon Transition Plan Emissions Projections (2009)
- CD46 National Renewable Energy Action Plan for the United Kingdom

- (July 2010)
- CD47 Renewable Energy Review (May 2011)
  - CD48 Towards a Sustainable Energy Policy for Nottinghamshire – Policy Framework (2009)
  - CD49 Low Carbon Energy Opportunities and Heat Mapping for Local Planning Areas (2011)
  - CD50 Statement of Common Ground
  - CD51 Energy Directive 2009/28/EC (2009)
  - CD52 The Coalition: our programme for government (2010)
  - CD53 Annual Energy Statement (2012)
  - CD54 National Infrastructure Plan (2010)
  - CD55 How Local Authorities Can Reduce Emissions and Manage Climate Risk- Committee on Climate Change Report (2012)
  - CD56 Committee on Climate Change – Meeting Carbon Budgets 2012 Progress Report to Parliament
  - CD57 Energy Bill 2012
  - CD58 Newark & Sherwood Community Infrastructure Levy Annual Monitoring Report (2012)
  - CD59 Review of Renewable Energy and Efficiency Targets for the East Midlands (2009)
  - CD60 Digest of United Kingdom Energy Statistics and Energy Trends DECC (2012)
  - CD61 Carsington Pastures Wind Farm Decision
  - CD62 Watford Lodge Farm Wind Farm Decision
  - CD63 Kelmarsh Wind Farm Decision
  - CD64 Low Carbon Environmental Goods and Services Report for 2010/2011 (2012) BIS
  - CD65 Enifer Downes Wind Farm Decision
  - CD66 Willow Bank Wind Farm Decision
  - CD67 Cotton Farm Wind Farm Decision

\* Documents not provided in hard copy as the Inspector had them to hand

**WITNESS DOCUMENTS submitted prior to the Inquiry– APPELLANT**  
***(nb updated versions in Inquiry Documents)***

- APP1 Proof of Evidence - Mr Hendley
- APP2 Summary Proof of Evidence - Mr Hendley
- APP3 Appendices - Mr Hendley
- APP4 Proof of Evidence – Ms Dodwell
- APP5 Summary Proof of Evidence - Ms Dodwell
- APP6 Appendices - Ms Dodwell (bound as two documents)
- APP7 Proof of Evidence – Dr Edis
- APP8 Summary Proof of Evidence - Dr Edis
- APP9 Appendices – Dr Edis

**WITNESS DOCUMENTS submitted prior to the Inquiry – COUNCIL**  
***(nb updated versions in Inquiry Documents)***

- LPA1 Proof of Evidence including appendices– Mr Pennick
- LPA2 Summary Proof of Evidence – Mr Pennick

- LPA3 Proof of Evidence - Mr Fuller  
LPA4 Summary Proof of Evidence – Mr Fuller

### **WITNESS DOCUMENTS submitted prior to the Inquiry – SNOW**

- SN1 Statement of Case for SNOW and associated documents

### **DOCUMENTS - submitted at the Inquiry**

- DOC1 Core Document List (Core Documents were submitted at the Inquiry number CD1 to CD67)  
DOC2 Statement of Mr Peter Caswell  
DOC3 Statement of Mo Caswell  
DOC4 Amended Proof of Evidence, Appendices and Summary Mr Pennick (Ipa)  
DOC5 List of Appearances for the local planning authority  
DOC6 Draft Press Notice  
DOC7 Opening Submissions on behalf of the local planning authority  
DOC8 Copy of Appeal Ref: APP/B3030/A/11/2157402 with associated site plan  
DOC9 Opening Submissions on behalf of the appellant  
DOC10 Statement of Dr SE Laurie provided by M Caswell  
DOC11 Amended Proof of Evidence, Appendices and Summary for Darren Hendly (appellant)  
DOC12 Statement of Common Ground Addendum  
DOC13 Proof of Evidence and Summary Andrew Fuller (Ipa)  
DOC14 Revised Table of Committed Energy Schemes in the District since the adoption of the RSS  
DOC15 Note in response to Inspector's question to S Dodswell regarding residential properties  
DOC16 Briefing Note on Noise and Amplitude Modulation  
DOC17 Closing - Case Advanced by SNOW  
DOC18 Additional notes for conditions  
DOC19 Closing Submissions on behalf of the Ipa  
DOC20 Closing Submissions on behalf of the appellant

### **PLANS**

- Plans The Application Plans  
A1-12  
Plan B Accompanied Site Visit Route and Viewpoints

### **PHOTOGRAPHS - submitted at the Inquiry**

- Photo 1 Car Park Area All Saints Hawton

### **DOCUMENTS SUBMITTED AFTER THE SITTING DAYS**

- PE1 Note Regarding Residential Properties submitted by appellant (as requested by Inspector)  
PE2 Note Regarding Amplitude Modulation submitted by appellant



- (as Requested by Inspector)
- PE3 Response to PE2 (From Mo Caswell with attachments)
  - PE4 Appellant's response to PE3
  - PE5 Bundle of responses to consultation regarding the Written Ministerial Statement concerning Local Planning and Onshore Wind (including Appellant response)
  - PE6 Bundle of responses to consultation regarding 'Planning Practice Guidance for Renewable and Low Carbon Energy' (DECC) and the IoA ' A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise'
  - PE7 Appellant response to above and Final Comments
  - PE8 Bundle of responses to consultation on ReUK Research on Amplitude Modulation
  - PE9 Bundle of responses to consultation on nPPG and the Barnwell Manor judgement

## **Annex A**

### **Schedule of Planning Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.  
*Reason: To establish the time within which this development can be commenced.*
- 2) No development shall be commenced until full details of the turbine specifications including their make, model, power rating, external dimensions, colour and finish have been submitted to and approved in writing by the local planning authority. The approved details shall comprise three bladed turbines no larger than the maximum dimensions submitted as part of the application. No part of the structures shall carry any logo or lettering other than as required for health and safety reasons. The turbines shall all be of the same specification and the development shall be carried out in accordance with such details as approved.  
*Reason: For the avoidance of doubt and to ensure satisfactory details.*
- 3) No development shall be commenced until precise details of the switchgear unit, control building and meteorological mast, including precise locations, their designs (including bird warning devices for the mast if it adopts a pole design) the types and colours of materials to be used on their external elevations have been submitted to and approved in writing by the local planning authority. The development shall be in accordance with the approved details.  
*Reason: To ensure a satisfactory design and external appearance in the interests of the character and appearance of the surrounding area.*
- 4) Prior to the commencement of the development an acoustic report shall be submitted to, and approved in writing by the Local Planning Authority in accordance with the following requirements:
  - I. It shall include final details of the wind turbines to be installed including dimensions, noise emission levels, control software (including noise management options as applicable) along with manufacturer warranties to show maximum sound power levels from the turbines at wind speeds from 6 to 10m/s.
  - II. The acoustic report shall 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. The methodology used in the assessment shall comply with the provisions of ETSU-R-97 "The Assessment and Rating of Noise from Wind Farms".
  - IV. It must include the assessment of the turbine noise at the locations as identified in Table 1 in Condition 5 and at any other location reasonably requested in writing by the local planning authority.
  - V. Where a limit value for a location does not exist, the proposed noise limits are to be those limits specified in Table 1 of Condition 5 herein for the nearest listed location or that listed location which the independent consultant, as approved in writing by the local planning

authority, considers likely to experience the most similar background noise environment to that recorded at the monitoring location.

*Reason: To protect the living conditions of nearby occupiers in terms of noise*

- 5) The rating level of noise immissions<sup>1</sup> from the combined effect of the wind turbines (including the application of any tonal penalty) when measured and calculated in accordance with "The Assessment and Rating of Noise from Wind Farms, ETSU-R-97" published by ETSU for the (former) Department of Trade and Industry and in accordance with the attached Guidance Notes shall not exceed the values set out in Table 1.

Noise limits for residential properties which lawfully exist or have planning permission for construction at the date of this decision but are not listed in the Table attached shall be determined according to the following methods:

- I. The noise limits shall be those of the physically closest location listed in the tables; or
- II. Alternatively, the noise limits shall be those for the listed location which the independent consultant, as approved in writing by the local planning authority under Condition 4 or 6, considers likely to experience the most similar background noise environment to that recorded at the monitoring location.

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 property in question.

**Table 1: Noise Limits**

Location	Standardised Wind speed at 10 m AGL, ms <sup>-1</sup>									
	4	5	6	7	8	9	10	11	12	
Noise Limit, dB, LA90,10min										
<b>Quiet Daytime</b>										
Balderton Grange	40.5	40.5	41.4	43.2	45.9	48.9	51.3	52.0	52.0	
Lowfield House	40.8	41.5	42.3	43.0	43.8	44.8	46.1	47.7	47.7	
The Elms	36.3	36.4	36.8	37.7	39.2	41.2	43.6	46.3	46.3	
The Grange	37.2	37.1	37.5	38.9	41.1	44.1	47.3	50.2	50.2	
<b>Night-time</b>										
Balderton Grange	43.0	43.0	43.0	43.0	44.4	49.3	54.0	54.0	54.0	
Lowfield House	43.0	43.0	43.0	43.0	44.9	46.7	47.8	47.8	47.8	
The Elms	43.0	43.0	43.0	43.0	43.0	43.0	44.9	44.9	44.9	
The Grange	43.0	43.0	43.0	43.0	43.0	43.9	48.8	48.8	48.8	

**Table 12: Receptor Locations**

Name	Easting	Northing
Balderton Grange	480623	348895
Lowfield House	480442	351030
The Elms	479068	350930
The Grange	479628	348902

<sup>1</sup> Incoming noise; i.e. the rated noise level at receptor locations. Quiet Daytime is defined by ETSU-R-97 between 18:00 and 23:00 Monday to Sunday, between 13:00 and 18:00 on Saturday, and between 07:00-18:00 on Sundays. Night-time is between 23:00 and 07:00.

*Reason: To protect the living conditions of nearby occupiers in terms of noise*

- 6) Within 21 days from receipt of a written request from the local planning authority, following a credible complaint to it from an occupant of a

neighbouring dwelling alleging noise disturbance from the development hereby approved at that dwelling, the wind farm operator shall at its expense employ a consultant approved by the local planning authority, to assess the level of noise from the wind farm at the complainants property in accordance with the procedures set out 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 and any identified atmospheric conditions including wind direction where known.

*Reason: In the interests of the living conditions of nearby residents with regard to noise.*

- 7) Prior to the commencement of any measurements by the independent consultant approved by the local planning authority to be undertaken in accordance with Condition 6, the wind farm operator shall submit to the local planning authority for written approval an assessment protocol stating:
- I. The details of the independent consultant to undertake the assessment.
  - II. The limits that are to be applied at the complainant's property.
  - III. A justification of 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).
  - V. The proposed measurement location as identified by the Guidance Notes.
  - VI. The range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
  - VII. Measurements taken by the independent consultant to assess compliance with the noise limits set out in the Tables attached to Condition 4 or those limits approved by the local planning authority in accordance with point III above shall be undertaken in accordance with the assessment protocol.

*Reason: In the interests of protecting living conditions of local residents in relation to noise.*

- 8) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to paragraph 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of the submission of the approved independent consultant's assessment pursuant to Condition 6 above unless the time limit has been extended in writing by the local planning authority.

*Reason: To ensure sufficient information is available in a timely manner for the approved independent consultant to adequately assess noise in the interests of the living conditions of local residents.*

- 9) 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 attached Guidance Notes within 2 months of the date of the written request of the local planning authority for

compliance measurements to be made under Condition 6 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 the attached Guidance Notes at 1(e). The instrumentation used shall be calibrated in accordance with the attached Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the approved independent consultant's assessment of the rating level of noise immissions.

*Reason: To ensure sufficient information is available to adequately assess noise in the interests of the living conditions of local residents.*

- 10) The wind farm operator shall continually monitor rainfall at the site and shall continuously monitor power production, wind speed, wind direction and nacelle orientation at each wind turbine all in accordance with the attached Guidance Notes at 1(c). This data shall be retained for the life of the planning permission. The wind farm operator shall provide this information in the format set out in attached Guidance Note 1(e) to the local planning authority within 14 days of the receipt of a written request from the local planning authority.

*Reason: To ensure sufficient information is available to adequately assess noise in the interests of the living conditions of nearby residents.*

- 11) Where the local planning authority is satisfied, pursuant to other conditions of this permission, of an established breach of the noise limits set out in Table 1 of Condition 5, upon notification by the local planning authority in writing to the wind farm operator of the said breach, the wind farm operator shall within 21 days propose a scheme to resolve the breach which shall be submitted for the approval of the local planning authority. The scheme shall demonstrate how the breach will be mitigated and provide measures to prevent its future recurrence. This scheme shall specify the timescales for implementation. The approved scheme shall be implemented in accordance with the time scales agreed. The scheme as implemented shall be retained thereafter unless otherwise agreed with the local planning authority.

*Reason: In the interests of the living conditions of nearby properties in terms of noise.*

- 12) In the event that national guidance on the acoustic effects of wind energy development, presently within ETSU-R-97 is revised or replaced, then:
- a) within 9 months of the issue of such guidance an acoustic report shall be submitted ('the Revised Acoustic Report') to and agreed in writing by the local planning authority which shall identify the revisions (if any) which shall be reasonably necessary to conditions 4 to 13 hereof in order to secure compliance with the revised guidance;
  - b) the development shall thereafter only be operated in accordance with the Revised Acoustic report.

*Reason: In the interests of clarifying the situation with regard to noise and local residents living conditions.*

- 13) Prior to commencement of the development the wind farm operator shall provide the local planning authority with a designated 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 point of contact shall have responsibility for liaising regularly with the local planning authority and for dealing with any complaints made during the construction of the development, throughout the operation of the wind farm and during the decommissioning / restoration of the site.

The operator shall provide the local planning authority with advance notice in writing of any subsequent changes in the details of designated point of contact.

*Reason: In the interests of being able to protect local residents living conditions.*

- 14) No development shall take place until the developer has notified the local planning authority of the following information:

- The proposed date of construction commencement and projected completion date;
- The maximum height of construction equipment;
- The latitude and longitude of each turbine.

In the event that the anticipated date of completion of construction varies from that which has been notified to the local planning authority an update shall be provided in writing prior to construction extending beyond the date of which it has been notified.

*Reason: In order that those with aviation interests can be notified by the local planning authority in good time.*

- 15) Prior to the commencement of the development hereby permitted, an assessment of noise levels expected to be generated during the construction of the wind farm, along with background noise levels, prepared in accordance with the current edition of BS5228, along with a scheme for noise control measures during the construction period, shall be submitted in writing to the local planning authority for its written approval and the scheme of noise control measures approved by the local planning authority shall be undertaken throughout the construction period.

*Reason: In the interests of protecting the noise environment of residents during the construction period.*

- 16) No part of the development hereby permitted shall commence until the access to the site has been completed and surfaced in a bound material for a minimum distance of 20m from the highway boundary, in accordance with details to be submitted and approved by the local planning authority in writing.

*Reason: In the interests of highway safety.*

- 17) The hours of operation during the construction phase of the development including the hours in which delivery of construction materials or equipment to the site takes place and associated with the construction of the development hereby permitted shall be limited to 0730 hours to 1800 hours on Mondays to Fridays and 0730 hours to 1300 hours on Saturdays and no work shall take place on Sundays or Public Holidays. Outside these hours, except in case of emergency, no works to implement the planning permission shall take place. The local planning authority shall be informed

in writing of any emergency works within three working days of its occurrence.

*Reason: To protect the living conditions of local residents.*

- 18) No development shall commence on any part of the application site unless or until highway improvement works have been provided at the site access and at other locations on the HGV route set out in the Environmental Statement between the A1 and the site to provide for the swept path of the largest construction/delivery vehicles.

*Reason: In order to provide a safe access to the site and to minimise disruption to the free flow of traffic.*

- 19) Prior to the commencement of the development hereby permitted, dust control measures to be used during the construction of the wind farm shall be submitted to and approved in writing by the local planning authority including provision of wheel wash facilities and sheeting of heavy goods vehicles where appropriate. The approved dust control measures shall be implemented throughout the construction period of the wind farm development hereby permitted.

*Reason: To protect the living conditions of nearby residents.*

- 20) Notwithstanding the provision of condition 17, delivery of turbine and crane components may take place outside the hours specified subject to not less than 2 local planning authority working days prior notice of such traffic movements being given to the local planning authority.

*Reason: Delivery of components cannot be easily controlled and it is in highway safety interests that they are moved to the site expeditiously.*

- 21) No part of the development hereby permitted shall commence until the visibility splays of 2.4m x 215m are provided at the site access, where it meets Cotham Road. The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.9 metres in height.

*Reason: In order to provide adequate visibility at the junction in the interests of highway safety and the free flow of traffic.*

- 22) No transportation of wind turbine components (via abnormal load movements) shall be carried out until all temporary works as identified on Royal Haskoning Ltd drawings no; 9V4595-TR13 Rev A; 9V4595-TRO19 Rev A; left turn onto A52-TR005 Rev A and left turn from A52 onto slip road TR006 Rev A have been completed to the satisfaction of the local planning authority.

*Reason: In order to provide a safe access to the site and to minimise disruption to the free flow of traffic.*

- 23) Prior to commencement of development hereby permitted, a construction and traffic management plan shall be submitted to and approved in writing, by the local planning authority. The development shall take place in accordance with the approved construction and traffic management plan.

*Reason: In order to provide a safe access to the site and to minimise disruption to the free flow of traffic.*

- 24) Prior to the commencement of development hereby approved (or such other date or stage in development as may be agreed in writing with the

local planning authority prior to the commencement of development), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

- a) A preliminary risk assessment which has identified:
  - All previous uses;
  - Potential contaminants associated with those uses;
  - A conceptual model of the site indicating sources, pathways and receptors; and
  - Potentially unacceptable risks arising from contamination at the site.
- b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- c) The site investigation results and the detailed risk assessment (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The scheme shall be implemented as approved.

*Reason: To ensure any contamination of the site, which is one where previous uses make this possible, is properly dealt with in the interests of public safety.*

- 25) No development hereby permitted shall be commenced until details of the existing site levels and slab levels for the wind turbines have been submitted to and agreed in writing with the local planning authority. The development shall be implemented in accordance with the agreed slab levels.

*Reason: The visual impact of the proposed development will be significant. Agreed final heights should therefore be clear including any change to base levels in order to minimise effects on the character and appearance of the area.*

- 26) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated October 2011 prepared by Arcus Renewable Energy Consulting Ltd. The mitigation measures within the FRA shall be fully implemented prior to the development becoming operational and subsequently in accordance with the timing / phasing arrangements embodied within the scheme.

*Reason: In the interests of managing flood risk.*

- 27) No development hereby permitted shall be commenced until details of an aviation warning light (which shall be infra-red unless aviation safety requires otherwise) to be fitted to highest practicable point of each wind turbine has been submitted to and approved in writing by the local planning authority. The approved aviation warning light shall be installed upon erection of each wind turbine and shall be retained in working order for the lifetime of the development.

*Reason: In the interests of aircraft safety.*



- 28) The blades of all wind turbines hereby permitted shall rotate only in the same direction.

*Reason: In the interests of visual amenity.*

- 29) No hedge or tree that is to be removed as part of the development hereby permitted shall be lopped, topped, felled or otherwise removed during the bird nesting period (beginning of March to end of August inclusive) unless otherwise agreed in writing by the local planning authority and no development shall be commenced where construction will take place during the main bird breeding season (1 March to 30 August) until details of the proposed mitigation measures for the protection of nesting birds during construction of the development, including pre-construction surveys, shall have been submitted to and approved in writing by the local planning authority. The construction shall be carried out in accordance with the approved details.

*Reason: In order to protect birds nesting in this area.*

- 30) No development shall take place until an ecological enhancement scheme, including a management plan and a timetable for implementation, has been submitted to and approved in writing by the local planning authority. All works shall be carried out in accordance with the approved details and timetable.

*Reason: To ensure that suitable mitigation is put in place so that the development does not have a detrimental effect on local ecology.*

- 31) All electrical cabling between each wind turbine and the sub-station shall be located underground.

*Reason: In the interests of the character and appearance of the surrounding area.*

- 32) Within 21 days from receipt of a written request by the local planning authority, following a complaint to it alleging disturbance from shadow flicker at a dwelling that is lawfully occupied and lawfully existing at the time of this permission, a scheme for the investigation and alleviation of shadow flicker at that dwelling likely to be caused by the wind turbines hereby permitted shall be submitted to the local planning authority for its written approval. A timetable for the implementation of the approved mitigation measures shall be agreed with the local planning authority in writing. The mitigation measures shall be carried out in accordance with the approved scheme and timetable and shall be retained thereafter thereafter.

*Reason: To protect local residents from shadow flicker.*

- 33) No development shall take place until full details of soft landscape works/vegetation enhancement works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include: (a) a schedule (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species; and, (b) existing trees and hedgerows, which are to be

retained pending approval of a detailed scheme, together with measures for protection during construction.

*Reason: In the interests of the character and appearance of the surrounding and in the interests of local ecology.*

- 34) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

*Reason: To set out a timetable for the implementation and establishing of landscaping required under condition 34 above.*

- 35) If any wind turbine hereby permitted ceases to produce electricity for a continuous period of 9 months, a scheme shall be submitted to the local planning authority for its written approval within 2 months of the end of that 9 month period for the repair or removal of that turbine. The scheme shall include, as relevant, a programme of remedial works where repairs to the relevant turbine are required. Where removal is necessary the scheme shall include a programme, including a timetable, for removal of the relevant turbine and associated above ground works approved under this permission, details of the depth to which the wind turbine foundations will be removed and for site restoration measures following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.

*Reason: In the interests of the character and appearance of the surrounding area as the development is permitted on the basis that it is functionally needed for energy generation.*

- 36) This permission is for a period not exceeding 25 years from the date that electricity from the development is first exported to the electricity grid ("First Export Date"). Written confirmation of the First Export Date shall be provided to the local planning authority within 14 days of the First Export Date.

*Reason: To clarify the permission and in the interests of the character and appearance of the surrounding area which should be returned to its former condition once energy generation ceases*

- 37) No later than 3 months prior to the permanent cessation of electricity generation at the site, a scheme for the removal from the site of wind turbines and associated works hereby approved shall be submitted to the local planning authority for its written approval. The scheme to be submitted shall include the dismantling and removal of each wind turbine and ancillary equipment above existing ground level and the removal of the wind turbine bases and foundations and a restoration scheme for the land. Restoration shall be completed in accordance with the approved scheme within 12 months of it being approved by the local planning authority.

*Reason: To clarify the permission and in the interests of the character and appearance of the surrounding area which should be returned to its former condition once energy generation ceases.*

- 38) Prior to the commencement of the development hereby permitted a scheme for the micro-siting of the turbines shall be submitted to and agreed in writing by the local planning authority. Such siting shall be not more than 20 m from the positions of the turbines shown on the approved plans and set out below and shall not be sited any nearer to National Cycle Route 64 than those specified positions. The development shall be implemented strictly in accordance with the approved scheme.

Number	Easting	Northing
1	480152	350137
2	480102	349799
3	480053	349460

*Reason: For the avoidance of doubt and to enable some flexibility within fixed limits should micro-siting be necessary.*

- 39) The development shall be carried out in accordance with approved plans, sections and elevations, including accompanying notes, submitted with the planning application, namely:

Drawing 001 Revision A	Site Location Plan
Drawing 002 Revision A	Planning Application Fee
Drawing 003 Revision A	Block Plan
Drawing 004 Revision A	Typical Wind Turbine
Drawing 005 Revision A	Typical Turbine Foundation
Drawing 006 Revision A	Typical Crane Hardstanding
Drawing 007a Revision A	Typical Access Track Design
Drawing 007b Revision A	Site Access Point
Drawing 008 Revision A	Typical Access Track and Drainage Details
Drawing 009 Revision A	Typical Cable Trench
Drawing 010 Revision A	Typical Switchgear Building
Drawing 011 Revision A	Typical Meteorological Mast
Drawing 012 Revision A	Typical Construction Compound

*Reason: For the avoidance of doubt and to clarify the permission.*

### **Guidance Notes for Noise Conditions**

These notes are to be read with and form part of the Noise Conditions. They further clarify the conditions 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 Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance 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.

**Guidance Note 1**

a) Values of the LA90, 10minute noise statistic shall be measured at the complainant's property, using a sound level meter of EN60651/BS EN 60804 Type1, or BS EN 61672 class1 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). The sound level meter shall be calibrated in accordance with the procedure specified in BS4142 1997 (or the equivalent UK adopted standard in force at the time of the measurements). 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 2 layered windshield or suitable equivalent approved in writing by the Local Planning Authority and placed outside the complainants dwelling. Measurements shall 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 access to the complainant's property is refused, or no suitable free-field measurement location is available at the complainant's dwelling, the wind farm operator shall submit for the written approval of the local planning authority full details of the proposed alternative representative free field condition measuring location prior to the commencement of the measurements. The measurements shall be undertaken at the approved alternative representative free-field measuring location. Where no suitable alternative representative free-field monitoring location is available, measurements shall be made at the complainant's dwelling, with appropriate corrections for façade effects made to the measurements.

c) The LA90 10minute measurements shall be synchronised with measurements of the 10 minute arithmetic mean wind speed 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 and direction at hub height for each turbine and arithmetic mean wind speed and direction at the location of the site meteorological mast, together with arithmetic mean power generated by each turbine, in successive 10 minutes unless otherwise agreed in writing with the local planning authority. The mean hub height wind speed data for the operating turbines shall be standardised to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness of 0.05 metres. It is this standardised 10 metre height wind speed data which is correlated with the noise

measurements determined as valid in accordance with Guidance Note 2 such correlation to be undertaken in the manner described in Guidance Note 2. All 10 minute periods shall commence on the hour and in 10 minute increments thereafter.

e) Data provided to the local planning authority in accordance with the Noise Conditions shall be provided in electronic format that has first been approved in writing by the local planning authority.

**Guidance Note 2**

a) The noise measurements shall be made to provide not less than 20 valid data points as defined by Guidance Note 2 (b).

b) Valid data points are those measured in the conditions specified by the local planning authority in its written protocol under Noise Condition 6, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurements periods set out in Guidance Note 1. In specifying such conditions the local planning authority shall have regard to those conditions which prevailed during the times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

c) For those data points considered valid in accordance with Guidance Note 2(b), values of  $L_{A90,10 \text{ minute}}$  noise measurements and corresponding values of 10 minute wind speed as an average of the operating turbines, standardized to 10 metre height using the procedure set out in Guidance Note 1(d) shall be plotted on an XY chart with noise level on the Y axis and the standardised mean wind speed on the X axis and annotated as such. 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 and define the wind farm noise level at each integer speed.

**Guidance Note 3**

a) Where in accordance with the approved assessment protocol under Noise Condition 6, noise immission 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 have been determined as valid in accordance with Guidance Note 2, a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods shall be spaced at 10 minute intervals provided that uninterrupted un corrupted 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 deviations from the standard procedure, as described in section 2.1 on pages 104 -109 of ETSU-R-97, shall be reported.

c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in section 2.1 on pages 104 -109 of ETSU-R-97.

d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

e) A least squares best fit linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the best fit line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2. The tonal penalty is to be derived in accordance with the figure on page 104 of ETSU-R-97.

**Guidance Note 4**

a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined by the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written protocol under Noise Condition 6.

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 Guidance Note 2.

c) In the event that the rating level is above the limits set out in the tables attached to the Noise Condition 5 or the noise limits for a dwelling approved in accordance with Noise Condition 7 part II, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to the wind turbine noise immission only.

d) The further assessment shall be undertaken in accordance with the following steps:

- I. The wind farm operator shall ensure that all the wind turbines on the development are turned off for such a period as the independent consultant requires to undertake the further assessment. The steps in Guidance Note 2 will be repeated with the wind farm switched off and then determining the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under Noise Condition 5 and the approved protocol under Noise Condition 6. Or,
- II. Where in the opinion of the independent consultant approved under Noise Condition 6, the background noise levels at the complainant's property can be adequately represented by those presented in Table

10.4 of the ES<sup>38</sup>, then such levels shall be used to represent the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under Noise Condition 6 and the approved protocol under Noise Condition 7.

- III. The wind farm noise (L1) at each integer wind speed shall be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:
- $$L_1 = 10 \text{ Log}(10^{L2/10} - 10^{L3/10})$$
- IV. The rating level shall be recalculated by adding the tonal penalty (if any is applied in accordance with note 3) to the derived wind farm noise L1 at that integer wind speed.
- V. 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 complainants dwelling in accordance with Noise Condition 7 part II 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 in accordance with Noise Condition 7 part II then the development fails to comply with the conditions.

---

<sup>38</sup> Hawton Wind Farm Environmental Statement, Bolsterstone Innovative Energy (Hawton) Ltd, October 2011



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.