



Department for Communities and Local Government

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Our Ref: APP/Y2003/A/13/2207858
Your ref: GRANGES/079571.000079

22nd December 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY FCC ENVIRONMENTAL (UK) LTD
LAND AT WINTERTON LANDFILL SITE, OFF COLEBY ROAD, WEST HALTON,
WINTERTON DN15 9AP
APPLICATION REF: WF/2011/0528**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Robert Mellor BSc DipTRP DipDesBEnv DMS MRPI MRICS who held an inquiry into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of North Lincolnshire Council ("the Council") to refuse an application for planning permission for three wind turbines with a maximum overall height of up to 127 metres, together with anemometer mast, a control building and works to provide foundations and on-site access improvements, dated 5 June 2013, in accordance with application ref: WF/2011/0528.
2. The appeal was recovered for the Secretary of State's determination on 22 May 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves a renewable energy development.

Inspector's recommendation

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

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Procedural Matters

4. The Secretary of State notes the Inspector's remarks at IR1-4 regarding the change of company name, the deletion of one turbine (T4) and the associated access, the submission and consultation of further environmental information and the Council's withdrawal of two of the five reasons for refusal.

Policy Considerations

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the adopted development plan comprises the saved policies of the Regional Strategy for Yorkshire and Humber (adopted 2008) (the RSS), saved policies of the North Lincolnshire Local Plan (adopted May 2003) (LP), and the Core Strategy Development Plan Document (adopted June 2011) (CS). The Secretary of State agrees with the Inspector that the saved policies of the RSS are not relevant to the consideration of the proposed development. The Secretary of State considers that the most relevant policies for this case are LP policies DS1 (in respect of adverse effects on features of acknowledged importance, DS21 (renewable energy), HE5 (setting of listed buildings) and CS policy CS6 (historic environment)
6. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("section 66 of the LBA"), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the planning practice guidance published 6 March 2014; the Overarching NPS for Energy (EN-1) and the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3). He has also taken account of other documents to which the Inspector refers at IR45-63.

Main issues

8. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR381.

Landscape Character

9. The Secretary of State notes that the landfill site is within an area to the north of Scunthorpe that is characterised as a 'Despoiled Landscape', in need of restoration (IR385), and that a main point of dispute between the appellant and the Council on landscape effects, is the relationship of the turbines to the parallel ridge of the ironstone escarpment (IR386). For the reasons given at IR388-417, the Secretary of State agrees with the Inspector that the siting and linear alignment of the turbines would respect the adjacent scarp with each turbine occupying a small area. This would not prevent the restoration of the wider landfill site for agriculture, woodland and other green space in broad accordance with the aims of Policy CS16 (IR422).
10. The Secretary of State further agrees there would be local change to landscape character and that the scale of the turbines means that, during their 25 year life they would become a dominant new landscape feature within about a 1km radius. There

would be local change to landscape character in conflict with LP Policy LC7 and LP Policy RD2 (IR422). The Secretary of State gives this some weight.

11. The Secretary of State agrees that there would be a slight sequential cumulative effect due to the extension of the area in which windfarms are seen (IR423).

Visual Amenity

12. The Secretary of State notes the Inspector's analysis at IR426 and agrees that the visual impact of T2 would be significant and that this turbine would be seen above the trees and buildings when looking south east from the centre of the Green. He further agrees that turbine T2 would not materially affect the functional use of the Green and like the Inspector he agrees that turbines T1 and T3 would be screened by the large trees around the church (IR426).
13. The Secretary of State notes that no footpaths or other recreational rights of way currently pass close to the proposed turbines and there would be no conflict with LP Policy R5. If a new right of way were to be created, he notes that a condition has been agreed, safeguarding LP Policy IG5, (IR427-428).
14. The Secretary of State agrees with the Inspector that the deletion of T4 significantly reduces the potential visual impact on the outlook from homes in Winterton, and views of the turbines from other settlements including Coleby and West Halton, (at typical distances of 900m-1km or more), would not cause the dwellings to be regarded as unsatisfactory places to live (IR434-435). However like the Inspector he agrees that this merits moderate weight in the planning balance as required by LP Policy DS21 and national policy (IR439).

Cultural Heritage

15. The Secretary of State has carefully considered the Inspector's assessment of the potential impact of the appeal scheme on the setting of the Grade II* St Etheldreda's Church, West Halton (IR440-446). He has had particular regard to the listed status of the church, its historic interest, and the extent to which the appeal proposal would alter the setting of the church (IR444). The Secretary of State agrees that turbine T2 would be a large and prominent feature in the landscape and that, while it would not be so close to the church so as to dominate it or to further diminish its limited role in the landscape, it would cause some limited harm to the setting of the church, which would be contrary to LP Policy HE5 (IR446). He agrees that Section 66 of the LBA is engaged and therefore he has given special regard to the desirability of preserving the setting of the church and its historic interest. He has also had due regard to the heritage policies at paragraphs 131, 132 and 134 of the Framework and has set out his conclusions in the balancing exercise below.
16. The Secretary of State has also carefully considered the Inspector's assessment of the potential impact of the appeal scheme on the setting of the upstanding Bronze Age burial mound on West Halton village green (IR447). He agrees that it is reasonable to assess the archaeology as being of equivalent value to a scheduled monument and that therefore paragraph 139 of the Framework is engaged. He considers that there would be some minor harm to the setting and significance of the visible upstanding archaeology (the barrow) which would conflict with LP Policy HE8 (IR452).

17. The Secretary of State concludes that the overall harm to the heritage assets is less than substantial for the purpose of paragraph 134 of the Framework. However, having applied Section 66 of the LBA, and having had regard to the judgment in the Barnwell Manor case, the Secretary of State nevertheless attaches considerable importance and weight to the desirability of preserving the setting of the Grade II* listed church. Accordingly, and also taking into account the visible archaeology and other heritage assets on the village Green as being unique in North Lincolnshire and making a substantial contribution to the communal and aesthetic significance of the heritage assets deriving from how they are experienced, the Secretary of State gives very substantial weight to the identified harms to all these heritage assets in the overall planning balance.

Noise

18. The Secretary of State has also carefully considered the effect of the appeal proposal and the noise environment for the nearest residents (IR456). He agrees with the Inspector (IR471) that although the appeal scheme would result in some loss of amenity, noise can be controlled to an acceptable level compliant with ETSU and other national policy if the condition proposed is in accord with IoA guidance.

Benefits

19. The Secretary of State agrees with the Inspector that the benefits of the development are important and that they merit considerable weight in the planning balance (IR482). The Secretary of State notes the policy considerations in relation to renewable energy and the assessments of potential energy generated by the turbines at IR473. He gives the potential renewable energy benefits of the development substantial weight.

Planning Balance

20. 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. The Secretary of State concludes that the proposal does not accord with the development plan taken as a whole. He does not agree with the Inspector's conclusions at IR495 and concludes that the adverse effects of the proposal bring it into conflict with a range of relevant policies including LP policies DS1, HE5 and CS policy CS6. He has then gone on to consider the relevant material considerations.

21. The Secretary of State gives considerable weight to the generating capacity of the proposed turbines and the environmental benefits thereby offered as a contribution to the Government's priority for the need to support the delivery of renewable and low carbon energy (IR494). He has also had regard to paragraph 98 of the Framework.

22. However, against the identified benefits, the Secretary of State also gives considerable importance and weight to the need to preserve the setting of the Grade II* listed St Etheldreda's Church, West Halton, in accordance with section 66 of the LBA. Further, he gives substantial weight to the identified minor harm to the setting and significance of the upstanding Bronze Age burial mound on West Halton village green. The identified harms to the heritage assets, having been assessed as less than substantial in accordance with paragraph 134 of the Framework, have been weighed against the public benefits of the proposal.

23. He also gives moderate weight to the harm which the appeal proposal would cause to the visual amenity at most locations within 1km and some weight to the harm caused to the landscape character of the ironstone escarpment.
24. Taken together, he considers that the harms referred to above outweigh the acknowledged environmental benefits which the appeal scheme would provide.

Conditions

25. The Secretary of State has considered the Inspector's comments at IR377-378 and his recommended conditions as set out in the Schedule of Conditions to his report (pages 105-115). The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that they overcome his reasons for dismissing the appeal.

Overall Conclusion

26. Having given careful consideration to the Inspector's recommendation the Secretary of State concludes that factors weighing against the appeal proposal outweigh those in its favour.

Formal Decision

27. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of three wind turbines with a maximum overall height of up to 127 metres; together with anemometer mast, a control building and works to provide foundations and on-site access improvements, dated 5 June 2013, in accordance with application ref: WF/2011/0528.
28. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

29. 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.
30. A copy of this letter has been sent to North Lincolnshire Council, and a notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Richard Watson

Authorised by the Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRTPI MRICS

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

Date: 26 August 2014

Town and Country Planning Act 1990

North Lincolnshire Council

Appeal by

FCC Environment (UK) Ltd

Inquiry held on 3-6 and 10-13 June 2014

Land at Winterton Landfill Site, off Coleby Road, West Halton, Winterton DN15 9AP

File Ref: APP/Y2003/A/13/2207858

File Ref: APP/Y2003/A13/2207858
Land at Winterton Landfill Site, off Coleby Road, West Halton, Winterton DN15 9AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by FCC Environment (UK) Ltd against the decision of North Lincolnshire Council.
- The application Ref WF/2011/0528, dated 6 May 2011, was refused by notice dated 5 June 2013.
- The development proposed is the erection of 3 wind turbines and associated infrastructure.

Summary of Recommendation: It is recommended that the appeal be allowed.

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Abbreviations used in this Report

AM	Amplitude Modulation
AOD	Above Ordnance Datum
CD	Core Document
CO ₂	Carbon Dioxide
CS	North Lincolnshire Core Strategy
dB	Decibel
DECC	Department of Energy and Climate Change
DL	Decision Letter Paragraph
DPD	Development Plan Document
EAM	Excess Amplitude Modulation
EH	English Heritage
EIA	Environmental Impact Assessment
EN-1	National Policy Statement for Energy
EN-3	National Policy Statement for Renewable Energy
ES	Environmental Statement
ETSU	The assessment and rating of noise from wind farms (ETSU-R-97)
EU	European Union
FEI	Further Environmental Information
Framework	National Planning Policy Framework
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GW	Gigawatt
ha	hectare
IoA	Institute of Acoustics
IR	Inspector's Report
km	Kilometre
LCA	Landscape Character Area
LDF	Local Development Framework
LP	North Lincolnshire Local Plan
LPA	Local Planning Authority
LVIA	Landscape and Visual Impact Assessment
m	Metre
MW	Megawatt
NE	Natural England
NLC	North Lincolnshire Council
NLLC	North Lincolnshire Landscape Character Assessment SPG
NO _x	Nitrous Oxide
PPG	Planning Practice Guidance (March 2014)
NPS	National Policy Statement
OAM	Other Amplitude Modulation
PPS	Planning Policy Statement
RLCE	Renewable and Low Carbon Energy
RSS	Regional Spatial Strategy
RUK	Renewable UK
SAM	Scheduled Ancient Monument
SEI	Supplementary Environmental Information
SoS	The Secretary of State for Communities and Local Government
SoCG	Statement of Common Ground
SNH	Scottish Natural Heritage
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
TSHA	The Setting of Heritage Assets – English Heritage
TWh	Terrawatt Hour
VP	Viewpoint (landscape)
RE SPD	Renewable Energy Supplementary Planning Document
XIC	Evidence in Chief
XX	Cross examination
WAIT	Winterton Against Inappropriate Turbines
WE SPG	Wind Energy Supplementary Planning Guidance
WHO	World Health Organisation
ZTV	Zone of Theoretical Visibility

PROCEDURAL MATTERS

1. The planning application was originally submitted in the name of the Waste Recycling Group. However the company has since changed its name to FCC Environment (UK) Ltd. The proposal has been described as the Ironstone Quarry Windfarm.
2. The application was originally described as: *'The erection of four wind turbines and associated infrastructure including a temporary access from Top Road'*. The application was accompanied by an Environmental Statement. However before the application was determined the Appellant agreed to delete one turbine (T4) and the associated access from Top Road. Turbine T4 would have been on higher ground closer to Winterton. The Appellant submitted Further Environmental Information in that regard which was subject to appropriate consultation.
3. After the appeal was lodged the Appellant submitted an updated noise assessment as additional environmental information and carried out further consultation in relation to that information.
4. The Council officers recommended that planning permission be granted. However that recommendation was not accepted by the Committee. Permission was refused for 5 reasons. The first reason related to possible impacts of the development on hazardous waste operations at the landfill site. However the Council had commissioned an independent assessment of a requested report on the hazards and that reason was subsequently withdrawn subject to the application of a recommended planning condition to require a further risk assessment. The domestic waste had previously attracted large numbers of gulls to the location. A reason relating to an adverse effect on ecology was also withdrawn following the mothballing of domestic landfill at the appeal site which ceased to attract the gulls. The 3 remaining reasons for refusal concern the effects of the development on: heritage assets, residential amenity (in respect of noise or disturbance); and landscape/visual amenity.

THE SITE AND SURROUNDINGS

5. Key Landscape Features are highlighted at Figure JM1 in the appendices to Mr Mason's appendices. The appeal site is part of the current Winterton landfill site which occupies land in open countryside against a low west facing escarpment that has been subject to quarrying for ironstone and is described as the ironstone escarpment. The ridge of the ironstone escarpment is about 400-500m east of the proposed turbine locations. The small town of Winterton stands on the high ground to the east of the escarpment.
6. To the west of the landfill site is open countryside including the small villages of Coleby (due west), West Halton (north west) and Thealby (south west). Beyond those villages the land rises gradually as a dip slope until descending steeply at a west facing escarpment known as The Cliff, beyond which is lower ground bordering the River Trent.
7. To the north of the appeal site the shallow valley between the escarpments descends to lower ground bordering Humber estuary and which accommodates the villages of Winteringham and Whitton.

8. To the east of Winterton the land descends gradually into the broad Vale of Ancholme before rising to the escarpment of the Lincolnshire Wolds. The northern end of that Vale close to the Humber is dominated by the industrial complex of the South Ferriby cement works.
9. The landfill site occupies the site of one of several ironstone quarries that were cut into the escarpment in order to supply the Scunthorpe steelworks about 6km to the south. The landfill site has been used both for domestic waste and for hazardous waste. There is an approved restoration scheme which would see the land restored to an approximation of its original profile and used for woodland, agriculture and wildlife meadows with some public access by footpath. The restoration scheme has been implemented in part at the northern end of the land fill site to include woodland and meadow planting. However a reduction in the supply of domestic landfill with the ending of contracts has caused that process to be mothballed. This has left a large unfilled void in the central part of the landfill site and another void at its southern end. Hazardous waste will continue to be deposited between these 2 voids until 2016. Unless a new source of landfill material is identified, it is likely that the restoration scheme will need to be modified to create a different land profile from that previously approved, whether or not the turbines are developed. This could still create opportunities for woodland, agriculture, wildlife habitats and recreation, possibly including water, and may result in a more varied and still attractive landscape, but with different ground levels to those which existed prior to the quarrying.
10. Methane gas is collected from the domestic landfill. Leachate is also collected and is either treated at a plant in the north west corner of the site or is transported by a tanker to another treatment site. The on-site treatment plant includes large circular structures to the west of the site entrance from Coleby Road that are not shown on the site plan.
11. The escarpment continues to the south of the site where there is another active landfill site in a former ironstone quarry adjacent to the village of Roxby.

Landscape Character

12. The appeal site lies within the 'Northern Lincolnshire Edge with Coversands National Character Area 45' as defined by Natural England¹. The area was assessed in more detail in the North Lincolnshire Landscape Character Assessment and Guidelines SPG² (1999) (the NLLC SPG). In the latter assessment the Lincolnshire Edge was described as the most discontinuous scenery of any landscape character area in North Lincolnshire and one which has become fragmented and impoverished through agricultural and industrial human exploitation. It is divided into sub areas in the NLLC SPG as shown at Figure 8.2 in the ES Volume 3.
13. In the NLLC SPG the appeal site lies within a sub-area defined as a '*Despoiled Landscape - North East Scunthorpe and Lincoln Edge*'³. This extends in a

¹ LPA CD2

² LPA CD1

³ At page 79 of the NLLC SPG the area is erroneously described as The Lincolnshire Edge but only forms a small part of that National Character Area.

narrow tongue north-south along the escarpment. It widens close to Scunthorpe from where there are views southwards of heavy industry and residential tower blocks. It includes former ironstone workings along the escarpment together with some restored land and also waterbodies known as gulleys. The recommended strategy for this area is aimed at landscape creation and conservation of the developing ecological resource.

14. The appeal site is at the northern end of the despoiled landscape where it closely adjoins other character areas. The land to the west is defined as '*Elevated Wooded Farmland*' where the recommended strategy is mainly to conserve and enhance existing vegetation cover and village character.
15. To the east of the appeal site above the scarp is '*Elevated Open Farmland*'. This is noted as having experienced losses of trees, hedges and woodland, mainly due to agricultural practices. The recommended strategy seeks to restore these traditional elements.
16. To the north is '*Flat Drained Farmland*' which in a different character area but has also been degraded by intensive farming and where the '*unity of the simple, remote, flat landscape is influenced by the dominant transmission lines to the south*'. The power lines pass east-west as 2 parallel lines just north of the appeal site. They divide to pass on either side of Coleby Road between the appeal site and West Halton. They currently dominate views of that area and continue up and over the scarp slopes to the east and west. At the north end of the Vale of Ancholme the South Ferriby cement works are another intrusive industrial feature in this area. The recommended landscape strategy for this area is again to restore and enhance landscape elements that have been lost due to the intensive agriculture.
17. A Landscape and Visual Impact Assessment (LVIA) was included in the submitted Environmental Statement. It includes plans showing the Zones of Theoretical Visibility and a selection of Viewpoints in the surrounding area. In the original LVIA, wireframes and photomontages indicate how 4 turbines might appear. When the number of turbines was reduced from 4 to 3 the ES was supplemented by Further Environmental Information and images. The ES and FEI include cumulative assessments with existing and proposed windfarms. These include a windfarm of 8 large turbines about 3-4km to the south of the appeal site at Bagmoor which is partly within the same despoiled landscape character area and is close to the same ironstone escarpment. The Council has not disputed the choice of viewpoints. The images are useful in assessing landscape and visual impacts. However as they are taken from static positions they can only give a partial impression of the landscape and visual impacts. My assessment does not rely on these visualisations but has been supplemented by site visits and journeys through the area.

Landscape Sensitivity

18. The NLLC SPG predates the more recent wind energy development in North Lincolnshire. It does not include specific references or guidelines for such development. However a regional study was commissioned to support the RSS as part of the 'Planning for Renewable Energy Targets in Yorkshire and Humber'

(2004)⁴ AEA Technology (the AEAT study). The Study at pages 86-88 included an assessment by landscape architects (Gillespies) of the sensitivity of the Lincolnshire Edge National Character Area 45 to wind energy development. This assessed the overall sensitivity of this area as **medium** but it includes a number of qualifying statements as to locations which would be more or less favoured for wind development.

Landscape Capacity

19. More recently in April 2011 a further report was commissioned from AECOM by Local Government Yorkshire and Humber entitled 'Low carbon and renewable energy capacity in Yorkshire and Humber'⁵ (the AECOM Study). The study adopted the landscape methodology of the AEAT study and includes an Energy Opportunities Plan for North Lincolnshire (fig 85 on page 182). This takes account of a number of listed constraints to identify where commercial wind energy may be practically viable. The appeal site lies within an area where wind energy would be practically viable. The local area is shown at a larger scale as Figure JM6 in the appendices to Mr Mason's landscape evidence for the Appellant. However the study provides that all planning applications should be assessed on a case by case basis. Having regard to landscape and other constraints (including an assumed 10km separation distance between wind farms that has never been a local or national policy requirement) the Study identifies for North Lincolnshire a current capacity for commercial wind energy of **105MW** (including unimplemented permissions at that date in 2011 - which would not have included Flixborough Grange) and estimates a potential resource of **188MW**.

Historic Environment

20. There is a Grade II* listed church at West Halton about 1.1km to the north west of the proposed site of Turbine T2 (the northernmost turbine). The church is located on the site of a 7th century Saxon church. That structure was replaced first by a medieval building that was damaged by a fire in 1696 before being rebuilt and then further altered during a 19th century restoration. The small church has a square tower and is surrounded by large mature trees including sycamores and evergreen holm oaks. There is a village green and recreation ground north of the church on which is located a grassed mound. Until recently that mound was thought to be either the site of a former post mill or a civil war lookout. However archaeological investigation by Sheffield University has identified it as a Bronze Age barrow in which case it is one of very few upstanding barrows in North Lincolnshire. The investigation also identified other buried archaeology on the green including Bronze Age remains and the foundations of a medieval manor house. The Council is seeking scheduled ancient monument status for the archaeology. The Council claims that the turbines would affect the setting and heritage significance of the church and of the archaeological remains. There are other archaeological remains in the wider area around the village and Coleby but these do not include upstanding barrows and no harm to their setting has been alleged by the Council.

⁴ CD3.1

⁵ CD3.2

21. Viewpoint 15 in the submitted Further Environmental Information Figure 8.7c(ii) was much discussed at the Inquiry. It indicates how the turbines may appear in a view from a central part of the village green. The photograph was taken in early spring with the trees partially in leaf. The church tower is at the right hand end of the view, partially concealed by the trees. It is almost fully screened in mid summer. The upstanding barrow is out of view to the right of the church and the other buried archaeology is not visible. In this view turbine T2 would be visible beyond a late 20th century house. Turbines T1 and T3 would be more distant and screened by the trees around the church. The power lines and pylons are more prominent in this view than indicated by the photo-montage. They also appear in other views from the green including in views where they are directly behind the barrow. Little of the countryside beyond the village can be seen from the green. However there is a distant view south from the road which is behind the viewer in this image and which includes a large wind turbine about 4-5km to the south at Bagmoor. The village hall and most houses around the green are modern and there is no conservation area.
22. There is also a Grade II* listed building at Coleby (Coleby Hall) and a Grade I listed mansion at Normanby Hall. However at the request of English Heritage these were further assessed during the consideration of the application and the Council does not now claim any adverse effect on their setting or significance.

Proximity to Dwellings

23. The nearest dwellings to the site of the turbines are to the south east on Thealby Road (New Cliff Farm and Windy Ridge Barn) and to the east on Top Road (The Observatory). The nearest settlements are Coleby (west), West Halton (north west), Winterton (east), and Thealby (south west).

THE PROPOSAL

24. The proposal would site 3 turbines in an approximately straight north-south line along the western lower edge of the landfill site. The layout is shown on Figure 1.2 of the Further Environmental Information (FEI). The turbines would all be at a similar ground level of about 10m AOD. They would be in a parallel line to the escarpment which here rises to about 40m AOD such that the relative height would be 30m. The associated infrastructure would include an anemometer mast, a control building and works to provide foundations and on-site access improvements.
25. The 3-bladed turbines would each be up to 127m in height to blade tip and would have a combined generating capacity of 7.5 MW. The proposed operational life of the turbines is 25 years.
26. In the Further Environmental Information, Figure 8.7f(ii) was taken from Viewpoint 19 and shows how the 3 turbines would appear as seen looking east from the village of Coleby. The restored part of the landfill site can be seen between turbines T2 and T1. To the right (south) of T1 is the current landfill site. The rising land behind the turbines is the ironstone escarpment. The power lines are just visible in the image to the left (north) of turbine T2 but are more prominent when seen on site.

27. Viewpoint 22 Fig 8.7(h)(i) shows how the 3 turbines would appear above the ironstone escarpment in views from the east. This is taken from a footpath to the north of Winterton.
28. Viewpoint 9 Figure 8.7a(ii) is taken from the Viking Way Footpath about 7.5km east of the appeal site. It shows how the turbines would appear on the horizon. The power lines are also visible to the right (north) of the turbines. By turning to the left it would be possible to see the Bagmoor windfarm which is already similarly visible above the ironstone escarpment.
29. At Figure 8.3 of the FEI minor changes have been indicated to the approved site restoration scheme in the vicinity of the turbines. These would be necessary to accord with Natural England recommendations concerning the separation of turbines from features such as trees and hedges that are attractive to some bat species.

PLANNING POLICY

The Development Plan

30. For the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the adopted development plan is made up of the following elements:
 - Saved policies of the Regional Strategy for Yorkshire and Humber (adopted May 2008) (the RSS);
 - Saved policies of the North Lincolnshire Local Plan⁶ (adopted May 2003) (LP)
 - The Core Strategy Development Plan Document⁷ (adopted June 2011) (CS).
31. Those policies of the Regional Strategy for Yorkshire and Humber which were not revoked pursuant to the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013 are not relevant to the consideration of the proposed development. RSS Policy ENV10 was referred to in the first reason for refusal but is not a saved policy.
32. LP Policy DS21 Renewable Energy is the most specifically relevant LP Policy. Amongst other things it will permit proposals for the generation of energy from renewable resources provided that '*(i) any detrimental effect on features and interests of acknowledged importance, including local character and amenity, is outweighed by environmental benefits*'. There is a tension between this policy and other more general LP and CS policies below that apply to all types of development but which fail to explicitly balance any detrimental effects with any benefits of development.
33. LP Policy DS1 General Requirements is a wide ranging policy which amongst other things seeks high quality design, no unacceptable loss of amenity, and no adverse effect on features of acknowledged importance.
34. LP Policy LC7 Landscape Protection will not permit development which does not respect the character of the local landscape. In the open countryside,

⁶ CD1.1 unless otherwise stated

⁷ CD1.2 unless otherwise stated

special attention will be given to the protection of scenic quality and the distinctive local character of the landscape.

35. LP Policy HE5⁸ Development affecting Listed Buildings provides amongst other things that the Council will encourage the retention and restoration of the historic setting of listed buildings and that proposals which damage the setting of a listed building will be resisted.
36. LP Policy HE8 Ancient Monuments will not permit development which would result in an adverse effect on Scheduled Ancient Monuments or other nationally important monuments or their settings.
37. LP Policy RD2 Development in the Open Countryside seeks to strictly control such development by specifying a restricted list of acceptable developments and by setting out further criteria with which they must comply. The list includes development '*(viii) essential for the provision of utility services*' which is potentially relevant to wind energy. The criteria amongst other things seek compliance with other plan policies and to avoid detriment to residential amenity and to the character and appearance of the countryside and nearby settlements.
38. LP Policy R5⁹ Recreational Paths Network amongst other things will not permit development which would prejudice access onto and through the recreational path network unless specific arrangements are made for suitable alternative linkages. There are currently no public rights of way on the appeal site however LP Policy IG5¹⁰ Footpaths and Cycleways provides that: '*The former North Lindsey Light railway Line will be safeguarded for the construction of a linear footpath, bridleway and cycleway*'. The safeguarded route¹¹ is shown on the Proposals Map. It passes through the appeal site and beneath the proposed turbine blades. Whilst the safeguarding policy remains in effect the Council has not made any progress towards adopting a policy or a scheme to implement the right of way. At the Inquiry the Appellant and the Council proposed a planning condition to create a permissive route using an existing track on a different alignment that avoids the turbine locations.
39. CS Policy CS18 Sustainable Resource and Climate Change provides that the Council will actively promote development that utilises natural resources as efficiently and sustainably as possible, to include: '*4. Meeting required national reductions of predicted CO₂ emissions by at least 34% in 2020 and 80% in 2050*' by measures which include: '*11. Supporting renewable sources of energy in appropriate locations, where possible, ...*'.
40. CS Policy CS6 Historic Environment generally seeks to protect, conserve and enhance the historic environment and the character and setting of areas of acknowledged importance including listed buildings, scheduled ancient monuments and archaeological remains.

⁸ Document 27

⁹ Document 25

¹⁰ Document 6

¹¹ Document 7

41. CS Policy CS16¹² North Lincolnshire's Landscape, Greenspace and Waterscape seeks to protect, enhance and support a diverse and multi-functional network of landscape, greenspace and waterscape by a range of measures including addressing local deficiencies and improving the quality and quantity of accessible space.

Local Guidance

42. The North Lincolnshire Landscape Character Assessment and Guidelines Supplementary Planning Guidance 5b (1999)¹³ (the NLLC SPG) defines landscape character areas and makes recommendations for the management of the landscape.
43. Wind Energy Development Supplementary Planning Guidance (2005)¹⁴ (the Wind Energy SPG) includes guidance on wind energy development.
44. Planning for Renewable Energy Development Supplementary Planning Document (2011)¹⁵ (the RE SPD) includes guidance on a wider range of renewable energy development. It predates the Framework. The SPD quotes LP Policy DS21 and CS Policy CS18 but not other development plan policies. The SPD text includes policies that are broadly supportive of renewable energy. However paragraph 1.6 of the Introduction suggests that there has been an over-concentration of proposals for renewable energy in North Lincolnshire, placing a disproportionate burden on the area and that an imbalance needs to be addressed by ensuring that other authorities strive to meet their targets before any further renewable energy development is accepted, in particular on-shore wind.

National Policy, Guidance and Law

45. The reasons for refusal claim that the development would contravene provisions in the National Planning Policy Framework (the Framework). This is disputed by the Appellant. It sets out Government planning policy and replaces a number of previous policy statements. Amongst other things it includes policies on climate change, the natural and historic environment, design, and the use of planning conditions and it sets out a presumption in favour of sustainable development. Whilst it acknowledges the S38(6) duty in relation to the development plan, it is capable of being a material consideration. In that regard paragraph 215 provides that: *'due weight should be given to relevant policies in existing plans according to the degree of consistency with the Framework (the closer policies in the plan to the policies in the Framework, the greater the weight that may be given)'*.
46. Paragraph 14 of the Framework provides that where the development plan is out of date planning permission should be granted unless:
- *'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole, or*

¹² Document 26

¹³ CD3.4

¹⁴ CD3.5

¹⁵ CD3.6

- *specific policies in this Framework indicate development should be restricted*'.

47. Specific policies in the Framework of relevance to renewable energy are set out in Section 10. In particular paragraph 97 includes the provision that local planning authorities should :

'... design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative and landscape impacts'.

48. Paragraph 98 includes the provision that when determining planning applications local planning authorities should:

'...approve the application [unless material considerations indicate otherwise] if its impacts are or can be made acceptable.'

Framework Sections 11 and 12 respectively set out national planning policy on conserving and enhancing the natural and historic environment.

49. Other material considerations include the [National Policy Statement for Energy \(EN-1\)](#)¹⁶ and the [National Policy Statement for Renewable Energy \(EN-3\)](#)¹⁷. Ministerial written statements on renewable energy were published on 6 June 2013 both by the Secretary of State for Energy and Climate Change and separately but simultaneously by the Secretary of State for Communities and Local Government. New national guidance for renewable and low carbon energy was published in July 2013 and then mildly revised and incorporated in [Planning Practice Guidance \(PPG\)](#) published in March 2014. That latter guidance also includes a range of other relevant topics. However it did not replace the [PPS5 Planning for the Historic Environment Practice Guide](#)¹⁸ which currently remains material to the heritage considerations.

50. The PPG is guidance which amplifies, but does not change, national policy. However whereas paragraph 97 of the Framework explains that all communities have a responsibility to contribute to energy generation from renewable or low carbon sources, the Renewable Energy section of the PPG confirms that this does not mean that the need for renewable energy *'automatically'* overrides environmental protections and the planning concerns of local communities. The document also includes specific guidance on the assessment of cumulative landscape and visual impacts from wind turbines.

51. The PPG also reaffirms that the document: ['The assessment and rating of noise from wind farms' \(ETSU-R-97\)](#) (ETSU)¹⁹ should be used when assessing and rating noise from wind energy developments. The Department of Energy and Climate Change also endorses the ['Good Practice Guide on the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise'](#)²⁰ that was published in 2013 by the Institute of Acoustics (IoA).

¹⁶ CD6.3

¹⁷ CD6.4

¹⁸ CD9.4

¹⁹ CD8.1

²⁰ CD8.2

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52. Also of importance to consideration of the benefits of the development are national energy documents including the UK Renewable Energy Strategy (2009)²¹, the UK Renewable Energy Roadmap (2011)²² and the updates to that document in 2012²³ and 2013²⁴. The UK Renewable Energy Roadmap Update 2013 emphasised the Coalition Government's commitment to the deployment of renewable energy to meet the target to deliver 15% of all energy from renewable sources by 2020.
53. The UK Renewable Energy Strategy 2009 had estimated that 30% of electricity would need to come from renewable energy to meet the overall 2020 target of 15% renewable energy as a proportion of all energy consumption. The achievement of the overall 15% target also depends on the contribution of renewable energy in the other sectors which are not electrically powered, such as heat. Renewable electricity is also likely to be needed in the transport sector to power trains and cars, including taxis. 30% renewable electricity is neither a target nor a ceiling. Thus whilst paragraph 27 of the 2013 update predicts that 32% of electricity consumption will be renewable by 2020, the update does not confirm that the other sectors will also contribute a sufficient share to achieve the overall 15% target.
54. Figure 5 of the update indicates that from 2008 to 2012 there was significant growth in renewable electricity but much more modest growth in renewable heat and a decline in renewable transport. Whereas the total energy generated from renewable sources was 64TWh, to reach the 2020 target of 15% would require 216-225TWh to be generated at that time. Even if the interim targets for preceding years in that Figure are met (which is not assured), that would still require a combined increase from all sectors of more than 70TWh in the last 2 years (2018-2020). That increase would represent more than the total renewable generation in 2012 which has come from renewable capacity that has been developed over a much longer period. In other words the rate of additional provision would need to increase sharply towards 2020 if the 15% target is to be met.
55. The UK Climate Change Act 2008 commits the UK to an 80% carbon reduction by 2050 (compared to 1990). The EU Commission proposes a Europe-wide 40% carbon reduction target for 2030 towards which renewable energy would contribute. This is to be considered by EU leaders in Oct 2014.
56. In the 2013 Update the anticipated contribution of onshore wind to the generation of renewable electricity was based on the assumption (illustrated in Fig. 16 p48) that the rate of success of planning proposals will be the same as in the past (also described as the historical attrition rate). This was qualified in that paragraph 136 indicates that: *"... future attrition rates may be affected by the Government response to the onshore wind call for evidence, published in June 2013 and the new Planning Practice Guidance published in July"*. The paragraph concluded that: *"... it is likely that they will affect individual planning decisions in England and may impact on the overall deployment of onshore wind"*

²¹ CD6.2

²² CD6.5

²³ CD6.6

²⁴ CD6.7

in England and Wales". It was also noted that the majority of new capacity is in Scotland and that consent rates had fallen in both England and Scotland in 2013. Paragraph 138 advised that: "... *growth would slow after 2015 due to a limit on the number of sites available, growth of competing technologies and cumulative planning impacts*".

57. The estimate in 2009 was that about 13GW of capacity may be provided by onshore wind. The capacity that has so far been installed or consented (but not all built) exceeds that figure, prompting Lord Deben²⁵ and others to conclude that no more onshore wind is needed to meet the 2020 target. However, the Strategy did not set an individual national target for onshore wind and the contribution of the other sectors to the overall renewable energy target is less advanced. There thus remains a risk of a shortfall against the 2020 target.
58. If additional onshore wind is needed to make up a shortfall in other areas or to contribute towards the likely continuing need for low carbon energy after 2020, consideration should be given to the time lag between the inception of a scheme and the delivery of installed capacity. The subject scheme for this appeal was initiated in 2009 and, if permitted, would be unlikely to deliver electricity until 2016, 7 years later. This suggests a risk that new onshore proposals that are not already in the planning system may not contribute to meeting the 2020 target.

Statute

59. A statutory duty separate from national policy is that S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides at subsection (1): "*In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*"

The Court of Appeal²⁶ has recently interpreted this to mean that considerable weight and importance should be accorded to preserving the setting of listed buildings.

60. Section 11 of the Countryside Act 1968 provides that:

"In the exercise of their functions relating to land under any enactment every Minister, government department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside."

This duty is to be distinguished from the above S66 duty in that it does not require 'special' regard and because it refers to 'conserving' and not 'preserving'.

Other Guidance

61. Both parties have referred to guidance produced by Scottish Natural Heritage as Siting and Designing Windfarms in the Landscape. Version 1 (2009)²⁷ has recently been replaced by Version 2 (May 2014)²⁸.

²⁵ John Gummer, Chairman of the Committee on Climate Change

²⁶ Barnwell Manor

62. English Heritage guidance referred to in the evidence includes: Wind Energy and the Historic Environment (2005)²⁹, Conservation Principles, Policies and Guidance (2008)³⁰ and The Setting of Heritage Assets (2011)³¹.
63. Additional documents have been referred to by the parties and most are included in their respective sets of core documents.

PLANNING HISTORY

64. There is an existing windfarm known as Bagmoor about 3-4km south of the appeal site on the Normanby Hall Estate. It lies partially within the same Despoiled Landscape Character Area and partly within the Elevated Wooded Farmland area. The windfarm stands to the north west of the Roxby landfill site, close to Scunthorpe and the Lincolnshire Edge escarpment, and within the same valley as the appeal site. That larger existing 8 turbine scheme was permitted by the Council in 2006. The turbines are of similar scale and the Bagmoor turbines rise above the scarp and can be seen in distant views from the east as well as in local views from all directions. The two windfarms would appear in some of the same local views as well as in sequential views.
65. There is an as yet unimplemented permission granted on appeal for a further 7 Turbine windfarm at Flixborough Grange on the low ground north of Flixborough and close to the River Trent (Appeal Ref APP/Y2003/A/11/2156713)³². That followed an earlier appeal on the same site which had been dismissed.
66. There are other existing and approved windfarms in the wider area including large developments to the west of Scunthorpe at Keadby Grange and Tween Bridge, which are partly within neighbouring local authority areas, and also to the north of the Humber.
67. Since the Inquiry the Secretary of State has dismissed an appeal concerning a 9 turbine windfarm at Saxby Wold on higher ground about 10km east of the appeal site³³.

OTHER AGREED FACTS

68. A Statement of Common Ground was drafted by the Appellant and submitted before the Inquiry but was only agreed by the Council (with amendments) on the last day of the inquiry³⁴. Amongst other things it includes a list of matters that are not disputed.

²⁷ CD7.9

²⁸ Document 3

²⁹ CD9.1

³⁰ CD9.2

³¹ CD9.3

³² CD5.2

³³ See Mason Figure JM1 for location

³⁴ Document 33

THE CASE FOR NORTH LINCOLNSHIRE COUNCIL

[These submissions are edited from the Council's Closing Statement with some additions from the evidence to the Inquiry]

Main Issues

69. The LPA considers that the main issues are:

- (a) The contribution that the development can make to national objectives of securing renewable energy resources;
- (b) Whether the development is harmful to the issue of visual amenity and landscape character;
- (c) Whether the development would be harmful to the setting and significance of heritage assets;
- (d) Whether the development would cause an unacceptable noise impact;
- (e) Whether the proposal conflicts with the Statutory Development Plan and other relevant policy.

(a) Renewable Energy Objectives

70. A consistent feature of energy policy is the need to bring forward renewable resources. The National Policy Statement for Energy (EN-1)³⁵ at 3.4.1/26 states:

"The UK is committed to sourcing 15% of its total energy (across the sectors of transport, electricity and heat) from renewable resources by 2020 and the projects need to continue to come forward urgently to ensure that we meet this target."

71. The NPS recognises³⁶ that the UK has substantial renewable energy resources and identifies that future large-scale renewable energy generation is likely to come from a number of sources, one of which is onshore wind.

72. The LPA recognises and accepts that a benefit of the appeal proposal relates to the contribution it can make to the development of renewable energy resources and the reduction of CO₂ emissions.

73. The correct approach is reflected in the very recent decision of the SoS in the decision letter dated 27 May 2014 in respect of an appeal site at East Heselton, Ryedale, North Yorkshire³⁷. The IR at Paragraphs 22 - 28 identified the up-to-date national policy statements in respect of energy. Attention was drawn to:

- EU Directive 2009/28/EC;
- Energy Review 2006;
- Climate Change Act 2008;

³⁵ CD 6.3.

³⁶ Paragraph 3.4.3.

³⁷ NLC LPA 1.

- 2009 UK Renewable Energy Strategy;
- UK Low Carbon Transition Plan;
- UK Renewable Energy Roadmap;
- Digest of UK Energy Statistics;
- Roadmap 2013 Updated;
- The Framework;
- Overarching NPS for Energy (EN-1);
- Renewable Energy Infrastructure NPS (EN-3);
- Ministerial Statements 6 June 2013;
- Planning Practice Guidance for Renewable Energy, July 2013.

74. The IR at 229 stated:

"The proposed development of the appeal site conforms with the aims of LPS policy SP18 and the likely contribution it would make to renewable energy production and CO₂ savings attracts very significant weight."

75. The analysis by Inspector Paul Jackson was a succinct précis of the relevant Government policy on energy, especially relating to the issue of renewables. The SoS nevertheless rejected the Inspector's recommendation that planning permission be granted for the development. The SoS expressly stated that he had taken into account the material considerations consisting of the policy documents referred to in IR 22 - 28³⁸. It continued:

"The SoS has also taken into account the Planning Practice Guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); and Ministerial Written Statements on renewable energy published in June 2013 by the SoS for Energy and Climate Change and the SoS for Communities and Local Government."

76. The overall analysis by the SoS was set out at Paragraph 11. This stated:

"The SoS agrees with the Inspector's assessment of the renewable energy, economic and other benefits of the scheme at IR 228 - 230. He agrees that there is no dispute that the proposal would make a very significant and useful contribution to renewable energy in Ryedale. He also agrees that the contribution it would make to renewable energy production and CO₂ savings attract very significant weight in favour of the proposal (IR 229)."

77. The SoS' conclusion in this appeal case in relation to this issue should be consistent with that expressed above: the contribution it would make to renewable energy production and CO₂ savings attracts very significant weight in favour of the proposal³⁹.

³⁸ Paragraph 9.

³⁹ DS Xx

78. Embedded within national policy on renewable development is the identification of other countervailing considerations that may militate against the grant of planning permission for such development. For example, the UK Renewable Energy Strategy of July 2009⁴⁰ identifies the central role that the planning system has in delivering the infrastructure needed to reduce carbon emissions and ensure continued security of energy supply. It continues:

"Equally the planning system plays a vital role in safeguarding our landscape and natural heritage and allowing communities and individuals the opportunity to shape where they live and work."

79. Specifically, EN-1⁴¹ at Sections 5.8 and 5.9 deals with heritage and landscape/visual matters as components in making a balanced decision.

80. The exhortation to increase the supply of renewable energy developments goes hand in hand with the countervailing balance of the weight to be attributed to disbenefits associated with the development; principally, in relation to visual amenity, landscape character, impact upon heritage assets and general amenity. The UK Renewable Energy Roadmap Update 2013⁴² in the Ministerial Foreword at Page 5 states:

"We recognise that some individuals and communities are concerned about the siting of particular renewable energy projects. An important part of the Update concerns our plans for community energy and the work we are doing to strengthen engagement, enhance local benefits, and promote community ownership. We are clear that if renewable energy is to be truly successful it must be truly sustainable, not only economically and environmentally, but also socially."

81. This is recognition that whilst the technology of wind turbines is sustainable, the developments themselves may not represent "sustainable development" as that term is understood and meant to be understood in the Framework.

82. The Appellant maintains that their proposal for wind energy development is inherently sustainable. Indeed, their case was put⁴³ that all forms of renewable development irrespective of their location remain sustainable forms of development to which the presumption in favour of development applies. They therefore proceed to Paragraph 14 of the Framework and consider that the test set out for decision taking needs to be applied. Paragraph 14 of the Framework states:

"At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision-taking this means:

Approving development proposals that accord with the development plan without delay; and

⁴⁰ CD 6.2 at p.72.

⁴¹ CD 6.3.

⁴² CD 6.7.

⁴³ to NL in Xx

Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole; or

specific policies in this Framework indicate development should be restricted."

83. The Appellant therefore maintains that it is only if adverse impacts would "significantly and demonstrably outweigh the benefits" should planning permission be refused.
84. The LPA does not regard that as a correct interpretation of national policy. The LPA accepts that renewable energy technology is sustainable. However, whether a particular development for a particular energy technology development is sustainable is to be determined by reference to the policies contained in the Framework. Before determining whether the presumption applies it is necessary to determine the extent to which the development proposal would be sustainable development. There are three dimensions to sustainable development: economic, social and environmental roles. These require a judgment to be made on a case-by-case basis as to whether the development can be said to contribute to each of the three roles. So, for example, the social role as part of the three dimensions to sustainable development has an expectation of support for "strong, vibrant and healthy communities."
85. If a particular development, whether it involves sustainable technology or otherwise, was positively harmful to the role of supporting a strong, vibrant and healthy community it would be, by definition, unsustainable. The technology itself is neutral on whether the three roles making up sustainable development are achieved. It is necessary to make a more sophisticated analysis before concluding that any particular development, whether renewable or otherwise, is capable of being considered sustainable. That is clear from Paragraphs 8 and 9 of the Framework. These state:

"These roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people in communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.

Pursuing sustainable development involves seeking positive improvements in the quality of the build, natural and historic environment, as well in people's quality of life, including (but not limited to):

- *making it easier for jobs to be created in cities, towns and villages;*
- *moving from a net loss of biodiversity to achieving net gains for nature;*
- *replacing poor designs with better design;*

- *improving the conditions in which people live, work, travel and take leisure; and*
 - *widening the choice of high quality homes."*
86. Measured against those issues the development, in the submission of the LPA, fails to meet the roles that would determine whether it should be regarded as sustainable development. This is because:
- (a) The development proposals will have a detrimental impact on health and wellbeing as a consequence of noise;
 - (b) It would cause harm rather than protection or enhancement to the natural environment because of the impacts upon visual amenity and landscape character;
 - (c) The development would be harmful to the setting and significance of heritage assets at West Halton.
87. The LPA approach is consistent with the HC decision of ***William Davies Ltd v. SoS for Communities and Local Government*** [2013] EWHC 3058 (Admin)⁴⁴. Mrs Justice Lang at Paragraph 37 stated:

"In my judgment, the Inspector and the SoS directed themselves correctly by asking the question whether the proposed development was 'sustainable development'. At the Inquiry the Claimants did not dissent from the Inspector's analysis that the fourth main issue was 'Whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply' (Paragraph 317). In their written submissions to the Inspector, the Claimants expressly referred to this question. I accept Mr Maurici's submission that Paragraph 14 of the Framework only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of Framework if the presumption in favour of development in Paragraph 14 applied equally to sustainable and non-sustainable development."
[emphasis added]

(b) Visual Amenity and Landscape Character

88. The issue is not whether harm to landscape character and visual amenity is occasioned, but the extent of the harm. The Appellant's landscape witness (JM) acknowledged that there would be harm to visual amenity and landscape character. That was qualified by reference to "local" harm that he further refined to within an area of a radius of 5 km. He recognised that the effects in respect of both visual amenity and landscape character were "significant"⁴⁵.

Planning Application Process

89. The Council's landscape witness (IG) was involved in the discussions surrounding the development proposal. Initially it consisted of four turbines, one of which was to be located in an elevated position. IG's Summary of Advice⁴⁶ states:

⁴⁴ NLC LPA 2.

⁴⁵ JM XX and 8.1.2/85 JM PoE.

⁴⁶ File 2 of Appeal Documents, Flag 8.

“• It is suggested that the residual impacts of the proposed development will have an adverse impact upon the character and appearance of the countryside.

• Given the overall potential impact of the proposed development the Appellants may wish to consider omitting the scarp top machine and making a reduction in the overall height of the remaining machines.

• It is for the planning officer to make the balance between this harm and the potential benefits accruing in terms of electricity generation.”

90. This was amplified in ‘Detailed Advice’ on page 2 of the same consultation response where it was stated:

“It is suggested that the residual impacts of the proposed development will have an adverse impact upon the character and appearance of the countryside. In particular the machine proposed for the brow of the eastern scarp will be especially prominent and dominant within the landscape such that the existing character and appearance would be harmed.

It is for the planning officer to make the balance between this harm and the potential benefits accruing in terms of electricity generation. This assessment suggested however, that the machine proposed for the scarp top is likely to have a much more significant effect upon landscape character than the three machines proposed for the base of the slope. These would appear to be capable of being seen as ‘contained’ within the landscape whereas the machine for the scarp top could not.

...

Given the overall potential impact of the proposed development the applicants may wish to consider omitting the scarp top machine; making a reduction in the overall height of the remaining machines would reduce potential impacts still further.”

91. The Council now maintains that the analysis demonstrates that whilst the fourth turbine would be particularly harmful it does not equate to a conclusion that the remaining three were without harm to landscape and visual amenity.

92. The analysis recognised that the remaining three turbines would be seen above the scarp slope. At Page 4 it is stated:

“The three turbines proposed for the remainder of the site would be set in line (north/south) on the western boundary of the site at about 10 metres above OSD⁴⁷. Given the height of these machines they would also ‘over-top’ the scarp slope (by about 95 metres). Much of these structures would therefore be seen from within the bowl [sic] against the skyline.”

93. It went on to recognise that, notwithstanding the LVIA assessment that the visual impact would be localised, the analysis of IG recognised that they would extend over a relatively large area, including to the north. When viewed looking east towards Winterton, the three machines would be *“prominent features in the landscape having a characterising effect upon that landscape.”*

⁴⁷ Ordnance Survey Datum

94. At page 5 the consultation response accepted the conclusions of the LVIA that the cumulative landscape and visual impacts would not be significant in either environmental impact or planning terms.

95. In the Conclusion at page 5 there is reference to the significant effects on landscape character ranging from moderate to major. It continues:

"Whilst these changes will for the most part be contained in a relatively discreet area of land the proposed development because of the nature of the topography into which it would be inserted would be very prominent resulting in significant changes in landscape character and in the composition of views. Three of the proposed machines, whilst being prominent and having a significant (potentially major impact) upon landscape character, could conceivably be contained within the landscape. This would result in a development with a similar relationship to the Lincoln Edge landscape and the key landscape feature of the eastern scarp as at Bagmoor [existing windfarm]."

The Framework⁴⁸

96. Paragraph 64 in relation to "good design" applies to all development including renewables. If a development does not achieve the objective set out in Paragraph 64 it is, by definition, unsustainable because good design is a key aspect of sustainable development⁴⁹.

97. The NPS - EN-1 - also requires good design for energy infrastructure. At 4.5.1 it states:

"It is acknowledged, however, that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area."

98. The language reflects the exhortation that all development should contribute to the enhancement of the quality of the area within which it is located. This is recognition that many energy infrastructure developments would be such that they could only make a limited contribution to the enhancement of the quality of the area. But that is the important point. It is not that there should be no enhancement (or, as in this case, a detriment). There is a limitation on the extent to which an enhancement can be achieved, but that is not to say that no enhancement at all should be secured by such development.

99. Reliance can be placed upon the established principles of achieving good design by reference to the Scottish Natural Heritage document "Siting and Designing Windfarms in the Landscape"⁵⁰ which was not materially changed by the May 2014 update. Reference to this document demonstrates that the development does not represent "good design". It is recognised that skylines are of critical importance⁵¹. It continues at Paragraph 4.29:

"Care should be taken to ensure that the windfarm does not overwhelm the skyline. If the skyline is 'simple' in nature, for example, over moorland and hills

⁴⁸ CD 2.1.

⁴⁹ Paragraph 56 of the Framework.

⁵⁰ CD 7.9: December 2009.

⁵¹ 4.28/22.

it is important that the wind turbines possess a simple visual relationship to this feature, avoiding variable height, spacing and overlapping of turbines and, also, visibility of blade tips intermittently 'breaking' the skyline."

100. JM in XX recognised that that was a feature of the development proposal.

101. 4.32⁵² also states:

"Landscape scale and openness are particularly important characteristics in relation to wind turbines because large wind turbines can easily seem to dominate some landscapes. For this reason, landscape scale can dictate the ability of an area to accommodate windfarm development both horizontally in terms of its extent, and vertically with regard to wind turbine height."

102. The advice continues that a key design objective for a windfarm would be finding an appropriate scale for the windfarm in keeping with the landscape. It continues:

"To achieve this the siting and design of the development will need to ensure that the windfarm in relation to the following aspects, is:

of minor vertical scale in relation to the key features of the landscape (typically less than one-third); ..."

103. JM attempted to disassociate the advice as being of application to the current circumstances, arguing that that was best considered in the context of a Scottish application. JM's approach must be rejected. His assertion that if that advice was followed there would be an inability to place viable wind turbines in this location is nothing to the point. It simply serves to demonstrate that the verticality of the wind turbines proposed would overwhelm the scale of the landscape appreciated in this location. That is part of the rationale for the advice that the vertical scale of the wind turbines in this location would simply overwhelm the scarp feature and therefore be out of keeping with that of the landscape.

National Landscape Characterisation

104. The appeal site falls within National Landscape Character Classification Area 45 "Lincolnshire Edge". As part of preparation for RSS renewable energy targets, a 2004 AEA Technology document was produced to inform the development of regional targets⁵³. As part of that analysis the NLC areas were subject to an analysis by Gillespies, Landscape Consultants, in order to determine the capacity of the region for accepting renewable energy development. This did not form part of any of the analysis by JM at the time of the submission of the planning application. He reproduces in his evidence Appendices the Final Report, volume 3. The independent analysis by Gillespies includes the following:

"The Lincolnshire Edge comprises an escarpment, which runs from the Humber estuary in the north to Grantham in the south and is locally known as The Cliff."⁵⁴

⁵² Paragraph 3.33 in the May 2014 update

⁵³ CD 3.1.

⁵⁴ This is a reference to the escarpment to the west of the appeal site.

A secondary escarpment is found at Frodingham and has largely been despoiled by quarrying⁵⁵. The escarpment often comprises a distinct edge, which contrasts with the adjacent lower lying landscapes. By introducing a vertical reference, turbines have the potential to diminish the apparent height of the escarpment, whether located on the hilltops or on the lower slopes. Wind energy development could relate to areas where the escarpment is less distinct and to areas where the landform has been modified, such as around Frodingham.

105. It continues⁵⁶:

"Wind energy development may diminish the apparent height of the locally prominent escarpment by introducing a vertical reference into the landscape. Opportunities may exist for turbines to be located where the escarpment is less pronounced where comparisons of scale would be less obvious. It could also relate to the more open farmland, which should be sited to avoid settlements in areas where woodland and semi-natural vegetation patterns are more diverse. Development can also be associated with the more modified landscapes around Scunthorpe, although care should be taken to avoid increasing visual complexity and confusion."

Under the heading 'Settlements' at page 86 there is reference to Scunthorpe and other settlements and it includes the following statement:

"Development should be located away from the settled foot of slope locations but could be sited on the unsettled hilltops and around Scunthorpe, where tall industry and infrastructure would have a better visual association with turbines."

Under the heading 'Visual Composition' at page 87 there is another reference to the ironstone scarp slope which is followed by:

"Turbines could relate to the simple visual composition of much of the scarp, although they would introduce a vertical element into an otherwise open landscape."

106. The overall sensitivity to development was described as "medium".

However, it is clear within that analysis that there were some areas that were more sensitive, relative to others, within the same classification. The findings⁵⁷ included the following:

- "• Wind energy development should be located to avoid the locally prominent escarpment;*
- Development could relate to the more modified areas around Scunthorpe where built development, industry and associated infrastructure together with the presence of large coniferous woodlands create a more diverse visual composition."*

107. Considerable weight can be given to this document because it was prepared specifically to inform decisions about the placing of renewable development.

⁵⁵ Frodingham is a northern suburb of Scunthorpe close to Bagmoor and this appears to be a reference to the quarrying of the secondary escarpment (the ironstone escarpment) which is also relevant to the appeal site.

⁵⁶ Page 87.

⁵⁷ Page 88.

108. At the more local level, the North Lincolnshire Council Landscape Character Assessment and Guidelines⁵⁸ is a more general development management tool informing and subdividing the national classification area into subdivisions. The appeal site falls within the “*Despoiled Landscape*” arising from the historically and economically important extraction of ironstone during the Victorian era. The strategy and guidelines⁵⁹ is:

“In this landscape blighted by the legacy of former heavy industries, landscape strategy should be aimed at landscape creation and conservation of developing ecological resource.”

109. The appeal proposal would locate the three turbines at the base of the eastern scarp slope to the east of the settlement of Coleby. IG⁶⁰ regards this as a simple scarpland topography providing diverse and often visually rich landscapes. The structures would protrude over the ridge lines of the scarps and appear discordant and incongruous. Such intrusion would be amplified by movement. This consequence resonates with the advice in respect of CD 7.9, the SNH Study that draws attention to that phenomenon as one to avoid. At 3.14 the advice states:

“Generally speaking, large wind turbines may appear out of scale and visually dominant in lowland, settled or smaller-scale landscapes, often characterised by the relatively ‘human scale’ of buildings and features.”

110. As IG points out in his proof⁶¹: *“The scale of contemporary machines (100m to 140m to tip) dwarfs the height of slopes in scarp lands with machines breaching the normal visual containment, attracting the eye, dominating the view and de-emphasising the role of the scarp slopes as the main visual clues concerning the scale of the landscape”*. They would diminish the role of the scarp slope as the main visual clue as to scale of the landscape. He considers⁶² that the structures would breach the visual containment of the scarp slopes and appear as detractors in the landscape. The analysis of IG is supported by the previous independent study by Gillespies as part of the RS policy formulation⁶³.

111. Some care needs to be taken in relation to the reference by JM in his evidence to the AECOM Low Carbon and Renewable Energy Capacity study⁶⁴. That was further work following on from the 2004 study. JM is correct in identifying that the appeal site falls within the area marked as “Practically Viable Resource”⁶⁵. However, that was not informed by an independent further landscape study. The AECOM study did not seek to address sensitivity of the landscape to accept wind turbine development.

112. Paragraph 5.14 of the AECOM study explains the Energy Opportunity Plans. It states:

⁵⁸ Council Documents CD1

⁵⁹ 79.

⁶⁰ IG PoE 5.1.1/17.

⁶¹ 5.5.2/20.

⁶² IOG PoE 5.5.3/20.

⁶³ CD 3.1.

⁶⁴ CD 3.2.

⁶⁵ JM PoE Appendix JM6.

"They show the economically viable resource for those renewable energy technologies that are restricted by geographical constraints."

113. The site falls within an area of "medium sensitivity" to windfarm development⁶⁶. Zone 3 states:

"Areas with some sensitivity to wind energy development. Within these areas, there is likely to be scope to accommodate development of an appropriate scale, siting and design and taking regard of cumulative impact. Zone 3 included regional and local natural heritage assets only where they have strategic locational implications, such as local landscape areas."

LVIA

114. The Bagmoor wind turbines can act as a model to measure the visual impact on the scarplands. The development consists of eight machines of a similar height to that proposed in this particular case.
115. The analysis by IG is such that he considers that the FEI⁶⁷ contains a number of viewpoints (VP). It is his analysis that the description of the development understates the impact.
116. Notwithstanding his earlier agreement with the LVIA that there would not be any significant cumulative visual effects, in his proof IG concluded that there would be an adverse impact of significance on views from Middlegate Lane (which runs along the scarp edge of the Saxby Wolds - about 7.5km east) because the turbines would be seen sequentially and cumulatively with those at Bagmoor and possibly at Flixborough Grange. Also in views south from around VP12 (minor road north of Winteringham) his proof concluded that there would be a large magnitude of change from seeing the proposed turbines in-combination with the existing Bagmoor turbines, as well as some potential for in-combination cumulative effects with the Saxby Wold turbines (10km east), should they be permitted by the SoS.
117. A good example to demonstrate the approach of IG relates to VP17⁶⁸. The Appellant's assessor found "Major" impact on the basis of high sensitivity for receptors against a medium magnitude of change. Applying the assessment methodology purportedly deployed by the Appellants, that viewpoint will be assessed as "Large - prominent - standing out - striking - sharp - unmistakably easily seen." As such the receptor sensitivity of High would give a Major to Substantial impact.
118. VP15 shows the turbines and especially turbine 2 from the Green at West Halton. In terms of the impact on visual amenity, the structure and movement of the blades would be prominent in views. There would be major to substantial effect. The structure itself would become a "dominant" feature in the view from that public recreational area.

⁶⁶ CD 3.1, Page 7.

⁶⁷ Appeal Documents File 1 of 3 (Finger flag 8).

⁶⁸ IG PoE 6.2.3.7/32.

(c) Heritage Assets

Legal Framework

119. The appeal application engages the statutory duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This provides:

"In considering whether to grant planning permission for development which affects a listed building or its setting, the LPA, or as the case may be, the SoS, shall have special regard to the desirability of preserving a building or its setting or any features of special architectural or historic interest which it possesses."

120. The statutory duty has recently been considered in the High Court and the Court of Appeal in the **Barnwell Manor** case.

121. In the HC⁶⁹ the LPA challenged a decision of Inspector Griffiths in allowing an appeal for four wind turbines. It can be noted from Paragraph 10 of the Judgment of Mrs Justice Lang that she records that the SoS conceded that the Inspector's decision should be quashed and took no further part in these proceedings. She recognised⁷⁰ that as the proposed development affected the setting of an LB consideration of the grant of planning permission had to be made in accordance with the statutory duty in Section 66 of the LBA 1990. In the HC Mrs Justice Lang stated⁷¹:

"In my judgment, in order to give effect to the statutory duty under Section 66(1), a decision-maker should accord considerable importance and weight to the 'desirability of preserving ... the setting' of listed buildings when weighing this factor in the balance with other 'material considerations' which have not been given this special statutory status."

122. In relation to then national policy PPS 5 Mrs Justice Lang⁷² drew attention to the requirement of the decision-maker to "weigh the public benefit of the proposal against harm" and "weigh any such harm against the wider benefits of the application."

123. This advice clearly has parallels in the Framework.

124. She continued⁷³:

"Although 'harm' is not the test in Section 66(1), one of the meanings of 'preservation' is to keep safe from harm and so the concepts are closely linked (see South Lakeland DC v. SoS for the Environment [1992] 2 AC 141 per Lord Bridge at 150). However, in my view, the addition of the word 'desirability' in Section 66(1) signals that 'preservation' of setting is to be treated as a desired or sought-after objective, to which the Inspector ought to accord 'special regard'. This goes beyond mere assessment of harm."

125. In Paragraph 46 the judge stated:

⁶⁹ CD 4.7.

⁷⁰ Paragraph 33 of the judgment.

⁷¹ Paragraph 39 of the Judgment.

⁷² Paragraph 44 of the judgment.

⁷³ Paragraph 45 of the Judgment.

"In my judgment, the Inspector did not at any stage in the balancing exercise accord 'special weight', or considerable importance to 'the desirability of preserving the setting'. The treated the 'harm' to the setting and the wider benefit of the windfarm proposal as if those two factors were of equal importance. Indeed, he downplayed 'the desirability of preserving the setting' by adopting key principle (i) of PPS 22, as a 'clear indication that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided' (Paragraph 86). In so doing, he applied the policy without given effect to the Section 66(1) duty, which applies to all listed buildings, whether the 'harm' has been assessed as substantial or less than substantial."

126. The order of the HC was that the decision was to be quashed and remitted to the SoS. In the event, the unsuccessful developer appealed to the Court of Appeal⁷⁴. The transcript of the judgment appears at CD 4.10. At Paragraphs 28 and 29 of the CofA judgment (18 February 2014) Sullivan LJ stated:

"It does not follow that if the harm to such heritage assets is found to be less than substantial, the balancing exercise referred to in policies HE 9.4 and HE 10.1 should ignore the overarching statutory duty imposed by Section 66(1), which properly understood (see Bath, South Somerset and Heatherington) requires considerable weight to be give by decision-makers to the desirability of preserving the setting of all listed buildings, including Grade II listed buildings. That general duty applied with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage assets of the highest significance. If the harm to the setting of a Grade I listed building would be less than substantial, that will plainly lessen the strength of the presumption against the grant of planning permission (so that a grant of planning permission would no longer have to be 'wholly exceptional', but it does not follow that the 'strong presumption' against the grant of planning permission has been entirely removed.

For these reasons I agree with Lang J's conclusion that Parliament's intention in enacting Section 66(1) was 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. I also agree with her conclusion that the Inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. ... it is true that the Inspector set out the duty in Paragraph 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision ..."

127. In the context of the Framework, the decision of Robin Purchas QC sitting as a Deputy High Court Judge in the case of **North Norfolk DC v. SoS for**

⁷⁴ [2014] EWCA Civ 137.

Communities and Local Government [2014] EWHC 279 (Admin)⁷⁵ is of some assistance. As this judgment was handed down on 14 February 2014 it could have paid no regard to the CofA judgment in **Barnwell Manor**. At Paragraph 66 the Learned Judge stated:

"I would respectfully agree with Mr Justice Lindblom that, taken as a whole, the advice in the Framework is consistent with that approach, having regard in particular to Paragraphs 131 and 132 where it advises that great weight should be given to the conservation of a designated heritage asset and that clear and convincing justification should be required for any harm or loss. It is correct that Section 66(1) applies the presumptive desirability directly to the setting of a listed building, whilst in the Framework the advice is directed to the significance of the asset itself. For present purposes that distinction is not of any significance. However, it remains essential that in applying the subsequent advice in Paragraph 134, which is expressed in terms of a balance rather than expressly referring to issues of weight and significance, the approach of the decision-maker is consistent with the statutory obligation under Section 66(1). Thus the question should not be addressed as a simple balancing exercise but whether there is a justification for overriding the presumption in favour of preservation."

128. Thus this judgment draws attention to the precision of the statutory duty in relation to the setting of a listed building and the Framework.

129. The statutory duty is to preserve the setting of a listed building. The authorities referred to above require the decision-maker to give "considerable importance and weight" to that objective when carrying out the balancing exercise. There is no doubt in this particular case that the development directly engages the statutory duty and does not preserve the setting.

130. It is accepted by CL⁷⁶ that there would be harm to the setting of the listed building at St Etheldreda's Church.

131. The Framework deals with the "significance" of the asset, not specifically the preservation of its setting.

132. Thus the legal submission on behalf of the LPA is:

(a) The statutory duty in Section 66(1) of the LBA 1990 requires the SoS to give "considerable importance and weight" to the desirability of preserving the setting of the listed building when carrying out the balancing exercise.

(b) National policy in the Framework is directed towards the impact of a development on the significance of the heritage asset requiring that great weight should be given to the asset's conservation⁷⁷.

(c) As in **North Norfolk**, the distinction between preservation of setting and harm to "significance" is not of any importance in this particular case. Whilst there is a legal distinction to be drawn there is, it is submitted, the necessity to: preserve the setting of the listed building in accordance with the

⁷⁵ CD 4.11.

⁷⁶ CL Xx

⁷⁷ Paragraph 132 of the Framework.

statutory duty above; and recognise and give weight to the conclusion in policy terms that the significance of the heritage asset is harmed as a consequence of the development.

133. As the development would not “preserve” in the sense of doing no harm⁷⁸, the statutory duty is directly engaged. If effect is given to the “desirability of preserving the setting of the listed building”, planning permission should be refused. Likewise, if there is harm to the significance of a designated heritage asset⁷⁹, the materiality of that determination in accordance with the Framework is a weighty consideration against the development proposal.

Analysis

134. Conspicuous by its absence in the evidence of CL is an acknowledgement that the Bronze Age burial mound and Anglo-Saxon and medieval remains on West Halton Green are of schedulable quality. His acknowledgement in XX of that appreciation leads to the direct application of Paragraph 139 of the Framework:

“Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to schedule monuments, should be considered subject to the policies for designated heritage assets.”

135. The PPG on renewable and low carbon energy warns at paragraph 5.019⁸⁰:

“As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence, a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.”

136. CL acknowledges:

- that the proposed development is within the setting of the heritage assets at West Halton;
- that in respect of St Etheldreda’s Church there is an acceptance of harm to the significance of the heritage asset.

137. In approaching the issue - notwithstanding the case put to ER in Xx - the English Heritage document Conservation Principles⁸¹ is of relevance and assistance in the assessment in this case. Indeed, it is quite apparent from the Appellant’s own case that the Conservation Principles was deployed post-Framework to the analysis in this case⁸².

138. The summary of the dispute in relation to this aspect is as follows:

- (a) Both parties agree in terms that there would be harm to the significance of the Grade II* Church⁸³.

⁷⁸ See *South Lakeland* [1992] 2 AC 141 referred to at Paragraph 20 of C of A *Barnwell Manor*.

⁷⁹ CL in Xx accepted that there was

⁸⁰ AW PoE 3.4.3/12.

⁸¹ CD 9.2.

⁸² See File 2 of Appeal Documents, Flag 6.

⁸³ CL PoE Pages 42/43.

(b) CL does not accept harm to the significance of the Village Green heritage assets because the development, he asserts, has no effect on their setting.

139. Importantly, it should be borne in mind throughout the analysis of CL that whilst guidance recognises that setting may be affected by factors other than visual change that was the only criteria against which he considered the impact on heritage assets⁸⁴.

Heritage Assets: West Halton Green

140. The Practice Guidance that accompanied PPS 5 - Planning for the Historic Environment⁸⁵ - remains extant advice. The significance of an asset is the sum of its architectural, historic, artistic or archaeological interest. In terms of setting, consistent with the Framework definition, it is defined as:

"Setting is the surroundings in which an asset is experienced."

141. Paragraph 114 of the advice continues that the setting is not limited to views, albeit they will play an important part. Paragraph 114 continues:

"Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration; by spatial association; and, by our understanding of the historic relationship between places. For example, buildings that are in close proximity but not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each. They would be considered to be within one another's setting."

The Council suggests that there may be an adverse noise effect on the setting of the heritage assets which would require control by a specific condition.

142. Paragraph 114 is of direct applicability to the circumstances of this case. The core of the village of West Halton is centred on the Village Green that contains a number of heritage assets of national importance including:

- Grade II* St Etheldreda's Church;
- The upstanding Bronze Age round barrow;
- Other Bronze Age flattened barrows;
- Anglo-Saxon and medieval buried remains.

143. Individually and as a group they have a high heritage value. The assets are interrelated. In the words of Paragraph 114, they have spatial associations and historic relationship. The selection of the site for St Etheldreda's Church and the deposit of the Anglo-Saxon remains are likely to be closely associated with the ritualistic recognition of the site as an important part of the community and of devotion.

⁸⁴ CL PoE Appendix 5, Page 26.

⁸⁵ CD 9.4.

144. The proposal will alter the setting by the introduction of large machines incompatible with the character and scale of the setting. It would diminish the prominence of the assets and their prominence attached to the perceived importance of the monuments. This is an issue that goes to appreciation and understanding of the monuments in their setting. The upstanding round barrow is one of five Bronze Age barrows that survive as prominent earthworks in North Lincolnshire. AW⁸⁶ recognises that the association between pagan prehistoric barrows and the siting of Anglo-Saxon churches is well established. She notes the possibility that the Church was deliberately sited on a barrow and points to a "clearly defined curvilinear break of slope"⁸⁷ that may represent the barrow mound upon which the Church was originally sited. It is difficult to avoid her conclusion at 5.2.22/31 where AW maintains:

"The prehistoric barrows, including the earthwork mound and the buried remains of at least two other barrows on the Green, and the wider barrow cemetery, the physical evidence of the Anglo-Saxon origins of the village, the high status manorial centre and an important early Christian church foundation together with a later listed church, create a group of inter-related assets of exceptionally high heritage value both for the village and for North Lincolnshire."

145. She asserted in her evidence that West Halton had a "unique and intriguing history" upon which she was not challenged. Her observation⁸⁸ that the intervisibility of the siting of the Church and the upstanding barrow on the Green is likely to have been deliberate. Again, this was not challenged by CL or the Appellant. Ms Williams now considers that there would be a severe adverse effect on the setting and significance of the heritage assets.

Contribution to Setting

146. AW originally assessed a moderate adverse effect on the setting of the larger and relatively more visible church. But in their evidence for the inquiry AW and ER described the setting of the assets as shared and overlapping. They are the physical setting of the structures themselves, their spatial associations within the historic environment and the wider agricultural character that is unchanged. Within that setting there is a readily appreciable ability to experience the layers of history and archaeology associated with human occupation of 4,000 years⁸⁹. She specifically⁹⁰ considered that the setting of the barrow and Church and other heritage assets on the Green is "unique" in North Lincolnshire and makes a substantial contribution to the:

"communal and aesthetic significance of the heritage assets deriving from how these are experienced."

Impact

147. VP15 is described in the heritage assessment's impact upon the Church of "negligible magnitude". Turbine 2 becomes the dominant visual element from the Green and one of pronounced verticality. The reliance by the Appellants on

⁸⁶ PoE 5.2.6/27.

⁸⁷ AW PoE 5.2.8/27.

⁸⁸ AW PoE 6.1.4/33.

⁸⁹ AW PoE 6.2.8/3.

⁹⁰ AW PoE 6.2.11/38.

the presence of trees to provide enclosure and screening can be afforded only limited weight in the consideration of this case. This is because:

- (a) It cannot be regarded as entirely successful as a screen to the view from within the curtilage of the Church itself outwards;
- (b) Nor will it be effective in views of the Church from the Green at various times of the year;
- (c) Nor can reliance be placed upon their continued presence throughout a 25 year period of the lifetime of the proposed development. Trees succumb to age, disease or damage or the requirements of HSE. It is difficult, in these circumstances, to avoid the conclusion that the partial screening of the windfarm by trees from other viewpoints cannot be relied upon to endure for the life of the development.

148. The Framework equates substantial harm to total loss⁹¹. Both AW and ER recognise that the development would not be tantamount to total destruction of significance and therefore not of substantial harm as defined in the Framework. Consequently, Paragraph 134 of the Framework is recognised as being of application in the policy sense. It states:

"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."

St Etheldreda's Church

149. CL in his evidence recognised that there would be harm to the significance of the Grade II* Church and he accepted that the development proposal would not preserve the setting of the LB. Part of the significance of the heritage asset is the fact that it was first built in the 7th century as a Minster Church to serve the wider community in the Anglo-Saxon settlements nearby. Such early churches were frequently found on or alongside prehistoric burial grounds. The development will introduce the turbines that will be part of the "surroundings in which the heritage asset is experienced."

Significance of the Church

150. It is beyond dispute that the Church is of national importance. In terms of Paragraph 132 of the Framework:

"The more important the asset, the greater the weight should be given [to conservation]."

151. It is important to recognise that the role of the Church in the community was as a structure constructed to be the largest building in the area to reflect its status as places of worship and a focal point for the community. They were intended to be the dominant structure of the settlement. This development would result in the dominant structure becoming the turbine and denude the Church of its original and intended role.

⁹¹ Paragraph 133 of the Framework.

152. The wider landscape is an important part of its significance. It is part of its identity, its *raison d'être* and how it is perceived. As a medieval church in a small, intimate village (the village layout being substantially intact) it is set within a wider open landscape in which the Church was intended to have the role as its most prominent building. Turbine 2 in particular will stand out because of its verticality of its form and contrast with the horizontal rooflines of the houses and the wider general open landscape. The movement of the blades when operational will conflict with significance associated with the tranquil location of the assets.

(d) Noise Impact

153. It is plain that the Government sees no inconsistency between the co-existence of policies in respect of noise and that of energy. The overarching National Policy Statement for Energy EN-1⁹² recognises the co-existence of the policies. The relevant paragraph states:

"Excessive noise can have wide-ranging impacts on the quality of human life, health (for example owing to annoyance or sleep disturbance) and use and enjoyment of areas of value such as quiet places and areas of high landscape quality. The Government's policy on noise is set out in the Noise Policy Statement for England. It promotes good health and good quality of life through effective noise management."

Use of ETSU-R-97

154. A key consideration is the extent to which the decision maker in any particular case should be confined to consideration of noise based upon the ETSU analysis. Attention has been drawn to Paragraph 97 of the Framework⁹³. The Framework states:

"To help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources. They should:

consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources ..."

155. Footnote 17 to the Framework states:

"In assessing the likely impacts of potential wind energy development when identifying suitable areas, and in determining planning applications for such development, planning authorities should follow the approach set out in the National Planning Statement for Renewable Energy Infrastructure (read with the relevant sections of the Overarching National Policy Statement for Energy Infrastructure including that on aviation impacts). Where plans identify areas as suitable for renewable and low carbon energy development, they should make clear what criteria have determined their selection, including for what size of development the areas are considered suitable."

⁹² CD 6.3, Page 103 at 5.11.1.

⁹³ CD 2.1

156. Reference then to the National Policy Statement for Renewable Energy Infrastructure (EN-3)⁹⁴ requires applicants to deploy the ETSU methodology as part of any application. Specifically at 2.7.57 and 58 the following appears:

"The IPC should consider noise and vibration impacts according to Section 5.11 of EN-1 and use ETSU-R-97 to satisfy itself that the noise from the operation of the wind turbines is within acceptable levels.

Where the correct methodology has been followed and a wind farm is shown to comply with ETSU-R-97 recommended noise limits, the IPC may conclude that it will give little or no weight to adverse noise impacts from the operation of the wind turbines."

157. As is the case with all Government policy in the planning field, no matter how much one may disagree with ETSU it should be followed unless there are good reasons to depart from it.

158. The Court of Appeal in ***Tegni Cymru v. Welsh Ministers***⁹⁵ clearly established that ETSU was not exclusive of other considerations. At paragraph 24 Pitchford LJ stated:

"What he [the Inspector] was deciding was that ETSU indicative levels in relation to the proposal which he was considering were not the last word on "acceptable" noise levels. The learned judge himself acknowledged that they did not represent an absolute standard against which the proposal was to be judged." [emphasis added]

159. It was held that, whilst ETSU limits are a matter to which the Inspector was required to have regard, he was not bound by them and they represent only one view as to the appropriate balance to be struck between the adverse effects of noise disturbance and the wider benefits of wind farms

160. The advice in EN-3 is the starting point but its existence does not preclude arguments about the environmental effects of noise from turbines generally and other guidance may be appropriate to deploy to consider the impact.

161. There is nothing internally inconsistent within the Framework that requires planning decisions to aim to avoid noise giving rise to significant adverse effects⁹⁶. Likewise, there is a policy to identify and protect areas of "tranquillity" which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for that reason. Albeit no such areas have been identified here.

162. As this is an EIA case there is a legal requirement in any compliant assessment prior to the determination of an application and the grant of any "development consent" that the direct and indirect effects of the project on human health is properly assessed. The consideration of impact on human health cannot be restricted to a particular form of assessment where there is evidence that alternative assessments could give rise to problems that could affect health and wellbeing.

⁹⁴ CD 6.4.

⁹⁵ [2010] EWCA Civ 1635

⁹⁶ CD 2.1, para.123.

163. That is the situation in this particular case.

164. EN-1⁹⁷ at Paragraph 5.11.6 states:

“Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance. Further information on the assessment of particular noise sources may be contained in the technology-specific NPSs. In particular, for renewables (EN-3) and electricity networks (EN-5) there is assessment guidance for specific features of those technologies.” [emphasis added]

165. The structure of that paragraph suggests that the technology specific EN-3 is further (ie additional) to the using of principles of relevant British Standards and other guidance.

166. The appropriateness of considering other guidance may be derived from the proposition that a material consideration in the determination of any application must be the health and wellbeing of individuals who may be affected by the proposal. Health and wellbeing affected by noise does not discriminate between “green” and other noise sources. Furthermore, noise is capable of objective determination. The ETSU guidance to some extent recognises the benefits of renewable energy in making an “allowance” for increased over background levels of noise.

167. The WHO Environmental Health 1980 Guidelines were used in ETSU for the setting of the nighttime levels of noise with the objective of preventing sleep disturbance.

168. The authors of ETSU anticipated it being reviewed within a two year period. The levels were set at the level of the WHO Environmental Health Guidance of 1980 and did not, as a matter of fact, adopt the more stringent requirements that were beginning to emerge. The effect of ETSU would be to permit an increase in the equivalent of +7 dB(A). Hence the fixed lower daytime limit of 35dB(A) and at nighttime somewhat higher at 43dB(A). The nighttime limit of 43dB(A) was based on sleep disturbance criteria of 35dB(A) by allowing for 10dB(A) attenuation through an open window. As appears in the evidence of SN the WHO Guidance is now an internal level of 30dB(A) and is an evidentially based limit.

BS 4142

169. BS 4142 uses a method to assess the likelihood of complaints by subtracting measured background noise levels from a rating level derived from predicted measurements and the application of, if appropriate, an additional 5dB correction for the intrusive character of the noise. As will be developed later in these submissions, one Inspector considered the approach in BS 4142 appropriate.

ETSU Derived Limits

170. The application has been formulated on the basis of ETSU derived limits and not on the predicted levels. That is, limits will be set by the conditions and the

⁹⁷ CD 6.3

obligation will be upon the developer to achieve it. The short point being that if the Appellants are confident that their predictions truly reflect the likely experience at the noise sensitive receptors identified those limits should be set.

171. As appears from the two versions of the draft conditions that were discussed the approach of the Appellants and the LPA reflect this fundamental difference.
172. The Appellants maintain that the ETSU derived limits are appropriate. On the other hand, the LPA have relied upon their predicted measurements at the noise sensitive receptors as the basis for their conditions. The LPA condition is based upon the predictions made by the appellants.
173. The consequence, in practical terms, would be that the noise levels set by the condition proposed by the Appellants would result in an inability by the LPA to take any enforcement action in respect of noise levels up to that limit despite the predictions in their ES that informed the acceptability of the development.
174. There should be no justification where there are predicted levels calculated by the Appellants not to require that those predicted levels be the subject matter of a planning condition. This would be the course that would be entirely expected in respect of any other form of development such as minerals or waste disposal. If the Appellants are confident that their predictions are "worst case" and robust, there can be no credible objection to the imposition of them as the appropriate conditions that govern the noise output of the turbines in order to protect residential amenity at noise sensitive properties.

Application of BS 4142

175. As developed earlier in these submissions, if a decision maker considers it appropriate consideration may be given to BS 4142 criteria in order to determine the likely reaction of individuals to increases against background levels.
176. The use of BS 4142 was considered in an appeal at Bradford, West Yorkshire. Whilst the appeal was by written representations (hence no challenge to evidence) it is plain that there was information before the Inspector that enabled her to make an informed judgment as to the appropriateness of the application of the various criteria. The conclusions at Paragraphs 53 and 54 contributed to the evidential basis for her dismissal of the appeal on the basis of harm to amenity. She had stated:

"The ETSU night-time fixed limit of 43dB(A) is based on what was then the WHO indoor night-time sleep disturbance criteria of 35dB LA eq. An allowance of 10dB(A) is made for attenuation through an open window and 2dB(A) is subtracted to account for the use of LA 90 rather than LA eq. The Appellant's readings show that this limit would frequently be exceeded by the predicted turbine noise, although, according to its background measurements, it is already exceeded on occasions at some properties.

Nonetheless, the WHO sleep disturbance level has now been re-assessed at 30dB LA eq. Comparing this with the estimated internal night-time noise within some of the nearby dwellings, shows that on occasions sleep within these properties is likely to be disturbed."

177. The Inspector recognised that BS 4142 was not appropriate for assessing wind turbine noise but was “useful for indicating when complaints would be likely.”

178. Thus the Inspector in that particular case was using the indication of complaints being likely as the touchstone for the determination of whether amenity was being substantially and unjustifiably interfered with.

179. The limitations of ETSU have been recognised in a recent SoS case⁹⁸ in respect of a site within Fenland District Council and South Holland District Council. At Paragraphs 50 and 51 the Inspector noted the location demonstrated consistent low noise levels at night. He continued:

“The large bedroom roof windows there are top-hung and in my opinion it is likely that turbine noise would be noticeable and at times intrusive because although falling within (just) the ETSU limit, it would frequently exceed the prevailing background noise level by a substantial margin. This is likely to be the position at other dwellings at Broad Drove West where exceptionally low night-time noise levels prevail.”

180. At Paragraph 51 the Inspector concluded:

“There is only a one dB safety margin between predicted turbine noise levels and the lower ETSU daytime limits at Ashtree Farm; at the adjacent Ashtree Barn, the main sitting area is outside the French doors of the kitchen diner near the wall. I consider that the combination of prevailing wind direction, low safety margins, very low background noise levels and sound reflection from the house wall amounts to a noise impact that significantly reinforces the overbearing visual impact on living conditions for the occupiers of this property; and potentially St Malo and others nearby.”

181. At Paragraph 18 of the Decision Letter the SoS agreed with the reasoning and conclusion of the Inspector in this regard.

Acoustic Characteristics

182. The ETSU methodology describes a method for applying a penalty for tonal noise (similar to BS 4142). ETSU does not address amplitude modulation (AM). The DTi in 2006 identified this as an issue. The study findings⁹⁹ found that a common cause of complaint was associated with the “occasional audible modulation of aerodynamic noise, especially at night.” It continued:

“Data collected showed that the internal noise levels were insufficient to wake up residents at these three sites. However, once awoken, this noise can result in difficulties in returning to sleep.”

183. Further research collated by Renewable UK indicates that there is currently no way of predicting whether AM will occur at a particular location before turbines begin. The summary of their research¹⁰⁰ concludes:

⁹⁸ CD 5.15.

⁹⁹ SN PoE 37.

¹⁰⁰ CD 8.27.

“Should OAM arise from a scheme, turbine management systems can be used to control the individual turbines responsible so that the impacts are mitigated under the particular conditions that give rise to the phenomenon on a case by case basis.”

184. The issue has been recently considered in the **Turncole Farm** case¹⁰¹. At Paragraph 171 of the Decision Letter the Inspector noted that the current practice anticipated that unacceptable noise impact resulting from AM would have to be addressed under the provisions for statutory nuisance.

185. Following the close of the Inquiry there were further submissions. Hence, the SoS at Paragraph 18 stated:

“Regarding the issue of Amplitude Modulation (AM) the SoS has considered the representations made in response to his request for further information and the suggested additional conditions put forward by the Appellant and SIEGE. He is persuaded that there is a need for additional condition to protect the living conditions of nearby residents from unacceptable AM. He agrees with the view expressed in the Appellant’s representation of 10 February that, given the wider debate that is presently taking place concerning the most appropriate form that a fit for purpose AM noise condition should take, it would not be appropriate at this stage to choose between the condition put forward in the Appellant’s early response of 3 February and the alternative form of an AM noise condition advanced in a technical report provided by SIEGE with its response of 3rd February ... The SoS agrees with the noise condition proposed by the Applicant’s representation of 10 February and considers that it is most appropriate in current circumstances, because this condition will allow a properly endorsed AM noise assessment and rating methodology to be appropriately incorporated into an AM scheme to be agreed by the Council, taking account of any further advice forthcoming from the UK Institute of Acoustics and/or Government prior to commencement of operation of the development. For these reasons the SoS has added Condition 25 in Annex B to this letter.”

186. Condition 25 states:

“No generation of electricity to the grid from the wind turbines shall take place until a scheme for the regulation of amplitude modulation has been submitted to and approved in writing by the Local Planning Authority. The scheme should be implemented as approved.”

187. The Appellants consider that such a condition would be inappropriate in this case, asserting that the condition is not necessary or otherwise justified in accordance with the policy test for such conditions. That is a remarkable proposition when it is apparent that it was that Appellant’s suggestion.

188. The condition is justified because AM is a recognised phenomenon associated with wind turbine operation. It may be unusual and difficult to predict but that is not the point. One of the consequences of the development proposed is the prospect that it will give rise to AM that has the potential, given the proximity of residential properties to the siting of the proposed turbines, to AM capable of disturbance. These land use effects can be anticipated as a possible

¹⁰¹ CD 5.20.

consequence of the development. They are therefore harmful, they are related to the development proposed and it is necessary that they be addressed prior to the bringing into the operation of the turbines in order to protect reasonable standards of residential amenity. The Council has suggested a more elaborately worded condition than that imposed at Turncole¹⁰². The alternative of relying upon the Environmental Protection Act 1990 and the statutory nuisance provisions is inappropriate. It is inappropriate because AM is a recognised consequence capable of having significant impacts upon residential amenity that is capable of being addressed at this juncture.

Operational Noise

189. The update evidence of SN demonstrates¹⁰³ that the Appellant's case does not compare the proposed noise limit levels to the Significant Observed Adverse Effect Level in PPG. The comparison was with what was predicted. The predicted levels are not to form the basis of the controls imposed upon any grant of planning permission. The application and the appeal seek ETSU derived limits as the basis for the control (and hence any breach of planning control) limits lawfully utilised.

Noise Receptors

190. The Council proposes use of a simplified noise condition to limit noise immissions at all residential properties to 35dB LA90 10min. Three receptors have been identified within the original 35 dB LA 90 contour. Those properties are New Cliff Farm, Windy Ridge Barn and The Observatory. The upshot of the most recent 2014 analysis is that the properties are on the boundary of the 35 dB boundary. The predicted turbine noise levels calculated for the "*louder candidate wind turbine*" the subject of the 2014 analysis is described as "*worst case*". This includes that the wind would be blowing from the direction of the turbine towards the receptor.

191. SN in her Proof Update dated 29 May 2014¹⁰⁴ analyses the impact of both predicted and ETSU derived limits on the residential properties.

192. A useful test of the respective approaches of the LPA and the Appellants can be seen in respect of the example of location H5, New Cliff Farm.

193. At this location the predicted cumulative turbine noise levels are all below WHO guidelines for daytime "moderate annoyance". For wind speeds of 7 m/s and above, the predicted cumulative turbine noise level is at 40 dB. This level can be compared to the WHO 2009 Night Noise Guidelines for Europe that identifies that it would be at the boundary of sustaining adverse health effects being observed amongst the exposed population¹⁰⁵. During the daytime, the predictive cumulative turbine noise levels are above the marginal significance levels for BS4142 for wind speeds between 5 and 8 m/s. If there are intrusive characteristics attracting the higher rating level of 5 dB, then the assessment would indicate that "complaints are likely." At night-time, the predictive

¹⁰² Document 41

¹⁰³ SN Up, para.106.

¹⁰⁴ Page 17 et seq.

¹⁰⁵ SN Up, Page 19.

cumulative turbine noise levels are up to +14 dB above background indicating that "complaints are likely." If necessary, to add a +5 dB penalty for acoustic characteristics, the predicted turbine rating is up to +19 dB above background noise levels at night.

194. The PPG for Noise (Paragraph 12) refers to the protection of tranquillity. The living conditions for residents at these locations have very low background noise levels. At night-time the background noise levels reported were so low that accurate measurement was limited. The background noise measurements reported indicate that night-time noise environment is relatively undisturbed by noise from human sources. The introduction of turbine noise at the Appellants' predicted levels would disrupt the tranquillity currently enjoyed by residents. The harm associated with noise impact of the proposed development would result in adverse effects on health and wellbeing.

195. The Appellants' proposed noise limits exceed background levels by a substantial margin (greater than +20 dB). The proposed limits exceed WHO 1999 guidelines for the prevention of sleep disturbance at all locations and for daytime annoyance at most locations.

(e) Development Plan and Other Relevant Policy

Statutory Development Plan

196. The relevant Statutory Development Plan, following the substantial abolition of RSS, consists of:

- (a) The North Lincolnshire Core Strategy (2011); and
- (b) The saved policies of the North Lincolnshire Local Plan (2003).

197. It is recognised that the proposed development would result in conflict or "non-accordance" with the Core Strategy and the saved policies of the Local Plan¹⁰⁶.

198. It follows, therefore, that in accordance with Section 38(6) of the 2004 Act applies the determination of the appeal application ought to be one of refusal unless there are "other material considerations" that indicate an alternative decision would be appropriate.

199. In terms of the Core Strategy the fact that it is of recent vintage is not determinative of the issue of whether it carries full weight. What determines the weight that ought to be ascribed to it is the degree to which it can be regarded as "up to date" and in accord with the Framework.

200. The Core Strategy was prepared against the background of a requirement for policies to be tested against "sustainable development principles". That was because RSS and other statements of national policy have, for many years, had the principles of sustainability at their heart.

201. Following the examination by an independent Inspector at which the duty was to examine the policies and determine whether they were consistent with national policies in relation to sustainability and the RSS (itself based upon

¹⁰⁶ DS Xx

sustainable development principles) the acceptance by the Inspector and subsequent adoption by the Council of the Core Strategy enables it to be accorded proper statutory weight as being broadly consistent with national policy at that time and up to date. Whilst the Framework has since been introduced the fundamental objectives of policy including the exhortation to encourage on-shore wind energy were, in 2011, embedded in national policy.

202. Policy CS18 is the most relevant policy against which to judge the appeal application. It supports renewable development "in appropriate locations." The policy provided no support for development in inappropriate locations.
203. Some consideration had been given in RSS during the course of its preparation to address "appropriate locations." Hence the consideration of the landscape constraints identified in the 2004 study referred to earlier into which Gillespies had a significant contribution.
204. CS Policy CS18 is a criteria based policy. Whether a development proposal complies or otherwise with its contents is determined by judgments upon the application of the criteria to a given development proposal. The inappropriateness of the location for development was identified in the Reasons for Refusal.

Local Plan

205. LP Policy DS 21 deals with renewable energy. It is a permissive policy that requires:
- "Any detrimental effect on features and interests of acknowledged importance, including local character and amenity, is outweighed by any environmental benefit; and*
- Proposals include details of associated developments including access road and other ancillary buildings and their likely impact upon the environment."*
206. Whether the proposal complies with this policy depends upon the resolution of the balance between the environmental benefits and the impact upon amenity, heritage assets and landscape character.
207. There is conflict with Policy HE5 - Proposals that damage setting of a LB will be resisted. There is also conflict with Policy HE8 which deals with scheduled ancient monuments. Developments causing an adverse effect on a scheduled ancient monument or their settings will not be permitted.
208. A number of features associated with the preparation of the RSS lend weight to the Core Strategy. The RSS promoted renewable energy and sustainability was a key consideration that underpinned its preparation. It was thoroughly tested by independent Inspectors at an EIP and approved by the SoS.
209. Importantly, it grappled with the balance at the heart of this case; namely, the need for renewable energy projects to be brought forward and the identification of appropriate locations to accommodate that need both in the geographic sense and avoiding harm to strategic environmental infrastructure including landscape character, visual amenity and heritage assets.

210. DS is of the view that the RSS targets for renewable energy are immaterial considerations in the determination of the appeal application¹⁰⁷. This represents a significance difference in opinion between the two parties and their approach to the relevant issues before the SoS.

211. The Appellants' case is not that the former targets contained within RSS could be given limited weight; it is a view maintained that they are immaterial considerations. It was sought in XX to test that proposition. If the LPA had not met RSS targets whilst the RSS was extant, it must be right to observe that it would be a relevant consideration and one of some weight where there is an identified conflict with RSS. After abolition of the RSS, the historic failure of a LPA to meet targets set whilst RSS was extant must also be capable of continuing to be a material consideration in a renewable development application. The weight that might be given to that issue will differ following abolition but not its materiality.

212. Indeed, it would be the view of the LPA that a failure to have addressed historic renewable energy development targets that were approved by the SoS could continue to be a material consideration of some weight in the determination of any appeal.

213. The factual position is not challenged. RSS targets for all forms of renewable energy in North Lincolnshire were identified as being:

2010:	54 MW
2021:	112 MW

214. There is no doubt that RSS targets were achieved. According to Mr Lawrence's supplementary proof at paragraph 82 the installed and consented capacity stands at 143 MW¹⁰⁸. That figure is not supported by corresponding appendix NLC1 to which reference is made. Nevertheless in the latter table the total is still higher at 159.65MW (after excluding the Drax biomass scheme which may not) proceed. The figure includes 80.5MW of installed or consented onshore wind.

215. Thus, if historic RSS targets are material, the question remains the extent to which weight can be attached to that consideration. It is the view of NL that weight can be given to the issue. The reason includes the proposition that the spatial distribution of the targets reflected the balancing exercise required in the determination of any renewable development application that inevitably imposed an impact upon the landscape of the region.

216. It is obvious that the targets were not expressed as upper limits or a maximum. They were, in essence, the base against which Local Authorities were expected to achieve. Nevertheless, it is right that they can be taken into account in terms of the contribution to the supply of renewables. It is therefore legitimate to have regard to those considerations. So, for example, if the targets were not met greater weight could be given by a decision-maker to the need for renewable energy development within a particular area. Consequently, that may outweigh considerations of landscape and amenity.

¹⁰⁷ DS Xx

¹⁰⁸ NL PoE 82/14.

217. The converse is also true. If the targets are met, there is no reason why weight cannot be given in the balancing exercise to other factors including landscape and visual amenity and heritage considerations than would have been otherwise the case.

218. The LPA does not say that the issues in respect of RSS targets are determinative in this case. What is submitted is:

- (a) They are material considerations; and
- (b) considerations to which weight ought to be ascribed in the determination of the appeal.

Non-Statutory Policy

Renewable Energy SPD (2011)¹⁰⁹

219. The RE SPD is an important material consideration in the determination of the appeal. It proceeded through a pre-consultation and public consultation exercise. Following consideration of the consultation exercise, it was adopted in November 2011¹¹⁰. The policies of the RE SPD are considered to be in compliance with the Framework. The preamble to the policies has been referred to by the Appellants. Of more interest is that the policies themselves are not hostile to renewable development.

220. Importantly, in terms of weight, DCLG were consulted on its contents. They raised no objections to the SPD. Had conflict been identified with the then national policy then one could have expected DCLG to have raised that matter as an issue of concern.

Overall Approach

221. Compliance or conflict with policy, and therefore the application of Section 38(6) of the 2004 Act, is a judgment on the matters to be considered in the criteria based policies of the Statutory Development Plan.

Localism

222. The Appellants' assertion that SoS Eric Pickles is promoting a "Lie of Localism" is not a view shared by the LPA. The DCLG Ministerial Statement¹¹¹ of 6 June 2013 is a refreshingly clear expression of a recognition that the planning balance in favour of on-shore wind development was in need of recalibration. The Ministerial Statement said so in terms:

"... current planning decisions on onshore wind are not always reflecting a locally-led planning system."

223. It continued:

"The Framework includes strong protections for the natural and historic environment. Yet, some local communities have genuine concerns that when it comes to windfarms insufficient weight is being given to environmental

¹⁰⁹ CD 3.6.

¹¹⁰ Prior to the publication of the Framework in March 2012

¹¹¹ CD 2.4.

considerations like landscape, heritage and local amenity. We need to ensure decisions do get the environmental balance right in line with the Framework and, as expected by the Framework, any adverse impact from a windfarm development is addressed satisfactorily."

224. The Ministerial Statement expressly recognised continuing Government policy in support of sustainable development. It continued:

"To help ensure planning decisions reflect the balance in the Framework, my department will issue new planning practice guidance shortly to assist local councils, and planning inspectors in their consideration of local plans and individual planning applications. This will set out clearly that:

The need for renewable energy does not automatically overriding environmental protections and the planning concerns of local communities;

Decisions should take into account the cumulative impact of wind turbines and properly reflect the increasing impact on (a) the landscape and (b) local amenity as the number of turbines in the area increases;

Great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting."

225. The SoS was indicating that the tipping point had historically moved in favour of onshore renewables without giving the appropriate weight in decision making to negative impacts. The June 2013 statement is sending out the clearest possible signal that the tipping point is being recalibrated to properly reflect the weight that needs to be given to other considerations and in particular landscape, visual and other amenity and harm to heritage assets.

226. The decision to call-in the appeal application to be determined by himself is a means to ensure consistency in the determination of applications. The LPA expectation of an honest and objective decision by the SoS may therefore be contrasted with the Appellant's brutally cynical analysis of the likely approach.

Conclusions

227. The appeal should be dismissed by reason of the following:

(a) Whilst the development has significant benefits in making a contribution of further capacity to electricity generation derived from renewable resources, it is unacceptable by reason of other factors.

(b) The other factors include significant, long-lasting and detrimental impacts upon visual amenity and landscape character.

(c) There would be an unacceptable and harmful impact upon the amenity and wellbeing of nearby residential properties if the development were to be allowed to and did operate at their proposed ETSU limits. It would be sufficient to cause sleep disturbance and therefore represents some potential for harm to health and wellbeing. Any permission granted should be controlled by the predicted noise levels contained in the ES [as updated] that were said to be "worst case".

(d) There would be significant and long-lasting harm to the setting of heritage assets. In light of the recent CofA decisions, "considerable importance and weight" has to be given by the decision-maker to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise.

(e) the development would also harm the significance of the heritage assets

(f) the development would not accord with the provisions contained within the Statutory Development Plan and therefore Section 38(6) requires the appeal to be dismissed "unless material considerations indicate otherwise."

THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY TO OPPOSE THE DEVELOPMENT

228. **Andrew Percy MP** made an oral presentation at the Inquiry to supplement his previous letters. He supported the Committee's unanimous decision to refuse planning permission. Officers who recommended approval are not infallible and he had petitioned for the appeal to be recovered for decision by the Secretary of State. He does not oppose all wind farms or renewable energy development but considered that North Lincolnshire should have its fair share and no more. The area is already playing its part in contributing to national infrastructure and had hit the former RSS regional target for 2020 by 2009. Mr Percy had not objected to all such developments and had not objected to the extension of the Goole Fields windfarm in East Yorkshire but had objected to the proposed Saxby Wold wind farm and to the subject proposal.

229. With reference to the PPG guidance on renewable energy this would be the wrong development in the wrong location. Greater weight should be given to landscape, heritage and amenity impacts. He is particularly concerned about the sequential cumulative landscape and visual amenity impacts with other wind farms when travelling through the area from west to east. It would further industrialise the landscape. In the light of the Barnwell Manor decision of the Court of Appeal he is also concerned about the impact on the setting of heritage assets at West Halton. Other concerns include the hazardous waste issue and the loss of residential amenity, particularly if Excess Amplitude Modulation should occur. Mr Percy lives opposite an existing wind farm at Rusholme in North Yorkshire near Goole and had been disturbed by low frequency buzzing noises in the early hours.

230. **Councillor Liz Redfern** is the leader of North Lincolnshire Council. She says that the Council has permitted bio-mass plants and turbines in appropriate locations. The Council supported off-shore green energy and was promoting the area as the location for a big marine energy park to service that industry. The Council has worked hard and taken more than its fair share of development. The future is off-shore. Residents' views should be paramount and these prominent enormous turbines of industrial scale are not acceptable. There would be serious harm to the area's character and appearance, to heritage assets and to the noise environment. The Council judged each case on its merits. It is the job of members to gather and funnel local views. This would be the wrong development in the wrong place for the wrong reasons.

231. **Councillor Elaine Marper** is 1 of 3 local ward members for Burton upon Stather and Winterton. She read out a written statement¹¹². In summary she has lived in the area for most of her life. It is her job to be a voice for residents. The use of the site as a quarry and then a toxic landfill site has covered a period of over 100 years and residents are looking forward to the land being returned to countryside. If permitted, residents would have to live with the turbines for 25 years. The turbines would negate enjoyment of amenity for the beautiful quiet and peaceful villages of Coleby, West Halton, Thealby and Winteringham and the historic market town or village of Winterton. There are too many turbines in North Lincs already, unlike areas further south. There would be a serious affect on the occupiers of Windy Ridge Barn who would see 3 windfarms from their property. There are concerns about the proximity of the turbines to the toxic tip including the potential for the turbine to topple or shed blades or to ignite gas leaking from the tip, even if the risk is very small. Residents recall the explosion at Flixborough. The precedent for further development also worries residents. West Halton has a quintessential village green with a listed church and burial mound. The turbines would all be plainly visible from there if the trees do not outlive the turbines. A single 130m turbine had been dismissed on appeal at Bradken in Scunthorpe next to the steelworks because of the effect on the setting of a grade II listed church¹¹³. The Inspector found substantial harm to the significance of the setting of the church.
232. **Mr & Mrs Favill** live at Windy Ridge Barn which would be about 690m south east of Turbine T3. Each read from a prepared statement¹¹⁴. Their main concerns are: noise including low frequency noise; visual proximity to the north and cumulative visual impact with Bagmoor wind farm to the south; risks associated with proximity to the hazardous waste tip in case of accidents such as the Flixborough disaster; loss of the promised site restoration including the provision of a public right of way along the former North Lindsey Light Railway; and loss of wildlife, especially the variety of birds in the area. Mrs Favill has severe asthma which is exacerbated by stress. The stress of the subject proposal over 2 years had already caused her to leave her home. It would be made worse if the development goes ahead and the Favills are worried that the home would then be unsalable. The proposal is driven by profit and greed and a more measured and strategic approach should be undertaken by Government to ensure this county's energy needs are met whilst continuing to be leaders in the reduction of CO₂ emissions.
233. **Ms Ellison** read a prepared statement¹¹⁵ and also read a statement by Mr White who was not present at the Inquiry¹¹⁶. Their main interest is in the potential risk to gulls from the turbines. Whilst domestic landfill on the site had stopped, gulls still fly through the area in large numbers when moving between the Humber estuary and the Roxby domestic landfill site to the south. Gulls

¹¹² Document 11

¹¹³ Appeal Ref APP/Y2003/A/12/2169774 The Inspector concluded that the turbine blades would have appeared behind the tower in an important view where they would have diminished the prominence of the church.

¹¹⁴ Documents 12 & 13

¹¹⁵ Document 14

¹¹⁶ Document 17

also use the Gullet Lake south of the site for bathing in the evening before going to roost. Ms Ellison seeks a monitoring condition if the appeal is allowed and that the turbines be switched off for periods at the start and end of the day should the monitoring reveal a harmful effect on the gulls. Ms Ellison has also detected noctule bats and other bats in the vicinity.

234. **Mrs Marritt** is a Winterton resident. She read from a prepared statement.¹¹⁷ Her main concerns are: the effect on the heritage assets; the visual impact on the Winterton Community Academy in views from the playing fields and west facing upper floor classrooms; the overbearing effect on the dwellings at New Cliff Farm including cumulative impacts in all directions if the Saxby Wold windfarm is also permitted; and incompatibility with the development of a footpath and bridleway along the route of the North Lindsey Light Railway, particular in respect of the risk to ramblers near the turbines.
235. **Ms Haynes** represents the **CPRE North Lincolnshire**. She read from a prepared statement¹¹⁸. The main concern of the CPRE is the cumulative landscape impact with other wind farms across the wider area. The scale and movement of the 3 turbines would also destroy the tranquillity and calm of the local landscape. Local residents are being expected to give up their delight in and appreciation of their surroundings and possibly their amenity and health to allow a development that would contribute a tiny fraction of the Government's renewable energy target. This is hardly of national importance.
236. **Mr Batley** lives in West Halton. His home faces east and would have only limited and highly oblique views towards the turbines. He read from a prepared statement and also submitted photographs taken from the gardens of his home and his neighbour's¹¹⁹. His main concerns are: visual amenity; landscape character; heritage assets; birds and bats; and the risk to health because of the toxic waste on the site. He referred to a recent statement by Lord Deben (the Chair of the Committee on Climate Change) to the effect that sufficient onshore turbines had been permitted already to contribute to 2020 targets for renewable energy. There is substantial local opposition and more turbines around Scunthorpe would further harm the town's reputation.

WRITTEN REPRESENTATIONS

237. The comments of the Parish and Town Councils at the application staged were summarised by the Council in the Officer Report as follows:

- **Alkborough Parish Council:** No objections.
- **Appleby Parish Council:** Objects, not convinced hazardous waste site is compatible with this type of development. Only people to benefit are the landowners. Will dramatically affect the residents of Thealby. Inappropriate, a blot on the landscape, not economically viable. Supports objection by Coleby Parish Council.
- **Burton-upon-Stather Parish Council:** Objects – risk of disruption to cells containing asbestos; inconsistencies in the application; new cell within at risk

¹¹⁷ Document 15

¹¹⁸ Document 16

¹¹⁹ Documents 24 & 24A

from debris from a failed turbine; risks from damage to landfill infrastructure; control measures needed for access to Coleby Road; removal of dyke; cumulative effect of noise disrupting sleep; low frequency noise; impact upon protected species. Has NLC checked the noise data? Cumulative effect, could it cause a vortex and increase noise? Does application fall within guidelines within SPD? Not happy with the position on protected birds – ie that Natural England will allow some mortality so that gulls can keep feeding at the site. The representations were repeated at the appeal stage with support for the reasons for refusal and reference to the effect on the village of Thealby by reason of proximity.

- **Roxby Parish Council:** Supports the objections of neighbouring parish councils.
- **West Halton and Coleby Parish Council:** Shadow flicker could affect drivers on roads including the A1077; adverse visual impact; impact on listed buildings; will spoil views; even manufacturers say you should not go within 400m of turbines – danger to workers in fields and to drivers; should be a full quantified risk assessment; is landfill site correct place?; extensive turbulence would spread toxic fumes over a large area; have safety issues been addressed?; adverse visual impact; how near is nearest dwelling – inconsistencies; noise pollution; flicker; turbines overlapping; why is the cable so large? – for more turbines?; ridiculous to transport power through area liable to flood; construction will cause disturbance, noise and traffic problems; death of wildlife; NLC has met its targets; is the expense justified? Parish council thinks the applicants have not listened to objections from local communities. These are industrial sites not ‘farms’, performance only 30-35%. Visual impact; noise; property values; wind vortices over landfill; adverse effect on TV reception; effect on wildlife; local communities will not benefit.
- **Whitton Parish Meeting:** No comments.
- **Winteringham Parish Council:** Is landfill site correct place?; extensive turbulence would spread toxic fumes over a large area; have safety issues been addressed?; adverse visual impact; how near is nearest dwelling – inconsistencies; noise pollution; flicker; turbines overlapping; why is the cable so large? – for more turbines?; ridiculous to transport power through area liable to flood; construction will cause disturbance, noise and traffic problems; death of wildlife; NLC has met its targets; is the expense justified? Parish council thinks the applicants have not listened to objections from local communities. Further representations were submitted at the appeal stage.
- **Winterton Town Council:** Objects – the application is littered with errors and inconsistencies; inadequate public consultation; noise and health; proximity; landscape; vulnerable families; cumulative impact; ecology; flicker; tip restoration; tip operations and health; risk assessment; nature conservation; loss of trees; effect on families in affordable housing on Grangefield Estate; Bill going through parliament will require 2km distance from turbines to dwellings; noise pollution; environmental pollution; too close to residential properties; impact on landscape; too high at 127m; cumulative impact; SPD – disproportionate level of turbines in and adjacent to North Lincolnshire.

238. Other notable consultation responses are given below.

239. **English Heritage** in their consultation response of 21 December 2012 drew particular attention to the Grade II* listed Coleby Hall and Grade I Normanby Hall which they considered required further assessment. They acknowledged that the setting of the latter building may well already be compromised by the Bagmoor Wind Farm which is on the Normanby Estate. A further heritage assessment was submitted to the Council on 31 January 2013 which concluded that the turbines would have no impact on the setting of Coleby Hall and a negligible magnitude of impact on Normanby Hall giving rise to at most minor significance. The Council has not disputed those conclusions. English Heritage had no specific comment relating to the Grade II* listed church or the archaeology at West Halton. Generally they advised that only limited weight should be given to screening by trees of heritage assets because of seasonal variations and the transience of trees in terms of the longevity of heritage assets.
240. **Natural England** submitted a series of consultation responses which sought clarification of aspects of the ES. In September 2012 and after the deletion of turbine T4 they commented that this would reduce the collision risk to birds and they did not have further concerns but requested post construction bird monitoring and gull monitoring.
241. At the application stage the **Lincolnshire Wildlife Trust** submitted a holding objection until such time as a collision risk assessment for gulls had been carried out to demonstrate that there would be no significant negative impacts. This was with regard to the large number of gulls using the site at the time that the application was considered. The **RSPB** was satisfied with the measures proposed in relation to gulls at that time and in relation to any effect on pink footed geese. Gulls are not using the site in numbers since domestic landfill ceased.
242. The Officer Report¹²⁰ recorded that **other interested persons** submitted about 610 letters or emails of objection at the planning application stage. It should be noted that the number of communications was also affected by the need to reconsult when the Further Environmental Information was submitted after the deletion of turbine T4. This resulted in many additional letters from previous correspondents, often repeating previous comments. At each stage there were frequently multiple letters from members of the same household such that the number of households is much less than the number of representations. The Officer Report summarises the comments of the objectors. They include matters subsequently incorporated in the reasons for refusal as well as other reasons that were not endorsed by the Council or where the Council's reason for refusal was withdrawn. The latter reasons include:
- The turbines should be a minimum distance from people's homes (variously 1500m, 2000m, or 10 x rotor diameter)
 - Hazardous waste and methane gas risks
 - Turbines should be offshore
 - Location is seismatically active

¹²⁰ CD10.5

- Misleading visualisations
- Loss of trees
- 1968 Countryside Act duty to preserve and enhance the countryside
- Harmful effect on tourism
- Driver distraction
- Shadow flicker
- Low frequency noise
- Health issues
- Wind farm syndrome
- Loss of property values
- Adverse effects on radio, TV and mobile phone reception
- Wildlife impacts
- Traffic problems during construction
- Aviation safety
- Inefficient
- Prefer tidal or nuclear power
- Incompatible with footpath/bridleway route safeguarding

243. The group **Winterton Against Inappropriate Turbines (WAIT)** submitted written representations at the appeal stage but did not take an active part in the Inquiry. The size and make up of the group is not stated but it appears to have significant support in the nearest settlements. Their main concerns are: the impact on heritage assets at West Halton; the impact on landscape including visual and sequential cumulative impacts with other wind farms such as those west of Scunthorpe; proximity to dwellings, especially at New Cliff Farm and visual impact at Winterton Community Academy; harm to birds; the effect on the safeguarded route of the footway/bridleway along the North Lindsey Light Railway including the risk to users of such a route; and risks associated with the proximity to hazardous waste and leachate within 400m of the turbines. The development is claimed to conflict with a number of development plan policies in these regards. Conflict is also claimed with national Planning Policy Statements 4 and 7. However these were replaced by the Framework in 2012. The benefits of the development are regarded as minimal and insufficient to outweigh the harm.

244. At the appeal stage WAIT advised its supporters against repeating previous submissions and this is probably why only 11 submissions were made including from WAIT itself, 3 parish or town councils, Andrew Percy MP, and 5 current or former residents including the occupier of The Observatory, one of the nearest dwellings. The Ministry of Defence confirmed that it had no objection on aviation safety grounds subject to the fitting of appropriate lighting, which could be infra red.

245. A **Mr Fuller** of Burton-upon-Stather was the only person from whom written comments were received in relation to the supplementary noise assessment submitted as further environmental information in April 2014. He makes a number of criticisms of the noise assessment to which the Appellant has made a written response¹²¹.

246. Three letters of **support** were received from interested persons at the application stage. The Council summarised these as follows:

- The country is getting deeper into debt as we import fuel. The overall good should outweigh minor objections.
- It is important for every community to play its part in helping the country to achieve CO2 emission reductions. It is wholly reasonable for Winterton to do what it can to contribute to the growth of wind power.
- With regard to turbines in our area, the view of the Bagmoor turbines is attractive. This will add a new feature to the landscape.

¹²¹ Document 29

THE CASE FOR FCC ENVIRONMENT (UK) LTD

[These submissions are edited from the Appellant Company's Closing Statement with some additions from the evidence to the Inquiry]

Introduction

247. Proper planning is about a transparent, development plan led system. The statutory duty of the decision-maker (the Council at first instance, and the Secretary of State for this appeal) is to determine this application in line with section 38(6) of the PCPA 2004. This requires a fair and objective assessment against the adopted development plan and other material considerations in a transparent, balanced and reasonable way. Determination in any other way would be improper and unlawful.
248. This preamble is important in a context where it seems at least questionable – on evidence to this inquiry – that the elected members of the Council took their decision having full and proper regard to s38(6).
249. Further, the determination must be made in line with policies that are actually in place, based upon the wording actually recorded in the documents. Policy - whether it be adopted development plan policy or other policy that constitutes a proper other material consideration – is based upon formal, written, statements of policy, rather than matters that are the subject of internal debate within the corridors of Westminster. It has to be, if it is to be part of a fair, transparent and predictable planning system.
250. As Mr Stewart, Mr Mason, Mr Lowe, Mr Arnott and Mr Abrams have set out, there is a story told by (1) adopted development plan policies pursuant to section 38(6) of the PCPA 2004 viewed through the lens of the Framework (2) the various layers of Council policy and guidance including the fact that the appeal site lies within an area of potential identified by the AECOM capacity report (3) the planning history (4) the Environmental Impact Assessment process and (5) the evidence - the narrative of which leads inexorably to the grant of planning permission on the appeal site for the proposed development.
251. The matters raised by the local MP Andrew Percy are political considerations that are not reflected in the Coalition Government and other policy documents actually in place. In his presentation to the Inquiry he made plain that he did not trust (1) the development industry (2) the professionally qualified officers at the Council or indeed (3) the Planning Inspectorate to come up with the right answer. His was a belief that only Secretary of State Pickles will get the right result by turning all commercial wind farms down.
252. To this must be added the evidence from the Leader of the Council that within North Lincolnshire elected members are the voice of the community and the views of constituents were “paramount”. The impression given was that it is not for them, nor for politicians to know about “the law” or the minutiae of each application, the Council’s planning documents, or the innumerable rules, regulations and processes of the planning system. Rather, members were there in her words to “channel” local opinion and refuse this application. What was described wasn’t the lawful and proper discharge of the Council’s statutory planning function. It was unreasonable behaviour on the part of a Local Planning Authority.

Council in a difficult position

253. The Council has a duty to discharge its statutory planning functions properly. Staffing difficulties and other such internal Council matters are not a matter for the Appellant. There has been a consistent attempt to blame staff shortages for things not having been done properly. Procedurally the Council has performed very poorly and without any apparent apology or explanation such as only agreeing the Statement of Common Ground at the end of the Inquiry. The Council first included the wrong development plan policies in the reasons for refusal and perversely, did not include clearly relevant policies such as Policy HE5 and Policy CS6. Whilst there is no application for costs, the Appellant does wish to register their disquiet.

254. Substantively, the Council finds itself in grave difficulties. In his consultation response dated 28 November 2011 on the original four turbine application, its landscape adviser Mr Goldthorpe concluded that the three turbines proposed for the base of the scarp:

“appear to be capable of being seen as “contained” within the landscape whereas the machine for the scarp top could not”

He now says something very different.

255. In his officer report to committee dated 5 June 2013¹²², the case officer Mark Simmonds recommended that planning permission should be granted for the proposed development subject to conditions. Mr Simmonds was experienced in relation to commercial scale wind farm developments within the District and knew the technology, the provisions of the development plan and the local landscape. As Mr Lawrence explained, once the reporting officer has written a report, it is handed on to the Head of Planning for his personal consideration. It was thus the personal professional view of the Head of Planning as well as the corporate view of the professional planning department at the Council that planning permission should be granted. Mr Lawrence went so far as to say that he himself would have supported the grant of planning permission as of June 2013 but what he believes the Ministerial Statement of Secretary of State Pickles of 6 June 2013 says has caused him to change his conclusion.

256. In his report, Mr Simmonds/the Head of Planning concluded, amongst other things, that:

- The proposals are considered to comply with national policy, particularly the Framework. Where local harm would occur this must be balanced against the imperative to find alternative, renewable forms of energy
- Where conflict with local policies does occur, such as the requirements of policies DS1 and LC7, the benefits of the scheme, in terms of contributing to renewable energy, outweigh the local policy and are to be treated as a “material consideration” which outweighs the harm which would be caused by the development
- The development would have a significant impact upon landscape and visual amenity but the deletion of the fourth turbine has significantly reduced this

¹²² CD10.5

impact and there would not be such harm as to warrant refusal of planning permission.

- The local landscape is not designated and is already marked by use of the site as a tip. It is adjacent to a busy road (the A1077) and a number of settlements and is not overly sensitive in terms of its existing character and form. Whilst visual amenity would be harmed it would not be so harmed as to warrant refusal of this application.
- There would be no impact on the setting of the (Grade II* listed) Coleby Hall; there would be a minor effect on the significance of the (Grade II* listed) Normanby Hall. Harm to the heritage assets at West Halton is acknowledged.
- A balance must be made between the positive benefits of renewable energy which is a national priority and the harmful impacts of the scheme. The planning balance in this case falls in favour of the development and permission should be granted.

Elected members said something very different.

257. The proposed development accords with those relevant policies of the adopted development plan which are themselves consistent with the Framework. There is an element of non-accordance with the cultural heritage policies of the Structure and Local Plans and also Policy EN73 of the Local Plan with regard to “wind turbine generators” but these policies are inconsistent with the Framework and attract reduced weight accordingly.

W.A.I.T. and other interested persons

258. It is important to disentangle the material planning concerns raised by local objectors from the more general invective aimed at fending off change of any sort to the local environment. Of course local residents identify the local landscape as unique and as valued by them. Just like everywhere else, the local countryside is valued and there is nothing unusual or unique in this situation.

259. But even on the literal wording of the Ministerial Statement from the Secretary of State Mr Pickles it is clear that it is land use planning concerns which should be accorded due weight. The raw number of objections isn't relevant; as it has always been, it is the substance of such objections which must be considered. This was fairly accepted by Mr Lawrence. The key then is to ensure that the location and design of the wind farm are such that any inevitable effects do not give rise to unacceptable impacts. In this case:

- residential amenity has been protected through the use of “stand-off” distances to nearest residences that exceed those that have previously been found to be acceptable in numerous appeal cases including one decided by the SoS himself in Fenland District at Burnthouse Farm¹²³;
- noise levels are all within ETSU limits;
- construction traffic will be routed away from local villages;

¹²³ CD5.3

So far as impacts on local communities are concerned, guidance and standards have been fully complied with.

Benefits

260. The benefits in favour of the proposed development are:

- The supply of a material amount of renewable energy and contribution to the achievement of the national target of meeting 15% of the United Kingdom's energy demand from renewable resources by 2020. This remains an important material consideration in its own right, even following the recent announcement by the European Union to remove national renewable energy targets which will not take effect until after 2020.
- The contribution that the scheme would make to mitigating climate change
- Energy security through contributing to a mix of renewable resources in North Lincolnshire
- Provision of renewable energy at lowest cost to the consumer
- Direct economic benefit in terms of some local new employment
- Indirect economic benefits which are recognised by the Coalition Government
- Local community benefits in the form of tangible community projects which can be enabled through 25 years of local community funding support

261. The proposed development is a wholly reversible form of development which will leave the landscape character and visual resource intact.

262. In his Ministerial Statement of 6 June 2013, the Secretary of State for Energy and Climate Change Mr Davey reaffirmed that:

"appropriately sited onshore wind, as one of the most cost effective and proven renewable energy technologies, has an important part to play in a responsible and balanced UK energy policy".

263. The Winterton wind farm is appropriately sited and can and should play its part in our low carbon future.

Planning policy framework

264. Development plan policies now need to be considered through the lens of the Framework in terms of their consistency or otherwise with national policy. The single important test is one of consistency with the provisions of the Framework.

265. The four reasons for refusal which are now pursued refer to seven development plan policies. The degree of consistency or otherwise of any given policy with the Framework is highlighted in bold:

NORTH LINCOLNSHIRE LOCAL PLAN	APPELLANT	COUNCIL
Policy DS1: General Requirements:	Limited weight	Moderate weight
Policy DS21: Renewable Energy:	Significant weight	Full weight
Policy LC7: Landscape Protection:	Limited weight	Moderate weight
Policy R5: Recreational Paths Network:	Full weight	Full weight
Policy HE8: Ancient Monuments:	Limited weight	Limited weight
Policy RD2: Devt. in Open Countryside:	Limited weight	Limited weight
NORTH LINCOLNSHIRE CORE STRATEGY		
Policy CS16: Lscape, Grspace and Wtrscape:	Full weight	Moderate weight
Policy CS18 from the Core Strategy:	Limited weight	Moderate weight

266. The Appellant considers other potentially relevant policies to be as follows:

NORTH LINCOLNSHIRE LOCAL PLAN	APPELLANT	COUNCIL
Policy HE5:		
Devt Affecting Listed Buildings:	Limited weight	Moderate weight
NORTH LINCOLNSHIRE CORE STRATEGY		
Policy CS6:		
Historic Environment:	Limited weight	Moderate weight

267. Policy DS 1 is applicable to all forms of development and insofar as it deals with matters of design, amenity, conservation of nature resources and cultural heritage, these matters are picked up and addressed by other topic specific policies. It is essentially a design policy but requirements that there should be no adverse effect on any heritage asset and the development must reflect the character of the surrounding area are tests that no commercial wind farm would be able to comply with. The absence of any balancing provision in relation to harm to cultural heritage features renders this part of Policy DS1 inconsistent with the Framework. In any event, there would be no conflict with this policy. The relationship between Policy DS1 and Policy DS21 has been considered at both of the Flixborough Grange¹²⁴ appeals and in both cases the Inspector found that compliance with Policy DS21 outweighed conflicts with Policy DS1 (and Policy LC7).

268. Policy DS21 is a permissive policy, provided that any effects judged to be detrimental to resources of acknowledged importance are outweighed by environmental benefits. The Appellant's evidence is that the proposed development would comply with Policy DS21.

269. Mr Lawrence confirmed that no case based on breach of Policy R5 is taken by the Council against the proposed development.

¹²⁴ CD5.1 and CD5.2

270. Policy LC7 is applicable to all types of development but the essence of it relates to the need to have attention given to protection of scenic quality and distinctive local character and landscape. Notwithstanding that this policy relates to more typical types of development projects, in this regard, these considerations have been taken fully into account. Again, the relationship between Policy LC7 and Policy DS21 has been considered at both of the Flixborough Grange appeals¹²⁵ and in both cases the Inspector found that compliance with Policy DS21 outweighed conflicts with Policy LC7 (and Policy DS1).
271. Policy HE8 may or may not apply to the proposed development depending on whether the Anglo-Saxon/medieval buried remains and the Bronze Age barrow are considered to be "nationally important monuments". If Policy HE8 does apply then it does not contain any balancing provision at all and should be accorded limited weight. If it does not apply to the unscheduled heritage assets then it does not apply at all.
272. Policy RD2 seeks to exclude most development in the open countryside. Even were a wind farm to fall within a permissible category of "utilities", which is doubtful, the criteria that such a development must meet such as avoiding any detrimental effects on the countryside and residential amenity are ones that no commercial wind farm could expect ever to meet.
273. Policy CS18 is the most relevant policy within the Core Strategy and is positively worded. It is not a criteria based policy. It supports renewable sources of energy "in appropriate locations, where possible". The appeal site is an appropriate location which was agreed by the Head of the Planning Department. Based upon the totality of its evidence, the Appellant submits that the proposed development would be consistent with and specifically supported by Policy CS18.
274. Policy HE5 was not mentioned in the reasons for refusal. It is clearly not consistent with the Framework because it does not have a balancing exercise contained within it. In the policy any "damage" to the setting of a listed building would mean that the proposed development should be resisted. Given paragraph 134 of the Framework, that is too simplistic and cannot be right.
275. The Council confirmed that it was not pursuing a case based on breach of LP Policy IG5. It is a safeguarding policy and there is currently no intention to advance the scheme. There is no physical impediment to providing a suitable and commodious linkage through the appeal site. As Mr Stewart indicated, there may be a conflict with the wording of the policy and the safeguarding corridor shown but there is no conflict with the intent. It is a strong material consideration that an alternative route can easily be provided. The Appellant is willing to accept a condition in Grampian form to secure provision of a suitable permissive right of way.
276. Accordingly, the adopted development plan policies referred to in the reasons for refusal are framed in such a way that they are inconsistent with the Framework to varying degrees. The proposed development would comply with those policies contained within the adopted development plan which are

¹²⁵ CD5.1 and CD5.2

themselves consistent with the Framework and when read as a whole. The cultural heritage policies do not contain a balancing provision to weigh harm to significance of heritage assets against wider environmental benefits and are inconsistent with paragraph 134 of the Framework. To this extent, the weight attached to breach of any such inconsistent policy is heavily tempered.

3. Other material considerations

National Planning Policy Framework

277. The Framework makes clear its support for renewable energy proposals in particularly trenchant terms. Encouraging the deployment of renewable energy is explicitly included within the Core Principles at paragraph 17; paragraph 93 urges that the planning system plays “a key role” in supporting the delivery of renewable energy; delivery of renewable energy is “central to the economic, social and environmental dimensions of sustainable development”.
278. At paragraph 96, the Framework states the responsibility on “all communities to contribute to” renewable and low carbon energy. Need for renewable generation projects does not need to be demonstrated by the appellant (paragraph 98) and all applications should be granted permission provided only that the impacts are (or can be made) acceptable. The Framework makes an explicit direction that, in the determination of planning applications for wind energy development, the decision maker should follow the approach set out in the relevant National Policy Statements – which, of course, contain the Government statements on the magnitude and urgency of need, which is presumably why this Appellant does not have to deal with this issue. All of these factors and policy statements within the Framework need to be given significant weight in the determination of these applications.
279. A key submission at the close of this inquiry is that in order to meet vital policy objectives, the threshold of acceptable change has to be set at the right level; it has to be set at a level which provides adequate protection for the local environment and communities but which allows us to ‘get on with it’. In summary:
- In accordance with paragraph 98 of the Framework, this appeal should be allowed if the impacts of the proposed development are (or can be made) “acceptable”; this does not mean that the scheme has to display perfection; it means “satisfactory” or “generally agreeable”
 - The policy imperative can be translated to mean “as many schemes as possible and as fast as possible, providing that in each case the impacts of a given scheme are acceptable”; this language and sentiment comes directly from EN-1
 - “acceptable” can be interpreted to mean that planning permission should follow unless interests of acknowledged importance would be “unacceptably harmed”
 - Unacceptable harm is not the same thing as a “significant effect” identified for the purposes of the Environmental Impact Assessment Regulations 2011. It must indicate something of much greater overall gravity

- The only way to give expression to the overwhelming policy drive is to interpret paragraphs 14 and 98 of the Framework in such a way as to set the threshold of acceptable change on the various interests of acknowledged importance at a level which allows sufficient schemes to go through in sufficient places

280. The Appellant submits that paragraph 93 operationalises the concept of sustainable development for this form of renewable energy infrastructure. The approach put forward by Mr Stewart is to be favoured. If the approach towards sustainable development put forward by the Council is correct and this scheme is never actually tested against paragraph 14 then it doesn't make any difference to the outcome. The development plan is not absent, silent and relevant policies are consistent to the degree set out above¹²⁶. Pursuant to the statutory test contained in section 38(6) of the PCPA 2004, planning permission should be granted in any case because the scheme would comply with the development plan when read as a whole and there are no material considerations which would dictate a different result.

Ministerial Statements and the Planning Guidance

281. In terms of the Ministerial Statement from DCLG dated 6 June 2013, and what is now the PPG, it is important to read the product rather than focus on the reported Ministerial aspirations that pre-dated finalisation of the product. Other elements of the Ministerial Statements have not been superseded by new policy documents and remain highly relevant including the parallel 6 June 2013 DECC Ministerial Statement from Ed Davey.
282. The Ed Davey statement makes clear that on-shore wind remains central to renewable energy policy as the most mature, least cost option. Both Ministerial Statements were published together with the Government Response to the Onshore Wind Call for Evidence. The updated and streamlined advice now in the PPG was being prepared according to the Taylor Review.
283. Taken together and properly understood, the Ministerial Statements did not constitute a change in Government planning policy in relation to onshore wind development and deployment. Nor did they signal any diminution in the need case for onshore wind. Nor did the Ministerial Statements direct the decision maker to actually do anything differently, or at all. They gave notice of and looked forward to the PPG itself.
284. When the NPPG and now the PPG arrived, the four bullet points identified within the Ministerial Statements as being matters that need to be carefully considered were carried forward with the addition of two more (1) the need case (2) cumulative matters (3) topography (4) heritage assets (5) national designations and (6) amenity. However, all these points were already addressed in national planning policy and guidance and well known decided case law and they gain no greater weight from being repeated. The Appellant agrees that each and every issue raised demands careful attention.
285. Contrary to what was asserted by Andrew Percy MP there is nothing in the PPG that does or should be taken to imply a recalibration of the threshold of

¹²⁶ Bullet Point 1, not bullet point 2

acceptable change. It does not say that any greater weight should be afforded to local concerns. There is no reference in the text of the PPG which suggests that a recalibration of harm, explicit or implicit had taken place. In none of the recent Secretary of State decisions does he anywhere state that by reason of the Ministerial Statements, draft NPPG or the PPG, any additional weight to any finding of harm has been applied. There have been 3 opportunities to change policy to a presumption against onshore wind but this has not been done.

286. The wording is explicit that it is the *“planning concerns of local communities”* that need to be *“properly heard in matters that directly affect them”* – but that has always been the case. This reinforces the need to distinguish between planning concerns that genuinely affect the local community, and generalised objections. It seeks to ensure that such concerns are *“properly heard”* as has always been, the case. There is no exhortation to give such concerns any special or extra weight, indeed it would not be lawful to do so. Such concerns are to be *“properly heard”* and, it might be added, *“properly weighed in the balance”*.

287. The PPG, meanwhile, exhorts local authorities to design their policies – and, by extension, interpret them when making planning decisions – in a way that maximises renewable energy development (obviously subject, as always, to the caveat of the impacts being acceptable). This is an important sentence to remember when dealing in detail with the interpretation of documents such as Landscape Character Assessments and the SPD.

288. In this appeal:

- Whilst the need case does not automatically override environmental protection and the concerns of the community, it is an important material consideration in this case which should be afforded significant weight in the planning balance. This was established in the Sea Land and Power¹²⁷ case in the High Court; and
- The Appellant has taken full account in its supporting information for the application of cumulative matters and local topographic considerations as part of the LVIA, and the Council does not object on cumulative grounds;
- The Appellant has properly assessed the potential effects on heritage assets in line with national planning policy and guidance, taking account of the Barnwell Manor¹²⁸ and Nuon v Bedford Borough Council¹²⁹ cases; and
- The visual component of residential amenity has been assessed in line with the bench mark case of Burnthouse Farm¹³⁰, decided by Secretary of State Pickles himself and the Council does not object on this basis

289. In summary, the considerations set out in the Ministerial Statements were those that would already be applied under the Framework and in environmental impact assessment procedures and were considerations properly addressed by the Appellant in its evidence. Whilst helpful and welcome, the PPG does not require the Appellant or decision maker to do anything more or different.

¹²⁷ CD4.5

¹²⁸ CD4.7

¹²⁹ CD4.9

¹³⁰ CD5.3

Energy policy context

290. Energy policy is clear. When the following documents are read together:

- Climate Change: The UK Programme
- EU Climate Change and Energy Package
- Planning for a Sustainable Future
- The Renewable Energy Strategy
- The Planning Act 2008
- The Energy Act 2008
- The Climate Change Act 2008
- UK Low Carbon Transition Plan
- National Policy Statement on Energy Infrastructure
- National Policy Statement on Renewable Energy
- The Renewable Energy Action Plan
- The Annual Energy Statement of July 2010
- Ministerial Statement of 18 October 2010
- Renewable Energy Review of May 2011
- Presumption in Favour of Sustainable Development of 16 June 2011
- White Paper on Energy Market Reform of July 2011
- Renewable Energy Roadmap of July 2011
- Delivering our Low Carbon Future of December 2011
- Energy Act 2013
- Annual Energy Statement of October 2013
- Renewable Energy Roadmap Update of November 2013

There is no reasonable room for dispute regarding (1) the seriousness of climate change and its potential effects (2) the seriousness of the need to cut carbon dioxide emissions or (3) the seriousness of the Coalition Government's intentions regarding deployment of renewable energy generation.

291. The Roadmap Update¹³¹, written in November 2013 confirms that on-shore wind continues to have an important role to play in UK energy policy and a long term investment programme underpins that commitment. As with the 2012 Update, the document emphasises the economic benefits presented by renewable energy. In summary, the document:

¹³¹ CD6.7

- Emphasises that renewable energy offers the UK a wide range of benefits from an economic growth, energy security and climate change perspective (introduction, page 11)
- 4.1% of energy consumption came from renewable sources in 2012 against a target of 15% by 2020
- On shore wind is one of the most cost effective and proven renewable energy technologies and has an important part to play in a responsible and balanced UK energy policy (paragraph 114)
- Renewable energy helps the UK achieve challenging decarbonisation targets and a key benefit of deploying renewable energy technologies is the potential reduction in carbon emissions (paragraph 91)

292. It is erroneous to suggest that somehow the need case for onshore wind has abated and that it is necessary that a scheme should do less harm than in circumstances when need was more urgent. NPS EN-1 makes it crystal clear that the need for renewable energy remains urgent. The Secretary of State was explicit in recognising this point in the recent Treading Bank¹³² appeal decision and that it remained a “very important” factor. Following what the Secretary of State said at East Heslerton¹³³, the Council agrees that “very significant weight” should be accorded to the renewable energy benefits of the proposed development.

293. The Council does not take any sort of performance related case against the proposed development; in other words, there is nothing relating to available wind speed, commercial viability, predicted output, carbon payback or emissions savings which specifically weigh against the scheme in the planning balance.

Supplementary Planning Guidance and Supplementary Planning Document

294. The Council adopted its SPG in 2003 to avoid what it saw as a “free for all”, motivated by a desire to make sure that all local authorities took what it saw as a proportionate number of wind farms. The SPG has not been referred to by the Council in its closing submissions. The Council adopted “Planning for Renewable Energy Development” in November 2011. The tone of this document is openly hostile towards further on-shore wind development and the backdrop is an embargo to further renewable energy development within the district. The wording of the Foreword expressly states that there should be no more renewable energy development in North Lincolnshire, in particular no more on-shore wind farms unless and until other local authorities had accepted more developments.

295. Mr Lawrence could point to no other way in which the Foreword could be construed; his only defence was to say that in fact, officers of the Council were still willing to grant planning permission for farm diversification scale wind turbines. This does nothing to deal with the impression given to developers that North Lincolnshire is hostile territory and closed for business to on-shore wind developers. This is exactly the position which the Leader of the Council wants to perpetuate. However, when the policies themselves are interrogated, with

¹³² CD5.15

¹³³ Document 20 APP/Y2736/A/13/2201109

the exception of the overly prescriptive separation distances from PROWs, the proposed development appears to be in conformity with what are very vague policies within the body of the document.

4. Principal issues

Landscape character and visual amenity

296. A Landscape and Visual Impact Assessment (LVIA) was included with the Environmental Statement¹³⁴ which addressed the original development proposal for 4 turbines. It was then updated in the Further Environmental Information for the reduced development of 3 turbines¹³⁵. It concluded that: the introduction of large man-made turbines would lead to a clear effect on landscape character and visual amenity in the immediate vicinity of the development site; the turbines would be prominent new features in the landscape and within views from nearby properties; significant cumulative visual effects may result at a small number of locations where the appeal turbines and the Bagmoor turbines would both be visible at short range; and locally significant effects upon character and views would result.
297. However it also concluded that: the localised effects would not necessarily be unacceptable; the turbines would not be so intrusive as to impinge on the ability of local residents to enjoy the amenity of their property and local environment; due to the subjective nature of individual responses to the presence of wind farms, effects would not necessarily be adverse; due to existing development in the area which includes the tall vertical structures of wind turbines, electricity pylons, South Ferriby cement works, the Humber Bridge, and Scunthorpe industry, the capacity of the landscape to accommodate change would not be exceeded; and that the turbines would form a new element within the wider landscape rather than lead to extensive change in the underlying character.

Mr Goldthorpe

298. The Council did not seek any landscape consultation response for the Bagmoor wind farm. The Council then asked Mr Goldthorpe to provide the only landscape related consultation response on the current application event though it employs a qualified landscape architect. Mr Goldthorpe does not possess any professional landscape qualifications and simply relies on a lay person's long standing familiarity with the local landscape. Whilst a diverse range of past roles within the Council is set out, nowhere was there any reference to familiarity with GLVIA methodology. He misunderstands the purpose of the GLVIA which is to assist landscape practitioners set up a transparent and consistent framework to assessment. He placed greater weight on the visual containment provided by the scarp land forms than would have been the case with a landscape architect taking a "conventional" GLVIA approach. He presented as an unreliable witness and gave difficult to follow, muddled and inconsistent evidence.

¹³⁴ Appellant's Appeal Documents File 2 of 3

¹³⁵ Appellant's Appeal Documents File 1 of 3

299. Mr Goldthorpe initially denied that he had changed his mind about the acceptability of the proposal but he belatedly had to accept that he had indeed undertaken a *volte face* in relation to: (1) containment afforded by the scarp; (2) acceptability in principle of the appeal site for commercial scale wind farm development; (3) geographical extent of significant effects; and (4) cumulative effects.
300. For the Appellant, Mr Mason has a very clear recollection of the meetings with the Council at which Mr Goldthorpe was present. The concern expressed was with the 4th turbine which was described as being potentially dominant. It was never suggested that the appeal site was unacceptable in principle or that there was some insuperable difficulty with the remaining three turbines. Mr Goldthorpe tried to draw attention to the suggestion that impacts could be further reduced if the turbine heights were lowered. In evidence he said that he had about a 30m reduction in mind. In his consultation response he did not say that without a reduction in height the remaining three turbines would be unacceptable. Moreover, the Appellant did consider the suggestion but decided very rightly that it was not a sensible move. The visual overtopping point would remain just the same; the proportions of the turbines would look odd if the same rotor diameter was used; and most importantly of all the effect of seeing the nacelle and blades from viewpoints on the scarp would be exacerbated and made worse.
301. Mr Goldthorpe described his change of opinion as resulting from work undertaken on other wind farms at Flixborough Grange (2011 and January 2012) and Saxby Wold (Inquiry landscape session early 2013). The current scheme did not go to committee until June 2013. Notwithstanding a complete change of mind on his part regarding the acceptability of landscape character and visual effects and a newly discovered unacceptable cumulative impact, Mr Goldthorpe seemingly did not get in contact with the planning department before Mr Simmonds wrote his report, blaming the amount of work on his desk. That is not credible.

Landscape character

302. The Lincolnshire Edge area is described as "*the most discontinuous scenery of any Landscape Character Area in North Lincolnshire*". The appeal site lies within the *Despoiled Landscape* type, sandwiched between *Elevated Open Farmland* to the east and *Elevated Wooded Farmland* to the west.
303. A principal point of objection from Mr Goldthorpe now seems to be that it is not good wind farm design to locate turbines close to the scarp edge. In fact, the three turbines are placed parallel to the landform and are sympathetic to it. The turbines respond to the landscape pattern rather than fight against it. When a long list of design principles taken from the SNH Siting and Design Guidance was put to Mr Goldthorpe he accepted that the design performed well. Indeed, he accepted that on the appeal site, the design was as it should be. The only real point of disagreement came with the advice in paragraph 4.33 which he had simply misread; that element of guidance relates to a high landform rising behind a turbine and not a modest landform which is much lower than the turbine as is the case here. The scarp edges are important and form a key characteristic of the local landscape but they are not sacrosanct. Moreover, Mr Goldthorpe gave clear evidence that Bagmoor was acceptable and

that the benefit of containment that the scarp exhibited there was equally applicable to the appeal site. This is also what he said in terms in his consultation response.

304. The appeal site and its environs are very open and generally of a large scale. The turbines are grouped on the most level part of the site so that the development appears visually cohesive. The complexity of land uses in the vicinity is a significant mitigating factor.

305. The suggestion by Mr Goldthorpe was that whilst development of the appeal site was unacceptable in principle for wind farm development, there were other parts of the Despoiled Landscape that would be acceptable in principle but he only identified the area which is now the Bagmoor wind farm because it is close to Scunthorpe. This had nothing to do with containment by the scarp but rather was a spatial point related to the presence of urban development. This is a different point and not one which has ever been expressed by the Council or Mr Goldthorpe himself.

Visual amenity

306. Whilst Mr Goldthorpe has attempted to undertake his own assessment and finds fault with sensitivity and magnitude judgments, even on his own revised basis it would make no difference to overall findings of acceptability on grounds of visual impact. When asked to identify the most seriously harmful impacts, he suggested it would be the matter of harm to general amenity at West Halton from the village green. He readily accepted that this was not a landscape character point. From West Halton, the over topping of the scarp point is irrelevant because from that direction in the west, the full height and legibility of the wind turbines would be apparent. Whilst the turbines would result in visual change in views from the village green, the juxtaposition of public open space and wind turbines is one often repeated up and down England. There is nothing unacceptable about this relationship. If this is the worst impact identified by Mr Goldthorpe then it helps to calibrate the rest of his concerns.

307. The other place from which Mr Goldthorpe considered there would be unacceptable visual effects was from the edge of the Lincolnshire Wolds on the Viking Way footpath. The containing effect can be seen with the Bagmoor scheme which Mr Goldthorpe thinks is acceptable. The proposed development is smaller and much simpler in layout and legibility. The turbines are at such a distance and would occupy such a small part of the arc of what is a panoramic view that the impacts would not be unacceptable.

Cumulative impacts

308. In his consultation response, Mr Goldthorpe was quite clear that there were no unacceptable cumulative effects. This was notwithstanding that Bagmoor was already operational and he knew full well about the Flixborough Grange and Saxby Wold proposals. As his evidence now stands, Mr Goldthorpe was clear that the Council was not running a cumulative landscape character case. Rather, his concern was with in-combination views from the edge of the Lincolnshire Wolds and from the North looking southwards. From the Wolds, the distances between the subject wind farms is such that they would appear separate and distinct and the landscape would retain its character as a landscape within wind farms contained within it. Given the extent and scale of

the existing wind farm development, it is very difficult indeed to see how the addition of the three turbines at Winterton would make any appreciable difference.

309. From the North, views would be obtainable of the three new turbines with the Bagmoor turbines behind. Leaving aside the remoteness and relative inaccessibility of the viewpoint from which this effect would be experienced, the addition of the Winterton turbines would not make any significant difference.

310. In short, there would not be any unacceptable cumulative impacts resulting from addition of the proposed development to the existing baseline whether in (1) cumulative landscape (2) combined visibility or (3) sequential terms.

Visual component of residential amenity

311. The separation between what is a private interest and what should be protected in the public interest is tolerably clear; it has been the subject of particular focus in wind farm cases since the decision at Enifer Downs¹³⁶ in April 2009. It is acknowledged that the approach adumbrated by Inspector Lavender, articulated in its fullest form at Carland Cross¹³⁷ should not be regarded as a mechanistic 'test' and has no status in terms of being part of statutory documentation or planning policy or guidance; however, it is welcome to adopt a logical, transparent and objective approach and was recognised by the High Court as a wholly suitable way of determining a policy compliance threshold.

312. As was pointed out at the Burnt House Farm¹³⁸ appeal, there can be no substitute for site visits to individual properties so that any likely impacts can be judged in the particular and unique circumstances of each. Nevertheless, it is helpful to consider the factors and thresholds of acceptability which have guided decision-makers in other cases:

313. No individual has the right to a particular view but there comes a point when, by virtue of the proximity, size and scale of a given development, a residential property would be rendered so unattractive a place to live that planning permission should be refused. The public interest is engaged because it would not be right in a civil society to force persons to live in a property, which, viewed objectively, the majority of citizens would consider to be unattractive. The test is concerned with an assessment of living conditions as they would pertain with the wind farm built, irrespective of the starting point. At Burnt House Farm¹³⁹, the Secretary of State found it useful to pose the question whether "would the proposal affect the outlook of these residents to such an extent i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?". This was precisely the position adopted by the Secretary of State in the Nun Wood¹⁴⁰ decision decided in mid-December 2013

¹³⁶ CD5.7

¹³⁷ CD5.5

¹³⁸ CD5.3

¹³⁹ CD5.3

¹⁴⁰ CD5.18

314. The test of what would be unacceptably unattractive should be an objective test, albeit that judgement is required in its application in the circumstances of a particular case.
315. There needs to be a degree of harm over and above an identified substantial adverse effect on a private interest to take a case into the category of refusal in the public interest. This was expressly endorsed by the Secretary of State in paragraph 10 of his decision letter at Burnt House Farm¹⁴¹ dated 6 July 2011. Changing the outlook from a property is not sufficient. Indeed, even a fundamental change in outlook is not necessarily unacceptable.
316. The visual component of residential amenity should be assessed "in the round" taking into account factors such as distance from the turbines, the orientation, size and layout of the dwelling, internal circulation, division between primary and secondary rooms, garden and other amenity space, arc of view occupied by the wind farm, views through the turbines and the availability of screening.
317. Each case has to be decided on its own merits but other appeal cases provide a useful benchmarking exercise. Granting permission here would be entirely in line with such decisions.
318. At no dwelling would the turbines be visually overbearing, overwhelming or oppressive such that they would be rendered unattractive places in which to live. Given the scale of the development, spacing of the turbines, separation distances involved, orientation of properties and amenity space and openness of view, any effects on outlook would not cross the public interest line here at Winterton.

Cultural Heritage

319. The evolution of the Council's case is revealing; it has moved from a position of no objection subject to the imposition of conditions to allegations that the level of harm is just below 'substantial harm' within the meaning of paragraph 134 of the Framework. Mr Goldthorpe's intervention may well explain the change in position on the part of the Historic Environment Record (HER):
320. In her consultation response dated 7 November 2011, Ms Williams indicated that providing a temporary roadway system was used then: *"The HER therefore has no further objection to the determination of this application"*.
321. On an unknown date, Mr Rychlak indicated that Mr Goldthorpe who was then line manager to Ms Williams told them that they ought to reconsider the position relating to potential impacts on heritage assets in West Halton. As recorded in Ms Williams' email dated 22nd January 2013, the HER undertook "its own appraisal of the site and its environs".
322. The appraisal undertaken by HER was not constrained in any way and was not bound to follow any particular methodology. Ms. Williams reported that

¹⁴¹ CD5.3

*"On the basis of the methodology used in the assessment, the HER finds that the settings of these designated heritage assets would be degraded to varying degrees; at St. Etheldreda's a **low** impact with an effect of Moderate Significance; and on the village green monuments a **medium** adverse effect giving rise to an effect of Major Significance"*

323. In relation to St. Etheldreda's the report concluded that:

*"The key element of setting degraded is the immediate setting of the church in views out from the entrance porch and to the south west from within the church yard particularly close to the war memorial where people are likely to gather in memoriam-notably in November. The magnitude of effect (SA Table 2) would be Low Adverse "Parts of the asset's fabric and/or setting are lost and changed, but without substantially affecting key characteristics, leading to a slight reduction in the asset's cultural significance". Thus an assessment of the Significance of Effects (SA, Table 3) combining high sensitivity with **Low** Magnitude results in a **Moderate** Significance of Effect on St. Etheldreda's"*

324. In relation to the Anglo-Saxon and medieval remains on the village green, the report concluded that:

*"The key element of setting degraded is the intimate setting of the site with the village surround of domestic scale and the prominence of the church in so far as that aspect becomes subsidiary to the visual dominance of the wind turbines within the confines of that setting. The magnitude of effect of the turbines is therefore assessed as **Medium** Adverse "One or more key characteristics of the asset's fabric and/or setting is considerably degraded, substantially reducing the asset's cultural significance"(SA, Table 2), resulting in a **Major** Significance of Effect (SA, Table 3)"*

325. In relation to the barrow mound on the green, the report concluded that:

*"The key element of setting degraded is the intimate setting of the site with the village surround of domestic scale and the prominence of the church in so far as that aspect of setting becomes subsidiary to the visual dominance of the wind turbine in the confines of that setting. The magnitude of effect of the turbines would be **Medium** Adverse "One or more key characteristics of the asset's fabric and/or setting is considerably degraded, substantially reducing the asset's cultural significance (SA, Table 2) resulting in a **Major** Significance of Effect (SA, Table 3)"*

326. In its Statement of Case, which Mr Rychlak apparently co-wrote or at least contributed to, the Council indicated that:

"...it will demonstrate the importance of key views from within the grounds of St. Etheldreda's church, primarily from the south porch, and in the wider landscape from the monuments on the village green, incorporating the church"

327. Accordingly, based no doubt on the HER assessment, the Council's case as articulated in the Statement of Case was that views from the south porch of the Church were a key view and the most important of the views obtainable from within the church grounds

328. In its evidence before this inquiry, any notion that views from the south porch or from within the church yard are a key view let alone the key element

of setting for the church has been ditched. The focus of the case has switched almost completely to views from one part of the village green

329. The Council's case seems to be based on a general amenity case and not a heritage case. Mr Rychlak waxed lyrical about the village green as being "stunningly beautiful" and as typifying "this green and pleasant land". This is the language of protecting a communal green space which should not and must not be confused with any communal value relevant to significance of the heritage assets. Pleasant though it is, Mr Rychlack accepted that West Halton would not qualify for Conservation Area status because there weren't enough assets of heritage value to warrant it. What the Council has done is confused visual change in one view from part of a pleasant village green with heritage significance; this is a serious error and one which leads them to grossly overstate the impact of the scheme.

Statutory and policy framework

Legislation

330. With regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990 the Barnwell Manor¹⁴² litigation has made plain the statutory duty is separate to the planning policy position. In summary:
331. The assessment of harm is a matter of planning judgment. However, once the decision-maker finds some harm to a heritage asset, the effect of s. 66(1) is that the harm must be given "considerable weight" in the balance, creating a "strong presumption" against the grant of planning permission
332. In striking the balance, it is not enough simply to ask whether the advantages of the scheme outweigh the harm in a loose or general sense, but whether they sufficiently outweigh harm to rebut that strong presumption
333. The courts will need to see a clear indication on the face of the decision that the section has been approached in that way. Even though the inspector referred (in several places) to s. 66(1), Sullivan LJ thought that he *"appears to have treated the less than substantial harm to the setting of the listed buildings...as a less than substantial objection to the grant of planning permission"*. Even where harm is properly assessed as less than substantial, *"it does not follow that the 'strong presumption' against the grant of planning permission has been entirely removed"* (paragraphs 28 and 29 of the judgment)
334. The Court of Appeal also agreed that the inspector had misapplied policy on heritage assets in what was then PPS5 (now incorporated into the Framework), undermining his assessment of the harm as "less than substantial". He had failed to properly examine the contribution the setting of the assets made to their significance, with the result that his assessment of the harm caused by the introduction of the turbines to that setting was flawed. Nor was it clear, at any rate without further explanation how he could rationally have treated the distinction between "substantial" and "less than substantial" harm as hinging on the observer's ability to distinguish between the heritage assets and the obviously modern turbines.

¹⁴² CD4.10

Policy

335. Heritage policies in the development plan lack any balancing provision and accordingly, breach of its strict wording should be accorded limited weight
336. The Framework supersedes most previous national policy in this area although considerable continuity is apparent. One of the core planning principles in paragraph 17 is the conservation of heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations. Significance is something that is experienced through an understanding of the heritage asset and which should be expressed in terms of archaeological, architectural, artistic or historic interest
337. This is an exhaustive list of the special interests which go towards significance, drawn from the definition in Annex 2 to the Framework. The authors of PPS5 and then the Framework specifically did not adopt the value based approach advocated by English Heritage in Conservation Principles. Conservation Principles came first and is good and thoughtful, but as English Heritage itself accepts, such values are more subjective and discretionary. In the subsequently adopted policies the special interests are harder edged and more usable in decision-making. This is important as the Council is making an amenity based case in relation to West Halton green. Nevertheless, it is agreed that communal values can feed into significance.
338. The hierarchy of (1) primary legislation in the Listed Building and Conservation Area Act 1990 (2) national planning policy (3) Practice Guide and then below those three (4) English Heritage guidance (which includes Conservation Principles) is clear and set out in Figure 1 of the Guidance on Setting of Heritage Assets
339. Significance is not the same thing as general visitor amenity; nor is it the same as a contemporary landscape and visual amenity assessment
340. Any assessment of the significance of a heritage asset should include the contribution of its setting. Any assessment should recognise that elements of setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral
341. Setting is not a heritage asset in itself and nor is it a heritage designation; its importance lies in what it contributes to the heritage significance of a heritage asset. The key question is to understand whether and to what extent elements of the setting of a heritage asset contribute to significance. It is then possible to assess whether any change in that setting due to the proposed development would affect the significance of the asset. Change in itself does not constitute an effect on significance
342. The Framework and the EH Guidance on Setting do not use terms like 'wider setting' or 'landscape setting'. These are simply working terms and are neither required nor should be used in place of the policy definition in Annex 2 to the Framework when properly applied
343. When an asset is likely to be affected, significance must be assessed in its entirety. This involves looking at setting 'in the round'. Particular views may be more important (because they were designed or because they convey more

heritage relevant information) than others but an assessment must not be restricted merely to views in which a development may have an effect.

Level of harm

344. Policy guidance does not provide clear guidance on where the line between “substantial harm” and “less than substantial harm” should be drawn. However, the PPG makes plain that the threshold is a high one. Importantly however, Jay J concluded in the decision of *Bedford Borough Council v (1) SSCLG and (2) Nuon UK Limited* [2013] EWHC 4344¹⁴³ that the Inspector was correct in saying that:

“24.....for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away.”

345. Plainly in the context of physical harm, this would apply in the case of demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced”.

Reversibility

346. Paragraph 2.7.17 of NPS EN-3 directs that when undertaking an assessment of the likely impacts of wind turbines on both the landscape and on cultural heritage assets, the decision maker should take reversibility into account. This echoes English Heritage’s own guidance on Wind Energy and the Historic Environment which provides in the last bullet point on the Checklist that consideration should always be given to the reversibility of wind turbines. Reversibility can only serve to mitigate any harm arising and militate in favour of the grant of planning permission.

Designated heritage assets

347. The assets in West Halton which the Council asserts will be affected comprise:

- St. Etheldreda’s Church (Grade II*)
- Bronze Age burial mound (undesignated but considered by the Council to be of equivalent significance to a SAM)
- Anglo-Saxon and medieval remains on the village green (undesignated but considered by the Council to be of equivalent significance to a SAM)
- Other (unspecified) Bronze Age funerary and ritual sites

¹⁴³ CD4.9

348. The calibration of the Council's case is too sensitive; the Council has failed to clearly establish that harm means harm to significance of the heritage asset and not just harm to setting. The importance of setting lies in what it contributes to the significance of a heritage asset and not simply whether there would be visual change because the turbines could be seen.
349. The ES concluded that the church is of high sensitivity but that due mainly to restricted visibility (including tree screening) there would be a **negligible** magnitude of impact on its setting which would be of **minor** significance. For the reasons given by Dr Lowe, there will be no impact on the architectural, artistic and archaeological interest embedded in the fabric of the church or any earlier remains buried beneath it. Nor will the wind farm impact on aspects of the architectural and artistic interest of the church as appreciated from within the immediate setting provided by the graveyard. The wind farm would have a very limited impact on short-range views of the Church from part of the village green. However, the considerable separation in the field of view between Turbine 2 and the church means that the former would not unacceptably dominate or compete with the heritage asset. The view from the village green is only one view and it is not a key view of the church in terms of how setting might contribute to its significance.
350. The tranquil setting that contributes to the aesthetic significance of St. Etheldreda's would not be unacceptably affected by noise levels. Dr Nicholson accepted that it was only the impact of noise during day time hours with which she had any concern in terms of impact on setting of heritage assets; however, even here the objection is misconceived. The predicted turbine noise would be well below existing background levels during the day and below the night time levels too. This is the predicted impact. The only case that Dr Nicholson can make is based upon the proposed ETSU-R-97 derived noise limit which, for the reasons set out by Mr Arnott indicates is very unlikely to be taken up. Even on this theoretical basis, such an increase would be acceptable.
351. With regards to the buried Anglo-Saxon and medieval remains below the village green, the Council accepts that it has to demonstrate that some hitherto unknown collective group significance is unacceptably affected for its case to succeed. In the words of Dr Lowe, whilst the Council may be able to describe some form of academic model, the sort of historic continuum described by both Council witnesses simply does not manifest itself in any way on the ground. Whilst it is accepted that Turbine 2 will be visible in views from the village green where the remains have been excavated, their significance is not informed by longer range views outwith the village.
352. It was not until just over a year ago that even professionals realised that the mound on the village green was likely to be a Bronze Age barrow. Until then, it was thought to be either a Civil War lookout mound or a post-mill mound. The presence of the wind farm would have no impact on the archaeological interest that resides within the remaining fabric of the mound nor on any earlier remains beneath it. It will continue to be possible to appreciate the location of the barrow, its proximity to the church (noting the physical demarcation by way of a stone wall and steep drop which makes a direct walking route impossible) and its survival as an upstanding monument on the village green. It will continue to be the most upstanding of the North Lincolnshire group of prehistoric barrows and it will continue to be possible to appreciate that it is a rare survival. The

significance of the barrow is not informed by longer range views outwith the village.

353. The thrust of the heritage protection guidance in the Framework is about managing change in the historic environment responsibly; not about avoiding harm altogether where it is justified. Paragraph 134 of the Framework applies in relation to the various designated heritage assets. The modest degree of harm identified in this case should be weighed against the wider benefits of the application and the public benefit of mitigating the effects of climate change. It is clear that the benefits of this scheme outweigh any harm within paragraph 134 in relation to the church. It is also clear that the statutory duty placed on the decision maker by section 66(1) and as explained by the Court of Appeal can properly be discharged and planning permission still granted. In relation to paragraph 139 it is not disputed that the archaeology is of schedulable quality. This is not a case of the interest of renewable energy trumping the interest of cultural heritage. The proposed development represents an acceptable solution in which both important interests can satisfactorily co-exist.

Noise

354. The Council's apparent case on noise impacts is that it is for an Inspector to decide what can constitute a material consideration in any given case and he can look to guidance, standards and materials other than ETSU-R-97 to inform his decision. This is an uncontroversial statement of principle, subject however to the legal requirement to provide clear reasoning to support any conclusion.
355. However the operational noise conditions proposed by the Council are: (1) a simplified procedure condition which is not appropriate for this scale of commercial wind farm; and (2) a condition actually tied to predicted levels rather than the ETSU-R-97 levels derived from a robust background noise survey, thus ignoring Government guidance that considers the ETSU-R-97 guidelines as fit for purpose.

National planning policy

356. Government guidance has consistently incorporated ETSU-R-97 as the approved methodology for assessing the impact of noise from wind turbines. The Framework specifically incorporates the guidance contained within EN-1 and EN-3. General guidance on noise is contained within EN-1. The specific, technology specific guidance for assessment of noise from on-shore wind energy schemes is provided in section 2.7 of EN-3. Paragraphs 2.7.57 and 2.7.58 of National Policy Statement EN-3 are perfectly clear that (1) ETSU-R-97 should be used and (2) providing that it is demonstrated that a particular scheme would comply with an ETSU-R-97 compliant assessment, a decision maker may well decide to give limited weight or further still no weight to claimed impacts on amenity.
357. As is the case with all government policy in the planning field, no matter how much a party may disagree with ETSU-R-97, it should be followed unless there are good reasons to depart from it. The position under Welsh and Scottish guidance is not relevant to this English decision albeit noting that the decision in

Tegni Cymru Cyf v Welsh Ministers [2010] EWCA Civ 1635¹⁴⁴ simply said in the Welsh policy context, a decision maker is entitled to look beyond ETSU-R-97 compliance in a particular case if the evidence warrants it.

358. The Government's endorsement of ETSU-R-97 cannot prevent consideration of the specific facts of an individual case, scientific information that points to a need to revise ETSU-R-97 either in light of the passage of time or evolving research or in relation to the site in question, or actual experience on the ground elsewhere. However, following the clearly stated guidance in paragraph 2.7.58 of EN-3, although it is open to a decision maker to look at factors beyond or contrary to ETSU-R-97, the Government is steering decision makers very much away from giving other factors weight in the planning judgement.
359. In the Spring Farm Ridge¹⁴⁵ challenge when this very point was raised by objectors, the High Court said that it was perhaps unsurprising that the Inspector had used ETSU-R-97 as the exclusive and sole criteria for determining the acceptability of noise impacts. On the facts of this case, the Appellant makes exactly the same point; it is open to the Inspector and Secretary of State to consider any of the myriad points made by the Council but then decide, perfectly lawfully and rationally that ETSU-R-97 should be used for determining acceptability of impacts and as the basis for imposing a suitably worded condition.

Acceptable change in the background noise environment

360. The appellant readily accepts that there will be a change to the local noise environment, even where the actual turbine noise immissions are less than those levels permitted by ETSU-R-97. Noise immissions will, at times, inevitably exceed current prevailing background noise conditions. A rise above very low prevailing background levels to something which is still in absolute terms a very low background noise environment would not cause disturbance, result in an unacceptable level of amenity or result in breaches of development plan policy. There will be a change in the background noise environment, which should expressly be recognised by the decision maker, as was lawfully done by the Inspector at Bradwell¹⁴⁶ in the Lee litigation.
361. However, great care has to be exercised so as not to invite a wolf in sheep's clothing into the decision making process; it would be a nonsense to find absolute limits acceptable within the rating and assessment ETSU-R-97 process, only to reintroduce a BS4142 style argument via the backdoor of an amenity argument. The very principles, purposes, methodology and shortcomings of BS4142 were known, understood and enshrined within ETSU-R-97 by its authors. It is not therefore necessary to undertake the ETSU-R-97 process and add something to it; impacts on amenity have already been taken into account. Simple audibility is not the same thing as acceptable levels of noise impact commensurate with the need to facilitate renewable energy development. Change in itself doesn't matter; it would have to be change to a background noise environment which is unacceptable, which in the case here Winterton it wouldn't be.

¹⁴⁴Document 10

¹⁴⁵ CD5.29

¹⁴⁶ CD5.30

Institute of Acoustics Bulletin and the Good Practice Guide

362. The assessment was carried out in accordance with the IoA Bulletin Article and the recently published Good Practice Guide and demonstrates that predicted wind turbine immission levels, using a candidate turbine, meet the ETSU-R-97 derived noise limits under all conditions and at all locations for both quiet daytime and night-time periods. Because downwind propagation conditions are assumed, the use of warranted sound power levels coupled with a ground roughness factor of 0.5 produces a realistic worst case. The Council has not disputed this.
363. Considerable work has been done to validate actual operating wind farm noise levels with those predicted assuming various assumptions within ISO 9613-2. The results have led to consensus amongst leading acousticians in this sector regarding the parameters which give predictions most closely related to those measured. Such predictions have benefitted from direct validation and the use of warranted sound power levels, in combination with a ground effect factor of 0.5, provides a realistic worst case basis for assessment assuming downwind propagation in all conditions.

Other Amplitude Modulation

364. Excess or Other Amplitude Modulation ("OAM") has been discussed at length in a number of inquiries. There remains no consensus amongst the acoustic community regarding the definition, causes, mechanics, frequency, duration or seriousness of amplitude modulation. Government policy and guidance, notwithstanding a number of opportunities to change tack by its authors has not changed. As recorded in the very recently published IoA Good Practice Guidance, current best practice is not to attempt to impose an amplitude modulation condition. The IOA website advice indicates that the Renewables UK template condition should not be used.
365. In the recent Secretary of State decision at Asfordby issued in March 2014, the Secretary of State expressly stated that in the absence of study and endorsement by the IOA, he did not consider the Renewables UK material or template condition to require him to seek consultation responses from the main parties. This is a clear and up to date statement by the Secretary of State that given the current state of knowledge, he does not consider the research or template condition to constitute a material consideration. The situations at Turncole and Dunsland Cross were both markedly different because, for whatever reason, based on local circumstances, the principal parties agreed that a condition to control OAM was necessary and the wording was within Circular 11/95. No such agreement is made here.
366. The Appellant submits that it is not possible, given the current state of play, to construct a lawful condition to control OAM. Precisely because the causal mechanism is not known, it is not possible to devise a scheme to predict and abate it. As is suggested in the Renewables UK material, the condition would likely dissolve into a blunt tool requiring turbines to be switched off, at least every night which is neither proportionate nor workable. Particular reference should be made to the detailed discussions in the recent appeals at Woolley Hill, Jacks Lane/Chiplow and Batsworthy Cross and the conclusions reached therein, all of which remain sound. SPC does not argue for use of the Renewables UK template condition but for a Swinford style variant of a scheme to be agreed.

Exactly this sort of condition was rejected by Inspector Mellor in the Jacks Lane/Chiplow case.

367. In terms of the PPG, because the likelihood of OAM itself cannot be predicted and there is nothing credible to suggest that the appeal site would be particularly prone, or even likely to such tendencies, the imposition of a condition cannot be claimed to be necessary in the sense of mitigating foreseeable impacts. Similarly, asking the question "*whether planning permission would have to be refused if the condition were not imposed*", the answer would be 'no' because there is no evidence of demonstrable harm
368. Because there is so little understanding of OAM, any condition set would be arbitrary
369. The Court of Appeal decision in Hulme concerned the construction of the specific wording of Conditions 20 and 21. The Court did not consider the science of OAM and clearly was not deciding on the need for an OAM condition in any given case.
370. In all the circumstances, the Appellant is clear that an OAM condition would be (1) unnecessary (2) imprecise (3) unenforceable and (4) unreasonable and therefore outside the guidance now in the PPG and unlawful. Other legislation can be used to control OAM/EAM should it occur. There is no agreement as to the definition of OAM/EAM suggested by the Council and there is no consensus amongst professional acousticians that the LAeq parameter suggested by the Council is appropriate. Neither is LAeq data available for the project. This does not then mean that planning permission should be refused. The unquantifiable risk of OAM occurring here at Winterton at levels which would be unacceptable and which might justify refusal of planning permission in the public interest does not lead to this conclusion. Statutory nuisance remains available as an appropriate statutory code for dealing with OAM complaints.

5. Further material considerations

371. The Appellant understands that beyond (1) landscape character and visual amenity (2) cultural heritage and (3) noise, the Council accepts in the SoCG at paragraph 10.1 that there are no other sustainable reasons for refusal. In relation to wildlife and a request from interested persons for post construction monitoring of gulls, the written response of 12 June 2014 from the Appellant's ecology consultant points out that a monitoring condition recommended in the ES related to visits to the appeal site by gulls when it was in use for domestic waste. With the cessation of domestic landfill operations at the appeal site there is a much reduced requirement for gulls to fly in proximity to the turbine locations and be exposed to collision risk. Having regard to population size and the likely frequency and magnitude of any impacts, a monitoring condition is no longer necessary. The necessary amendments to the site restoration scheme are likely to enhance its biodiversity. The watercourse west of the site likely to provide a valuable feeding habitat for bats.

6. Concluding remarks

372. At the planning application stage the personal professional and corporate view of the planning officers who know their own landscape and development

plan policies was that planning permission should be granted. The Council's appeal stage evidence has been unconvincing and overplayed.

373. The proposed development would accord with those elements of the adopted development plan which are in themselves consistent with the Framework. In this case, the full force of paragraph 14 of the Framework is engaged and the presumption in favour of sustainable development bites and planning permission should be granted without delay. The level of harm relating to (1) landscape character and visual amenity (2) cultural heritage and (3) noise alleged by the Council does not come close to warranting refusal of planning permission.
374. The proposed development would be visible and would result in change to local landscape character and change to views within the local and wider environment. However, mere visibility does not necessarily equate with damage to the landscape and change is not of necessity to be deemed unacceptable. There are no specially protected landscapes here.
375. If central Government had some limit or target in mind when it wrote the Framework then it would have not have said in effect that all renewable energy developments should be granted planning permission provided that any resulting impacts are or can be made acceptable. There is no reference in any policy document to phrases such as *'provided there is still a need to be met'* or *'providing targets have not been reached'* or *'taking account of progress towards meeting the Roadmap'*. The position is as the Appellant has always said; all contributions, big or small are to be welcomed and positively supported, provided that in any case, the planning impacts are or can be made acceptable. There is nothing so special about this undesignated and despoiled landscape here at Winterton which would justify refusal.
376. In the evidence it has called, the Appellant has demonstrated that the environmental, economic and social impacts of the proposed development would be acceptable and that planning permission should be granted in the form in which it has been sought.

CONDITIONS

377. In the event that the Secretary of State decides to allow the appeal and grant planning permission than a recommended schedule of planning conditions is attached. The conditions were discussed at the Inquiry and minor changes have been made to the suggested conditions. Reasons for each condition are included in the schedule. Most have been agreed between the Council and the Appellant. However there was disagreement between the main parties about the noise conditions which is addressed below in the reasoning on noise.
378. A condition to require post-development wildlife monitoring was requested by Natural England but at a time when gulls were visiting the appeal site when it was being used to deposit domestic waste. Those operations have since ceased. Some other interested persons now seek a monitoring condition in respect of gulls which may be passing over the site on the way to and from the nearby Roxby landfill site. Such a condition would be relevant to planning in that it could provide data that would be useful elsewhere. However to be directly related to the development, precise, and necessary for the development to proceed it would need to have a clear and relevant purpose in relation to the

subject development. Whilst it has been suggested that monitoring might result in a need to turn the turbines off at specified times when the gulls would be crossing the site, there is no suggested threshold to determine what effects detected by monitoring would be so significant as to trigger such a requirement. It is therefore concluded that the monitoring condition cannot be justified as necessary. Neither is there submitted evidence to substantiate the need for such a limitation on the hours of operation from the outset or to define precisely what hours would be appropriate.

ENVIRONMENTAL STATEMENT

379. The application was accompanied by an Environmental Statement (ES) prepared in accord with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, as amended, and comments from statutory consultation bodies and representations duly made about the ES and the likely environmental effects of the proposed development. During the consideration of the application and following the deletion of turbine T4, Further Environmental Information was submitted and subject to further consultation. Additional Environmental Information in the form of a revised noise assessment was submitted in April 2014 before the inquiry and was also subject to consultation. The ES and FEI are considered to be in satisfactory and in accordance with the requirements of the regulations.

INSPECTOR'S CONCLUSIONS

Figures in square brackets [] refer to other paragraphs in the report.

The Main Considerations

380. The application was recovered for the decision of the Secretary of State for Communities and Local Government (SoS) because it involves a renewable energy development. The SoS is required to determine the application in accordance with the development plan unless material considerations indicate otherwise. National policy is an important material consideration.
381. At the Inquiry, and having regard to the reasons for refusal and to local and national policy, I identified the main considerations to be the effect the proposed development would have on:
- (i) landscape character;
 - (ii) visual amenity;
 - (iii) heritage assets (setting of listed buildings and archaeological remains); and
 - (iv) noise levels.
382. A fifth main consideration was to be the effect on wildlife and particularly birds. The Council is no longer disputing that matter but it has been raised by other persons [233,240, 241] and will be addressed as one of several other matters rather than as a main consideration. Some of these matters may be appropriate to address by planning conditions should the appeal be allowed.
383. Having regard to national and local policy, if any harm is identified it will be necessary to consider whether that harm would be outweighed in the public interest by any environmental and/or economic benefits of the development.

Landscape Character

384. The site and the area's landscape character, sensitivity and capacity are described above at paragraphs [5-23]. The proposal is described at paragraphs [24-29]. In summary the 3 turbines would be sited in a line on the lower western side of an area of landfill. The landfilling has partially filled a former ironstone quarry that was dug into a disturbed escarpment slope to the east which is referred to hereafter as the ironstone escarpment. The turbines would be in a line parallel to that ironstone escarpment. The landfill site has been partially restored but the operation is being wound down due to a shortage of material and is likely to cease entirely within a few years when the deposit of hazardous waste ends [9]. Domestic landfill has already stopped and is unlikely to resume [9]. This means that the previously approved restoration levels are likely to require modification [9]. However this should not affect levels at the locations of the 3 turbines.
385. The landfill site is within an area to the north of Scunthorpe that is characterised as a 'Despoiled Landscape' and in need of restoration. This part of the character area is a relatively narrow tongue of land extending north along the edge of the ironstone escarpment and which includes other former ironstone quarries [13]. The appeal site is also close to other character areas to the north, east and west which include agricultural land where fields are typically large and where some hedges and other features have been lost due to modern

agricultural practices [14-15]. Two parallel rows of high voltage power lines pass close to the northern end of the site and are prominent in local views [16].

386. A main point of dispute between the Appellant and the Council on landscape effects is the relationship of the turbines to the parallel ridge of the ironstone escarpment, the high point of which is about 400-500m to the east of each turbine location [5]. The 3 turbines would each be up to 127m high [25]. The escarpment rises by only about 30m compared to the base level of the turbine towers [24]. In views from the west across the broad shallow valley from Coleby and other villages, roads and rights of way the escarpment would be seen behind the fully visible turbines. From there the turbine blades would usually appear against the sky above the escarpment. From the east, in near views from around Winterton and in long views from the Lincolnshire Wolds, the lower parts of the towers would be concealed but the blades would be mostly visible above the escarpment. From the north and south the 3 turbines would be seen to one side of the escarpment and mostly at full height (except where partially concealed by local landscape features). As first submitted the application included a fourth turbine (T4) at the top of the ironstone escarpment which would have been closer to Winterton and fully visible against the sky from most directions, but this was withdrawn from the scheme before it was determined by the Council.

387. Comparisons have been made between the proposal and the existing Bagmoor windfarm 3-4km to the south. There the turbines are of similar height but are more numerous (8 turbines) and are laid out as an irregular group rather than in a linear format [64, 17, 95, 114, 303, 305]. Some of those turbines are at a similar distance from the ironstone escarpment which has been similarly modified by quarrying and landfilling. Their blades are also seen against the sky from both east and west including in long views from the Lincolnshire Wolds. The Bagmoor development was approved by the Council on the basis of the LVIA submitted at that time and apparently without further landscape advice [298].

Landscape and Visual Impact Assessment

388. The LVIA submitted for the current proposal had identified significant local landscape effects. These were mainly within the adjacent landscape character areas to the east and west rather than the despoiled landscape in which the turbines would be located. But the LVIA concluded overall that the landscape had the capacity to accommodate the change, mainly because it already contains a number of large vertical features which include the Bagmoor turbines to the south and numerous large electricity pylons to the north [17, 296-297]. The significant effects would be within about 5km and in particular would not extend as far as the Lincolnshire Wolds which are about 7.5km to the east.

Landscape Advice, Negotiations and Scheme Amendments

389. All large turbine schemes will result in some change to landscape character but there is variation in the degree of harm and the area to which it extends according to the present character of the landscape. As the Council's case acknowledges, the issue is not whether harm to landscape character and visual amenity is occasioned, but the extent of the harm [88]

390. The initial consultation response from the Council's experienced but unqualified landscape adviser Mr Goldthorpe related to the 4 turbine scheme first proposed. He advised then that the significant effects on landscape character would extend to a wider area when compared to the LVIA conclusions, and particularly to the north. He concluded that the 4 turbines would have an adverse impact upon the character and appearance of the landscape although he was not clear on the extent of that harm [89-95, 254].
391. Mr Goldthorpe advised that with the removal of turbine T4, the remaining 3 turbines were capable of being 'contained' within the landscape and that their relationship to the ironstone escarpment would then be similar to that of the Bagmoor wind farm which the Council had previously approved [95]. By implication the adverse impact would be much reduced if turbine T4 were removed and would be potentially acceptable if there were sufficient other benefits [90].
392. The consultation response also agreed with the LVIA that cumulative landscape and visual impacts with other wind farms would not be significant [308]. The consultation recognised that the 3 turbines would overtop the scarp by about 95m [92].
393. The Council points out that the Appellant's landscape witness also recognised that the turbines would have significant effects in respect of visual amenity and landscape character and acknowledged that there would be harm to both [88]. However he did not accept that there would be significant harm.
394. Negotiations involving Mr Goldthorpe and the Appellant's landscape architect Mr Mason [90,91,300] led to the removal of turbine T4. Mr Goldthorpe also suggested that consideration be given to reducing the height of the remaining 3 turbines (by 30m) [90,300] but it was not clear what landscape or visual benefit this would have had given that the turbines would still overtop the scarp and remain fully visible from the north, south and west. The Appellants considered the suggested height reduction but rejected it [300]. That was reasonable given the likely adverse impact on efficiency as well as the lack of visual benefit coupled with the added visual harm on views from the east where partial views of the turbines would result in blades chopping the skyline as they turned.

Committee Report

395. The Officer Report to Committee was apparently endorsed by the Head of Planning [255-256]. It disagreed with the LVIA conclusion that existing man-made vertical features in the landscape mitigated the impacts and created the capacity to accommodate the wind turbines. It also disagreed with the Council's own landscape advice that the 3 turbines would be contained in the landscape. It concluded that harm of unspecified extent would be caused to landscape character but the report concluded that nevertheless this (and other) identified harm would be outweighed by the positive benefits of renewable energy and the application was recommended for approval.

Inquiry Evidence

396. Following the rejection of that officer recommendation and the refusal of planning permission, Mr Goldthorpe gave landscape evidence to the Inquiry which differed significantly from his previous advice to the Council [110, 116,

299-303]. In particular he directly contradicted his earlier assessment that the 3 turbines could be 'contained' by the landscape [90] by stating in his proof that turbines of this scale would breach the normal visual containment [110].

397. Mr Goldthorpe relies on his long experience of the North Lincolnshire landscape rather than any professional qualifications. He thus would already have been aware of the landscape and visual effects of the similar existing Bagmoor turbines. However he claimed that his change of opinion since his original advice arose from a greater understanding of the landscape. This was in part because of his recent involvement with the consideration of other wind farm proposals at Flixborough Grange and Saxby Wold. These events occurred after giving his original advice but some time before the current proposal went to committee. In these circumstances it is remarkable that he did not communicate his change of view to the case officer or the Council [301]. In any event the inconsistency in Mr Goldthorpe's position means that reduced weight should be accorded both to his original advice at the application stage and to his inquiry evidence.

398. The Council now places particular reliance on: extracts from the Scottish Natural Heritage (SNH) document "Siting and Designing Windfarms in the Landscape" [61, 99-103, 109]; extracts from Gillespies landscape contribution to the AEAT Yorkshire and Humber study [104-110]; and on Mr Goldthorpe's comparison of the current proposal with the Bagmoor windfarm [114-116].

SNH Guidance

399. The Council refers to the SNH guidance at paragraph 4.29 about the importance of skylines in wind farm design which seeks that turbines have a simple relationship to simple skylines [99]. In this case the skyline is simple and the turbines would have a simple visual relationship to it. In particular they would avoid variable height or spacing. Overlapping would only occur from very narrow areas within a wide field of view. Because the turbine blades would usually be seen mainly or entirely above the skyline, they would rarely result in intermittent breaking of that skyline as would be the case if the height had been reduced by 30m as suggested by Mr Goldthorpe. As Mr Goldthorpe accepted, the appeal proposal is compliant with many of the above SNH general design principles. These are applicable in many types of landscape, whether in Scotland or England [303].

400. Nevertheless, whilst the SNH guidance is widely used in English casework, it is written for Scottish landscapes which include many upland areas of larger scale than typical lowland English landscapes, as is obvious from many of the diagrammatic illustrations in the document and from the text references to 'mountainous landscapes' and 'open moorland' which are contrasted with 'small scale glens'. Thus, when paragraph 4.32/3.33 refers to a wind farm being of "*minor vertical scale in relation to key features of the landscape (typically less than one third)*" [101-102], the literal application of that advice would mean that a typical commercial scale large turbine of 127m could only be located in an area devoid of such key features (such as flat marshland), or where such features visibly exceeded 381m (1,250ft) in relative height. From my experience, features of that height are much rarer in England than in Scotland and where they do exist in England they are typically within protected landscapes such as National Parks.

401. If this one third height guideline were to be applied in the vicinity of the appeal site, then the relative 30m height of the escarpment would only permit the siting of small 10m high turbines. In my experience turbines of that scale are only used in domestic situations as they may each have a capacity of only about 10kw. If so, as many as 250 such turbines would be needed to provide as much energy capacity as only one of the 2.5MW commercial turbines proposed here. Moreover their efficiency would be compromised if they were placed in a similar position below the escarpment, and thus shielded from easterly winds.
402. Much of the undesignated English landscape does comprise lowland, settled and smaller-scale landscapes which are acknowledged to be potentially more sensitive to wind energy development than larger scale landscapes. Nevertheless many commercial windfarms have been permitted on lowland in England by local Councils or on appeal, including by the Secretary of State, which would not accord with that specific SNH guidance criterion (such as at Bagmoor). For these reasons I recommend that the SNH one third height guideline be accorded little weight in the context of this appeal.

Local Studies and Guidance

403. Turning to the AEAT document it should be noted that the Gillespies landscape advice referred to by the Council [104-107,110] applies to the National Landscape Character Area 45 'Lincolnshire Edge' as a whole. Area 45 is of varied and discontinuous character, extending north, south and east of Scunthorpe. It includes farmland, woodland, parks, scarps and dip slopes, derelict quarries, landfill sites, gullet lakes, urban influences from Scunthorpe with its heavy industry, and a variety of smaller settlements. Whilst Gillespies assessed that whole area as of **medium** sensitivity to wind energy development [106] it is unsurprising that the assessment included statements which may suggest that sensitivity varies within that area.
404. Not all such statements are relevant to the appeal proposal. In particular the reference to avoiding '*settled foot of slope locations*' does not apply in the vicinity of the appeal site. Local settlement is here on the hilltops to the east or on the rising dip slope to the west. Neither are the nearby hilltops to the east the '*unsettled*' hilltops to which Gillespies refer since they are occupied by the town of Winterton and the village of Roxby [105].
405. When referring to the escarpments there is an apparent inconsistency in the Gillespies advice in that on the one hand it suggests that:

"Turbines could relate to the simple visual composition of much of the scarp although they would introduce a vertical element into an otherwise open landscape." [105]

but on the other hand Gillespies find that:

"Wind energy development should be located to avoid the locally prominent escarpment." [106]

A likely explanation is that the first statement relates to the 'Ironstone' scarp to the east of the appeal site whilst the second statement relates to the prominent 'Cliff' scarp to the west. This interpretation is supported by the NLLC SPG in which the western Cliff escarpment is described as a "*prominent*" steep wooded

scarp slope which is impossible to farm. The steep Cliff escarpment cannot be seen from the vicinity of the wind farm and no adverse impact on the Cliff escarpment is claimed by the Council. The ironstone escarpment to the east is closer to the appeal site and more visible but is not described as prominent in either document. The ironstone escarpment is less steep than the Cliff. It is typically open and the gentler slopes mean that it can be farmed where it has not been disturbed and reshaped by quarrying and landfill.

406. Gillespies suggested that wind energy development could take place in the *"more modified areas around Scunthorpe"* [106]. It is not clear whether or not this was intended to apply to all of the Despoiled Landscape Area that had previously been defined north of Scunthorpe in the NLLC SPG (1999) and which includes the appeal site, most of the Bagmoor wind farm site, and the rest of the quarried ironstone escarpment. The only suitable location that Mr Goldthorpe considered to qualify as a suitable *'more modified area'* is already occupied by the Bagmoor wind farm. That wind farm would already have been permitted and indeed was probably operational when the study was published. In any event, if that location was considered by Gillespies to have an acceptable relationship to the ironstone escarpment, that would suggest that the similar relationship of the appeal site proposal to the scarp should also be acceptable in landscape terms. Indeed the siting of the appeal site turbines would be more respectful of the north-south alignment of the scarp since they would be fewer in number (3 not 8) and they would have a linear format aligned with the scarp whereas the Bagmoor turbines are arranged in a more informal group.
407. The Appellant draws attention to the regional AECOM capacity study which followed the AEAT study [19, 252]. The Council points out that the AECOM study did not include a new landscape assessment [111-113]. However it did make explicit reference to the AEAT/Gillespies work and to its landscape methodology before going on to map *"practically viable"* locations for wind energy. These locations include the appeal site. The choice of locations acknowledged a number of locational constraints. The study was however qualified by explicitly providing that individual planning applications for wind energy should be assessed on a case by case basis.
408. One constraint used by AECOM to assess overall capacity in the region was an assumed 10km separation distance between wind farm developments to reflect the potential cumulative impacts [19]. However that is an arbitrary distance used to estimate capacity. There is no fixed separation distance in local or national policy. Wind farms have been permitted in the area with less separation including as extensions to existing developments. Cumulative impacts should therefore be assessed on a site by site basis.

Design

409. The Council refers to paragraph 64 of the Framework which provides that: *"Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions"*[96]. With reference also to paragraph 4.5.1 of EN-1 [97] the Council is suggesting that any development which fails to positively enhance the character and quality of an area is by definition unsustainable. That interpretation however would create an unreasonably high bar for development, and one which is even higher than the statutory S72 duty in a

conservation area which requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area¹⁴⁷.

410. A more reasonable interpretation of paragraph 64 is that it must first be established whether there are available opportunities to improve the character and quality of the area which should be taken in the design of the scheme. If there are no opportunities then they cannot be taken. Most large scale developments will involve significant change to the character and quality of an area. These may have positive, and/or negative or neutral effects. However even negative effects such as the loss of open land may be accompanied by compensating benefits. In design terms a pragmatic interpretation of paragraph 64 is that the design of the development should seek to be as good as it can reasonably be in its particular context and having due regard to the type of development under consideration.
411. In this case the Council objects to the height of the turbines and to the principle of their location at the appeal site but has not criticised the form and appearance of the individual turbines, which is typical of large turbines. The spacing and alignment of the turbines and their height relative to one another relates to the simple visual composition of the scarp. It is generally consistent with the applicable SNH guidance on skylines [399]. That the siting of turbine T4 would not have conformed to those guidelines has been suitably addressed by the deletion of that machine. The 30m height reduction suggested by Mr Goldthorpe would have resulted in conflict with the SNH guidelines for skylines by resulting in intermittent breaches of the skyline and has been rejected by the Appellant.
412. It is concluded that whereas the wind farm development would not result in a positive enhancement of the area's character and quality (as is the case for most if not all onshore wind energy development), the design and layout is as good as it reasonably could be for this type of development in this context. It is not a poor design in the terms of Framework paragraph 64.

Cumulative Landscape Impacts

413. North Lincolnshire Council does not object on the grounds of any cumulative landscape effects. However representations from WAIT and several other interested persons raise an objection about sequential cumulative landscape impacts with other existing or proposed wind farms in the area including those west and north of Scunthorpe. The proposed wind farm to the east at Saxby Wold can be discounted as the SoS has recently dismissed the appeal there [67].
414. The consented 34 turbine Keadby Grange and 22 turbine Tween Bridge (Doncaster) wind farms on the Humberhead Levels are respectively about 12km and 20km south west of the appeal site¹⁴⁸. Those developments were approved after a joint Public Inquiry in 2007 which would have considered their cumulative impacts. Their sites are on level ground close to the M180

¹⁴⁷ There is no evidence that the appeal proposal would contravene the S72 duty in respect of any conservation area.

¹⁴⁸ See ES Figure 8.8

motorway and are highly visible from it. Most people approaching North Lincolnshire from the motorway network would pass through this area. The dominant features apart from the turbines include the flat land, wide skies, the motorway itself, and distant views of power stations, pylons and power lines. The consented Flixborough Grange/Grange Farm wind farm would be also seen from the west of Scunthorpe and across the River Trent.

415. Those travelling by car are usually considered to be less sensitive to landscape effects, in part because their journey usually has purposes other than to view the landscape. Drivers will be concentrating on the road. The speed of travel means that any effects are likely to be fleeting for drivers and passengers. After passing Keadby Grange, to reach the appeal site one would leave the motorway and travel through the town of Scunthorpe. After about 15-20 minutes one would pass the 8 Bagmoor turbines. These are already a feature of the undulating scarp landscape north east of Scunthorpe. From that area the tips of the permitted Flixborough Grange turbines may also be visible in the future to the west above the Cliff escarpment and trees.
416. The Bagmoor wind farm is smaller in scale than the wind farms in the different and more open landscape west of Scunthorpe. The appeal proposal would be smaller still with only 3 turbines and with much reduced landscape effects compared to the larger existing wind farms.
417. In summary there are already wind farms more or less continuously in view from the motorway between Doncaster and the western side of Scunthorpe. The smaller Bagmoor wind farm is seen again on leaving Scunthorpe. The appeal development would mean that wind turbines would remain visible for only a few more minutes in the journey when travelling north from Scunthorpe. There would thus be a minor sequential cumulative landscape impact in that the experience of passing through a landscape with wind farms would be marginally prolonged.

Residual Effects and Conclusions on Landscape Character

418. The baseline landscape character in National Landscape Character Area 45 Lincolnshire Edge has been described as 'discontinuous'. It includes farmland, woodland, parks, scarps and dip slopes, derelict quarries, landfill sites, gullet lakes, urban influences from Scunthorpe with its heavy industry, and a variety of smaller settlements. Smaller and more homogenous sub areas were identified by the NLLC SPG including the 'Despoiled Landscape' which extends north from Scunthorpe and within which the appeal site sits. However this is a narrow area and the turbines would be close to other landscape character areas to the north, east and west that are mainly open farmland and subject to modern intensive farming with large fields and the associated past loss of hedges and trees.
419. The 30m high ironstone scarp peaks about 400-500m east of the turbine locations and is a significant landscape feature, albeit disturbed by quarrying. However it is not prominent in the landscape, particularly when compared to the Cliff escarpment to the west and the Lincolnshire Wolds to the east. The appeal site itself is part of a partially restored landfill site in a former quarry. Whilst this is expected to be fully restored to agriculture, woodland and limited recreational use, because of a shortage of fill material it is unlikely to be restored to the original profile of the scarp slope.

420. Although there is some complexity in the variety of land uses this is not a small scale landscape. The inter-scarp landscape has a relatively simple topography and it features expansive long views, large fields and large quarries and landfill sites. There are already some prominent man-made vertical features in the landscape, notably the two high voltage power lines that pass east-west to the north of the appeal site [21], the Bagmoor wind farm 3-4km south [64] and, further south, the steelworks and tower flats at Scunthorpe. These already have an influence on the area's baseline landscape character. The turbines would add another series of large vertical features and would be similar to the Bagmoor turbines that were permitted by the Council. The subject turbines would be suitably separated from the Bagmoor turbines and other wind farms such as to avoid any significant cumulative landscape impact. Their spatial relationship to the ironstone scarp would be similar to that at Bagmoor but enhanced by the reduced number of turbines and the simpler linear layout.
421. The available long views westward from the Lincolnshire Wolds are even more expansive than the views from other directions. They already include distant views of other manmade vertical features including the Scunthorpe steelworks, the Bagmoor turbines, the pylons and the South Ferriby cement works. The proposed turbines would add another man-made feature on the skyline but again as a distant feature in the expansive landscape and suitably separated from the other existing structures such as to avoid significant cumulative landscape impacts.
422. The siting and linear alignment of the turbines would respect the adjacent scarp. Each turbine would occupy a small area and would not prevent the restoration of the wider landfill site for agriculture, woodland and other greenspace in broad accordance with the aims of CS Policy CS16. The presence of the above man-made features moderates the degree of change that would occur to the local landscape, particularly in the more distant views. Nevertheless there would be local change to landscape character. The scale of the turbines means that whilst they remained during their 25 year life they would become a dominant new landscape feature within about a 1km radius. That would extend at least to the edges of the nearest settlements to the east and west. It would usurp the present local dominance of the pylons and power lines in views from the North. Some (but not all) people would consider the change in landscape character to be adverse and that harm would be in conflict with LP Policy LC7 and some related provisions including LP Policy RD2. However, LC7 lacks the balancing provision required by LP Policy DS21 and which is necessary to be generally consistent with national policy.
423. Although the turbines would be the dominant landscape feature of their immediate surroundings up to 1km, the despoiled landscape in which they would be located is of large scale and low sensitivity. The adjoining landscape areas to the east and west within 1km are more sensitive but are still of large and open scale with large fields and few trees and hedgerows. In these areas there would be minor harm to the landscape character. The similar landscape to the north within 1km is also of large and open scale and is already dominated by the power lines and pylons such that there would only be minor harm to the baseline character. To the south the baseline character is already influenced by outward views towards the Bagmoor turbines and other man made features including the steelworks, such that the baseline character would experience only

minor change. There would be a slight sequential cumulative effect due to the extension of the area in which windfarms are seen but which would only be apparent when making longer journeys through the area in which wind farms are already a feature. Beyond 1km landscape effects would still be experienced but they would decline rapidly with distance and also because of the presence there of other man made vertical features in the expansive landscape already contributes to its baseline character. The degree to which those experiencing the landscape would find it harmful, if at all, would be affected by differing personal views about wind turbines and their appearance. Some persons have a positive view of the appearance of wind turbines [246].

Visual Amenity

424. At the Inquiry the Council's witness Mr Goldthorpe considered that the most harmful visual amenity impact of the development would be on the view from West Halton Green as represented by VP15 [306]. This consideration of visual amenity is separate from the consideration of the setting of heritage assets at West Halton which is addressed below.
425. The Green is used for informal play and recreation and also has a football pitch. These functions do not depend on views out beyond the village which in any event are generally screened by the mostly 20th century dwellings that front the green and by the trees in their gardens and around the church. Whilst the degree of tree screening will vary with the seasons, it would be greatest in summer when local residents would be likely to be spending more time outdoors. Where views south east towards the appeal site are available above the trees and buildings they are mainly of the sky and are already affected by the sight of large pylons and power lines near the village. These are seen against the sky and they appear more prominent when on site than they do in the VP15 visualisation. The pylons are also prominent in other views from the Green towards the south west. Moreover from the village road to the west of the Green it is already possible to see one of the Bagmoor turbines, albeit at greater distance than the appeal site.
426. VP15 only shows one view from the Green. In that view one of the turbines (T2) would be seen above the trees and buildings when looking south east from the centre of the Green [21]. The visual impact of T2 in particular would be significant, as the LVIA confirms. Whilst those who dislike the appearance of all turbines are likely to dislike the change to the view of the open sky and would consider it harmful, Turbine T2 would not be so close as to be dominant or overbearing and it would not materially affect the functional use of the Green. Turbines T1 and T3 would be screened by the large trees around the church, particularly in summer although they include evergreen holm oaks. Whilst the permanent retention of all the trees cannot be assured [147] the many large trees around the church appeared healthy when on site and there would be no obvious reason or incentive to remove them during the 25 year life of the turbines and especially within the early years.
427. Although no footpaths or other recreational rights of way currently pass close to the proposed turbines and there would be no associated conflict with LP Policy R5 [38], distant views of the turbines would be available from other rights of way where not screened by hedges, trees and buildings. In most cases the turbines would appear as another relatively distant landscape feature like

the pylons and the Bagmoor turbines which some people would dislike whilst others would have a neutral or positive reaction. Again the turbines would not be so close to the existing rights of way as to be dominant or overbearing towards them.

428. Were a new right of way to be created along the North Lindsey Light Railway that followed the indicated route safeguarded by LP Policy IG5 [38], the route would pass close to the base of the turbines and beneath the turbine blades. Some users, and especially horseriders, would find the presence of the turbines overbearing and would have safety concerns that would probably deter use of the route. However the Council did not refuse permission for these reasons and it has no current policies or proposals to create a public right of way. At the Inquiry the Appellant and the Council agreed that a suitable alternative route could be identified that follows an existing track within the eastern boundary of the landfill site and which would provide adequate separation from the turbines. A condition has been agreed for the provision of such a path as a permissive path to include pedestrian, cycle and equestrian use. This is a material consideration that outweighs the literal conflict with the IG5 safeguarding policy and which could secure a usable recreational route at an earlier date.

Residential visual amenity

429. It is a longstanding planning principle that there is no right to retain unchanged a view from private property. However, as the Appellant accepts [], it has been confirmed by numerous appeal decisions (including that of the Secretary of State in December 2013 at Nun Wood [313]) that it can be in the public interest to protect the outlook from private dwellings where a development would so visually overbearing, overwhelming or oppressive that the dwellings would be widely regarded as unattractive or unsatisfactory places to live.
430. The 3 closest dwellings would be to the south east of the appeal site at New Cliff Farm (690m from the nearest turbine), Windy Ridge Barn (691m from the nearest turbine) and The Observatory (823m from the nearest turbine)[23].
431. New Cliff Farm does not have north facing windows to the main rooms. The main windows in the southern elevation currently have slightly oblique views of the Bagmoor turbines about 2.5-3km away. A high evergreen hedge around the garden would partially screen views towards the turbines. The turbines would then only be seen above the hedge from the garden when looking in one direction. This would not become an unattractive or unsatisfactory place to live.
432. At the adjacent recently-converted Windy Ridge Barn dwelling there are windows in both the north and south elevations. The Bagmoor wind farm is on lower ground about 2.5km-3km south south west. Slightly oblique views are currently available of Bagmoor from the generally small southern elevation windows and from a large south facing front garden which is used for play. The proposed turbines would be seen from north facing windows at closer range. The nearest turbine (T3) would be seen in the most oblique about 45 degrees to the north elevation. The other 2 turbines would be further away within a narrow arc of view. The most direct view would be of the most distant turbine (T2). In each case the turbines would be sited on lower ground which would diminish their apparent height. Most of the existing north facing windows from the main rooms are small and thus provide only a narrow field of view. A larger

window is proposed in a door opening if and when a further part of the barn is converted to a family room. The turbines would also be seen from the large north facing rear garden. That is currently laid to grass with no screening from trees, hedge or shrub planting, although there is space to provide such planting should the occupier choose to do so in the future. Given the mitigating factors in relation to the apparent height, the oblique views towards the nearest turbine, the generally small windows and the scope for screen planting within the curtilage, I do not consider that turbines would appear visually overbearing or oppressive or that the change in outlook would cause the dwelling to be widely regarded as an unattractive or unsatisfactory place to live. Neither given the distance from Bagmoor, its lower height and the oblique nature of views do I consider that the Bagmoor wind farm or any other wind farm would create a significant adverse cumulative visual effect with the proposed turbines.

433. The views from some rooms and balconies at The Observatory are towards the east and thus away from the proposed turbines. Views from some ground floor rooms are restricted by boundary walls. However there is a first floor open plan living area with expansive westward views from windows that are set low in the wall. These views are across large and mainly featureless open fields. From these windows there would be a slightly oblique view of Turbine T3 and a much more oblique view of turbines T3 and especially T2. In these views the bases of the turbine towers would be concealed by the topography. Given the greater distance from the turbines, the oblique nature of views to some turbine, the expansive large scale of the available views and the relative height, I do not consider that the turbines would appear visually overbearing or oppressive or that the change in outlook would cause The Observatory to be widely regarded as an unattractive or unsatisfactory place to live.
434. The deletion of turbine T4 significantly reduced the potential visual impact on the outlook from homes in Winterton which would not be widely regarded as unsatisfactory places to live by reason of the changed outlook. The secondary school is further away than the nearest Winterton homes and is more centrally located within the built up area [234,243]. Whilst it would be possible to see the turbines from the upper floor of that building they would be at least 1500m away and sited on lower ground such that they would not be dominant or overbearing on the outlook from the school.
435. Views of the turbines would be available from some dwelling windows and private gardens in other settlements including Coleby and West Halton at typical distances of about 900m-1km or more¹⁴⁹. It would appear that some residents in the past may have deliberately planted their gardens to screen views of the landfill site and that such planting close to the viewer would also serve to wholly or partially screen views of the turbines. I visited a number of representative dwellings at Coleby and one at West Halton (for which photographs were provided by Mr Batley for his own house and that of his neighbour). Having regard to the distances involved and to the expansive views that are typically available from these dwellings over a wide area, the turbines would not be dominant or overbearing and the dwellings would not come to be regarded as unsatisfactory places to live.

¹⁴⁹ Statement of Common Ground Appendix 5

Cumulative Visual Impacts

436. In his Inquiry evidence Mr Goldthorpe contradicted his earlier advice to the Council (and his agreement with the LVIA) that the cumulative visual impact would not be significant [116]. In his proof he instead stated firstly that there would be an adverse cumulative visual impact of significance on views west from Middlegate Lane on the edge of the Saxby Wolds about 7.5km to the east [116]. That view is not directly represented in the visualisations but Middlegate Lane has a junction at its northern end with the Viking Way footpath and there is a cumulative visualisation from close to that junction at ES Fig 8.11a(iii) Viewpoint 9¹⁵⁰. The visualisation also indicates further wind farms on the horizon but at a considerable distance and which would only be seen in exceptionally clear visibility. Given the expansive nature of the views, number and spread of turbines in that view and their distance from the viewer I consider that the appeal scheme would not cause a magnitude of change to the baseline position such as to result in a significant cumulative visual impact.
437. Mr Goldthorpe also now claims a significant cumulative visual impact in views south from VP12 because he suggests that the proposed turbines would be seen in-combination with the existing Bagmoor turbines [112]. There is no cumulative visualisation at this viewpoint which I would not consider to be a key view or one that would be seen by many people. ES Figure 8.6j at VP12 shows the group of 3 turbines proposed in the appeal (T1, T2 and T3) as a tight group (T4 is also shown but has been deleted from the proposal). The existing Bagmoor turbines may also be just visible there but at a distance of about 7km. They cannot be identified in the photograph even though it appears to have been taken in clear conditions. As such they are less conspicuous than the pylons and power lines that are closer to the viewpoint and which stretch across the horizon. Having regard to the limited visibility of the Bagmoor turbines it thus may reasonably be concluded that there would not be significant in-combination visual effects.
438. The cumulative visualisation at VP13 (Fig 8.10c) is taken from beside a busier lane south of Winteringham. It does suggest that the appeal turbines (aka Iron Stone Quarry) could be seen in combination with the Bagmoor turbines and possibly the more distant tips of the Flixborough Grange (aka Grange Farm) turbines (which may however be screened by trees along The Cliff). However the previous deletion of turbine T4 and the resulting physical separation between the 3 wind farms should avoid any visual confusion between them or other significant adverse in-combination cumulative effects.
439. In conclusion there would be some loss of visual amenity for those who object to the sight of wind turbines, and particularly the nearest residents. However LP Policy DS1 does not seek to prohibit all such change. It instead provides that there should be no *'unacceptable loss of amenity'*. In this case the loss of visual amenity would be slight in relation to existing public rights of way and can be suitably mitigated by rerouting a proposed recreational route. It would not be such as to make the nearest dwellings unattractive or

¹⁵⁰ The appeal scheme is there described as Iron Stone Quarry. Flixborough Grange is described as Grange Farm.

unsatisfactory places to live and it only merits moderate weight in the planning balance required by LP Policy DS21 and national policy.

Cultural Heritage

Listed Buildings

440. The ES considered a large number of listed buildings in the wider area around the appeal site. However following the submission of a further assessment requested by English Heritage in relation to the listed buildings of Coleby Hall and Normanby Hall, the only listed building about which the Council now has concerns in relation to the effect on its setting and significance is the Grade II* St Etheldreda's Church at West Halton [149-152]. That is about 1.1km north west of the site of the nearest turbine T3.
441. The ES concluded that the church is of high sensitivity but that due mainly to restricted visibility (including tree screening) there would be a **negligible** magnitude of impact on its setting which would be of **minor** significance [349].
442. The Council's heritage adviser Ms Williams had first assessed that there would be a **low** magnitude of impact on this high sensitivity asset resulting in a **moderate** significance of effect [323]. As the Appellant points out, the latter assessment was based mainly on outward views towards the turbines from the southern entrance porch and the churchyard and this was repeated in the Council's statement of case [323,326]. However the Council's evidence at the Inquiry, as presented by Mr Rychlak, shifted to a concern with views towards the church from the village green [328]. In those views turbine T2 would be visible and turbines T1 and T3 may be concealed by trees. The Council also sought to emphasise possible connections between the origins and siting of the church and the archaeology that has recently been explored on the nearby village green [143-145]. However much of this is speculative and it is not obvious on the ground [351].
443. Whilst a church was first erected here in the 7th century, the church was rebuilt in the medieval period and then again following a fire in 1698. There were further major alterations in the 19th century [20]. These changes add to its historic interest but also reflect continuing and on-going change in the building and its setting which is now far from being original and which contributes relatively little to the heritage significance of the church. The church is modest in scale and is little visible from anywhere outside the churchyard, mainly due to the large surrounding trees both within and beyond the churchyard, and which include evergreen trees [21]. Whatever its role may have been originally in the landscape, it now has little presence in the wider landscape beyond the village. The trees also severely limit outward views, including from the southern porch. In the much discussed Viewpoint VP15, which is taken from the village green, the church is almost hidden amongst the trees, particularly in summer, and there are no clear views of the surrounding landscape as the green is itself ringed by relatively modern dwellings and trees [21]. Winter views of the trees are illustrated in an appendix to Mr Rychlak's evidence and show that there would be some screening effect even when the branches are bare.
444. Even if the church were more readily visible, the landscape between the church and the turbine site does not have any particular heritage significance.

It comprises very large modern arable fields crossed by 2 prominent and locally dominant parallel high voltage power lines. These are supported on tall pylons. The power lines and pylons readily seen from the village green and they straddle and dominate the road between the appeal site and the village. Turbine T2 would be seen against the sky beyond the power lines. It would, like the pylons, be a prominent feature in the landscape. However it would not be so close to the church as to dominate it or to further diminish its already limited role in the landscape. It is relevant that one of the Bagmoor turbines is already visible when standing in the road to the west of the church, albeit at a greater distance.

445. Whilst it is theoretically possible that one or more trees around the church could be removed during the 25 year life of the wind farm [147] (in which case turbines T1 and T3 may become more visible depending on which tree and which viewpoint are affected) there are no obvious signs of disease or stress that would make that necessary, particularly in the early years of the scheme. Most or all of the relevant trees are controlled by the church authorities who would have little incentive to remove any trees unnecessarily. It is also a material consideration that the turbines would be removed after 25 years and that any impact on setting is thus temporary and reversible [346].
446. I conclude that there would be some limited harm to the setting of the church that would be literally contrary to LP Policy HE5 in that turbine T2 would be a large and prominent feature which could be at least partially visible in some of the same views as the church, the more so in winter when only the evergreen trees would be in leaf. Section 66 is thus engaged and the harm to setting would require special regard in the planning balance which merits considerable importance and weight albeit that it would be limited in extent. There would be minor harm to the heritage significance of the church. Neither the Council nor the Appellant assess that harm as substantial in the terms of paragraph 134 of the Framework. Whether there would be overall conflict with LP Policy DS21 would depend upon the balancing provisions of that policy. The setting and significance of no other listed building would be materially harmed.

Other Heritage Assets

447. There has been no identified harm to any presently scheduled ancient monuments but the Council is currently seeking the scheduling of the archaeology that has recently been explored by Sheffield University on West Halton village green [20]. LP Policy HE8 and Framework paragraph 139 are thus engaged and it is reasonable to assess the archaeology as being of equivalent value to a scheduled monument [20,353].
448. The only visible archaeology here is the mound that has only recently been identified as a (locally rare) upstanding Bronze Age burial mound [352]. It had previously been thought to have had another purpose which may even have included a post-mill mound for a wind mill [20]. The other archaeology comprises flattened burial mounds, which are not readily identifiable, and the invisible buried foundations of what is believed to have been a medieval manor house [20].
449. The Appellant's heritage witness Dr Lowe (CL) considers that the setting and significance of these archaeological remains would be unaffected by the wind farm [351]. By contrast the Council's archaeology witness Ms Williams now

considers that there would be a severe adverse effect on the setting and significance of the heritage assets [145]. This may be contrasted with her earlier assessment of only a moderate adverse effect on the setting of the larger and relatively more visible church [146]. Much is made in the Council's evidence of the group value of the assets including the church and their communal value [143-145]. There is speculation that the original early Christian church was sited nearby because the site had a history of ritual use, however it is not known what knowledge the Saxons may have had about the site's past.

450. These considerations may contribute to and reinforce the historic interest and heritage significance of the archaeology, but this depends upon interested persons being made aware of the current knowledge (and speculation) about the site's history. Without any knowledge of the recent archaeological investigations, anyone visiting the green for a visual appreciation of the assets would just see an unidentified mound on a pleasant but unexceptional recreational area surrounded by mainly modern houses and with glimpses of a church through the trees, views of pylons against the sky beyond the rooftops and a view of a Bagmoor turbine as one leaves the village by the road past the green and the church. It is notable that whilst the Council's witness Mr Rychlak considers the green to be of high amenity value, he accepts that the village does not merit conservation area status notwithstanding the grouping of assets [450].

451. Views of the upstanding barrow can only be appreciated from within the village. The buried archaeology cannot be identified visually. Turbine T2 would be visible from the village green as the much discussed VP15 visualisation shows. However it should be noted that none of the archaeology, even the upstanding barrow, is seen in that particular visualisation. The barrow is out of the picture to the right [21]. Whilst it would be possible to see the barrow by turning away towards the west, views from the centre of the green also include large pylons and a cats cradle of high and low voltage power lines. These can be seen directly behind the barrow when looking south west. Even though the pylons are outside the village and their apparent height is much diminished by perspective, they are still seen as up to 3 times higher than the barrow in this view. The barrow can also be seen from the adjacent road to the west, from which one of the Bagmoor turbines is also already visible [21].

452. Given the limited visibility of the archaeological assets and of turbines T1 and T3, the relatively modern visual setting within the village, the intensive modern agricultural landscape around it, and the large vertical man made structures that are already visible from the village green and street, I consider that the visual effect of the wind farm on the setting and significance of the archaeological assets will be at most minor adverse and would only materially affect the visible upstanding barrow. The effects would not be severe or major adverse. There would be a literal conflict with LP Policy HE8 which however lacks the balancing provision in LP Policy DS21.

Noise effects on heritage assets

453. The Council has also suggested that there may be an adverse noise effect on the setting of the heritage assets and that this requires control by a specific condition [141]. The Appellant disputes the need for such a condition on the

basis that there would be a noise limit condition directed at residential amenity. That would control noise to a reasonable level. There is said to be a lack of evidence that noise immissions which complied with such a condition could nevertheless cause material harm to the setting or significance of the heritage assets [350].

454. There are no recommended noise limits relevant to the setting of heritage assets. Those visiting these assets would already experience some background noise including from traffic or from use of the recreation ground and play facilities. The many trees around the church would cause background noise levels to rise with wind speed. Neither are the green or the churchyard likely to be much used at night when ETSU permits higher noise levels than by day.

455. In these circumstances and subject to the application of the usual ETSU compliant noise condition it is concluded that any noise effects are unlikely to materially affect the setting or significance of the assets or result in material conflict with any development plan policy in that regard.

Noise

456. There are 3 key areas of dispute between the Council and the Appellant. These are:

- (a) the Council considers that even if the proposal is compliant with guidance on noise assessment and control in ETSU-R-97 then the guidance in BS 4142:1997¹⁵¹ should be also taken into account, with particular regard to the absolute increase in noise above low background levels [169, 175-181];
- (b) the Council's noise witness considers that a simplified noise condition should be used to limit noise at all residential properties to 35dB. This was not referred to in the Council's closing submissions but the text of such a condition was submitted after those submissions. Alternatively, if variable noise limits are used, these should match the predicted noise immissions from the turbines and not the (higher) variable limits recommended as acceptable by ETSU [172]; and
- (c) the Council seeks an additional planning condition for the control of 'Other' (or 'Excess') Amplitude Modulation (OAM/EAM)[182-188].

Although the Appellant accepts that considerations other than ETSU can be taken into account, none of the other propositions are accepted by the Appellant [354-370].

457. There are also further noise-related representations from other interested persons including associated health concerns [232, 237, 242, and 245].

ETSU vs BS4142

458. The ETSU report had specific regard to the similar preceding version of BS4142 published in 1990. Indeed the introduction to ETSU at page 1 states that: '*A literal interpretation of how BS 4142 should be applied to wind turbine*

¹⁵¹ British Standard 'Method for rating industrial noise affecting mixed residential and industrial areas'.

noise assessment is difficult and its use may be inappropriate and problematical'. This was discussed further in Chapter 6 with particular reference to the problems of measuring and assessing noise levels below 30dB in quiet rural areas. ETSU went on to recommend fixed lower noise limits of 35-40dB by day and 43dB by night. This deliberately departed from the BS 4142 advice. BS 4142 refers to fixed margins above background noise levels although ETSU continues to apply such margins when background noise levels are higher. The implication of the ETSU approach is that, as the Council points out, in conditions of low background noise then there may be difference of more than 5dB above background noise. Those are likely to be noticeable and are likely to be a cause of complaint even if absolute noise levels remain low and particularly if the differences exceed 10dB.

459. The ETSU recommended noise limits are a necessary compromise between the protection of amenity and the need for renewable energy. The Government continues to endorse the use of ETSU in national policy and in recently published guidance. That does not preclude reference to other standards and means of assessment such as BS4142 where there are good reasons to do so. However the same problems remain as were identified in ETSU. Noise levels would remain relatively low when compared to the residential areas where most people live.
460. I accord little weight to two appeal decisions referred to by the Council in this regard [176-181]. In one the decision was made based on written representations with no opportunity for cross examination of expert witnesses and thus the issue could not have been fully debated. In the other the noise issue was supplementary to a visual amenity issue. In each case there would have been differences in local circumstances compared to the current proposal. That an individual person may complain about a change in noise level does not necessarily mean that the noise level would be unacceptably high when considering the wider public interest.

ETSU noise limits vs predicted noise levels or a simplified noise condition

461. The Council's witness has proposed the use of a simplified noise condition to limit noise at all dwellings to a maximum of 35dB. However that is not ETSU compliant since ETSU only recommends the use of such conditions for single turbines or where there is very large separation between wind farms and the nearest dwellings. That does not apply here and there has been a full background noise survey to support the use of the variable limit condition supported by the IoA Guidance. That noise assessment shows that a 35dB limit could not be satisfied at all wind speeds up to 10m/s at the nearest dwellings. However at the higher wind speeds the noise levels would remain less than 5dB above background noise levels.
462. As is usual for wind farm developments, the noise assessment was based on a candidate turbine which may or may not be that available or selected at the time of installation, which in this case would be several years later [362]. The predicted noise immissions from that candidate turbine at noise sensitive properties are included in the recommended condition in the schedule and would be at or below the limits advised as acceptable by ETSU. The Council seeks that noise limits be applied which match those predicted levels, even in cases where ETSU would allow a higher noise limit [172]. This is on the basis

that the Appellant claims that the predictions represent the worst case and should be robust [174]. The Appellant agrees that the assessment represents a realistic worst case [362]. Nevertheless, there must remain an element of uncertainty in that the assessment is based on predictions and not on measured noise immissions with the turbines in position. Moreover ETSU provides that it may be appropriate to add a tonal penalty should the sound have tonal characteristics.

463. The Council argues that the ETSU guidance was related to WHO 1980 guidelines and that the noise immissions at sensitive properties could breach the later WHO 1999 Guidelines and the WHO 2009 Night Noise Guidelines for Europe which seek to avoid sleep disturbance. This is disputed by the Appellant's noise expert who considers that there is no reason why the WHO guidance would not be met. In any event the Government has continued to endorse use of ETSU, including in the recently published PPG. The evidence of the Appellant's noise expert is that the predicted noise immission levels are below the Lowest Observed Adverse Effect Level (LOAEL) for all receptors such that sleep disturbance is unlikely¹⁵².
464. The health and sensitivity of one objector is such that she has felt it necessary to leave her home even before the appeal is determined, let alone before construction or operation of the wind farm commences [232]. That cannot be because of any actual harm from the development but only because of a perception as to what might happen. There is a lack of substantive evidence to support the concerns of this and other objectors about low frequency noise or other suggested health impacts including those which are sometimes referred to as wind farm syndrome [242].
465. To set the noise limits at the predicted noise immission levels at sensitive properties would fail to allow for any uncertainty in the predictions. Even if the predictions are accurate it would be very difficult to operate at all wind speeds without any margin. Such limits would not be justified in circumstances where ETSU would allow that a higher limit would nevertheless provide acceptable living conditions and noise levels that would remain low.

Excess/Other Amplitude Modulation

466. The Council suggests that ETSU does not address amplitude modulation (AM)[182]. In fact it does do so although AM is also referred to there as 'blade swish'. At page 68 ETSU refers to variations of 3dB(A) peak to trough and it was taken into account in the recommendations of the ETSU working group. It does not follow that even a small variation in excess of 3dB would necessarily result in unacceptable noise conditions. However, there have been reported instances of AM significantly exceeding this level of variation and this is usually described as 'Excess' or 'Other' Amplitude Modulation (EAM/OAM). High levels of EAM can cause annoyance but they occur only rarely and are difficult to predict, define or control [367-370]. Occasional attempts have been made to devise planning conditions to manage the phenomenon but these have been criticised mainly on the grounds of defining appropriate levels of variation and difficulties both in framing objective means of assessment and in enforcing vaguely worded conditions. Reliance has instead usually been placed on

¹⁵² Document 29

environmental protection legislation where the test for a statutory nuisance can be applied using more subjective assessments.

467. In late 2013, the trade body Renewable UK (RUK) published research which reflected some progress in identifying the physical conditions in which EAM may occur and which suggested some wording for a planning condition [365]. However the prediction and assessment of EAM remain difficult. The research results and the suggested condition have not been endorsed by either the Government or the Institute of Acoustics (IoA) [365]. The IoA Good Practice Guide 2013 predated the RUK research but remains in place and concludes that best practice is not to attempt to impose an AM condition. The IoA website advice still indicates that the RUK condition should not be used [364].
468. The parties point out that the SoS has recently considered the matter in relation to wind turbine development allowed on appeal at Turncole in Essex (CD5.20) [184,365]. In that case the Inspector considered representations on OAM but did not recommend any AM condition in his report, concluding that the matter should be left to be addressed by statutory nuisance measures should OAM arise. That reasoning was consistent with most other earlier appeal decisions to which the Appellant has referred. The RUK research was published after the Turncole Inspector's report had been submitted to the SoS and thus was not considered by the Inspector or subject to his recommendations. The SoS sought further information and alternative planning conditions were then suggested by the Appellant and objectors.
469. The Council points out that the SoS agreed the condition wording suggested by the then Appellant RES UK¹⁵³ which required that there be no electricity generated until a scheme had been approved for the regulation of AM. However the present Inquiry was told that no scheme had yet been devised and approved for the Turncole proposal. The current Appellant is opposed to such a condition which they do not consider to be lawful on the basis that it would be unnecessary, imprecise, unenforceable and unreasonable [370].
470. The Council's closing submissions quoted the Turncole AM condition and suggested that such a condition is justified. However the wording of the condition subsequently submitted by the Council is notably different. It seeks to define OAM/EAM, to set out measures for its assessment, and to require that the 'relevant' turbines be turned off when the wind is within 25 degrees of the direction when OAM/EAM occurred. The Appellant responds that the condition is unnecessary, that other legislation can be used to control OAM/EAM should it occur, that there is no agreement as to the definition of OAM/EAM suggested by the Council and that there is no consensus amongst professional acousticians that the LAeq parameter suggested by the Council is appropriate. Neither is LAeq data available for the project [370].
471. It is concluded overall that notwithstanding changes in the noise environment for the nearest residents which would result in some loss of amenity, noise can be controlled to an acceptable level compliant with ETSU and other national policy if the condition proposed by the Appellant in broad accordance with IoA guidance is applied. A further condition to control OAM/EAM should not be applied as suitable wording could not be devised that met the tests for

¹⁵³ The Appellant, advocates, and noise witnesses were different in that appeal.

conditions and because, should OAM/EAM occur, then statutory nuisance measures remain available for its control.

Benefits

472. The Appellant's comment [261] that this is a reversible form of development which will leave landscape character and visual resource intact is not a benefit but rather a mitigation of harm.
473. The 3 turbines are expected to have an individual capacity of 2.5MW each and a combined capacity of 7.5MW [25]. Onshore turbines rarely exceed 3MW capacity and these turbines are thus relatively large. A capacity factor of 30-35% would be typical for this technology and does not make the location unsuitable for wind energy [237]. Smaller turbines would be less efficient, particularly in a valley location where they would be shielded from some winds. Each 2.5MW turbine would have the same capacity as 250 x 10KW turbines if limited to 10m in height or one third the relative height of the escarpment in accordance with the SNH guidance on which the Council relies [102]. Whilst 7.5MW would represent only a small fraction of the national requirement for renewable energy that is inherent in the technology and could only be materially increased by installing a larger number of turbines, which is not proposed. National energy policy continues to support wind energy for its contribution to energy needs as the most mature least cost option [282] and onshore wind turbines remain relatively cost effective as acknowledged at paragraph 114 of the Roadmap Update of 2013 [291].
474. The Council refers to the national policy objectives that support renewable energy and which were summarised in the SoS's recent decision at East Heslerton and in the Inspector's Report on that appeal [73]. The Council considers that the contribution that the scheme would make to renewable energy production and CO₂ savings attracts very significant weight in favour of the proposal, albeit that it concludes that this is here outweighed by other considerations [77].
475. Whilst the Council Leader considers that the future of wind energy is offshore and states that the Council is supporting offshore development [230], there is no evidence that offshore wind energy alone would make a sufficient contribution to fulfil the (as yet unmet) 2020 national target for renewable energy or the higher carbon reduction targets in subsequent years.
476. Although it was not a stated reason for refusal by the Council, the Council Leader [230], the MP [228-229] and some other objectors consider that sufficient renewable energy provision has already been made in North Lincolnshire. Similar sentiments were expressed in the Foreword and Introduction to the SPG and SPD although they are not carried through to the adopted guidance and policies in those documents. The SPD highlights LP Policy DS21 and CS Policy CS18 as the most relevant development plan policies.
477. The Council does not rely on the SPG and suggests that the SPD policies are not hostile to renewable development [293,294]. However the SPD introduction takes a notably different position [44]. It appears that only small scale farm diversification turbines have been permitted by the Council since its adoption in 2011 [295]. As that adoption preceded publication of the Framework and because a SPD does not require the approval of DCLG, no weight should be

given to any lack of objection from DCLG when a copy of the SPD was sent to the department prior to adoption [220].

478. Current renewable capacity includes the existing and consented development of other wind farms. Most of these schemes have been opposed by the Council, whether or not they were recommended for approval by officers. An exception is the Bagmoor windfarm which the Council did permit and which had similarities with the appeal scheme [64]. It also includes other forms of renewable energy such as biomass. The Council has continued to permit some smaller farm scale turbines with lesser environmental impacts. But on their own these can only make a very modest contribution towards local or national renewable energy targets.
479. Whilst the installed and consented renewable energy capacity in North Lincolnshire exceeds the former renewable energy target in the Regional Spatial Strategy [213], that target was at no time a ceiling on provision and it has been withdrawn, along with most other RSS policies. Neither does the selection of targets in the RSS appear to have been closely aligned with the estimated capacity of each area. The adjoining districts of Doncaster and the East Riding of Yorkshire have both exceeded their RSS targets because specific proposals have been judged to be acceptable, in which case their actual capacity must have exceeded their targeted capacity. Neither is the CS Policy CS18 carbon reduction target a ceiling since it explicitly seeks CO₂ reductions of at least 34% by 2020 and 80% by 2050. Given the national need for renewable energy, it makes sense to use additional capacity where it exists, even in areas that have previously made significant contributions. In that regard the AECOM Study points to a significant amount of additional capacity for wind energy remaining in North Lincolnshire [19].
480. The 2013 Renewable Energy Roadmap Update confirms that renewable energy is needed from a variety of sources including onshore wind [56]. Some objectors point out that committed onshore wind provision nationally already approximates to, and may exceed, the 13GW capacity estimate (not a target) in the original 2009 RE Strategy [57, 236], particularly because of high provision in Scotland [56]. However there remains a risk of shortfalls in other sectors compared to the 2009 estimates such that achievement of the overall 2020 UK target is not assured [57]. In any case the achievement of that target is likely to require a higher annual rate of new (installed) renewable energy provision in the remaining years until 2020 than has been achieved in the past [54]. Renewable energy will also continue to be needed after 2020 to contribute towards meeting the higher 80% statutory carbon reduction target for the UK in 2050 [55].
481. The Appellant lists a number of other important benefits of the development. These include energy security, mitigating climate change and economic benefits [260]. However whilst there is a reference to other local community benefits, those benefits are not part of the submitted evidence and should not be taken into account in the planning balance.
482. It is concluded that the benefits of the development are important and that they merit considerable weight in the planning balance.

Other Matters

483. All other matters raised at the Inquiry and in written submissions have been taken into account. These do not outweigh the conclusions on the main considerations but particular points are addressed below.

Hazardous Waste

484. The landfill site has been used in part to deposit hazardous waste. The hazardous waste cells currently remain in use for new material and are now concentrated within the southern half of the site and closest to turbine T3 [9]. The northern part of the site has been mainly used for domestic landfill which generates significant amounts of methane gas that are collected and recycled. Polluted leachate from the site is also collected. Some is treated in a plant at the northern end of the site near the proposed location of turbine T2 and other material is taken away by tanker for treatment elsewhere [10]. The Council withdrew a reason for refusal related to hazardous waste risks on the basis that an independent assessment had supported the Appellant's own assessment [4] but subject to a requested planning condition to require a further risk assessment, to which the Appellant has not objected. The chances that a failure of the turbine structures could lead to the release into the environment of hazardous material or the ignition of escaping methane appear to be very small.

Wildlife

485. Following the cessation of domestic landfill, which had already resulted in large numbers of gulls ceasing to visit the landfill site, the Council withdrew an ecological reason for refusal which had related to the potential impact on gulls visiting the landfill site [4]. Other persons remain concerned about the potential for adverse impacts on gulls crossing the site to reach the continuing landfill operation at the nearby Roxby site [233,241]. They do not seek refusal on those grounds but do seek a monitoring condition if the appeal is allowed and that the turbines be switched off for periods at the start and end of the day should the monitoring reveal a harmful effect on the gulls. Natural England sought a similar condition but at a time when the concern was with gulls visiting the appeal site itself rather than passing over it [240].

486. The Appellant submitted a written response dated 12 June 2014¹⁵⁴ which disputes the need for a monitoring condition as fewer gulls will visit the site and there is insufficient evidence to suggest a significant effect on bird populations. I agree. Moreover there is no suggested wording for a condition that would address the need to define the circumstances in which the harm identified by monitoring would warrant the suggested controls. As such the condition would not be either necessary or precise.

Shadow Flicker

487. Shadow flicker is a concern of some objectors [242] but can be adequately addressed by the use of a planning condition which would have the effect of causing the turbines to be shut down during the typically brief occasions when the sun angle may cause flicker within sensitive buildings.

¹⁵⁴ Inquiry Document 32

Planning Balance and Conclusions

488. The development plan policies pull in different directions. However, where they are in conflict, greater weight should be accorded to those policies which are most consistent with national policy in the Framework and especially to those policies that are the most specific to renewable energy development [215]. In that regard Policy LP Policy DS21 is specific to renewable energy development and is consistent with the Framework in allowing for a balancing of the benefits of renewable energy with any adverse impacts [32]. CS Policy CS18 does not include a specific balancing provision but it does include a minimum CO2 reduction target (to which renewable energy would contribute) and which is not a ceiling. It supports renewable energy in appropriate locations [39].
489. There would be some detrimental but reversible impacts upon landscape character with typically minor harm to the baseline character, notwithstanding a significant magnitude of effect [418-423]. That would be in literal conflict with LP Policy LC7 [34] and some related provisions of LP Policy RD2 [37]. It may potentially conflict with some objectives of CS Policy CS16 [41]. However those policies lack balancing provisions. There would only be conflict with the more specifically relevant LP Policy DS21 if that and any other harm is not outweighed by the benefits. If the benefits do outweigh the harm, that would also address any conflict with the criteria of LP Policy RD2 for the development of utility services in the countryside.
490. There would be some detrimental but reversible impacts upon visual amenity, including some harm for the small number of the residents who live closest to the nearest turbine T3 [439]. There would also be some loss of amenity by reason of an increase in noise levels for those nearest residents who currently experience very low background noise levels. Nevertheless, the development could be limited by condition to operate at the proposed ETSU limits which would be an acceptable maximum [471]. Actual noise immissions should be lower than those predicted on the worst case established by the noise assessment. Even at the higher ETSU-derived levels the absolute noise levels should not result in an unacceptably harmful impact upon the occupiers of those residential properties. Where there is some loss of visual and noise amenity for some residents it would not make any dwelling come to be widely regarded as an unsatisfactory place to live. The identified harm would not necessarily be in conflict with LP Policy DS1 if sufficient benefits meant that the loss of amenity was acceptable in the wider public interest and thus not '*an unacceptable loss of amenity*' [33].
491. Only slight and reversible adverse visual effects on amenity would be experienced by those users of existing public rights of way who dislike the appearance of wind turbines [427]. A potential for more significant adverse effects on users of a possible future route along the disused North Lindsey Railway route through the appeal site (as currently safeguarded by LP Policy IG5) can be addressed by creating an alternative permissive route [428], thereby avoiding harm to the objectives of LP Policies IG5 and R5 [38].
492. There would be some limited and less than substantial harm to the setting of the Grade II* listed church at West Halton [446]. That would result in a literal conflict with LP Policy HE5 [35] and merits considerable importance and weight

in the balancing exercise required by paragraph 134 of the Framework by reason of the S66 duty [59]. However that identified harm to setting and the associated minor harm to heritage significance is both limited in extent and reversible. It is less than substantial in the terms of Framework paragraph 134 which allows that less than substantial harm may be weighed with wider public benefits. Whether there is conflict with the more specifically relevant LP Policy DS21 would depend on the outcome of the balancing exercise including whether the benefits would be sufficient to outweigh the importance of the harm to setting.

493. There would be no harm to the setting or significance of the buried archaeology on West Halton village green and at most minor harm to the setting and significance of the visible upstanding archaeology (the barrow) [452]. Such minor harm to the setting of the barrow would constitute a literal conflict with LP Policy HE8 [36] and some potential for conflict with the objectives of CS Policy CS6 [40]. But whether there is conflict with the more specifically relevant LP Policy DS21 and paragraphs 139 and 134 of the Framework would depend on the outcome of the balancing exercise. There would be negligible effects on the setting and significance of any other heritage assets.
494. Like other commercial scale wind farms, the development would have very significant benefits in making a contribution of further capacity to electricity generation derived from renewable resources [474]. These benefits also merit considerable importance and weight having regard to the identified national need for renewable energy from a variety of sources, including wind.
495. Like the case officer in the committee report, as apparently endorsed by the Head of Planning, I conclude that the positive benefits of renewable energy in this case outweigh the limited identified harm in the above respects. The proposal would thereby accord with the most specifically relevant development plan policy LP Policy DS21. It follows that this would be an appropriate location in the terms of CS Policy CS18 and that the loss of amenity would be acceptable in the wider public interest for the purposes of LP Policy DS1. These considerations outweigh the identified conflict with some other development plan policies that lack balancing provisions such that the proposal can be said to be in overall accord with the development plan. The decision should be determined in accordance with that conclusion unless material considerations indicate otherwise.
496. There was some debate at the Inquiry as to whether the presumption in favour of sustainable development at paragraph 14 of the Framework is applicable in these circumstances and, if so, whether it is satisfied.
497. The Council maintains that only development which has first been found to be 'sustainable' can proceed to be considered under paragraph 14 where the presumption is applied. Then, when referring to the three dimensions of sustainable development – economic, social and environmental – as set out at paragraph 7 of the Framework, the Council maintains that a particular development which involves sustainable technology but which was positively harmful to one of these three roles would, by definition be unsustainable [81-85]. However that approach would not appear to accord with the advice at paragraph 8 of the Framework that the three roles should not be undertaken in isolation but should be sought jointly.

498. The Appellant disputes the Council's interpretation and points to paragraph 93 of the Framework. That describes renewable and low carbon energy as itself central to the three dimensions of sustainable development. But in any case the Appellant responds that, even if the Council's interpretation is correct and the scheme is not tested under paragraph 14, it makes no difference so long as the scheme would be compliant with the development plan read as a whole and if no material consideration would indicate a different result.
499. In this case and for the purposes of Section 38(6) it is concluded above that the development would be in accord with the development plan, read as a whole. The first bullet point of paragraph 14 under 'decision-taking' advises that such development should be approved without delay but Section 38(6) would still allow that material considerations may indicate otherwise.
500. The second bullet point provides for circumstances where the development plan is absent, silent or out-of-date. Some relevant development plan policies are indeed out of date in that they are inconsistent with more recent policy in the Framework. Nevertheless whilst there are some adverse impacts which are material considerations and which include literal conflict with some out of date policies, I consider that they would not here significantly and demonstrably outweigh the benefits. In that case paragraph 14 would allow that the proposal is sustainable development. It follows that if the presumption is to apply then the proposal nevertheless satisfies the paragraph 14 test and the appeal should be allowed.
501. For the above reasons and having regard to all other matters raised, it is concluded and recommended that the appeal should be allowed.

R P E Mellor

INSPECTOR

SCHEDULE OF CONDITIONS

No.	Topic
	TIME LIMITS AND SITE RESTORATION
1	<p>The development hereby permitted shall be commenced before the expiration of three years from the date of this permission. Written confirmation of the commencement of development shall be provided to the Local Planning Authority no later than 14 days after the event.</p> <p>Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.</p>
2	<p>The development hereby permitted shall be removed in accordance with condition 3 after a period of 25 years from the date when electricity is first exported on a commercial basis from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be given to the Local Planning Authority no later than 1 calendar month after the event.</p> <p>Reason: In recognition of the expected lifespan of the wind farm and in the interests of safety and amenity once the plant is redundant.</p>
3	<p>Not later than 12 months before the expiry of the 25 year period referred to in condition 2, a decommissioning and site restoration scheme shall be submitted to the Local Planning Authority for its written approval. The scheme shall make provision for the removal of the wind turbines and the associated above ground equipment and foundations to a depth of at least 1 metre below ground level. The scheme shall also include the management and timing of any works, a traffic management plan to address likely traffic impact issues during the decommissioning period and restoration measures for the land where the turbines and any ancillary equipment and structures have been removed. The approved scheme shall be fully implemented within 12 months of either the expiry of the 25 year period referred to in condition 2 or the Local Planning Authority's approval of the scheme, whichever is the later.</p> <p>Reason: For the avoidance of doubt and to establish the duration of the planning permission</p>
4	<p>If any wind turbine hereby permitted ceases to operate for a continuous period of 12 months, within 3 months of the end of that 12 month period a scheme shall be submitted to the Local Planning Authority for its written approval for the repair or removal of that turbine. The scheme shall include either a programme of remedial works where repairs to the relevant turbine are required, or a programme for removal of the relevant turbine and associated above ground works approved under this permission and the removal of the turbine foundations to a depth of at least 1 metre below finished ground level 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.</p> <p>Reason: In the interests of visual amenity and to ensure that the turbines produce electricity whilst in situ and that they are removed from the land if they cease to function.</p>
	CONSTRUCTION TRAFFIC MANAGEMENT PLAN AND CONSTRUCTION METHOD STATEMENT
5	<p>No development shall commence on site until a Construction Traffic Management Plan ("CTMP") has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, the management of junctions to and crossings of the public highway and other public rights of way, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, reinstatement of any signs, verges or other items displaced by construction traffic, provision for addressing any abnormal wear and tear to the highway and banksman/escort details. The approved CTMP, including any agreed improvements or works to accommodate construction traffic where required along the route, shall be carried out as agreed in writing by the Local Planning Authority.</p> <p>Reason: In order to protect highway safety and the amenity of other users of the public highway and rights of way.</p>
6	<p>No development shall commence on site until a Construction Method Statement ("CMS") has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the construction of the development shall be carried out in accordance with the approved CMS. The CMS shall</p>

	<p>address the following matters:</p> <ol style="list-style-type: none"> a) Details of the phasing of all construction works. b) Details of the construction and surface treatment of all hard surfaces and tracks. c) Details of the proposed storage of materials and soils and disposal of surplus materials. d) Dust management. e) Siting and details of wheel washing facilities and their use. f) Details of the proposed temporary site compound for storage of materials and machinery, including areas designated for car parking. g) Temporary site illumination during the construction period. h) Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway. i) Pollution control, including the protection of water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage. j) Proposals for post construction restoration/reinstatement of the temporary working areas. k) Details of emergency procedures and pollution response plans. l) A site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and habitats to include: <ul style="list-style-type: none"> - detail how any habitat loss around turbine plinths will be offset and how remaining habitat can be improved to become suitable areas for breeding birds; - detail how planned vegetation removal shall not disturb nesting birds; - detail further survey for breeding birds, over flying birds, great crested newts and bats in order to enhance habitat and management further; - detail how any Japanese knotweed on the site will be managed. <p>The agreed matters of the plan will be implemented on site.</p>
	Reason: To ensure a satisfactory level of environmental protection and to minimise disturbance to local residents during the construction process.
	CONSTRUCTION HOURS
7	Construction work shall only take place between the hours of 0730 – 1800 hours Monday to Friday inclusive and 0800 – 1300 hours on Saturdays with no such work on a Sunday or Public Holiday. Works outside these hours shall only be carried out (a) with the prior written approval of the Local Planning Authority or (b) in the case of an emergency, including turbine erection and works delayed due to the weather, provided that the Local Planning Authority is notified by telephone and in writing as soon as reasonably practicable (and in any event within 2 working days) following the emergency first being identified, such notification to include both details of the emergency and any works carried out and/or proposed to be carried out, or (c) where they concern dust suppression or the pouring of wind turbine foundations.
	Reason: In the interests of amenity to restrict noise impact and the protection of the local environment.
8	The delivery of any construction materials or equipment for the construction of the development, other than deliveries of (i) concrete for the wind turbine foundations and (ii) the turbine blades, nacelles and towers (referred to in this condition together as “abnormal load deliveries”), shall be restricted to the hours of 0730 – 1800 on Monday to Friday inclusive, 0800 to 1300 on Saturdays with no such deliveries on a Sunday or Public Holiday. Abnormal load deliveries may take place outside of these hours, subject to not less than 2 working days prior notice of any such deliveries and the associated traffic movements being given in writing to the Local Planning Authority.
	Reason: In the interests of highway safety and the free flow of traffic.
	APPEARANCE
9	No wind turbine shall be erected on site until details of the finish and colour of the turbines and any external transformer units has been submitted to and approved in writing by the Local Planning Authority. No name, sign, symbol or logo shall be displayed on any external surfaces of the turbines or any external transformer units other than those required to meet statutory health and safety requirements. The development shall thereafter be carried out and operated in accordance with the approved details.
	Reason: For the avoidance of doubt and in the interests of visual amenity.
10	All wind turbines shall rotate in the same direction. The overall height of the turbines shall not exceed 127m to the tip of the blades when the turbine is in the vertical position as measured

	from original natural ground conditions immediately adjacent to the wind turbine base and the hub height shall be no less than 73.5m and no more than 80m.
	Reason: For the avoidance of doubt and in the interests of visual amenity.
11	The construction of the substation building shall not commence until details of the external appearance, dimensions, layout and materials for the building and any associated compound or parking area and details of surface and foul water drainage from the building have been submitted to and approved in writing by the Local Planning Authority. The development of the substation building and any associated compound or parking area shall be carried out in accordance with the approved details.
	Reason: In the interest of visual amenity.
12	All cabling between the wind turbines and between the turbines and the control building shall be laid underground.
	Reason: In the interests of visual amenity.
13	Except as provided for by other conditions of this permission there shall be no permanent illumination on the site other than lighting required during the construction period (as approved through the CMS referred to in condition 6(g)), lighting required during planned or unplanned maintenance or emergency lighting and a movement sensor-operated external door light for the control building door to allow safe access.
	Reason: In order to prevent unnecessary light pollution and In the interests of visual amenity.
14	No development shall commence on site until a scheme of infra-red aviation obstruction lighting to be installed on all of the wind turbines has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme and the lighting will remain operational until the site is decommissioned in accordance with condition 3.
	Reason: In the interests of aviation safety.
	ECOLOGY
15	No vegetation removal or ground clearance shall take place between 1 March and 31 August unless a suitably qualified and independent ecologist has first confirmed in writing to the Local Planning Authority that appropriate measures are in place to ensure that no species protected under Schedule 1 of the Wildlife and Countryside Act 1981 as amended will be harmed.
	Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010.
	SHADOW FLICKER
16	No wind turbine shall become operational until a written scheme has been submitted to and approved in writing by the Local Planning Authority setting out a protocol for the assessment of shadow flicker in the event of any complaint alleging shadow flicker effects to the Local Planning Authority from the owner or occupier of any dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) or school which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any effects of shadow flicker attributable to the development. Operation of the turbines shall take place in accordance with the approved scheme.
	Reason: In the interests of residential amenity.
	TV INTERFERENCE
17	No turbine shall be erected until a scheme for providing a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial TV caused by the operation of the wind turbines shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at a dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) or school or business which lawfully exists or had planning permission at the date of this permission where such complaint is notified to the developer by the Local Planning Authority within 12 months of the First Export Date. Where impairment is determined by the qualified independent television engineer to be attributable to the wind farm development, mitigation works shall be carried out in accordance with the approved scheme.

	Reason: In the interests of residential amenity.												
	ACCESS AND HIGHWAYS												
18	No development shall commence on site until the design and layout of the upgraded site access from Coleby Road has been submitted to and approved in writing by the Local Planning Authority. No other part of the development shall commence until the site access has been constructed and laid out in accordance with the approved details.												
	Reason: To ensure the provision of a satisfactory access and in the interests of highway safety.												
	APPROVED PLANS												
19	The development hereby approved shall take place in accordance with the terms of the submitted application and plans (unless any additional plans are submitted to and approved by the Local Planning Authority in accordance with a condition associated with this planning permission) as set out below: <table border="1" data-bbox="469 674 1289 779" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Drawing Number</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>994-01-01 Rev B</td> <td>Statutory Plan</td> </tr> <tr> <td>994-01-02 Rev B</td> <td>General Arrangement Plan</td> </tr> </tbody> </table>	Drawing Number	Description	994-01-01 Rev B	Statutory Plan	994-01-02 Rev B	General Arrangement Plan						
Drawing Number	Description												
994-01-01 Rev B	Statutory Plan												
994-01-02 Rev B	General Arrangement Plan												
	Reason: For the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved.												
	MICRO-SITING												
20	The wind turbines hereby permitted shall be erected at the following co-ordinates: <table border="1" data-bbox="373 1021 1051 1144" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Turbine ID</th> <th>Easting</th> <th>Northing</th> </tr> </thead> <tbody> <tr> <td>T1</td> <td>490980</td> <td>419523</td> </tr> <tr> <td>T2</td> <td>491213</td> <td>420010</td> </tr> <tr> <td>T3</td> <td>490928</td> <td>419156</td> </tr> </tbody> </table> <p>Notwithstanding the terms of this condition, but subject to the restriction set out below, the turbines may be micro-sited within 20 metres of the coordinates set out in this condition and subject to no part of the structure being located outside the appeal site as defined by the red line on the approved Drawing 01-01 rev B and to Turbine T3 being no closer to the dwellings to the south and east. For the avoidance of doubt, the consequential realignment of the access tracks between and to the turbines following micro-siting of the turbines in accordance with this condition is permitted. A plan showing the position of the turbines and tracks established on the site shall be submitted to the Local Planning Authority within 1 calendar month of the First Export Date.</p> <p>The turbines hereby permitted shall not be micro-sited in any direction so that the separation distance between each turbine blade tip and the nearest feature of ecological interest (which shall mean any tree or hedgerow) within the site to the relevant turbine is less than 50m as measured in accordance with Natural England's Technical Information Note TIN051: Bats and onshore wind turbines.</p>	Turbine ID	Easting	Northing	T1	490980	419523	T2	491213	420010	T3	490928	419156
Turbine ID	Easting	Northing											
T1	490980	419523											
T2	491213	420010											
T3	490928	419156											
	Reason: To enable necessary minor adjustments to the position of the turbines and access tracks to allow for site-specific conditions.												
	RISK MITIGATION												
21	No development shall commence until a written scheme of risk mitigation, in accordance with the Terraconsult report of 16th January 2013 and the GBC report of 15th April 2013, has been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented throughout the entire lifetime of the wind farm.												
	Reason: To protect the safety and amenity of the occupiers of residential properties and to comply with policy DS21 of the North Lincolnshire Local Plan.												
	SUBSTATION												

22	No development shall be commenced until details of the materials of the wall and roof of the substation building have been submitted to and approved in writing by the local planning authority. The building shall only be erected in accordance with the approved details.
	Reason: To protect the character and appearance of the area
23	The substation shall not be brought into use until details of the associated vehicle parking and perimeter fencing have been submitted to and approved in writing by the local planning authority and until the parking area and fencing have been provided for use in accordance with the approved details.
	Reason: To protect the character and appearance of the area
	PERMISSIVE RIGHT OF WAY
24	No development shall take place until a scheme for the construction, implementation, maintenance and retention of a permissive right of way (equestrian, cycleway and footpath) has been submitted to and approved in writing by the Local Planning Authority. The permissive right of way shall follow the route which is shown dashed green on Plan 1 (labelled "Permissive Path Route") between grid co-ordinates 634365, 117183 (southern end) and 635664, 118254 (northern end), and shall be provided in accordance with a timetable to be approved as part of the aforementioned scheme.
	Reason: To avoid prejudice to the objective of Local Plan Policy IG5 to safeguard a route for a right of way through the landfill site as an alternative to the route of the former north Lindsay Light Railway that would nevertheless connect to that route to the north and south if and when it is provided.

	OPERATIONAL NOISE
25	<p>The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:</p> <p>(A) Prior to the First Export Date, the wind farm operator shall submit to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.</p> <p>(B) Within 21 days from receipt of a written request of the Local Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the Local Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the Local Planning Authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the Local Planning Authority in the format set out in Guidance Note 1(e).</p> <p>(C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's</p>

	<p>dwelling. The submission of the proposed noise limits to the Local Planning Authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.</p> <p>(D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the Local Planning Authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the Local Planning Authority.</p> <p>(E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the following:</p> <ul style="list-style-type: none"> (i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component. <p>The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the Local Planning Authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the Local Planning Authority and the attached Guidance Notes.</p> <p>(F) The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority made under paragraph (B) of this condition unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.</p> <p>(G) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the Local Planning Authority.</p> <p>(H) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an</p>
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	<p>alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. The data from each wind turbine shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the Local Planning Authority on its request within 14 days of receipt in writing of such a request.</p> <p>Note: For the purposes of this condition, a “dwelling” is a building within Use Class C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this consent.</p>
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Table 1 - Between 07:00 and 23:00 - Noise level dB L_{A90}, 10-minute

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	L _{A90} Decibel Levels											
Kirk Lodge (490552,420644)	36	37	38	40	41	42	44	46	48	50	53	56
Northlands (492367,420022)	30	34	37	38	39	39	40	41	43	46	49	53
Booth House Farm (492241,419475)	36	38	39	40	40	41	41	42	44	46	49	53
The Observatory (491724,418961)	35	37	38	39	39	39	39	40	41	43	46	50
New Cliff Farm (491343,418723)	35	37	38	39	39	39	39	40	41	43	46	50
Keepers Cottage (490107,418648)	35	35	35	35	36	37	38	39	40	41	44	47
East Dale Farm (489948,419536)	35	35	35	35	36	37	38	39	40	41	44	47

Table 2 - Between 23:00 and 07:00 - Noise level dB L_{A90}, 10-minute

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	L _{A90} Decibel Levels											
Kirk Lodge (490552,420644)	43	43	43	43	43	43	43	43	46	49	51	54
Northlands (492367,420022)	42	42	42	42	42	42	42	42	42	42	46	50
Booth House Farm (492241,419475)	43	43	43	43	43	43	43	43	43	43	46	51
The Observatory (491724,418961)	43	43	43	43	43	43	43	43	43	43	44	47
New Cliff Farm (491343,418723)	43	43	43	43	43	43	43	43	43	43	44	47
Keepers Cottage (490107,418648)	43	43	43	43	43	43	43	43	43	43	43	46
East Dale Farm (489948,419536)	43	43	43	43	43	43	43	43	43	43	43	46

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

Guidance Notes for Noise Condition

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

Note 1

Values of the LA90,10-minute noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.

The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).

To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. Each 10 minute arithmetic average mean wind speed data as measured on the mast at turbine hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data

which is correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary.

Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.

A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the Local Planning Authority prior to the commencement of measurements.

Note 2

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).

Valid data points are those measured during the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).

Values of the $L_{A90,10\text{-minute}}$ noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.

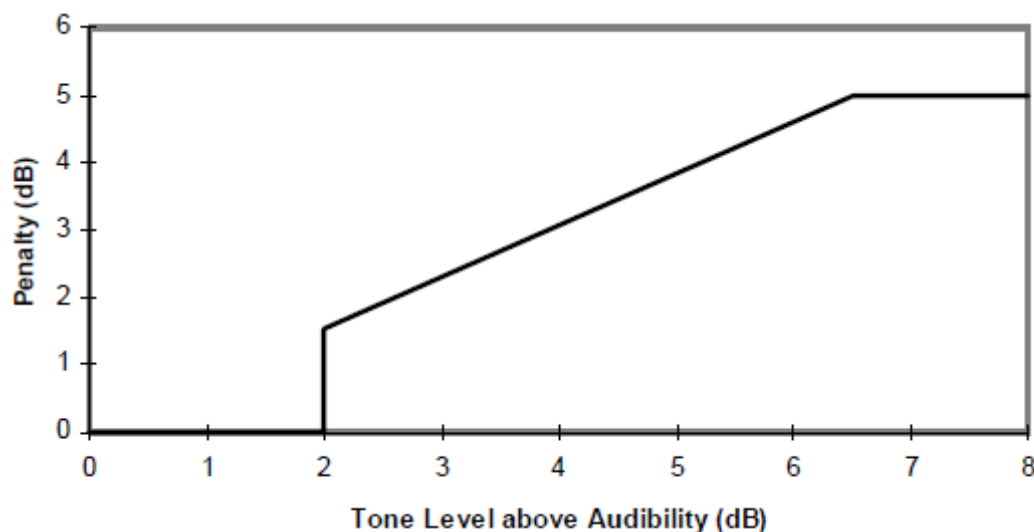
For each 10-minute interval for which $LA_{90,10\text{-minute}}$ data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.

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

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.

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

The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



Note 4

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.

If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.

If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.

The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

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

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Hardy LL.B(Hons)(Oxon)	of Counsel and Solicitor, Partner, Eversheds LLP, Leeds
He called	
Mr J Mason BSc(Hons) DipLA CMLI	Landscape Consultant, Technical Director Axis, Chester
Dr C Lowe BA MA PhD MifA FSA Scot	Senior Heritage Consultant, Headland Archaeology (UK) Ltd., Edinburgh
Mr S Arnott BSc(Hons) MSc MIOA	Principal Associate Consultant (Acoustics), TNEI Services Ltd, Newcastle
Mr D Stewart MA (Cantab) DipTP MRTPI	Planning Consultant, David Stewart Associates, Cullompton, Devon

FOR THE APPELLANT:

Mr J Barrett	of Counsel, Kings Chambers, Manchester
He called	
Mr I Goldthorpe BA, DipURP MASustDes	Principal Environmental Planning Officer, North Lincolnshire Council (Landscape and Visual Amenity).
Mr E Rychlak DipHtgeMgt AIHBC	Environment Officer (Built Conservation), North Lincolnshire Council
Mrs A Williams BA(Hons)	Sites and Monuments Officer, North Lincolnshire Council
Ms S Nicholson BSc(Hons) PhD DipANC	Environmental Protection Officer, North Lincolnshire Council
Mr N Lawrence BA(Hons) MA MRTPI	Senior Planning Officer, North Lincolnshire Council

INTERESTED PERSONS:

Mr Andrew Percy MP	Member for Brigg and Goole
Cllr Liz Redfern	Leader, North Lincolnshire Council
Cllr Elaine Marper	Local Member, North Lincolnshire Council
Mrs J Favill	Winterton Resident
Mr L Favill	Winterton Resident
Ms J Ellison	Winterton Resident
Mrs F Marritt	Winterton Resident
Mr A Batley	West Halton Resident
Ms J Haynes	CPRE North Lincolnshire

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening submissions on behalf of the Appellant (APP)
2. Opening on behalf of the Local Planning Authority (LPA)
3. Replacement to CD7.9 Scottish Natural Heritage Design Guidance (APP)
4. Goldthorpe summary (LPA)
5. Letter of notification of the Inquiry and list of persons notified (LPA)
6. N Lincs Local Plan Policy IG5 Footpaths and Cycleways (LPA)
7. N Lincs Local Plan 2003 Proposals Map extract for appeal site (LPA)
8. Nicholson Appendix 2 (corrected) (LPA)
9. Nicholson Appendix 3 (corrected) (LPA)
10. Tegni Cymru Cyf and Welsh Ministers (Court of Appeal) 24 November 2010 (LPA 3)
11. Statement by Cllr Marper (N Lincs Council Local Member)
12. Statement by Mrs B J Favill
13. Statement by Mr L Favill
14. Statement by Ms J Ellison
15. Statement by Ms F Marritt
16. Statement by Ms J Haynes (CPRE)
17. Statement by Mr A White (read out by Ms Ellison)
18. Review of Wind Turbine Risk Assessment by GBConsulting (LPA)
19. William Davis Ltd & Jelson Ltd v SoCCLG & NW Leics DC (High Court) 11 October 2013 (LPA 2)
20. Secretary of State appeal decision at East Heslerton, Ryedale Ref APP/Y2736/A/13/2201109 dated 27 May 2014 (LPA 1)
21. Email from Spatial Planning Manager concerning Policy IG5 (LPA)
22. Email from Chillwind with CE certificate concerning performance of Sodar wind speed measuring equipment close to mobile phone masts (App)
23. Appeal Decision for Barlborough wind turbine Ref APP/R1010/A/13/2203975 (APP)
24. Statement by Mr A Batley
- 24A Mr Batley's photographs
25. N Lincs Local Plan 2003 Policy R5 (LPA)
26. N Lincs Core Strategy 2011 Policy CS16 (LPA)
27. N Lincs Local Plan 2003 Policy HE5 (LPA)
28. Wind Turbine Risk Assessment by TerraConsult (LPA)
29. Arnott rebuttal on noise matters raised by Mr Fuller and Mrs Favill (APP)
30. Evidence of publicity given to updated noise assessment April 2014 (App)
31. Closing on behalf of the Local Planning Authority (LPA)
32. Abrahams' Rebuttal of ecology matters raised by Ms Ellison and Mr White (APP)
33. Statement of Common Ground between the Appellant and the Council
34. Closing submissions on behalf of the Appellant (APP)
35. Draft Non Noise Conditions (APP)
36. Council's Response to Draft Non Noise Conditions (LPA)
37. Draft Noise Conditions (APP)
38. Council's Response to Draft Noise Conditions (LPA)
39. File of representations on planning application from Consultee organisations (LPA)
40. Email of 19 June 2014 with agreed wording for permissive path condition and plan
41. Email from the Council dated 3 July 2014 with revised suggested noise conditions
42. Email from the Appellant dated 23 July 2014 with Comments on Council's suggested noise conditions.
43. Set of Appellant's Core Documents (Index below)
44. Set of Council's Core Documents (Index below)

Appellant's List of Core Documents

		Document
1 Adopted Development Plan Documents		
Requested by	CD	
APP	1.1	Saved policies of the North Lincolnshire Local Plan (adopted May 2003)
APP	1.2	The Core Strategy Development Plan Document (adopted June 2011)
2 National Guidance		
APP	2.1	DCLG: National Planning Policy Framework (March 2012)
APP	2.2	National Planning Practice Guidance [only available electronically unless requested]
APP	2.3	Government Response to the Communities and Local Government Select Committee Report: NPPF
APP	2.4	DCLG: Written Statement to Parliament, Local Planning and Onshore Wind, The Rt Hon Eric Pickles MP (6 June 2013)
APP	2.5	DECC: Written Statement to Parliament, The Rt Hon Edward Davey MP (6 June 2013)
APP	2.6	DECC: Press Release (6 June 2013)
APP	2.7	DECC: Written Statement to the Institute of Acoustics, The Rt Hon Edward Davey MP (20 May 2013)
3 Other Local Planning Authority Documents, Regional Renewable Energy Documents and Documents regarding Regional Spatial Strategies		
APP	3.1	Planning for Renewable Energy Targets in Yorkshire and Humber (December 2004, AEA Technology) (Volumes 1-3)
APP	3.2	Low Carbon and Renewable Energy Capacity in Yorkshire and Humber (Final Report) (March 2011, AECOM)
APP	3.3	Supplementary Planning Guidance 5a: Countryside Design Summary (September 1999)
APP	3.4	Supplementary Planning Guidance 5b: Landscape Character Assessment and Guidelines (September 1999)
APP	3.5	Supplementary Planning Guidance: Wind Energy Development (March 2005)
APP	3.6	Renewable Energy SPD (November 2011)
4 High Court Decisions		
APP	4.1	R (Hulme) v Secretary of State for Communities and Local Government [2010] EWHC 2386 (Admin)
APP	4.2	Michael William Hulme v Secretary of State for Communities and Local Government and RES Developments Limited [2011] EWCA Civ 638
APP	4.3	R (Lee) v Secretary of State for Communities and Local Government, Maldon

		Document
		District Council, Npower Renewables [2011] EWHC 807 (Admin)
APP	4.4	(1) Derbyshire Dales District Council (2) Peak District National Park v (1) Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin)
APP	4.5	Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government, Great Yarmouth Borough Council [2012] EWHC 1419 (Admin)
APP	4.6	(1) South Northamptonshire Council (2) Deidre Veronica Ward v (1) Secretary of State for Communities and Local Government (2) Broadview Energy Development Limited [2013] EWHC 11 (Admin)
APP	4.7	(1) East Northamptonshire District Council (2) English Heritage (3) National Trust v (1) Secretary of State for Communities and Local Government (2) Barnwell Manor Wind Energy Limited [2013] EWHC 473 (Admin)
APP	4.8	Colman v Secretary of State for Communities and Local Government and others [2013] EWHC 1138 (Admin)
APP	4.9	Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Ltd [2012] EWHC 4344 (Admin)
APP	4.10	Barnwell Manor Energy Limited v (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) Secretary of State for Communities and Local Government [2014] EWCA 137
APP	4.11	North Norfolk District Council v Secretary of State for Communities and Local Government and David Mack [2014] EWHC 279 (Admin)
APP	4.12	RWE Npower Renewables Limited v (1) Milton Keynes Borough Council (2) Ecotricity (Next Generation) Limited [2013] EWHC 751 (Admin)
5 Various Wind Farm Appeal and Application Decisions		
APP	5.1	Grange, Flixborough (APP/Y2003/A/09/2105130)
APP	5.2	Grange, Flixborough (APP/Y2003/A/11/2156713)
APP	5.3	Burnthouse Farm (APP/D0515/A/10/2123739 & APP/D0515/A/10/2131194)
APP	5.4	Cleek Hall (APP/N2739/A/12/2172629)
APP	5.5	Carland Cross (APP/D0840/A/09/2103026)
APP	5.6	Chelveston (APP/K0235/A/11/2160077 & APP/G2815/A/11/2160078)
APP	5.7	Enifer Downs (APP/X220/A/08/2071880)
APP	5.8	Watford Lodge (APP/Y2810/A/11/2153242)
APP	5.9	Church Farm, Southoe (Common Barn) (APP/H0520/A/12/2188648)
APP	5.10	Earls Hall Farm (APP/P1560/A/08/2088548)
APP	5.11	Lilbourne (APP/Y2810/A/11/2164759)

		Document
APP	5.12	Newlands Farm (APP/E0915/A/09/2101659 & APP/E0915/A/09/2101667)
APP	5.13	Cotton Farm (APP/H0520/A/09/2119385)
APP	5.14	Yelvertoft (APP/Y2810/A/10/2120332)
APP	5.15	Treading (APP/D0515/A/12/2181777 & APP/A2525/A/12/2184954)
APP	5.16	Potato Pot (APP/G0908/A/12/2189934)
APP	5.17	Gayton le Marsh (APP/D2510/A/12/2176754)
APP	5.18	Nun Wood (APP/YO435/A/10/2140401, APP/K0235/A/11/2149434 & APP/H2835/A/11/2149437)
APP	5.19	Dunsland Cross (APP/W1145/A/13/2194484)
APP	5.20	Turncole (APP/X1545/A/12/2174982, APP/X1545/A/12/2179484 & APP/X1545/A/12/2179225)
APP	5.21	Black Ditch (APP/V3310/A/12/2186162)
APP	5.22	Asfordby (APP/Y2430/A/13/2191290)
APP	5.23	Weddicar Rigg (APP/Z0923/A/13/2191361)
APP	5.24	Swinford (APP/F2415/A/09/2096369)
APP	5.25	Keadby/Tweenbridge (GDBC/003/00025C/1 & GDBC/003/00025C/2)
APP	5.26	Kelmarsh (APP/Y2810/A/11/2154375)
APP	5.27	Wormslade Farm (APP/Y2810/A/12/220118)
APP	5.28	Carsington Pastures (APP/P1045/A/07/2054080)
APP	5.29	Spring Farm Ridge (APP/Z2830/A/11/2165035)
APP	5.30	Bradwell (APP/X1545/A/06/2023805)
APP	5.31	Spaldington Airfield and Common (APP/E2001/A/10/2137617 & APP/E2001/A/10/2139965)
APP	5.32	Alaska Farm (APP/B1225/A/11/2161905)
6 Planning, Renewable Energy and Climate Change Documents		
APP	6.1	DTI Energy White Paper "Meeting the Energy Challenge" (2007) [Extract Only]
APP	6.2	DECC: The UK Renewable Energy Strategy (2009)
APP	6.3	DECC: Overarching National Policy Statement for Energy EN-1 (Designated Version, 19 July 2011)
APP	6.4	DECC: National Policy Statement for Renewable Energy Infrastructure EN-3 (Designated Version, 19 July 2011)

		Document
APP	6.5	DECC: UK Renewable Energy Roadmap (July 2011)
APP	6.6	DECC: UK Renewable Energy Roadmap Update (December 2012)
APP	6.7	DECC: UK Renewable Energy Roadmap Update (November 2013)
APP	6.8	Committee on Climate Change: Renewable Energy Review (May 2011)
APP	6.9	IPCC Fifth Assessment Report (April 2014)
7 Landscape and Visual Effects		
APP	7.1	The Landscape Institute, Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment, Second Edition (2002)
APP	7.2	The Landscape Institute, Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment, Third Edition (2013)
APP	7.3	Landscape Institute: Landscape Architecture and the Challenge of Climate Change (October 2008)
APP	7.4	Landscape Institute: Photography and Photomontage in Landscape and Visual Impact Assessment, Advice Note 01/11
APP	7.5	Scottish Natural Heritage: Guidelines on the Environmental Impacts of Windfarms and Small Scale Hydro Electric Schemes (2001)
APP	7.6	Produced for Scottish Natural Heritage by the University of Newcastle: Visual Assessment of Wind Farms: Best Practice (2002)
APP	7.7	Scottish Natural Heritage and Countryside Agency: Landscape Character Assessment Series: Topic Paper 9 Climate Change and Natural Forces – the Consequences for Landscape Character (2003)
APP	7.8	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance (2006)
APP	7.9	Scottish Natural Heritage: Siting and Designing Windfarms in the Landscape, Version 1 (December 2009)
APP	7.10	Scottish Natural Heritage: Guidance Assessing the Cumulative Impact of Onshore Wind Energy Developments, Version 3 (March 2012)
APP	7.11	DECC: DECC Public Attitudes Tracker – Wave 9 (April 2014)
APP	7.12	Ipsos Mori: Wind Power Omnibus Research (April 2012)
APP	7.13	Scottish Executive: Public Attitudes to Wind Farms (2003)
APP	7.14	Green on Green Public Perceptions of Wind Power in Scotland and Ireland (November 2005)
APP	7.15	Natural England: Sustainable Energy Policy (2008)
APP	7.16	Natural England: Climate Change Policy (2008)

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APP	7.17	Natural England: Position on Wind Energy (2009)
APP	7.18	Natural England: Making Space for Renewable Energy (2010)
APP	7.19	Natural England: All Landscapes Matter (2010)
APP	7.20	Natural England: Future Landscapes – Draft Policy for Consultation (2009)
8 Noise		
APP	8.1	ETSU-R-97: The Assessment and Rating of Noise from Wind Turbines (September 1996)
APP	8.2	A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise, Institute of Acoustics (May 2013)
APP	8.3	Night Noise Guidelines: World Health Organisation (Geneva, 2009)
APP	8.4	Noise Policy statement for England: DEFRA (March 2010)
APP	8.5	Hansard: HC Deb, 9 January 2014, c291W http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140109/text/140109w0001.htm#140109w0001.htm_wqn42
APP	8.6	BS 4142: Method of rating industrial noise affecting mixed residential and industrial areas (British Standards Institution, 1997)
APP	8.7	Draft BS 4142 Methods for rating and assessing industrial and commercial sound, British Standards Institution, 2014)
APP	8.8	Environmental Burden of Disease-European Countries Project, WHO (Geneva, 2011)
APP	8.9	Nissenbaum MA, Aramini JJ, Hanning CD: Effects of industrial wind turbine noise on sleep and health (Noise Health 2012; 14:237-43)
APP	8.10	Ollson CA, Knopper LD, McCallum LC, Whitfield-Aslund ML: Letter to Editor: Are the findings of "Effects of industrial wind turbine noise on sleep and health" supported? (Noise Health 2013; 15:148-50)
APP	8.11	Barnard M. Letter to Editor: Issues of Wind Turbine Noise. Noise Health [serial online] 2013 [cited 2013 Oct 24]; 15:150-2
APP	8.12	Dr Jeffery, Ms Krogh, and Mr Horner, Vol 59: September 2013, Canadian Family Physician: Adverse Health Effects of Industrial Wind Turbines
APP	8.13	Hume KI, Brink M, Basner M. Effects of Environmental Noise on Sleep. Noise Health 2012; 14:297-302
APP	8.14	Why Turbine Noise Annoys, Bowdler D., Proc. Fourth International Meeting on Wind Turbine Noise (Rome 12-14 April 2011)
APP	8.15	Crichton. F et al, "Can Expectations Produce Symptoms From Infrasound Associated with Wind Turbines?" Health Psychology 0278-6133/13, American Psychological Association (http://dx.doi.org/10.1037/a0031760)
APP	8.16	Energy, Sustainable Development and Health, EUR/04/5046267/BD/8, p79,

		Document
		WHO, 3 June 2004 [Extract Only]
APP	8.17	Low Frequency Noise and Wind Turbines, BWEA, 2005
APP	8.18	A Review of Published Research on Low Frequency Noise and its Effects Report for DEFRA by Dr Geoff Leventhall, Assisted by Dr Peter Pelmear and Dr Stephen Benton, DEFRA May 2003, Contract ref: EPG1/2/50
APP	8.19	Infrasound emission from wind turbines, Jakobsen, Journal of Low Frequency Noise, Vibration and Active Control (pages 145 – 155, 17 August 2005)
APP	8.20	"In Home Wind Turbine Noise is Conducive to Vibroacoustic Disease", Mariana Alves-periera, ERISA-Lusofona University, Lisbon, July 2007
APP	8.21	Energy, Sustainable Development and Health, EUR/04/5046267/BD/8, p79, WHO, 3 June 2004 [Extract Only]
APP	8.22	Low frequency noise from large wind turbines, Project EFP-06, DELTA, 30 April 2008
APP	8.23	Moller, H & Pederson, C.S., "Low frequency noise from large wind turbines" J.Acoust.Soc.Am 129 (6) June 2011
APP	8.24	Wind Turbine Sound and Health Effects, An Expert Panel Review, Colby et al, December 2009
APP	8.25	Location, Location, Location, UK Noise Association, August 2006 [Extract only]
APP	8.26	Noise Radiation from Wind Turbines installed near Homes : Effects on Health, Barbara J Frey, BA, MA and Peter J Hadden, BSc, FRICS, June 2007
APP	8.27	RenewableUK Research into Amplitude Modulation http://www.renewableuk.com/en/publications/reports.cfm/year/2013/
9 Cultural Heritage		
APP	9.1	English Heritage: Wind Energy and the Historic Environment (October 2005)
APP	9.2	English Heritage: Conservation Principles, Policies and Guidance (April 2008)
APP	9.3	English Heritage: The Setting of Heritage Assets (October 2011)
APP	9.4	PPS5 Planning for the Historic Environment: Planning Practice Guide (March 2010)
10 Planning Application and Appeal Documents		
APP	10.1	Planning Application and Supporting Documents [provided in the Appeal Bundle]
APP	10.2	Environmental Statement [provided in the Appeal Bundle]
APP	10.3	Supplementary Environmental Information (October 2011) [provided in the Appeal Bundle]
APP	10.4	Supplementary Environmental Information (August 2012) [provided in the Appeal Bundle]

		Document
APP	10.5	Officer's Report to North Lincolnshire Council Planning Committee
APP	10.6	Minutes of Committee Meeting on 5 June 2013
APP	10.7	Statement of Case of the Appellant
APP	10.8	Statement of Case of North Lincolnshire Council
APP	10.9	Agreed Statement of Common Ground [only available in hard copy]

Index of Council Core Documents

	Document Title
1.	North Lincolnshire Landscape Character Assessment & Guidelines (13 September 1999)
2.	National Character Area Profiles 43: Lincolnshire Wolds 44: Central Lincolnshire Vale 45: Northern Lincolnshire Edge with Coversands
3.	Extracts from the Buildings of England: Lincolnshire (pages 210 and 792)
4.	Extracts from North Lincolnshire Historic Environment Record
5.	St Etheldreda's Church, West Halton, North Lincolnshire: Supplementary Assessment of Setting Issues (C Lowe, 26 October 2012) Supplementary Assessment of Potential Impacts on the Setting of West Halton, Normanby Hall and Coleby Hall (P Masser, 31 January 2013)
6.	North Lincs Museum Source Reports – SLS Numbers: 2674, 3422, 3425 & 3426
7.	Field Work at West Halton (North Lincolnshire: Interim Report for 2007-2009) (April 2011)
8.	An Analysis of the Pottery from Ditch Systems at the Multi-Period Site of West Halton, North Lincolnshire (Gareth J Perry)



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.