



Department for  
Communities and  
Local Government

Mr Marcus Trinick  
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Bridgewater Place  
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Leeds  
LS11 5DR

Our Ref: APP/D2510/A/14/2213150

Your Ref: 181407.000006

20 March 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY ASC RENEWABLES LTD  
LAND AT BISHOPTHORPE FARM, TETNEY, GRIMSBY - APPLICATION REF:  
N/178/01969/12**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Philip Major BA (Hons) DipTP MRTPI, who opened an inquiry on 5 August 2014 into your client's appeal against the failure of East Lindsey District Council ('the Council') to give notice within the prescribed period of a decision on an application for planning permission for the erection of 8 wind turbines (with a maximum height from the ground to the blade tip of between 105m and 115m, between 63m and 75m to hub and between 70m and 93m rotor diameter) and associated infrastructure including foundations, transformers, and crane hardstanding areas; new and upgraded on-site access tracks and one new site access point and one upgraded site access point; a new switchgear and control building; underground cabling; a meteorological mast; and 2 temporary construction compounds (application ref N/178/01969/12).
2. On 17 June 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves a renewable energy development.

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

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except

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where indicated otherwise, and agrees with his recommendation. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

### **Procedural matters**

4. In reaching this position the Secretary of State has, like the Inspector, taken into account the Environmental Statement (ES), Supplementary Environmental Information (SEI) and further SEI which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (IR3). The Secretary of State is content that the Environmental Statement complies with the above regulations. He considers that the ES and SEI, together with other information which is referred to in Appendix 2 of this letter, has provided sufficient information for him to assess the environmental impact of the application.

### **Policy Considerations**

5. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, he agrees with the Inspector (IR12) that the development plan comprises the saved policies of the East Lindsey Alteration Local Plan (adopted 1999); the saved policies of the Lincolnshire minerals Local Plan (1991); and the saved policies of the Lincolnshire Waste Local Plan (2006).
6. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the proposals before him or their settings or any features of special architectural or historic interest which they may possess.
7. The Secretary of State agrees with the Inspector and the parties that the most relevant policies as they relate to this appeal are those set out at IR13-19.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the accompanying planning practice guidance; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3) the Community Infrastructure Levy (CIL) Regulations 2010 as amended; and Planning Policy Statement (PPS) 5 Planning for the Historic Environment Practice Guide of March 2010. The Secretary of State has also taken into account the Written Ministerial Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government and the Written Ministerial Statement on renewable energy published by the Secretary of State for Communities and Local Government in April 2014.
9. A draft East Lindsey Local Plan is in preparation which will replace the extant Local Plan. However the draft Local Plan has made limited headway and the Secretary of State agrees with the Inspector that it can be afforded little if any weight at this stage (IR21).

### **Main Considerations**

10. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR372.

### *Landscape and Visual Impact*

11. For the reasons given by the Inspector at IR373-397, the Secretary of State agrees with the Inspector's summary of his findings (IR398) on the impact of the proposed development on the character and visual qualities of the area. He agrees too that when assessed against the development plan, it is not clear that the landscape character and visual impacts would be significantly harmful to the amenities of people living and working in the area in the sense that it would impact upon the conditions experienced as they go about their lives. Like the Inspector, the Secretary of State does not find there is a conflict with the thrust of Local Plan Policy A4. However, he agrees that there would be some apparent conflict with Policies A5 and C14, though for reasons given at IR15 and 19 the weight attached to this conflict is minimal as a result of the limited weight attaching to these policies (IR399).

### *Heritage Assets*

12. The Secretary of State agrees with the Inspector that the issue in regard to heritage assets is the effect of the proposed wind turbines on the setting of heritage assets and whether or not this would affect their significance (IR400).
13. The Secretary of State has carefully considered the Inspector's findings on heritage assets at IR401-423. The Secretary of State accepts the Inspector's overall conclusion that there is less than substantial harm to the setting of the Grade I Tetney Church, but no harm to the setting of any other designated or undesignated heritage asset (IR424). For the reasons given by the Inspector at IR412, the Secretary of State agrees that although the harm to Tetney Church is less than substantial, the desirability of preserving the setting is a matter of considerable importance and weight, and must form part of the planning balance.

### *Living Conditions*

14. The Secretary of State agrees with the Inspector's assessment of the impact on the outlook from the chalets at Thorpe Park and from dwellings surrounding the appeal site at IR425-433. He also agrees with the Inspector's assessment about the issue of noise (IR434-438). He therefore agrees with the Inspector's overall conclusion (IR455 vi) that there are no grounds to conclude that the living conditions of nearby residents or visitors would be unacceptably harmed.

### *Tourism*

15. For the reasons given by the Inspector at IR439-443, the Secretary of State agrees that there is no evidence of the likelihood of any material impact on tourism in the area (IR443).

### *SPA and Ramsar Sites*

16. The Secretary of State has considered the Inspector's assessment at IR444-448 and the proposed conditions 24 and 25 on ecology in the Appendix to the IR.
17. The Secretary of State, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, agrees that he needs to carry out an Appropriate Assessment. This is at Appendix 2 to this letter and sets out his independent consideration the relevant technical information. On the basis of his assessment he agrees with the Inspector that he can safely conclude that the proposed development would not adversely affect the integrity of any

European site so long as suitable conditions are imposed (IR448), in this case being conditions 24 and 25.

*Other matters*

18. For the reasons given by the Inspector at IR449-454, the Secretary of State agrees that none of the matters considered by the Inspector in those paragraphs militate against the proposal.

*Benefits of the Proposal*

19. For the reasons at IR458-459 the Secretary of State agrees with the Inspector, that the renewable energy and CO<sub>2</sub> saving benefits are clearly of substantial weight in favour of the proposal in the overall balance (IR459). For the reason at IR460 he also agrees that there is a need to do more to ensure security of supply, in accordance with Government policy, and concurs with the Inspector's view that this is of significant weight.
20. In terms of other aspects of sustainability, the Secretary of State has carefully considered the Inspector's conclusions at IR461 and agrees that social benefits would be provided by the provision of renewable energy and the assistance in combating climate change. However, like the Inspector, he recognises that the case against the proposal includes matters related to the enjoyment of the locality, and these matters can also be taken to be of some social relevance.
21. Turning to economic benefits, the Secretary of State agrees that there would be undoubted gains in the provision of employment and services associated with the proposal, but like the Inspector (IR461) he considers that these economic benefits would not be guaranteed to be felt in the local area and there is no firm basis for accepting the figures advanced by the appellant. Nonetheless, he agrees with the Inspector that, in a general sense, and to some extent locally, there would be economic benefit from the proposal. He agrees too that there would also be economic benefit in assisting with the security of national energy supply. He gives the economic benefits moderate weight in this case and agrees with the Inspector that in the round the proposal can be regarded as a sustainable development (IR461).

**Conditions**

22. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions at IR364-370 except in regard to a detailed consideration regarding guidance note 5, considered below. For the reason given he agrees that the time limit in Condition 1 should be 5 years (IR365). He agrees with the Inspector's assessment in regard to conditions 19 and 20. Turning to condition No 27h, he notes that in this case the appellant accepts the necessity for such a condition based on a number of factors relating to the perceived risk of EAM occurring (IR367). He agrees with the Inspector's assessment at IR368-369, and therefore that on balance that a condition regarding EAM should be imposed in this case. However, he has amended Guidance Note 5 part 2 (i) to refer to the 'wind farm operator' rather than 'complainants'. This is because, although it is the responsibility of complainants to notify the operator of alleged incidents of AM, the Secretary of State considers that it should be the operator's responsibility to maintain a record of all such alleged incidents.

### **Balancing exercise and overall conclusion**

23. Like the Inspector, the Secretary of State is not convinced that the weight of public opinion here is against the proposal as firmly as suggested, and he does not accept the suggestion that local objection is so strong that it must be of great weight. The Secretary of State agrees that this case should be determined on its merits without reference to the number of people reported as supporting one side or the other (IR463).
24. The Secretary of State agrees with the Inspector (IR464) that taken overall there would be moderate harm to landscape character and a similar impact on visual amenity. Like the Inspector, he considers the landscape is of a character which can absorb a development of this nature with some success, and accordingly he agrees that these matters attract only moderate weight against the proposal.
25. The Secretary of State acknowledges that there would be limited harm to the setting of one heritage asset, but agrees with the Inspector (IR465) that there is no harm to any others. However, the harm, albeit less than substantial, must be considered in the light of S.66 of the Act noted in paragraph 6 above, and like the Inspector, the Secretary of State considers this attracts considerable importance and weight (IR465).
26. The Secretary of State agrees with the Inspector (IR466) that there would be conflict with the development plan in some respects, but development plan policies here are of limited assistance and weight. He agrees too that the Framework is of greater weight in the balance.
27. The benefits of the proposal are outlined in paragraphs 19-21 above and the Secretary of State concludes that these attract substantial weight in favour of the proposal. In overall terms he agrees with the Inspector (IR467) that the proposal should be regarded as sustainable development when considered against the Framework taken as a whole. Like the Inspector, the Secretary of State concludes that the negative impacts would be acceptable in this instance when weighed against the positive benefits. Furthermore, in the terms of paragraph 98 of the Framework, he agrees that the impacts are acceptable.

### **Formal decision**

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the erection of 8 wind turbines (with a maximum height from the ground to the blade tip of between 105m and 115m, between 63m and 75m to hub and between 70m and 93m rotor diameter) and associated infrastructure including foundations, transformers, and crane hardstanding areas; new and upgraded on-site access tracks and one new site access point and one upgraded site access point; a new switchgear and control building; underground cabling; a meteorological mast; and 2 temporary construction compounds (application ref N/178/01969/12), subject to the conditions set out at Appendix 1 to this letter.
29. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted

conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

30. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
31. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

**Right to challenge the decision**

32. 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.
33. A copy of this letter has been sent to East Lindsey Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**Julian Pitt**

Authorised by the Secretary of State to sign in that behalf

## **APPENDIX 1**

**CONDITIONS: APPLICATION REF: N/178/01969/12**

### **Time Limits, Decommissioning and Site Restoration**

1. The development hereby permitted shall commence before the expiration of 5 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 1 week after the event.
2. The development hereby permitted shall be removed in accordance with condition 3 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be given to the Local Planning Authority and Humberside International Airport Limited no later than 1 calendar month after the event.
3. 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 turbine foundations to a depth of 1 metre below ground level. The scheme shall also include proposals for the management and timing of any works, a traffic management plan and restoration measures. The approved scheme shall be implemented as approved.
4. If any of the wind turbines hereby permitted fail to operate for a continuous period of 9 months following the First Export Date, a scheme shall be submitted to the Local Planning Authority for its written approval within 3 months of the end of that 9 month period for the repair or removal of the relevant turbine. The scheme shall include a proposed programme of remedial works where repairs to the relevant turbine are required or a method statement relating to the removal of the relevant turbine and the works solely associated with that turbine and for site restoration. The scheme shall be implemented as approved.

### **Appearance of the Development**

5. The wind turbines shall have 3 blades which shall rotate in the same direction and the overall height of the wind turbines shall be between 105m and 115m to the tip of the blades when the turbine is in the vertical position and the hub height of the wind turbines shall be between 63m and 75m.
6. No wind turbine shall be erected on site until details of the finish and colour of the turbines, meteorological mast and any external transformer units have 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, meteorological mast or any external transformer units other than those required by law. The development shall thereafter be carried out and operated in accordance with the approved details.

7. The construction of the onsite temporary construction compounds shall not commence until details of the external appearance, dimensions, layout and materials for the buildings and any associated parking area and details of surface and foul water drainage from the compounds have been submitted to and approved in writing by the Local Planning Authority. The construction shall proceed in accordance with the approved details.

8. The switchgear and control building shall not be erected on site until details of its external materials have been submitted to and approved in writing by the Local Planning Authority. The building shall then be built in the approved materials.

9. All electrical cabling between the individual wind turbines and the switchgear control building shall be installed underground.

10. Save as provided for within conditions 12 and 18 or as required by law there shall be no external lighting of the site.

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

11. 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 details for the:

- a) routeing of construction traffic;
- b) scheduling and timing of movements;
- c) management of junctions to and crossings of the public highway and other public rights of way;
- d) access from the site to the public highway and a timetable for the implementation of these works;
- e) temporary warning signs and any temporary or permanent works required in the public highway to enable the construction of the development; and
- f) proposals for the transportation of abnormal loads to the site.

The CTMP shall be implemented as approved by the Local Planning Authority.

*Reason:* In the interests of highway safety.

12. No development shall commence 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, subject to any variations approved in writing by the Local Planning Authority. The CMS shall include details of the following:

- a) the timing of construction works;
- b) a Health and Safety Plan reflecting the details contained within Chapter 13 of the Environmental Statement at paragraphs 13.5.4 and 13.7.4.4;
- c) the formation of the temporary construction compounds, access tracks and any areas of hard standing;
- d) the provision of parking, loading and unloading facilities, and manoeuvring areas for vehicles within the site;
- e) the methods of working to be employed in the construction of the cable trenches, crane pads and foundation works;

- f) site illumination during the construction period;
- g) the siting and details of wheel washing facilities;
- h) the prevention of pollution of ground or surface water;
- i) the method of disposal of foul drainage and sewage;
- j) a surface water drainage scheme;
- k) dust management;
- l) details of emergency procedures;
- m) a site Construction Environmental Management Plan to include details of measures to be taken during the construction period to protect wildlife and habitats;
- n) the cleaning of the entrance to the site and the adjacent public highway and the sheeting of all heavy goods vehicles taking spoil or construction materials to or from the site to prevent spillage or deposit of any materials on the highway;
- o) the disposal of surplus materials;
- p) proposals for the restoration of the site following the completion of the development; and
- q) a Construction Noise Management Plan (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out and any necessary mitigation measures).

### **Construction Hours**

13

- (a) Save as provided within Condition 11(b), construction work and any associated traffic movements to or from the site shall only take place between the hours of 07.00 to 19.00 Mondays to Fridays inclusive and the hours of 07.00 to 13.00 on Saturdays with no such work or associated traffic movements on a Sunday or Public Holiday.
- (b) The following works may take place outside the hours specified in Condition 13(a): -
  - Works in the case of emergency (to be notified to the Local Planning Authority by telephone as soon as practicably possible and in writing within two working days).
- (c) The following works may take place outside the hours specified in Condition 13(a) with the prior written approval of the Local Planning Authority:-
  - Pouring of concrete for the wind turbine foundations; and
  - Delivery of turbine and crane components for the erection of wind turbines.

### **Archaeology**

14. No development shall commence on site until the developer has secured the implementation of a programme of archaeological work which programme shall be undertaken in accordance with a Written Scheme of Investigation ("WSI"), which has been submitted to and approved in writing by the Local Planning Authority.

### **Telecommunication Interference**

15. Turbine 1 should not be erected until a scheme (to be implemented as approved) has been submitted to and approved in writing by the Local Planning Authority providing for the re-routing of a link operated by the Joint Radio Company Ltd on behalf of Northern Powergrid.

### **TV Interference**

16. No development shall commence on site until a scheme providing for the investigation of any interference to television signals by the operation of the development and for the remediation of any interference caused by the operation of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme (which shall be implemented as approved) shall provide that complaints from users of television signals in the area may be made either to the developer or to the Local Planning Authority, that complaints made to the developer shall be notified to the Local Planning Authority, and that complaints must be made within 12 calendar months of the First Export Date.

### **Micro-siting**

17. The wind turbines and supporting infrastructure shall be sited in the position as shown on Figure 3.1 of the Environmental Statement (September 2012) save that:-

- (a) The turbines may be sited within 25m of their approved positions provided that:-
  - (i) Without the written approval of the Local Planning Authority Turbine 4 may not be sited more than 5m eastwards of its approved position;
  - (ii) Turbines 7 and 8 may not be sited closer to the dwellings at Bishopthorpe Farm than their approved positions;
  - (iii) No turbine may be sited within 8m of an existing drainage ditch; and
  - (iv) Access tracks and crane pads may be sited so as to accord with the positions of the turbines.
- (b) A meteorological mast and other infrastructure associated with the development may be sited within 5m of the position shown on the approved plan.

For the avoidance of doubt, subject to the micro-siting provision of this condition, the turbines and meteorological mast shall be erected at the following grid co-ordinates:

<b>Turbine</b>	<b>Easting</b>	<b>Northing</b>
1	533078	403582
2	533385	403870
3	533086	404274
4	533020	403944
5	532684	404051

6	532685	403620
7	532380	403758
8	532260	404032
<b>Met Mast</b>		
Permanent	532417	403408

The submitted plans are:

Site Location Plan (drawing 001)  
 Planning Application Boundary (drawing 002)  
 Access from Newton Marsh Lane – Option 1 (drawing 012)  
 Access from A1031 – Option 2 (drawing 013)  
 Site Layout (Figure 3.1)

Within one calendar month of the First Export Date the developer shall send the Local Planning Authority a plan of the development as built.

### **Aviation**

18. The developer shall install MOD-approved infra-red warning lighting at the highest practicable point on all turbines. Each turbine will be erected with this lighting installed and the lighting will remain operational throughout the duration of this permission.

19. No blades shall be fitted to the turbines comprised within the development until the Developer has agreed a Primary Radar Mitigation Scheme (PRMS) with the Operator which has been submitted to and agreed in writing by East Lindsey District Council in order to mitigate the impact of the development on the Primary Radar Installation at Claxby.

For the purpose of this condition:

“Operator” means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

“Primary Radar Mitigation Scheme” or “Scheme” means a detailed scheme agreed with the Operator which sets out the measures to be taken to mitigate at all times the impact of the development on the Claxby primary radar and air traffic management operations of the Operator.

20. No blades shall be fitted to the turbines comprised within the development unless and until the approved Primary Radar Mitigation Scheme has been implemented and the development shall thereafter be operated fully in accordance with such approved Scheme.

For the purpose of this condition:

“Operator” means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

“Primary Radar Mitigation Scheme” or “Scheme”) means a detailed scheme agreed with the Operator which sets out the measures to be taken to mitigate at all times the impact of the development on the Claxby primary radar and air traffic management operations of the Operator.

21. No turbines shall be erected until an Air Defence Radar Mitigation Scheme (“ADRMS”) has been submitted to and approved in writing by the Local Planning Authority. The ADRMS means a detailed scheme to mitigate the adverse impacts of the development on the air defence radar at RRH Staxton Wold and the air surveillance and control operations of the Ministry of Defence. The scheme shall set out the appropriate measures to be implemented to that end.

22. No turbines shall become operational until:

- a) the approved mitigation measures which the approved scheme (as referred to in condition 21) requires to be implemented prior to the operation of the turbines have been implemented; and
- b) any performance criteria specified in the approved scheme and which the approved scheme requires to have been satisfied have been satisfied; and
- c) that implementation and satisfaction of the performance criteria have been approved by the Local Planning Authority.

The developer shall thereafter comply with all other obligations contained within the ADRMS.

### **Shadow Flicker**

23. No generation of electricity to the grid shall take place until a scheme setting out a protocol for the avoidance of shadow flicker at any dwelling which is lawfully existing or has planning permission at the date of this permission has been submitted to and approved in writing by the Local Planning Authority. The approved protocol must be implemented in its entirety.

### **Ecology**

24. No development shall commence on site until an Ecological Management Plan (“EMP”) has been submitted to and approved in writing by the Local Planning Authority. The EMP shall include (but not be limited to) the mitigation and enhancement measures referred to in Sections 7.6.1, 7.8, 8.6.5 and 8.6.6 of the Environmental Statement and Section 5.6 of the Supplementary Environmental Information 2 (September 2013) and provide full details of the means by which the mitigation measures will be both secured and delivered as well as the mechanism for

their long term management and monitoring. The EMP shall be implemented as approved.

25. No development shall commence until a scheme providing for pre-construction surveys of breeding birds including any nests on the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.

### **Flood Prevention**

26. The development hereby approved shall be carried out in accordance with the details in Sections 5.2 and 5.3 of the Supplementary Environmental Information 1 (February 2013), Section 2.1 – 2.3 of the Supplementary Environmental Information 3 (April 2014) and the Flood Risk Assessment contained in Technical Appendices A9.1 and A9.2 to the Environmental Statement (September 2012).

### **Noise**

27. The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

a) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data 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) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

b) Within 21 days of this condition coming into force the wind farm operator will 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.

c) Within 21 days from receipt of a written request from the Local Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise 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 and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

d) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. 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 written request of the Local Planning Authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.

e) Prior to undertaking noise monitoring at Bishopthorpe House, the wind farm operator will submit for the approval of the Local Planning Authority, evidence of the financial involvement of the occupants of this property. If this evidence meets with the approval of the Local Planning Authority, the limits detailed in the Tables attached to these conditions for Bishopthorpe House (if involved) shall apply, otherwise those limits detailed for Bishopthorpe House (if not involved) shall apply. Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the noise limits shall be those of the physically closest location listed in the Tables. For such dwellings, the wind farm operator may 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 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.

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 for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

g) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c), 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 (d) above unless the time limit has been extended in writing by the Local Planning Authority.

h) If a written request made by the Local Planning Authority under condition 27(c) contains a notification that the complaint may relate to amplitude modulation (as defined in Guidance Note 5) the independent consultant approved under this condition shall:-

- (a) Within 21 working days submit a scheme for the investigation and the assessment of amplitude modulation to the Local Planning Authority for its written approval. The scheme, which shall be implemented as approved, shall include the matters specified in Guidance Note 5;
- (b) Implement the scheme immediately following its written approval by the Local Planning Authority.

**Table 1 – Noise limits applicable in the event that Louth Canal Wind Farm does not become operational**

Location	Standardised 10 m Wind Speed, ms <sup>-1</sup> as determined within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit, dB, L <sub>A90,10min</sub>											
<b>Daytime (0700 to 2300)</b>												
1 Coastguard Cottages	34.6	34.6	34.6	35.3	37.7	40.4	43.2	46.0	48.5	50.4	52.3	53.6
The Old Barn	45.0	45.0	45.0	45.0	45.0	44.9	44.9	46.4	49.3	52.2	55.4	58.4
Braybrook Cottage	34.5	34.5	34.5	35.2	37.6	40.3	43.2	45.9	48.5	50.5	52.3	53.6
Braybrook Farm	34.6	34.6	34.6	35.3	37.7	40.4	43.2	46.0	48.5	50.6	52.3	53.6
Humberston Fitties South	34.9	34.9	34.9	35.5	37.9	40.6	43.4	46.1	48.6	50.4	52.4	53.7
Southfields Farm	34.4	34.4	34.4	35.1	37.5	40.2	43.1	45.8	48.4	50.3	52.3	53.6
Foreman's Cottage	45.0	45.0	45.0	45.0	45.0	44.9	44.9	46.4	49.3	52.2	55.4	58.4
Bishopthorpe House (if not involved)	34.8	34.8	34.8	37.7	39.3	41.4	43.8	46.5	49.3	52.3	55.4	58.4
Bishopthorpe House (if involved)	45.0	45.0	45.0	45.0	45.0	44.9	44.9	46.5	49.3	52.3	55.4	58.4
Thorpe Caravan Park South	34.8	34.8	34.8	35.4	37.9	40.6	43.4	46.1	48.6	50.4	52.4	53.7
Wad Farm	34.9	34.9	38.7	40.4	42.7	45.5	48.5	51.5	54.6	57.4	59.8	61.7
Whitegates Farm	34.4	34.4	34.4	35.1	37.5	40.2	43.1	45.8	48.4	50.3	52.3	53.6
Willow Farm	34.5	34.5	34.5	35.2	37.6	40.3	43.2	45.9	48.5	50.3	52.3	53.6
Willow Farm House	34.5	34.5	34.5	35.2	37.6	40.3	43.2	45.9	48.5	50.3	52.3	53.6

	5	5	5	1	6	3	1	9	5	3	3	6
Yew Tree Farm	34. 5	34. 5	34. 5	35. 2	37. 6	40. 3	43. 2	45. 9	48. 5	50. 3	52. 3	53. 6
<b>Night-time (2300 to 0700)</b>												
1 Coastguard Cottages	42. 9	42. 9	42. 9	42. 9	42. 9	42. 8	42. 7	42. 5	43. 1	46. 7	49. 8	52. 5
The Old Barn	45. 0	45. 0	45. 0	45. 0	45. 0	44. 9	44. 9	44. 8	44. 7	48. 2	52. 2	56. 1
Braybrook Cottage	42. 9	42. 9	42. 9	42. 9	42. 9	42. 8	42. 6	42. 4	45. 5	49. 4	53. 3	57. 1
Braybrook Farm	42. 9	42. 9	42. 9	42. 9	42. 9	42. 8	42. 7	42. 5	45. 6	49. 4	53. 3	57. 1
Humberston Fitties South	43. 0	43. 0	43. 0	43. 0	43. 0	42. 9	42. 9	42. 8	43. 5	46. 9	49. 9	52. 6
Southfields Farm	42. 9	42. 9	42. 9	42. 9	42. 8	42. 7	42. 5	42. 2	42. 7	46. 5	49. 7	52. 5
Foreman's Cottage	45. 0	45. 0	45. 0	45. 0	45. 0	44. 9	44. 9	44. 8	44. 7	48. 2	52. 2	56. 1
Bishopthorpe House (if not involved)	43. 0	43. 0	43. 0	43. 0	42. 9	42. 9	42. 8	42. 7	44. 3	48. 3	52. 3	56. 1
Bishopthorpe House (if involved)	45. 0	45. 0	45. 0	43. 0	42. 9	42. 9	42. 8	42. 7	44. 3	48. 3	52. 3	56. 1
Thorpe Caravan Park South	43. 0	43. 0	43. 0	43. 0	43. 0	42. 9	42. 9	42. 8	43. 4	46. 9	49. 9	52. 6
Wad Farm	43. 0	43. 0	43. 0	43. 0	43. 0	43. 0	44. 9	48. 4	52. 1	55. 8	59. 4	62. 9
Whitegates Farm	42. 9	42. 9	42. 9	42. 9	42. 8	42. 7	42. 5	42. 2	42. 8	46. 5	49. 8	52. 5
Willow Farm	42. 9	42. 9	42. 9	42. 9	42. 9	42. 8	42. 6	42. 4	43. 0	46. 6	49. 8	52. 5
Willow Farm House	42. 9	42. 9	42. 9	42. 9	42. 9	42. 8	42. 6	42. 3	42. 9	46. 6	49. 8	52. 5
Yew Tree Farm	42. 9	42. 9	42. 9	42. 9	42. 9	42. 8	42. 6	42. 4	43. 0	46. 6	49. 8	52. 5

**Table 2 – Noise limits applicable in the event that Louth Canal Wind Farm becomes operational**

Location	Standardised 10 m Wind Speed, ms <sup>-1</sup> as determined within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit, dB, L <sub>A90,10min</sub>											
<b>Daytime (0700 to 2300)</b>												
1 Coastguard Cottages	34.5	34.5	34.5	35.1	37.6	40.3	43.2	45.9	48.5	50.3	52.3	53.6
The Old Barn	45.0	45.0	45.0	45.0	44.9	44.9	44.8	46.4	49.3	52.2	55.4	58.4
Braybrook Cottage	34.4	34.4	34.4	35.1	37.5	40.3	43.1	45.9	48.5	50.5	52.3	53.6
Braybrook Farm	34.5	34.5	34.5	35.2	37.6	40.4	43.2	45.9	48.5	50.6	52.3	53.6
Humberston Fitties South	34.8	34.8	34.8	35.5	37.9	40.6	43.4	46.1	48.6	50.4	52.4	53.7
Southfields Farm	34.1	34.1	34.1	34.9	37.3	40.1	43.0	45.8	48.4	50.2	52.2	53.6
Foreman's Cottage	45.0	45.0	45.0	45.0	44.9	44.9	44.8	46.4	49.3	52.2	55.4	58.4
Bishopthorpe House (if not involved)	34.7	34.7	34.7	37.7	39.2	41.3	43.8	46.5	49.3	52.2	55.4	58.4
Bishopthorpe House (if involved)	45.0	45.0	45.0	45.0	45.0	44.9	44.9	46.5	49.3	52.2	55.4	58.4
Thorpe Caravan Park South	34.8	34.8	34.8	35.4	37.8	40.6	43.4	46.1	48.6	50.4	52.4	53.7
Wad Farm	34.9	34.9	38.6	40.4	42.7	45.5	48.5	51.5	54.6	57.4	59.8	61.7
Whitegates Farm	34.2	34.2	34.2	34.9	37.3	40.1	43.0	45.8	48.4	50.3	52.3	53.6
Willow Farm	34.3	34.3	34.3	35.0	37.4	40.2	43.1	45.9	48.4	50.3	52.3	53.6
Willow Farm House	34.3	34.3	34.3	35.0	37.4	40.2	43.1	45.8	48.4	50.3	52.3	53.6
Yew Tree Farm	34.3	34.3	34.3	35.0	37.4	40.2	43.1	45.9	48.4	50.3	52.3	53.6
Windy Ridge	33.0	33.0	33.0	33.0	30.2	38.1	43.9	50.0	56.0	57.5	57.5	57.5
<b>Night-time (2300 to 0700)</b>												
1 Coastguard Cottages	42.9	42.9	42.9	42.9	42.9	42.8	42.6	42.4	43.0	46.6	49.8	52.5
The Old Barn	45.0	45.0	45.0	45.0	44.9	44.9	44.8	44.7	44.6	48.2	52.2	56.1
Braybrook Cottage	42.9	42.9	42.9	42.9	42.9	42.8	42.6	42.3	45.4	49.4	53.3	57.1
Braybrook Farm	42.9	42.9	42.9	42.9	42.9	42.8	42.7	42.5	45.5	49.4	53.3	57.1

Humberston Fitties South	43.0	43.0	43.0	43.0	43.0	42.9	42.9	42.8	43.5	46.9	49.9	52.6
Southfields Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.4	42.0	42.6	46.4	49.7	52.4
Foreman's Cottage	45.0	45.0	45.0	45.0	44.9	44.9	44.8	44.8	44.7	48.2	52.2	56.1
Bishopthorpe House (if not involved)	43.0	43.0	43.0	43.0	42.9	42.9	42.8	42.7	44.3	48.3	52.2	56.1
Bishopthorpe House (if involved)	45.0	45.0	45.0	43.0	42.9	42.9	42.8	42.7	44.3	48.3	52.2	56.1
Thorpe Caravan Park South	43.0	43.0	43.0	43.0	42.9	42.9	42.9	42.8	43.4	46.8	49.9	52.6
Wad Farm	43.0	43.0	43.0	43.0	43.0	42.9	44.8	48.4	52.1	55.8	59.4	62.9
Whitegates Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.4	42.1	42.7	46.5	49.7	52.5
Willow Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.5	42.3	42.8	46.6	49.8	52.5
Willow Farm House	42.9	42.9	42.9	42.9	42.8	42.7	42.5	42.2	42.8	46.5	49.8	52.5
Yew Tree Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.5	42.3	42.8	46.6	49.8	52.5
Windy Ridge	42.5	42.5	42.5	42.5	42.2	42.1	41.3	41.0	40.7	40.6	40.3	38.5

**Table 3: Coordinate locations of the properties listed in Tables 1 and 2**

Receptor Name	Eastings (m)	Northings (m)
1 Coastguard Cottages	534137	402397
The Old Barn	531903	403742
Braybrook Cottage	534325	402998
Braybrook Farm	534401	402818
South Fitties	533637	405028
Southfields Farm	533446	402246
Foreman's Cottage	531873	403742
Bishopthorpe House	531661	403695
Thorpe Caravan Park South	533506	404898
Wad Farm	532791	405312
Whitegates Farm	533679	402296
Willow Farm	533744	402216
Willow Farm House	533800	402310
Yew Tree Farm	533925	402346
Windy Ridge	533193	400726

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

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

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 Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

#### **Guidance Note 1**

(a) Values of the  $L_{A90}$ , 10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK

adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

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

(c) The  $L_{A90}$ , 10 minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational datalogged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second 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. All 10 minute arithmetic average mean wind speed data measured at 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 Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter.

(e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels 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).

## **Guidance Note 2**

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

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

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the  $L_{A90}$ , 10 minute noise measurements and corresponding values of the 10- minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

## **Guidance Note 3**

(a) Where, in accordance with the approved assessment protocol under paragraph (d) 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 is to be calculated and applied using the following rating procedure.

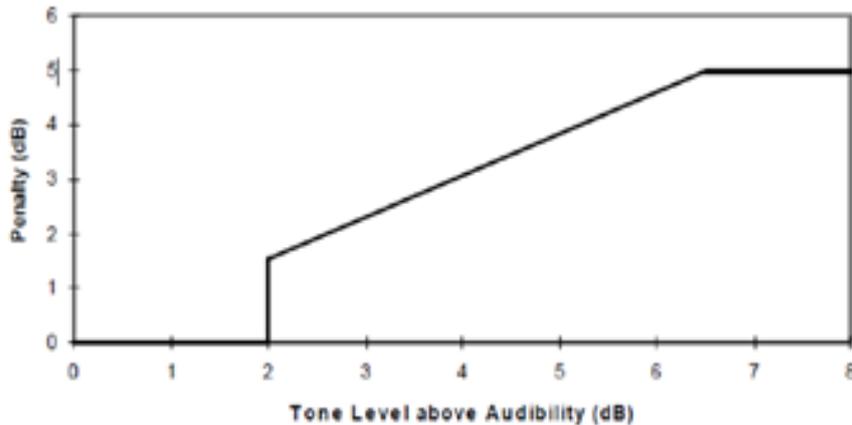
(b) For each 10 minute interval for which  $L_{A90}$ , 10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided 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, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

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

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

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

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



#### **Guidance Note 4**

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

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

(c) 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 (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

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

(e). Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range

requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) 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:

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

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

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 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 (e) 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 (e) of the noise condition then the development fails to comply with the conditions.

#### **Guidance Note 5**

1. Amplitude modulation (AM) is the variation in the level of aerodynamic noise created by the wind turbines at the blade passing frequency.
2. Condition 27(h) requires the submission of a scheme to the Local Planning Authority. This scheme should include details of the following matters:-
  - i) A requirement for the wind farm operator to maintain a record of the times at which complainants allege that incidents of AM occur and the precise locations in or in the vicinity of a dwelling where such occurrence is observed;
  - ii) A methodology for measuring and assessing the degree of AM and assigning an upper limit of acceptability for AM, taking into account the frequency and duration of occurrence, the degree of modulation as measured using a metric also to be approved under the scheme, the absolute level of wind turbine noise during development periods and other factors requested by the Local Planning Authority as relevant in a particular case;
  - iii) Proposals for the mitigation of AM if measured and assessed as above the upper limit of acceptability approved under the scheme which has been approved under condition 27(h); and
  - iv) Provisions for the implementation of a mitigation scheme, reports to the Local Planning Authority about the effectiveness of the approved scheme and requirements for further measurement and assessment to demonstrate the acceptance of the mitigation scheme.

## **APPENDIX 2**

### **RECORD OF THE HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (AS AMENDED FOR AN APPLICATION UNDER THE TOWN AND COUNTRY PLANNING ACT 1990**

**Project Title and Location: Recovered planning appeal No. APP/D2510/A/14/2213150: Land at Bishopthorpe Farm, Tetney, Grimsby**

**Project description:- The development of 8 wind turbines (with a maximum height from the ground to the blade tip of between 105m and 115m, between 63m and 75m to hub and between 70m and 93m rotor diameter) and associated infrastructure including foundations, transformers, and crane hardstanding areas; new and upgraded on-site access tracks and one new site access point and one upgraded site access point; a new switchgear and control building; underground cabling; a meteorological mast; and 2 temporary construction compounds. (Planning Application Ref: N/178/01969/12 dated 24 September 2012.)**

**Completion Date: 16 March 2015**

### **Project description – further information**

1. The project site and surroundings are described at paragraphs 6 – 11 of the Inspector's report. The project proposal is described at paragraphs 23 – 25 of that report, in the planning application documentation and in the Environmental Statement.

### **Competent authority**

2. The above project, being a 'recovered appeal', is to be determined by the Secretary of State for Communities and Local Government using his powers under section 78 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2010.

### **Screening**

3. In a letter dated 31 October 2012 to East Lindsey District Council, Natural England expressed the view that the proposal as submitted is likely to have a significant effect on the interest features for which the Humber Estuary SPA and Ramsar site has been classified. In light of that advice the Secretary of State has undertaken the following appropriate assessment (AA).

### **Assessment**

4. In a letter dated 20 November 2013 to East Lindsey District council, Natural England referred to a 'shadow' appropriate assessment' undertaken by the applicant for planning permission for the project.
5. The Secretary of State has ascertained from Natural England that the term 'shadow appropriate assessment' refers to a body of technical evidence compiled by or on behalf of the applicant for planning permission, which is presented to the competent authority with the aim to provide sufficient information to enable that information to undertake an appropriate assessment. The description of this information as a 'shadow appropriate assessment' has no legal basis or significance, and the Secretary of State's appropriate assessment has not simply relied on and adopted the information by virtue of that description. Rather, the Secretary of State has considered the relevant information independently and reached his own conclusions.

### *Relevant documentation*

6. In this case, the 'shadow appropriate assessment' on which Natural England has been consulted at several iterations was embedded within a set of documentation intended to meet the requirements both of the Environmental Impact Assessment Regulations 2011 and the information needs of the competent authority in undertaking an AA. The relevant documents are:
  - Chapter 8 entitled 'Ornithology' within the 'Newton March Extension Windfarm Environmental Statement' (ES), September 2012. Within this chapter:

Section 8.2.1 refers to the EU Birds and Habitats Directives under '*Relevant legislation and guidance*';

8.3.1 describes the particular features of the Humber Estuary SPA and its conservation objectives;

8.4 is entitled 'Development Design Mitigation, and is mainly concerned with the SPA

8.5. is entitled '*Assessment of Potential Effects [on the SPA]*'

8.6 is entitled '*Mitigation Measures and Residual Effects*';

8.7 is entitled '*Cumulative Effect Assessment*';

8.8 is entitled '*Potential effects on the Humber Estuary SPA*'

8.9 is entitled '*A Summary of effects*', and the text covers in combination effects with other developments;

8.10 provides a '*Statement of Significance*' in relation to the Humber Estuary SPA.

- Figure 8.1 within '*Volume 2: Figures*' of the ES, entitled '*Statutory Designated Sites*' which shows the location of the project in relation to the extent of the Humber Estuary SPA.
- Chapter A8 of '*Volume 3: Technical Appendices*', which contains two supplementary technical reports on ornithology.
- An appendix entitled '*Ornithology*' within 'Supplementary Environmental Information, Volume 2', February 2013. This information here was in response to consultation responses from the RSPB dated 24 October 2012 and Natural England dated 31 October 2012, and, inter alia, considers in combination effects in relation to the SPA.
- Chapter 5 entitled '*Addendum to Chapter 8 Ornithology*' within 'Supplementary Environmental Information 2, September 2013. This includes technical information in response to further consultation responses from Natural England dated 17 July and 3 September 2013, the RSPB dated 31 May, 26 July and 6 September 2013, and Lincolnshire Wildlife Trust dated 3 June 2013. Within this document:

Section 5.6 is entitled '*Mitigation Measures and Residual Effects*';

5.7 is entitled '*Cumulative Effect Assessment*';

5.8 is entitled '*Potential Effects on the Humber Estuary SPA and Ramsar Site*. This includes a statement of the conservation objectives of the Humber Estuary SPA, and considers in combination effects with reference to the SPA.

- A document entitled 'Supplementary Environmental Information 2: Volume 2 Figures and Annexes'. This includes all the correspondence referred to in the SEI of 2 September and the applicant's detailed responses to each
- Chapter 3 entitled '*Addendum to Chapter 8 Ornithology*' within 'Supplementary Environmental Information 3', April 2014. This contains the applicant's technical response to a letter on a remaining outstanding issue in a letter from the RSPB dated 2 December 2013.

*Natural England's advice*

7. Natural England provided advice to East Lindsey District Council on the 'shadow appropriate assessment' in a letter dated 20 November 2013 (when the Council was still the competent authority). Natural England stated that:

*'Natural England notes that the applicant has provided a 'shadow' Appropriate Assessment of the proposal. The 'shadow' Appropriate Assessment concludes that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.'*

8. The mitigation measures in question were set out in Section 5.6 of Supplementary Environmental Information 2, September 2013, referred to above, and Natural England proposed that planning permission should be subject to the following condition:

*No works shall commence until an Ecological Management Plan (EMP) providing full details of the mitigation measures outlined within Section 5.6 of the 'Newton Marsh Extension Windfarm Supplementary Environmental Information 2 (SEI2)' Arcus Consultancy Services, September 2013 has been submitted for approval by the Local Planning Authority.. This EMP must provide full details of the means by which the mitigation measures will be both secured and delivered and also the mechanism for their long term management and monitoring.*

9. Natural England's letter went on to state that:

*'In accordance with Regulation 61, Natural England considers that for the reasons outlined above, the 'shadow' Appropriate Assessment is in a form which could be adopted by the Local Planning Authority as the competent authority.'*

10. On 15 August 2014 East Lindsey wrote again to Natural England to seek clarification in respect of Natural England's responses to the planning application. Natural England replied on 19 August and confirmed that its view, reproduced at paragraph 6 above, was unchanged.

11. The Secretary of State, having become the competent authority in this case, contacted Natural England again on 10 March 2015 to ask if Natural England has any further advice on the planning application in addition to the content of their letter to East Lindsey District Council dated 19 August 2014, including whether Natural England has changed its view as expressed in that letter. Natural England replied on 11 March to confirm that it had no change of view on the planning application since its responses of November 2013 and August 2014, and that it has no outstanding objection providing that all mitigation measures are appropriately secured in any permission given.

### *Consideration and Conclusions*

12. The Secretary of State has given very careful consideration to the technical information referred to at paragraph 6 above, the advice of Natural England and also the consultation responses from the RSPB and Lincolnshire Wildlife Trust.
13. The information that he has considered includes the features and conservation objectives of the Humber Estuary SPA, the potential effects of the proposed development alone and in-combination with other development; the proposed mitigation measures and related condition recommended by Natural England.
14. The appeal inquiry Inspector has recommended that the condition in a slightly expanded form, as follows:

*24. No development shall commence on site until an Ecological Management Plan ("EMP") has been submitted to and approved in writing by the Local Planning Authority. The EMP shall include (but not be limited to) the mitigation and enhancement measures referred to in Sections 7.6.1, 7.8, 8.6.5 and 8.6.6 of the Environmental Statement and Section 5.6 of the Supplementary Environmental Information 2 (September 2013) and provide full details of the means by which the mitigation measures will be both secured and delivered as well as the mechanism for their long term management and monitoring. The EMP shall be implemented as approved.*

*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.

15. The Secretary of State also considers that Condition 25, below, is relevant as it is imposed in in the interests of safeguarding protected bird species:

*25. No development shall commence until a scheme providing for pre-construction surveys of breeding birds including any nests on the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.*
16. The Secretary of State has decided that he will impose conditions 24 and 25 as set out above if planning permission is to be granted. On this basis he considers that the proposed mitigation measures would be adequate and that he can be confident they will be appropriately secured.
17. The Secretary of State concludes on the basis of his consideration of the technical information and Natural England's advice that the construction and operation of the project, referred to as the development of 8 wind turbines on land at Bishopthorpe Farm, Tetney, Grimsby, with all of the proposed avoidance and mitigation actions being secured by planning conditions and implemented in full, will not adversely affect the integrity of the Humber Estuary SPA either alone or in combination with other plans or projects.

18. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.

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

by Philip Major BA (Hons) DipTP MRTPI

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

Date: 1 December 2014

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Town and Country Planning Act 1990

Appeal by ASC Renewables Ltd

East Lindsey District Council

Inquiry opened on 5 August 2014

Land at Bishopthorpe Farm, Tetney, Grimsby.

File Ref: APP/D2510/A/14/2213150

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**File Ref: APP/D2510/A/14/2213150**

**Land at Bishopthorpe Farm, Tetney, Grimsby.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by ASC Renewables Ltd against East Lindsey District Council.
- The application Ref: N/178/01969/12 is dated 24 September 2012.
- The development proposed is the erection of 8 wind turbines (with a maximum height from the ground to the blade tip of between 105m and 115m, between 63m and 75m to hub and between 70m and 93m rotor diameter) and associated infrastructure including foundations, transformers, and crane hardstanding areas; new and upgraded on-site access tracks and one new site access point and one upgraded site access point; a new switchgear and control building; underground cabling; a meteorological mast; and 2 temporary construction compounds.

**Summary of Recommendation: That the appeal is allowed and planning permission granted.**

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**Procedural Matters**

1. The inquiry sat for a total of 6 days. Accompanied site visits were carried out on 12 August and 29 September 2014. I carried out unaccompanied site visits on 8 August and 20 August. The inquiry was formally closed, in writing, on 18 September 2014. I am grateful to the main participants for providing written closing submissions which could be used in large measure for the reports of cases which follow below.
2. Marsh Windfarm Action Group (MWAG) was granted Rule 6(6) Status and played a full part in the inquiry. Bourne Leisure was also granted Rule 6(6) Status and appeared on the first 2 days of the inquiry. Members of the local community and others gave evidence at various points during proceedings.
3. The planning application was accompanied by an Environmental Statement (ES) dated September 2012, Supplementary Environmental Information (SEI) submitted in February 2013, and further SEI (SEI2) submitted in September 2013.
4. Following the lodging of the appeal additional environmental information (SEI3) was submitted dealing with a number of issues, for clarification and to address received comments.
5. Had the Council been in a position to determine the application it has indicated that it would have refused planning permission for the following reasons.
  - 1) *The proposed wind farm by reason of its height, spread, moving parts and location close to the coast would have a significantly harmful effect on the landscape character of the area and on the visual amenities within it. This would be particularly so when assessed from the east. This harm would be compounded by the presence of other wind farms and turbines in the area, including those that are currently proposed at Louth Canal. This harm would outweigh the benefits of allowing the turbines and would be contrary to Policies A4, A5 and C14 in the East Lindsey Local Plan Alteration 1999 and paragraphs 109 and 114 of the National Planning Policy Framework.*

- 2) *The proposed wind farm by virtue of its height, spread, moving parts and location would have a significantly harmful impact on the setting of*
- a. the grade one listed Church of St Peter and St Paul, Tetney (which would be further harmed if the proposed wind farm at Louth Canal was also approved);*
  - b. the grade two listed coastguard cottages, Tetney Lock;*
  - c. the grade two listed Haile Sand Fort;*
  - d. the non-designated World War II military installations; and*
  - e. the Humberston Fitties Conservation Area.*

*That harm to the setting would in turn substantially harm the significance of those heritage assets, which would outweigh the public benefits of providing the proposed renewable energy. For assets listed at a – d above this would be contrary to Policy C2 in the East Lindsey Local Plan Alteration 199 and for item e contrary to Policies Gen2 and BH1 in the North East Lincolnshire Local Plan. This reason for refusal would be in line with paragraphs 131, 132, 133, and 135 in the National Planning Policy Framework.*

### **The Site and Surroundings**

6. The appeal site is located on agricultural land in arable use. It is about 2.4km south-east of the centre of the large village of Humberston, and about 2km to the south of the edge of the Cleethorpes and Grimsby urban area (as defined by Pleasure Island). The North Sea coast is about 600m to the east at its closest (the sea defence) and includes the Humber Estuary Special Protection Area (SPA) Special Area of Conservation (SAC) Site of Special Scientific Interest (SSSI) and Ramsar site. The A 1031 road lies to the west, from which access to Bishopthorpe Farm is taken. Beyond the A1031, and about 8km distant the generally low coastal plain merges with the higher ground of the Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB).
7. The land is generally flat, with an almost imperceptible fall towards the sea. It is criss-crossed by drainage ditches and hedgerows. There are also blocks of structural planting in the form of tree belt and coverts. Immediately to the south of the site is the Anglian Water Newton Marsh sewage treatment works, largely surrounded by trees, which extends to some 3.4Ha of buildings, masts, plant and lagoons. It also contains 2 operational wind turbines with tip heights of 102.25m.
8. Slightly further to the south is the Tetney oil storage facility, an extensive tank farm which stores oil piped from the Humber estuary. The sewage treatment works and oil storage facility share an access road (Newton Marsh Lane) which leads from the Tetney village to Tetney Lock road. This access road also leads to the appeal site from the south.
9. To the north-east is the extensive Thorpe Park holiday village, which has a large number of holiday chalets and static caravans, together with associated leisure facilities. These facilities include a small golf course which extends out from Thorpe Park towards the appeal site. The nearest part of the chalet accommodation area is about 600m from the edge of the appeal site. Adjacent

to Thorpe Park to the east (north-east of the appeal site) and lying tight against the estuarine dunes, is Humberston Fitties. This is an area of plotland development dating from the early 20<sup>th</sup> century. It contains many and varied holiday chalets and is a designated Conservation Area. The Humber Mouth Yacht Club is located at the southern tip of the Fitties.

10. The coastline to the south of the Fitties is coastal saltmarsh backed by a raised sea defence 'wall' formed of an earth embankment. The width of the saltmarsh varies but widens in a southerly direction. The sea defence embankment is also a public footpath which runs along the coast, passing disused military pill boxes. Within the Humber mouth are 2 defence forts known as Haile Sand Fort and Bull Sand Fort. Between the embankment and the appeal site is open arable agricultural land.
11. This agricultural land generally extends in all directions around the site, interspersed by occasional villages, such as Tetney itself (about 2.5km to the south-west) and Tetney Lock (about 1.5km to the south). There is a network of public footpaths through the area, including along the eastern site boundary and parts of the southern site boundary. There are no public footpaths within the site, but footpaths do run between the proposed turbines and those existing at Newton Marsh.

### **Planning Policy**

12. The development plan is comprised of 3 elements:
  - Saved policies of the East Lindsey Alteration Local Plan (adopted 1999)
  - Saved policies of the Lincolnshire Minerals Local Plan (1991)
  - Saved policies of the Lincolnshire Waste Local Plan (2006)
13. It is agreed<sup>1</sup> that only the former of these has policies which are relevant to the appeal. Relevant policies were saved by direction in September 2007. The agreed relevant policies are set out below and full text is in attached documents<sup>2</sup>. Although it is agreed that the policies are relevant, the weight to be attached to them is not agreed. Significantly there is no development plan policy relating to renewable energy provision. This in itself is a regrettable starting point given the support for renewable energy in the National Planning Policy Framework (NPPF). In this particular regard it is agreed that the development plan is out of date, and the NPPF takes on greater significance. It is also agreed that paragraph 215 of the NPPF is engaged.
14. Policy A4. This is a general policy which amongst other things seeks to protect the amenities of people living or working nearby. The text of the policy requires a balance to be struck between the fact that some impact is inevitable with any development, and that a judgement is required on what is an acceptable impact. This generally accords with the approach of the NPPF towards amenity of residents but it would be mistaken to afford it any wider applicability in a case such as this.

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<sup>1</sup> CD 13.10 - Statement of Common Ground between the Appellant and the Council

<sup>2</sup> CD 1.1

15. Policy A5. This policy is supportive of good design which improves the quality of the environment. That is also a general aim of the NPPF. But Policy A5 is clearly aimed at 'mainstream' types of development. It is difficult to reconcile the policy with development proposals for a wind farm since such developments are out of scope. In my view it has limited relevance here. Any wind farm in a rural location is bound to be in conflict with its objectives and given that the NPPF supports the provision of renewable energy if the impacts are, or can be made, acceptable, the policy seems to me to be out of step with the requirements for the balanced approach inherent in the NPPF. The policy may be relevant to cases of a different nature, but cannot carry much weight in decision making for large scale proposals such as this.
16. Policy C2. Amongst other things this policy seeks to protect the setting of listed buildings in accordance with statute. It is not framed in the same terms as the NPPF but nonetheless has similar objectives in so far as it goes.
17. Policy C5. This is a policy which seeks to protect historic buildings not protected by statute. There is no acknowledgement that there may be circumstances where a balance needs to be struck between the potential for harm and the benefits of a proposal. As such the policy does not follow the thrust of the NPPF that a planning balance is necessary in assessing the impact on heritage assets.
18. Policy C11. This policy relates to development affecting the Lincolnshire Wolds AONB. It is primarily concerned with development within the AONB, but also refers in part to the fringes of the area, and the part played by the surrounding landscape. One objective is to restrict development which inhibits the quiet enjoyment of the AONB. This could be taken to mean views out from the AONB. Hence there is some relevance in this policy.
19. Policy C14. This is restrictive of development in Coastal Conservation Areas 1 and 4 (CCAs) unless it is essential in that area. This policy is also aimed at 'mainstream' development and takes a prescriptive approach. As such it does not accord with national advice which seeks to encourage a balanced approach to development. Paragraph 114 of the NPPF does encourage the maintenance of the character of the undeveloped coast, protecting and enhancing its distinctive landscapes. But that is not an isolated aim – the NPPF has to be read as a whole. In that context I find the Policy C14 to be of limited assistance and not in accord with the balanced approach advocated by the NPPF.
20. Other Material Policy and Guidance considerations are agreed to be found in the NPPF, the Overarching National Policy Statement (NPS) for Energy (NPS EN-1), NPS for Renewable Energy Infrastructure (NPS EN-3), Written Ministerial Statements of 6 June 2013, National Planning Practice Guidance (PPG) of March 2014, and Planning Policy Statement (PPS) 5 Planning for the Historic Environment Practice Guide of March 2010<sup>3</sup>.
21. There is a draft Local Plan in preparation which will replace the extant Local Plan. The draft Local Plan has made limited headway and it was agreed in evidence that it can be afforded little if any weight at this stage.

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<sup>3</sup> CD 2.1, 2.2, 2.3, 2.4, 2.5, 9.3

22. Other considerations relating to matters of policy and guidance which are agreed are set out in the Statement of Common Ground<sup>4</sup>.

### **The Proposals**

23. The proposed development consists of 8 wind turbines up to 115m in height to blade tip. Each turbine would be intended to have a generating capacity of between 2 and 3 MW, giving a total capacity of 16 to 24 MW.
24. New on-site infrastructure would be provided, including crane hardstandings, new and upgraded access tracks, a switchgear and control building, 2 temporary construction compounds, underground cabling, and a meteorological mast up to 75m in height. Site access would be taken from one of two existing access points. These are the already upgraded Newton Marsh Lane access from Tetney Lock Road, or from the A1031 utilising the existing Bishophorpe Farm entrance.
25. The proposed layout is seen in the submitted plans in the ES<sup>5</sup>. Setting aside the implications of construction traffic and disturbance there has been no substantive debate in relation to the ancillary development proposed. This is a minor element of the proposal and I concentrate on the principal controversial proposal here, which is the impact of the wind turbines themselves.

### **Other Agreed Facts**

26. The Statement of Common Ground<sup>6</sup> sets out matters which are agreed between the Appellant and the Council.

### **The Case for ASC Renewables Ltd**

27. The main points are:

#### *Introduction*

28. Since the close of oral evidence the appeal against the refusal by the Council of the Louth Canal proposal has been rejected by the Secretary of State. The decision has now been submitted as an inquiry document<sup>7</sup>.
29. The Statement of Common Ground (SoCG) records agreement between the Appellant and ELDC that, subject to conditions, no issue arises from noise or the visual component of residential amenity.
30. Two matters were raised in evidence which will not have a material influence on the outcome. These are, first, the impact on birds as reported by third parties. However, this amounted to observational evidence only, and nothing amounting to impact evidence has been submitted, and therefore there is no concern to be addressed in this respect. Secondly, concerns were expressed by members of the public in relation to noise. Here again, there was no impact evidence. With regard to amplitude modulation a condition has now been agreed with the local planning authority, and all other noise conditions were agreed prior to the inquiry.

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<sup>4</sup> CD 13.10

<sup>5</sup> ES Volume II: Figures September 2012

<sup>6</sup> CD 13.10

<sup>7</sup> Included in Core Documents as CD 8.36

31. As recorded in paragraphs 4.72 and 4.74 of the Planning Officer's report to Committee<sup>8</sup> there were a number of letters and other representations opposing the development, and some supporting the development. A further 370 letters of support were submitted during the appeal process. In oral sessions evidence was given by individuals who supported and opposed the development. Public opinion is relevant if founded in relevant planning principles, but the planning process is not a game of numbers and it is certainly not a plebiscite. Regardless of claims based on websites or newspaper material that the Government has moved against onshore wind power the Appellant relies on the Inspector's report to follow the customary practice.

#### *Legal and Policy Framework*

32. There are two statutory provisions to which attention must be drawn, in terms of the issues brought in evidence. First, there is section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 about which there has been recent litigation. As for section 72 of the same Act the SoCG records at paragraph 9.3 that the principal parties are agreed that this section is not engaged for the reasons given. The Council's heritage witness agreed in cross examination that this is the case.

33. The policy framework is set out in the proofs of each party, although the weight to be given to the local plan policies is not agreed.

#### *Development Plan*

34. The East Lindsey Local Plan First Alteration 1999 (ELLP) was the subject of a saving Direction of the Secretary of State in 2007. The following saved policies were canvassed in evidence and/or in the putative reasons for refusal.

- a) Policy A4. The scope of this policy is clearly limited to the protection of the amenities of people living or working near proposed developments. There is a reference to the "distinctive character of the area" in paragraph 2.79 of the reasoned justification, to which the Council was much attracted, but it is a stray and out of place reference. The policy and the reasoned justification are so clearly aimed at the amenities of people. The policy is relevant to the issue of living conditions of residents.
- b) Policy A5. This policy is aimed solely at new buildings and cannot be shoehorned into service in a wind energy appeal. Other Inspectors have, without making this specific finding, found the policy less than helpful<sup>9</sup>. The value of the policy to ELDC is perhaps the reference to Fens and Marshes, but it became clear in evidence that this phrase cannot automatically be applied to the appeal site (paragraph 2.92 of the reasoned justification for the policy is a case in point – the River Steeping is a long way south (40km) of the appeal site). The Appellant does not believe that this policy is material to this appeal.
- c) Policy C2. This addresses the setting of listed buildings and therefore relates better to section 66 Planning (Listed Buildings and Conservation Areas) Act 1990 than to the Framework, but its advice on setting is perfectly acceptable

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<sup>8</sup> CD 13.4

<sup>9</sup> CD 8.10, paragraph 42 for example

and the policy is material to one of the main issues. There is however a lack of any balance within the policy.

- d) Policy C11. MWAG in particular rely on this policy to aid of its case that the development would impact on the interests of the Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB). Paragraph A of this policy is acknowledged to be material since it can reasonably be said to apply to development outside, but affecting, the AONB (see paragraph A(ii) – harm to the distinctive character and/or inhibition of the quiet enjoyment of the AONB). The other paragraphs of this policy relate to development within the AONB.
- e) Policy C14. The appeal site is in Coastal Conservation Area 1 (CCA1) but not within the Sandhills (as agreed in cross examination by the Council). C14 requires any development to be “essential in that location”. While the geographical scope of the policy means that it has to be considered it is clearly in difficulty in terms of consistency with the Framework.

#### *Emerging Local Plan*

- 35. In the evidence it became clear that this early stage plan will not be submitted to the Secretary of State until at least December 2014. It is agreed between the three planning witnesses that little weight should be given to this document.

#### *National Planning Policy Framework (NPPF)*

- 36. While the decision making process must commence with section 38(6) of the 1990 Act it does seem to be the case that in wind energy appeals generally and certainly in this appeal the Framework can be acknowledged as giving the most relevant advice, attracting greater weight for the purposes of section 70 of the 1990 Act.
- 37. The Appellant, ELDC and Bourne Leisure were agreed, until just before the planning evidence for the Appellant, that the second limb of the decision making advice in paragraph 14 of the Framework was engaged in the absence of a renewable energy policy in the Local Plan. However, there is the difficulty of paragraph 119 of the Framework which removes the paragraph 14 presumption in favour of sustainable development “where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined”. There is no way round this extremely curious provision within the Framework. It is curious, and quite probably simply badly drafted and unintended in its effect, because no distinction is drawn between positive and negative appropriate assessments.
- 38. In the case of a negative appropriate assessment a refusal of permission will follow unless an applicant can demonstrate an absence of alternative solutions and imperative reasons of overriding public interest why the development should proceed. In such an event the removal of the paragraph 14 presumption in favour of sustainable development is understandable. However, it is not comprehensible advice if a development receives a positive appropriate assessment. In that case there is no obvious reason why the presumption in paragraph 14 should not apply. In this case the letter of 19 August 2014 from Natural England to ELDC, sent in response to a letter which the Inspector requested should be sent to Natural England, confirms that an appropriate

assessment is required in respect of the Humber Estuary Special Protection Area (SPA) and a Ramsar Site with similar interest features to the SPA. An appropriate assessment for the Ramsar Site is required as a matter of policy, and not law. That for the SPA is required as a matter of law (Regulation 61 of The Conservation of Habitats and Species Regulations 2010).

39. There is no doubt that Natural England is of the view that, subject to appropriate controls over development (incorporated within the conditions before the inquiry), a positive appropriate assessment can be made should one be required. It is requested that the Secretary of State be recommended to make such an assessment if he is minded to grant permission for the proposed development.
40. It would be a brave step to suggest that an appropriate assessment is not required in light of the advice from Natural England. Therefore there is a totally illogical position under paragraph 119 of the Framework. However, there is no choice but to recognise that paragraph 119 says what it says, so that the Appellant cannot claim the presumption in favour of sustainable development.
41. This leads to paragraph 98 as the other key paragraph of the Framework in relation to the approach in this case, and in relation to the planning balance (again ELDC, Bourne Leisure and the Appellant agree this). With regard to other material considerations noted in paragraph 98 these will certainly include Local Plan policies.
42. Paragraph 98 is that which will be of most weight of all the policies under consideration. It applies specifically to energy development and requires that applications for planning permission should be approved (subject to examination of all material considerations) if the impacts of the proposed development are (or can be made) acceptable. In fact that advice is in terms on all fours with that in paragraph 14, although it is acknowledged that it leaves the decision maker having to pay more regard to section 38(6) of the 1990 Act than would be the case if the paragraph 14 presumption applied, on the basis that only paragraph 14 explicitly tells decision makers what to do if the development plan is silent on the topic of a proposed development. However, consideration ends up in much the same place under paragraph 98, having been through the section 38(6) stage, and acknowledging that in any case paragraph 12 of the Framework still requires the decision maker to examine the development plan as the starting point for decision making.
43. Other advice in the Framework is also relevant.
  - a) In the chapter of the Framework advising on the conservation and enhancement of the natural environment paragraph 109 advises (amongst other things) that the planning system "should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes . . .". There was debate at the inquiry about the meaning of valued landscapes within paragraph 109 in cross examination of the Council's planning witness.

There are 2 logical possibilities. First, that the paragraph is badly written and it is not possible to extract a sensible meaning from the phrase. This is perhaps the most likely explanation. Secondly, if the phrase is deliberate then it can only mean something more than a landscape which is valued by those who live within it. If that was the meaning of the phrase then there

would be no need for the advice since all landscapes are locally valued. Equally there would be a danger of reducing the planning system to an exercise in taking the temperature of local opinion. Developers thinking of bringing forward proposals for any type of development in an area would have difficulty in knowing how to treat the advice. The area of Bishopthorpe Farm wind farm should not be treated as a valued landscape for the purposes of paragraph 109.

- b) Paragraph 97 of the Framework repays some attention. It is clearly of direct relevance although the primary context is the preparation of plans. However, it is necessary to note in particular footnote 17 to paragraph 97 which makes it clear that National Policy Statements EN-1 and EN-3 are directly relevant to the determination of applications for wind energy development. This was agreed in cross examination by witnesses for the Council and Bourne Leisure.
- c) Chapter 12 of the Framework on heritage is obviously engaged in this appeal. Of especial relevance are paragraphs 131 – 135.

#### *Decisions of the Court*

- 44. Decisions of the court in three cases were canvassed in the inquiry. These are decisions before the inquiry as CD7.7, CD 7.8 and CD 7.9.
- 45. CD 7.7 - the critical difference between the facts of that case and those in this appeal are that in that case (proposed Batsworthy Cross Wind Farm) there were policies in the development plan addressing renewable energy. That is not the case here, and it makes it difficult to make any useful comparison between the decision of the court and the situation here. This decision does not help.
- 46. CD 7.8 - this can be swiftly addressed. It followed the decision of the Court of Appeal in the Barnwell case (CD7.6), but adds nothing further to the Judgement of Sullivan LJ in Barnwell (and nor could it since Forge Field is a decision of a lower court). CD7.8 simply emphasises that the duty of a decision maker in a case where harm to a listed building is determined is to give that harm "considerable importance and weight". This does not mean (see paragraphs 48-52 of the Judgement) that the presumption against granting planning permission in such circumstances is irrebuttable: "it can be outweighed by material considerations powerful enough to do so, but an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering". The Inspector will of course be fully aware of this duty.
- 47. CD 7.9 - (the Chase Milton case) Chase Milton says nothing very surprising, and it is understandable that the challenge comprehensively failed.

#### *Development Plan Weight*

- 48. The Development Plan contains no saved renewable energy policy. The extinction of the previous policy has left little of material added value in the Development Plan for the purposes of this appeal. Paragraph 215 of the Framework advises on the approach to be taken to giving weight to policies in development plans.

49. As noted above Policy A4 is relevant to the amenities of those living near to the appeal site. It is therefore broadly consistent with the Framework, and there is a balance of sorts within the policy (“unacceptably harm”). There can be no real quarrel with A4 in terms of consistency with the Framework.
50. As already indicated Policy A5 is completely irrelevant to the appeal. In the alternative it might be said that the development complies with the first paragraph of the policy since, in the broadest terms, wind energy development assists in improving the quality of our environment. More practically it is impossible to usefully relate A5 to the development and to the Framework in a context of wind energy development. In practice no weight should be given to this policy.
51. Policy C2 addresses the setting of listed buildings but does not relate particularly well to the Framework. Additionally it contains no balance.
52. Policy C11 contains no balance within the relevant paragraph - A(ii) - but there is some consistency with paragraph 115 of the Framework. There is a broad consistency with the Framework.
53. Policy C14. This policy is completely inconsistent with the Framework and should be given no weight. No matter what the provenance of C14 ELDC cannot disguise the fact that C14 is simply a ban on non-essential development. It is at odds with paragraphs 14 and 98 of the Framework.
54. In summary some assistance is gained from policies A4, C2 and C11, but none from A5 and C14. It would be helpful to have specific findings in relation to the relevance of all of these policies and the weight to be given to them. This is because the Inspector in the Louth Canal case did not properly grapple with the weight to be given to development plan policies. That is a matter of considerable importance in this case, especially since the Secretary of State will make the decision. The conclusions drawn by the Inspector in the Gayton Le Marsh appeal decision<sup>10</sup> are agreed. In paragraph 80 of that decision the Inspector concluded that “the Local Plan does not provide a realistic context for considering wind farm schemes and is therefore out of date”.

*National Policy Statements EN-1 and EN-3*

55. These documents were rehearsed in evidence on behalf of the Appellant. They were placed on the floor of the House and therefore bear the sanction of Parliament. Footnote 17 to paragraph 97 of the Framework brings EN-1 and EN-3 directly into play in this appeal.
56. The proposed development would be temporary and reversible. Paragraph 2.7.17 of EN-3 advises that an important consideration for the IPC (now PINS and the Secretary of State) will be the time limited nature of wind energy development if a decommissioning condition is imposed (as is invited here). The reversibility of the development is a material consideration. Paragraph 2.7.17 makes the point in the context of landscape and visual and cultural heritage impacts. The point is emphasised in paragraph 2.7.43 of EN-3.

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<sup>10</sup> CD 8.9

57. In the Asfordby appeal decision<sup>11</sup> the Secretary of State concluded that he could give little weight to the temporary nature of the proposed development and to the issue of reversibility because of the length of life of the development (25 years). But the Secretary of State was quite wrong to distance himself from clear advice within a document representing national policy and approved by Parliament. I note that the Secretary of State has repeated his position in paragraph 16 of the Louth Canal decision. The Inspector in this case is urged to do what the Secretary of State does not appear willing to do – to follow national policy in this respect and to give material weight to the temporary quality of the development and to its reversibility.

*Planning Practice Guidance (PPG) – March 2014*

58. This was addressed in evidence and there are 3 points to make.

- a) PPG does not change the policy advice in the Framework or within EN-1 or EN-3. At the most it puts the gloss of the Secretary of State's current views on the advice in these documents.
- b) The issues which have been canvassed by the Secretary of State in the PPG as of importance were always regarded as being of importance in the determination of wind energy applications. For example, developers have always attributed great importance to cultural heritage issues and to cumulative impacts. Nothing has changed. All the matters canvassed in the PPG have been thoroughly addressed in evidence before the inquiry.
- c) With regard to public opinion this is addressed above and below. The Standard Note in the House of Commons Library of 14 May 2014 indicates that nothing within the PPG is intended to give communities a veto over wind energy development.

*The Bourne Leisure Case*

59. Bourne Leisure (BL) made clear that the objection brought was founded on a perception of business risk. BL perceive that the visual and acoustic impacts of the proposed wind farm would cause harm to its business through the reaction of its customers. But that was as far as the BL case went. There has been no attempt to properly describe the offering of BL to its customers in objections to the local authority or in evidence to the inquiry. There has been no attempt to quantify the potential loss to the business. What is evident, to use a well used planning phrase, is no more than mere fear or a generalised concern.
60. The BL argument is threefold. First, the view that there will be significant visual and acoustic impacts on its customers; secondly, anticipation (but without taking any soundings) that its customers will feel the same way; and thirdly, that in talking to other tourism operators they appear to feel the same way as BL.
61. BL's witness agreed that he had no knowledge of any appeal relating to a proposed wind farm in England which has been rejected for reasons relating to impacts on tourism. In his proof he made claims that it would now be impossible to determine whether or not there had been adverse impacts on tourism as a result of existing wind farms. However, as put by the Appellant, with so many

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<sup>11</sup> CD 8.33

wind farms now up and running in England there would surely be some evidence of impacts on tourism if in fact any such impacts exist. There is no evidence to this effect. The quotation rehearsed within paragraph 8.44 of the Appellants' planning evidence records the comment of the Resort Director at Butlins Skegness as "I haven't heard anything negative from guests. They seem interested in the wind farms off Skegness which add perspective to the seascape."

62. The case made by BL is wholly inadequate. Even if there were significant adverse visual and acoustic impacts to consider there is no evidence that such impacts would damage the business of BL, which is so clearly founded in active family holidays.
63. In relation to landscape and visual impacts it is clear that the BL witness has given no cogent evidence in relation to impacts on the visual component of the residential amenity of those staying in Thorpe Park Holiday Park (TPHP). Instead he focussed entirely on whether or not significant visual effects would arise at the various viewpoints selected by agreement between the Appellant and ELDC and discussed in the ES and in the evidence of the Appellant. Of no great note in relation to the BL objection, BL and the Appellant disagreed on the significance of visual effects in relation to only four viewpoints (1, 2, 3 and 5). In terms of cumulative impacts there was disagreement only in relation to Viewpoint 5. So far as the interests of BL are concerned only VP4 is of relevance to TPHP.
64. BL evidence was therefore very narrow. It focussed only on representative viewpoints. So far as significant effects on Thorpe Park were concerned Bourne Leisure relied heavily on Figure 1 of the original objection document<sup>12</sup>. However, it was acknowledged in cross examination that BL had brought to the inquiry no textual analysis of impacts from viewpoints represented in the Appendix to the proof of evidence. All there is are a range of photographs and viewpoint indicators on Figure 1. BL appeared to be happy to leave it to the Inspector to determine on the site visit what might be seen of the development from the TPHP golf course (the green lines on Figure 1). With regard to significant visual effects on chalets within TPHP it took cross examination to extract precisely which chalets were of concern. The Inspector may therefore feel that the evidence on behalf of BL was entirely inadequate in order to make any case to support the business risk proposition articulated. The Appellant certainly feels that this is the case. It is also noted at this point that, against an anticipation that it would take two days to get through the BL evidence, it took one day. There was simply not much to examine.
65. In relation to noise, BL acknowledged that it was Government advice that ETSU-R-97<sup>13</sup> (ETSU) should be used to assess and rate operational noise from wind farms. The issue taken was that the advice given did not enable an analysis of significant impacts in EIA terms. This, with respect, is irrelevant. Nobody has claimed that the Environmental Statement and subsequent advertised environmental information are inadequate because of a failure to identify significant acoustic effects. In the case of noise, whether or not the impact of operational noise is acceptable is always measured in terms of the ETSU advice

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<sup>12</sup> This is separately bound and included within the BL Document folder

<sup>13</sup> ETSU-R-97 – The Assessment and Rating of Noise from Wind Farms

for wind farms, and ELDC and the Appellant have complete agreement on this point. The fact that the Appellant's acoustic expert agreed that chapter 10 of the ES did not specifically conclude on the significance of noise impacts takes BL nowhere for the reasons given.

66. The arguments of BL that some additional assessment is required of the extent to which predicted wind turbine noise levels exceed background levels is not correct. ETSU itself makes clear within its Executive Summary that the objective was always to strike a reasonable balance between the protection of amenity and the need for renewable energy development. And the Government has within the Framework, within National Policy Statements EN-1 and EN-3, and most recently in the March 2014 PPG endorsed without qualification the use of ETSU to assess and rate operational noise from wind farms with the assistance of the Good Practice Guidance produced by the Institute of Acoustics<sup>14</sup>.
67. BL does not claim that operational noise from the wind farm would breach the limits advised in ETSU (as indeed agreed in the Noise Statement of Common Ground<sup>15</sup> signed between Mr Bowdler and Mr Reid and which is before the inquiry). So far as the quiet daytime period is concerned the Appellant has been able to offer a fixed daytime limit at the bottom of the range of values advised as potentially appropriate in ETSU. With regard to the night time limit BL's point concerning advice on sleep disturbance by the World Health Organisation in 1999 falls down on two grounds. First, since 1999 the use of ETSU has been endorsed by Government in a number of documents including those noted above. Secondly, the fixed night time noise level proposed by the Appellant is the level recommended by ETSU, and it has been agreed with ELDC. It is also the fixed night time limit which appears in the Newton Marsh conditions.
68. The Appellant agrees that, so far as wind turbine sound power levels are concerned, the position of BL is accepted so that 1.3db(A) should be added to the sound power levels recorded in Table 10.2 within the Environmental Statement. The document produced on the second day of the inquiry<sup>16</sup> substitutes the sound power level figures agreed with BL for those in the Environmental Statement, in terms of noise immission levels at various properties. Even with the addition of 1.3db(A) the development is compliant with the rating advice in ETSU at the levels proposed.
69. In relation to amplitude modulation (AM) evidence was given that the Appellant has agreed that an amplitude modulation regulating condition should be imposed, and this was before the inquiry.
70. In summary in relation to acoustic issues, and on the basis that Government policy is followed and ETSU is used for the assessment and rating of noise from the wind farm, the only issue remaining between BL and the Appellant relates to the night time fixed noise level referred to above. BL has entirely failed to make its case in relation to the acoustic impact of the operational development.
71. The objection of BL was always poorly thought out and poorly presented. No impact evidence worth the name has been presented. The mere fear or

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<sup>14</sup> CD 11.3

<sup>15</sup> App Doc 9

<sup>16</sup> App Doc 3

generalised concern which characterises the BL objection should be wholly rejected.

### *Landscape and Visual Effects*

72. In the Appellant's view the principal determining matter on this topic is the relationship between the appeal site and the coast and therefore impacts of the proposed development on the landscape character and visual amenity of coastal areas. Reference has been made to the dismissal of the Louth Canal appeal. This removes that scheme from consideration in the assumed cumulative baseline, leaving only (on the Council's evidence) the Newton Marsh turbines so far as significant cumulative effects are concerned. Despite the Council straying into recreational and tourism issues in oral evidence in chief and at, for example, paragraph 5.19 of the proof of evidence, paragraph 13.3 of the SoCG is to the effect that recreation and tourism form no part of the Council's case.
73. Of specific relevance to consideration of this appeal is the Secretary of State's acceptance of the Inspector's conclusions at paragraph 429 of her report that the Louth Canal project would not have an unacceptable effect on landscape character within LCA J1 (as defined within the East Lindsey Landscape Character Assessment (CD10.10)). In terms of visual effects the Inspector's only adverse findings related to potential for the creation of unacceptable living conditions for the occupant of one property. There was no finding by the Inspector that the general visual amenity of the area would be unacceptably impacted.
74. The Inspector for the Louth Canal inquiry also found, and the Secretary of State accepted her finding, that so far as the AONB was concerned there would be no material conflict with the objective set out in paragraph 113 of the Framework of protecting distinctive landscapes.
75. Other matters were canvassed, and they are dealt with first, before moving on to contended impacts on the coast.
76. MWAG set out a case in relation to impacts on the AONB. There is no reason for refusal relating to this topic, and the Council landscape witness confirmed in giving evidence that the local authority took no issue with the AONB. The Council's planning witness, under cross examination, confirmed that the local authority really did make no case in relation to this designation, as agreed in the SoCG.
77. MWAG evidence on the AONB includes a photomontage from a viewpoint within the AONB. Care needs to be taken with the photomontage for a number of reasons. First, the viewing distance is substantial but not fully established. Secondly, the image cannot sensibly be used in the field (the only purpose of photomontage material). Thirdly, the photomontage assumes that all elements in the planning system, and in addition scoping stage developments have proceeded. Clearly there will be some such developments that do not get planning permission, some developments that do get planning permission but are not built, and perhaps some other developments which are never submitted for planning permission. Caution should be applied to the weight given to any projects other than those which are built or consented. Fourthly, the proposed development is not centred in the image. If an applicant produced a photomontage with the proposed development to one side of the image it would rightly be criticised for omitting relevant visual context. When that context is

added the picture changes, and it becomes clear that to the north there are fewer operational, consented or proposed developments.

78. The AONB is at its closest point 8.4km from the development. The proposed turbines will be visible but the conclusions of the Appellant's landscape witness can be adopted. Not only will there be no significant landscape character effects at this distance, but there will in addition be no significant visual effects from any viewpoint. That finding also applies to the cumulative impacts of the proposal. It is also worth noting that, taking into account but not relying on the dismissal of the Louth Canal appeal, sufficient gaps would be maintained between wind farms with the proposal in place when viewed from the higher ground in the AONB. In this context paragraph 422 of the report of the Louth Canal inquiry is pertinent, where the Inspector found that existing developments were generally well spaced. The spacing would be qualitatively maintained with the arrival of this proposal.
79. On the same basis the Special Qualities set out in the AONB Management Plan<sup>17</sup> remain unaffected as explained in the Council's landscape proof at paragraph 4.5.4. The findings of the Inspector in the Gayton Le Marsh decision<sup>18</sup> regarding the impact of that project on the AONB are at paragraph 63 of the report. Those findings are commended and reflect the position of the Appellant here.
80. With regard to landscape character effects it is notable that effects in this predominately flat landscape, where local screening can attenuate significant effects at relatively short distances, extend only to 2km on the evidence of the Council. Therefore the spatial extent of significant landscape character effects will be very limited.
81. The lack of any real evidence from Bourne Leisure on the visual component of residential amenity is indicated earlier. Neither did the Council engage on this topic, and this issue is not seriously engaged in this case.
82. Thus issues relating to general landscape character effects (save in relation to the coast), the AONB and the visual components of residential amenity do not give rise to significant concern in this appeal.
83. The main contention is therefore in relation to impacts on the coast. A necessary introduction to considering the evidence on coastal impacts is to look at policy C14 in Local Plan. The Council gave evidence to the effect that this policy has a proud provenance. That may be so, but there is at least some doubt about how it came to be applied to the area which includes the appeal site north of Tetney Lock. In the record of emergence of the Coastal Conservation Area (the CCA) the Council drew attention to the Sandhills Act 1932. It is clear that the origin of the present policies C14 and C15 lie in the Sandhills Act and its purpose, which was to control holiday development along areas of the coast. It is equally clear that the area north of Tetney was not covered by the Sandhills Act.
84. The best evidence is that as late as 1986 (Appendix 2 of Council's planning proof) the CCAs now found in the Local Plan extended only as far as Tetney (the Louth Canal). There is no evidence to the contrary. Subsequently CCA1 was extended

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<sup>17</sup> CD 10.12

<sup>18</sup> CD 8.9

to Humberston Fitties. The difficulty is that this local designation has its origins in coastal protection under the Sandhills Act. The provenance claimed by the Council could not be said to apply to the piece of coast north of Tetney Lock. All there is is a draconian policy which admits no possibility of wind energy development without exception. The policy is a dinosaur survivor from older style development control plans and it is completely inconsistent with the Framework.

85. The Council claims that paragraph 114 of the Framework applies to the coast at the Humberston Fitties. In turn it claims that footnote 9 to paragraph 14 of the Framework is engaged so that presumption in paragraph 14 would not apply (regardless of paragraph 119 of the Framework) since paragraph 114 sets out a restrictive policy. That approach is entirely wrong.
86. The second bullet point within paragraph 114 of the Framework seeks the maintenance of the character of undeveloped coast, particularly in areas defined as Heritage Coast (not applicable here). This is a general objective and falls far short of being a restrictive policy for the purposes of footnote 9 to paragraph 14. The objective is simply the maintenance of the character of the undeveloped coast, a high level statement. As a result the presumption in paragraph 14 remains engaged despite footnote 9.
87. Much evidence was heard on the weight to be given to advice on landscape areas defined at a national, regional and local level. The Council made great play of the profile for National Character Area 42<sup>19</sup> and the theme was continued in cross examination, attempting to closely associate the area of the appeal site with the coast, although no claim was made that the appeal site is actually on the coast. That approach is problematic. Pages 77-79 of version three of the Guidelines for Landscape and Visual Impact Assessment<sup>20</sup> (GLVIA3) are relevant here. Paragraphs 5.12 and 5.13 on page 77 deal with the usefulness of existing landscape character assessment material and advises that a judgement does require to be made as to the degree to which that material will be useful in informing the LVIA process. Paragraph 5.13 specifically refers to the scale and level of detail of the assessment, while “noting that large scale assessments can provide valuable context”. Paragraph 5.14 gives attention to national and regional level information which it is stated “can be helpful in setting the landscape context, but are unlikely to be helpful on their own as the basis for LVIA – they may be too generalised to be appropriate for the particular purpose”. Paragraph 5.14 commends the use of local authority assessments which “provide more detail on the types of landscapes that occur in the study area”. The paragraph goes on to refer to descriptions and definitions of key characteristics in local authority assessments. It is therefore clear that the Landscape Institute takes the same view as the Appellant that local level assessments are those which should be used for LVIA, with other documents providing context.
88. NCA 42 is a very large area, not appropriate for use as an LCA basis for the impact assessment of a project. Strategic Environmental Objectives 2 and 4 are very general objectives which could apply anywhere within NCA42 or indeed anywhere near a coast. Put another way the fact that Objectives 2 and 4 could

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<sup>19</sup> CD 10.15 and 10.17

<sup>20</sup> CD 10.2

- be applied to this local area doesn't take matters very far since the objectives could be applied in so many places. They should not be applied in a landscape and visual impact assessment context. The Profile for NCA 42 is simply too high level to be helpful.
89. The same point applies to the East Midlands Regional Landscape Character Assessment<sup>21</sup>. However, this regional assessment at least recognises a distinction between LCAs 2a (the area including the appeal site) and 2b (the coast to the east). As put to the Council's witness in cross examination the areas are quite distinctive in terms of key characteristics, and this was accepted. It may be noted that there are no key characteristics in LCA 2b which include views over LCA 2a to the Wolds.
90. The East Midlands Assessment does contain some wind energy advice, but is too general to be helpful. The advice is really all things to all men. It does not help in a project level impact assessment.
91. As indicated by the Appellant the ELDC LCA<sup>22</sup> contains the correct baseline information for the impact assessment of this project, as advised in GLVIA3. Relevant LCAs are J1 (including the appeal site) and K1 (the naturalistic coast). There are no key characteristics of LCA K1 which include views over LCA J1. This is important in the context of landscape character effects because assessment should be carried out against key characteristics and, if any of those for K1 had included views over J1, then the possibilities for indirect impacts on landscape character arise (indirect because K1 is not the host landscape area).
92. With regard to landscape value/sensitivity there are insufficient differences between the Council and the Appellant to be of concern. A useful table<sup>23</sup> was produced by the Council comparing its findings in respect of operational landscape character effects with those of the Appellant. There are differences in attributions of sensitivity; they are "half a notch" differences, and therefore not of great concern.
93. In relation to landscape character effects the Appellant's evidence is that they will extend to within approximately 1km of the turbines. The Council says 2km. In cross examination of the Council's witness and in the Appellant's evidence in chief it became clear these differences were not so precise as would appear on paper. The Council said in cross examination that the significant landscape character effects would actually extend to the south less than 2km, but more than 2km to the east (the principal point of contention between the parties). It may be felt that there are very limited differences between these witnesses in terms of the spatial extent of significant landscape character effects except in relation to impacts contended by the Council over LCA K1.
94. Viewpoint 4 (VP4 within the Environmental Statement) seems to become a surrogate for the main issue between the principal parties. This viewpoint, coupled with the site visit in the area of that viewpoint, will enable a view to be reached on this main issue.

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<sup>21</sup> CD 10.14

<sup>22</sup> CD 10.10

<sup>23</sup> LPA Doc 4

95. The Appellant's case on the issue of landscape character and visual effects is to be preferred for the following reasons.
- a) The Council's concern on landscape grounds is the undeveloped coast, not Humberston Fitties or Humberston. However, VP4 shows no significant landscape impacts on LCA K1 (and for this purpose it is a good surrogate for the issue). From VP4 and the coast generally wind turbines will be seen quite clearly in another landscape area (it happens to be J1 but the viewer would not know the character of that area because it is beyond the immediate foreground including some vegetation and the sea bank). No confusion arises. The wind turbines will be seen as clearly apart from the coast. From the footpath on the sea bank which divides areas J1 and K1 the position will be even clearer. The wind turbines will be seen in a "working agricultural landscape" while on the other side of the path the character of the landscape is quite different. There will be no material landscape character effects on the coast within LCA K1. There will be no unacceptable visual impacts on areas to the east of the appeal site within (broadly) the coastal strip.
  - b) The area of VP4 is not undeveloped. As the Appellant has stated in evidence a walker will enter undeveloped coast when moving south from the car park, but not north or immediately west of that point. There is an important distinction to be drawn between the area of the Humberston Fitties and the car park south of that development and in turn the undeveloped coast which demonstrably begins somewhere to the south of the car park. It may also be noted on the evidence in chief of the Appellant that walking is discouraged on the RSPB reserve to the south, and is directed towards the prescribed footpaths.
  - c) The area of the appeal site is not undeveloped in the sense that there is no development. As described by various witnesses the area of the appeal site contains various developments (e.g. the Newton Marsh turbines, the green oil tanks which featured in the evidence of MWAG, and other elements). The appeal site is outside any settlement, but close to manmade structures and certainly not remote or tranquil. Paragraph 338 of the report of the Louth Canal inquiry is worth recording. There the Inspector agreed with the views of the Newton Marsh Inspector in his decision<sup>24</sup> that what we have here is essentially a working agricultural landscape accommodating a number of detractors, and not being a quiet or secluded spot.
96. If these points are accepted then the remainder of the significant environmental effects of the development identified by the Council and the Appellant, and which are addressed above, will be acceptable. Indeed the landscape and visual effects are relatively modest for an eight wind turbine scheme. And in this context the advice in the PPG<sup>25</sup> concerning topography is material. Whilst the Secretary of State may say that "impacts can be as great in predominantly flat landscapes as hilly or mountainous areas" the evidence in this inquiry, and the evidence of the site visit which will clearly inform the recommendation to the Secretary of State (who will have made no site visit), is somewhat to the contrary.

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<sup>24</sup> CD 8.12 paragraph 26

<sup>25</sup> CD 2.5

97. Specifically, in this flat landscape, for the reasons given by the Appellant in evidence in chief, the incident angle within which turbines may be visible decreases quickly with distance (in comparison with a hilly location) so that views of the turbines can rapidly be obscured by hedges and trees. Such is the case here as will have been observed on the site visit.

#### *Cumulative Assessment*

98. There is a small point to make concerning the treatment of the cumulative baseline. Wind farms forming part of this baseline may be established (operational) reasonably certain to proceed (those with planning permission) or less certain (projects at application stage). The issue I address is the weight to be given to various parts of the necessary EIA baseline. Although the Council did not agree it is the Appellant's position that less weight should be given to those projects in the planning system than to the more established baseline. The point I have just made has been given added weight by the dismissal of the Louth Canal appeal. One part of the less certain baseline has now ceased to exist. This also reflects the views of the Louth Canal Inspector in paragraph 331 of her report.

#### *Heritage Assets - General*

99. Since the close of evidence there has been the issue of consultation documents comprising an intended Good Practice Guide on the Historic Environment (issued by English Heritage). The consultation period for these documents expired on 5 September. When the documents are finally issued the PPS5 Practice Guide<sup>26</sup> (PPS5PG) will be withdrawn. However, for the purposes of this case PPS5PG is still current and no weight should be given to the consultation documents.

100. It is common ground that section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged since no part of the proposed development is within a Conservation Area.

101. In the Louth Canal decision the Inspector recommended refusal of the proposal in part because of impacts on a Listed Building. The Secretary of State agreed with her view, but the obvious point to make here is that, unlike perhaps the case for landscape character where a proposal comes forward in the same landscape character area as a proposal whose fate has been determined at appeal, cultural heritage issues are entirely site specific.

102. In the view of the Appellant the most relevant advice to which regard should be had in assessing the impact of the proposed development on the significance of heritage assets is English Heritage's Guidance on the Setting of Heritage Assets issued in October 2011<sup>27</sup>. While this document now has a 6 June front sheet noting that the advice is under review it is still current for the purposes of this appeal.

103. The Appellant's heritage witness approached his evidence on the basis of a methodology clearly set out in his Appendix 1, and he followed that approach in his evidence. In turn his methodology is based firmly in English Heritage

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<sup>26</sup> CD 9.3

<sup>27</sup> CD 9.1

- guidance. It presents and follows a sound basis on which to evaluate his evidence.
104. It is clear that the approach determined by the Court involves giving “considerable importance and weight” to the desirability of preserving or enhancing the setting of listed buildings. If development would cause harm to the setting of a listed building then there is a rebuttable presumption against the grant of a planning permission. Whether or not the presumption is rebutted is a matter for the planning balance.
105. However, in the context of section 66 of the Act it is important to note the evidence of the Appellant’s witness in chief to the effect that he had visited every one of the heritage assets scoped into the assessment within the ES in so far as they were publicly assessable, and that he regarded his assessment as adequate. He confirmed that, on the basis of his site visits and his assessment, there would be no harm to any listed building save for the Church of St Peter and St Paul Tetney. Given the importance of section 66 it is right to record these findings.
106. Both the Council and the Appellant acknowledge the approach advised in guidance from English Heritage on the setting of heritage assets as that which is appropriate when considering whether or not a development would cause harm to the significance of any asset. That approach is recorded in paragraph 1.4 of Appendix 1 to the proof of the Appellant’s witness and there is no dispute that he correctly sets out the position.
107. It is also common ground between the Council and the Appellant that the phrase “great weight” (to the conservation of a heritage asset) in paragraph 132 of the Framework has the same meaning in practice as “considerable importance and weight”, the phrase used in the Barnwell Judgement in the Court of Appeal. Indeed, as noted by the Appellant’s witness, it is no surprise that the test in the Framework equates to that in section 66, noting that the statute addresses setting while the Framework addresses significance.
108. Other relevant advice can be found in NPS EN-1 and NPS EN-3 in the context of cultural heritage assets. Note can be made of paragraphs 2.7.17 and 2.7.43 of EN-3. Further advice is in the Practice Guide to PPS5. Additionally the PPG provides some guidance.
109. Finally, Conservation Principles<sup>28</sup> contains some further advice, as does English Heritage’s “Wind Energy and the Historic Environment”<sup>29</sup>. However, because these documents and the Practice Guide predate the Framework and because the Framework does contain quite comprehensive advice on the issues at large in this appeal, the most useful guidance will be found in that document.
110. The Appellant’s evidence includes principles of assessment which can be derived from the plethora of guidance. These are a useful and correct synopsis of the approach to be taken to assessment. In addition the time limited nature of wind energy development (where a permission endures for a defined period) and the reversibility of the development is relevant. In this context paragraphs 2.7.17 and 2.7.43 of NPS EN-3 are material. Paragraph 2.7.17 advises that a

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<sup>28</sup> CD 9.5

<sup>29</sup> CD 9.2

time limited permission is likely to be an important consideration when considering impacts on landscape character and visual amenity, and on potential effects on the settings of heritage assets. Paragraph 2.7.43 refers to paragraph 2.7.17 and reinforces the point made there concerning the historic environment.

111. The Council has drawn attention to the decision of the Secretary of State in the *Asfordby Appeal*<sup>30</sup> in which he said in paragraph 17 of the Decision Letter that “while the Secretary of State accepts that each of the assets may well suffer from less than substantial harm if considered separately as being the only asset of any significance, he takes the view that, looking at the sum total of the impact on so many and varied assets, the harm caused is arguably greater than the sum of its parts”. The view taken by the Secretary of State is curious in the context of the clear position of NPS EN-3. As advised in the Framework conclusions should be reached in relation to each heritage asset. There is no advice to the effect that less than substantial harm should be aggregated. Paragraph 17 of the Decision Letter is unsatisfactory. This reflects an incorrect approach to the assessment of harm to heritage assets, which should focus on the potential harm asset by asset. The Framework advises no concept of collective harm, and such a concept should not be adopted. EN-3 is current policy and its approach should be given weight when reporting to the Secretary of State.
112. Whilst it is clear from paragraph 132 of the Framework that significance can be harmed or lost as a result of development within the setting of a heritage asset the PPG does provide some further useful guidance in paragraph 017, recorded for ease of reference in paragraph 3.14 of Appellant’s witness proof. This advice makes it clear that “substantial harm is a high test, so it may not arise in many cases”. The example is given of whether “the adverse impact seriously affects a key element of its special architectural or historic interest”. The PPG also makes it clear that it is the degree of harm which is to be addressed and not the scale of the development. Paragraph 309 of the Louth Canal inquiry report refers to the Judgement in the *Podington* case rehearsed in, for example, paragraph 307 of the report. The Inspector made clear that she agreed with what came out of the *Podington* Judgement and planning guidance to the effect that (in cases involving impacts on settings) for substantial harm to arise “the level of harm from the proposed development has to be so extreme that the heritage asset in question would no longer be worthy of listing.” That approach is correct and needs to be reinforced.
113. Where it is determined that there will be less than substantial harm it cannot be that the weight to be attached to that harm is predetermined in the Framework. The balance set out in paragraph 134 impliedly requires that a scale of less than substantial harm should be addressed. This is a point taken up and developed in the evidence of the Appellant.
114. While the Council drew attention to errors that Sullivan LJ concluded that the Inspector in the *Barnwell* case had made in his approach to identify the contribution of setting to the significance of the principal asset in contention in that case, and to the assessment of harm (the reasonable observer test) it cannot be said that either the ES submitted with the application or the Appellant’s witness fall into the traps identified by the judge. The approach

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<sup>30</sup> CD 8.33

taken by the Appellant to the identification of the contribution of setting and to the assessment of harm, in respect of each of the assets in play in this appeal, was followed firmly in accordance with the Framework and the Settings Guidance of English Heritage.

115. The Appellant records the position of English Heritage, or its lack of a stance on this appeal, from paragraph 2.11 in the witness proof. As advanced by the Appellant, English Heritage has studiously refrained from making any comments on the proposed development beyond those conveyed in its scoping stage response of 25 June 2012. While the Appellant's witness was asked questions in relation to the approach taken in his proof it is clear that he has it right. English Heritage has routinely responded to consultations in cases where it believes that there would be harm to designated assets it considers to be within its remit as a consultee, typically assets including Grade I and II\* listed buildings. It does on occasion comment on issues relating to Conservation Areas and Grade II assets. Therefore I believe that it can be concluded that the absence of any interest from English Heritage is an indication of a lack of material concern on the part of that body. It is notable that English Heritage was consulted at the scoping stage and following the submission of the application, but also following the submission of SEI2 in September 2013 and SEI3 in April 2014.

116. In the context of the Louth Canal decision, and having read its findings, the Appellant has discovered that English Heritage responded in detail to ELDC on the Louth Canal application. This was not brought to the attention of the inquiry. It is therefore fair that reference is now made to the 25 May 2012 response of English Heritage to the Louth Canal proposal. English Heritage did give detailed views on a number of heritage assets, including the church of St Peter and St Paul, Tetney. This reinforces the submission in the previous paragraph.

#### *Heritage Assets – Individual Assets*

117. The Church of St Peter and St Paul, Tetney (Grade I). Contrary to the Council's evidence the Appellant's view that there is no great relevance in the slight height difference and the level of Tetney Church compared with the surrounding land is to be preferred. The level difference is almost imperceptible. Paragraph 417 of the Louth Canal inquiry report echoes the view taken by the Appellant that this is not a landmark church and that its position in the landscape is "modest". The same paragraph in the Louth Canal inquiry report notes that the main visual references for the church and its setting link to its role within the settlement and as a marker for the settlement. This again agrees with the Appellant's view. There are only clear views of the church from the south, and then only in certain locations, including Cultural Heritage Viewpoint 8 (CH VP8).

118. The Council expressed concerns regarding the accuracy of the wireline represented in CH VP2 following his comparison of that image with that of the wireline for CH VP8. As explained by the Council's witness the confusion arose because of perceptions of the relative height of turbines at different distances. The images are correct.

119. In consequence of the available views of the church from outside the village to the south, and because the wind turbines would be seen behind the church from that direction, the only harm that could result from the wind turbines is in views from the south. However the setting of the church extends beyond this southerly viewpoint to wherever it can be seen and experienced as a heritage asset. Most

- of the locations from which the setting can be experienced are, as a result of the restricted views, from outside the village of Tetney.
120. Contrary to the Council's assertions, on the basis of conclusions in its proof of evidence, it is the case that impacts on setting have been translated into impacts on significance without considering the contribution that setting makes to significance and the absence of any contended harm to other contributors to significance. By virtue of this approach the Council has overstated the level of harm to the significance of the asset.
121. Contrary to views expressed by the Council witness the turbines would not appear from the CH VP8 to be "part of the village". As noted by the Appellant the wind turbines would be "over there", well beyond the village, although their position in the Outmarsh cannot be perceived from this viewpoint.
122. Although the Louth Canal decision has now been received and the situation overtaken by events it is right to record the Appellant's concession (following a further site visit) in evidence in chief that it would have been possible to see the Louth Canal turbines with Tetney Church from the A1031 and the local footpaths mentioned by the Council's witness. Nevertheless the evidence given by the Appellant concerning an absence of views of any church with both the proposed appeal turbines and the Louth Canal turbines remains. On the viewpoints considered in evidence there will be no such views.
123. The Appellant's approach to evidence of this asset, as with all assets, rigorously follows the approach advised in the Settings Guidance from English Heritage. For the reasons given in evidence it can be concluded that less than substantial harm will be caused by the proposed development, the harm solely being in respect of the contribution that setting makes to significance. However, as he also makes clear in paragraph 4.24 of the Appellant's witness proof and in 6.6 of his conclusions to his proof the harm would be at the lower end of the range of less than substantial harm. The weight attributed to this harm in the planning balance should have regard to the degree of harm and not merely the fact of less than substantial harm.
124. The Church of St Peter, Humberston (Grade II\*) and Manor Farmhouse, Humberston (Grade II). The only professional evidence brought forward on these 2 assets is from the Appellant. Neither is addressed by the Council and the Appellant's evidence should therefore be accepted. Similarly the Council did not put forward evidence in relation to the Humberston Conservation Area. Again, the Appellant's evidence, to the effect that there would be no harm, should be accepted.
125. Coastguard Cottages, Tetney Lock (Grade II). There are a number of minor issues which are of limited importance, such as whether or not the cottages were built in an isolated part of the marshes, whether there is any evidence that other buildings were erected other than the cottages, and questions relating to the absence or presence of a unified architectural style.
126. The Appellant disagrees with the Council in relation to the claim that the Coastguard Cottages are prominent. Even from the selected viewpoint for cultural heritage purposes (CH VP7) it could not be said that the cottages are prominent in the landscape. They are attractive, but low buildings have no reason to, and in any case do not, assert themselves in the landscape.

127. There is an issue concerning whether or not the turbines would affect the historic relationship between the cottages and the Louth Canal. The evidence of the Appellant is to the effect that the uniformity and neatness of the cottages and any architectural distinctiveness that they possess would remain unaffected by the proposed development, as would the relationship between the cottages and the Louth Canal.
128. It is fair to say that matters between The Council and the Appellant in relation to the Coastguard Cottages are ultimately matters of judgement concerning harm. In this context a view of any importance of the cottages with the proposed turbines in the same view is from the south from the other side of the Louth Canal or from closer to the cottages. As indicated by the Appellant the presence of the wind farm would not diminish the legibility of the setting of the Coastguard Cottages and there will be no harm to the significance of the asset.
129. Haile Sand Fort (Grade II). A key point of difference between the Appellant and the Council is that of the functional military link between the two forts (Haile Sand and Bull Sand which stand at the entrance to the Humber estuary) and the undesignated assets including the Pill Boxes (which stand along the coast). For reasons relating to the date that the respective structures were built it is the view of the Appellant that there is no specific military functional link between the structures.
130. It is noticeable that within the Council's evidence, in a section which combines a consideration of a Grade II Haile Sand Fort and the undesignated Pill Boxes, much of the attention focuses on the undesignated assets rather than on Haile Sand Fort. This is no doubt partly because with an undesignated asset the Council justifiably felt the need to describe them in some detail. However, it does mean that disentangling the evidence on the designated asset from that on the Pill Boxes can be difficult. In evidence discussion of the assets becomes very mixed.
131. As investigated in cross examination it seems that some of the Council's observations about an exposed, bleak landscape depart from proper discussion of the contribution of setting to significance and verge in the direction of landscape appreciation.
132. Although in evidence the Council mentioned other wind farm projects it is ultimately clear that the only cumulative evidence advanced on behalf of the Council in relation to cultural heritage assets relates to the Newton Marsh wind turbines and to Louth Canal (now dismissed at appeal).
133. As put to the Council's witness in cross examination there is no evidence whatsoever that the grant of a permission for the proposed turbines (and their erection) would deter investment that is being encouraged in order to find a new use for Haile Sand Fort (nor would it deter further investment in the Humberston Fitties). The Council's point can only proceed from its own professional adviser's view of the adverse impact of the turbines, a view which cannot be associated with the opinions of others. No weight should be attached to this observation in respect of either of the assets.
134. In contrast the evidence of the Appellant's witness in relation to Haile Sand Fort is to be commended. The significance of the fort lies in its architectural interest, while setting makes a contribution to significance in terms of

understanding its defensive military function. It does make a considerable contribution to the significance of the asset. The Appellant points out that the fort can be most readily observed from the shoreline at Humberston Fitties. But it can also be viewed from Spurn Head on the opposite side of the estuary, with Bull Sand Fort in the foreground. The only impact on setting that results from the erection of turbines would be for visitors from Spurn Point at a range of over 9km. Although turbines would be visible from Spurn Point, on the evidence of the Appellant there would be no impact on setting and therefore no impact on the significance of the asset.

135. World War Two Pill Boxes (undesigned). As noted above the Council gave considerable attention to these undesigned assets, while at the same time looking at the designated Haile Sand Fort. The Council risks departing from a cultural heritage appreciation of the Pill Boxes with the imaginative text in evidence relating to what soldiers (on both sides) would have experienced when close to them or when based at them. The fact that the proposed turbines would fall within a field of fire from one or more Pill Boxes does not appear to be relevant in a cultural heritage context. Nor is the bleak and inhospitable nature of the open marshes relevant to the issue of setting, although this may be relevant to landscape and visual issues.
136. Precise design of the Pill Boxes as evidenced by the Council is not relevant to the issue of setting, although it may be relevant to other aspects of significance. The Council's witness appears to be particularly attached to the WWII Pill Boxes, given the attention given them in comparison with the attention given to, for example, the Church of St Peter and St Paul Tetney. That is not to criticise the witness who is entitled to be enthused by these assets, and Haile Sand Fort. However, the evidence is imbalanced in this respect.
137. In contrast the evidence of the Appellant in relation to these undesigned assets is to be commended. The Appellant's witness acknowledges that setting adds considerably to the historical interest of the Pill Boxes. However, there are other elements of significance such as their architectural interest and their historical interest. In spite of being relatively close to the wind turbines the evidence of the Appellant is that there will be no impact on the contribution that setting makes to the significance of these assets, and thus no effect on significance.
138. Humberston Fitties Conservation Area. With reference to the Council's evidence it could be said that every Conservation Area is unique in some respect. But there is no advice to the effect that the uniqueness (if such a thing exists) or relative rarity of a particular type of cultural heritage asset gives it an added planning importance. As with the WWII Pill Boxes the Council's enthusiasm for the topic leads it to state its position at too high a level. There are points in the Council's evidence where the necessary objectivity is obscured or replaced by subjective enthusiasm.
139. It also seems clear that the harmful impact perceived by the Council is on the visitor or residential experience of those who come to properties in the Conservation Area rather than on the contributors to cultural heritage significance. This attitude also strays into a topic already explored in relation to Haile Sand Fort; a perceived disincentive to invest because the Council takes the view that people will be put off by the turbines. When the Council says that

there will be “permanent substantial harm caused by 8 industrial turbines to 115m high, [which] puts this designated heritage asset at more risk than anything the elements can throw at it” it demonstrates subjectivity, enthusiasm, but not necessarily good objective judgement. The judgement is not based on the facts of the case.

140. Turning to the evidence of the Appellant, it does not shy from a careful exploration of the significance of the asset, and of the contribution which setting makes to that significance. It takes a more measured view than the Council towards the predicted effect of the development on the significance of the asset, noting that the key views out to sea from the top of the dunes will remain unaffected. It is also noted that the designation was made, in the view of the Appellant, to protect the distinctive character of this development with its “remarkable diversity of small, densely packed chalets”. This element of significance will be unaffected by the proposed development. Taken in the round there will be no harm to the significance of this asset.
141. In conclusion, in relation to heritage assets, the best evidence is that of the Appellant. The planning balance should take into account only the findings of harm at the lower end of the scale of harm in respect of the church of St Peter and St Paul, Tetney. The Appellant’s view is that the magnitude of adverse effect in the case of St Peter and St Paul, Tetney would be “slight”, equating to the lower end of the range of “less than substantial harm”.

#### *Development Plan Policy Considerations*

142. Although in the view of the Appellant more weight should be given in this appeal to the Framework and to other Government policy it is nonetheless necessary to have regard to section 38(6) of the 1990 Act. The relevant Local Plan policies in this appeal within the development plan are A4, C2 and C11. Relevance and weight to be given to these policies is noted earlier.
143. Based on the evidence the development would not give rise to any breach of Policy A4 since there is no unacceptable harm to the amenities of people living or working in the area. Turning to Policy C11 it is clear on the evidence, noting the neutral position of the local planning authority, that there will be no harm to the quiet enjoyment of the AONB and certainly no harm to the distinctive character of the designated area, so that there would be no breach of C11.
144. In relation to Policy C2 there would be a breach of this policy in that development would, on the evidence of the Appellant and the Council, cause harm to the setting of Tetney Church and thus fail to preserve that setting. The weight to be given to this finding is addressed in the planning balance.
145. It is the case that the development plan must be read as a whole. Conflict with one policy does not mean that there is a breach of the development plan when read as a whole. In this case the position is more confusing because the development plan is silent on renewable energy. Therefore it is suggested that a breach of policy C2 has little weight in terms of compliance with the development plan as a whole precisely because of its silence on renewable energy. Nevertheless the breach of C2 goes into the planning balance.

### *Planning Balance*

146. The Secretary of State has on several occasions overturned the recommendation of professional, independent, appointed persons. That might seem to signal a change of policy towards onshore wind. With regard to local opinion the report of the Planning Officer to committee records local support and objection. A substantial number of letters of support were received during the application process and a further 370 of letters of support during the appeal process. The mapping produced by the Appellant<sup>31</sup> shows that many letters were signed by people living near to the development (in Humberston and Tetney) as well as further letters signed by those living within the wider, but still local, area. The rebuttal evidence of the Appellant is commended. This drew out points from the recent report from ComRes which focussed on the impact that political parties' views on onshore wind would be likely to have on voting amongst the electorate. Contrary to the apparent perceptions of a number of Government Ministers this survey records a high level of support for onshore wind, while a total of 75% of those surveyed either said that they would vote for a local election candidate that would support wind farms or that the issue of wind farms would make no difference to their voting habits.
147. This pattern of views is repeated throughout the survey and this evidence is commended in the context of evidence from MWAG. The MWAG witness was cross-examined on the real support it enjoys within the community. He brought evidence that 250 people had attended a local meeting and expressed opposition to further wind energy development in East Lindsey. He also drew attention to the results of a survey by Lincolnshire County Council (online), involving expressions of concern in relation to onshore wind from 1,326 people. These are tiny figures in a local context and in a county context. MWAG cannot say that the majority of people living in the local area or in Lincolnshire generally oppose the proposed development.
148. It is frequently claimed by people in the position of MWAG that they speak for the majority. It is important that it should be recorded that there is no evidence to this effect at all. Although planning should not be carried out by plebiscite it is clear from announcements of the Secretary of State, and from some appeal decisions issued by him, that importance is increasingly attached to the opinions of local people. Therefore it is right to record the lack of any evidence of a majority against this development. Government policy has not changed since EN-1 and EN-3 and the Framework were published. The correct policy framework for this appeal is EN-1 and EN-3, the development plan, the Framework, and the PPG.
149. Turning to Government policy paragraphs 6.17 – 6.18 of the Appellant's planning proof of evidence are relevant, concerning DUKES 2013<sup>32</sup> and the Renewable Energy Roadmap Update of November 2013<sup>33</sup>, which provides sufficient energy policy context for this appeal. The proof of evidence is commended in relation to the content of this document. In particular Figure 5 of the 2013 Update is relevant, which shows the acceleration in the rate of delivery

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<sup>31</sup> Appellant Document 12

<sup>32</sup> CD 6.29

<sup>33</sup> CD 6.5

of energy from renewable sources and which is required in order to meet the 2020 Obligation. Figure 5 reveals that the contributions from the heat and transport sectors are not increasing significantly, thus placing greater reliance on renewable electricity, including onshore wind, to achieve the quantity of energy from renewable sources required. The Update also refers to the consistently high levels of public support for renewables.

150. As noted above the acknowledged breach of Policy C2 in the development plan should be given limited weight given the absence of a renewable energy policy in the development plan and the common ground with the Council that the primary policy focus on this appeal will be on the Framework.

151. Turning to section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 the Appellant has identified some harm to one cultural heritage asset (the church of St Peter and St Paul Tetney), as previously noted. However, evidence in chief indicates that the harm that would be occasioned to this asset is at the lower end of the scale. That judgement is material to the weight to be given to the presumption against granting a planning permission which results from a finding of harm (taking the Judgement of the Court of Appeal in the Barnwell case<sup>34</sup>). In this case the presumption is significantly outweighed in the planning balance by the need for and the benefits of this development within the overall planning policy context of the Framework, NPS EN-1 and EN-3 and the Renewable Energy Roadmap Update 2013.

152. Also relevant to the planning balance are the benefits of the proposal, as summarised by the Appellants in paragraphs 6.34 – 6.49 of the planning proof of evidence, which should be given significant weight.

153. Turning to the Framework, in terms of paragraph 98, the proposed development should be approved because it has been demonstrated by the Appellant that such adverse impacts as arise (and which are inevitable with any wind farm of this scale) are acceptable, or can be made acceptable, by imposition of the conditions which have been before the inquiry. This is the right scale of development for this location. The location of the development is also appropriate, and planning permission should be granted for Bishopthorpe Farm wind farm.

### **The Case for East Lindsey District Council**

In this section it will be clear where I have had regard to the comments made by the Appellant regarding the Council's closing submissions. I have also made reference to some disagreements which are outstanding. The main points of the Council's case are:

154. The Council has two reasons for refusal. The first relates to landscape impact and visual amenity, and the second concerns harm to various heritage assets. The Council has considered the other issues at play, but for the reasons outlined in the Report to Committee<sup>35</sup> does not argue they form the basis for refusing the scheme.

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<sup>34</sup> CD 7.6

<sup>35</sup> CD 13.4

### *Landscape and Visual Impact*

155. There is a measure of agreement between the Council and the Appellant on the landscape and visual impacts of the scheme. The differences are helpfully set out in the table submitted at the start of the Council's oral evidence<sup>36</sup>. Furthermore, there seems to be no dispute that where there are significant cumulative effects with other wind energy developments, Bishopthorpe itself will already cause significant landscape and visual effects. As such, the individual impact of the proposed development is central.
156. There are a number of landscape character assessments - national, regional and local - that cover the appeal site. They are all important in informing the assessments that have been made and together form a comprehensive picture of the landscape character in and surrounding the site.
157. The Council explained in evidence why the National Character Area (NCA) profile (42. Lincolnshire Coast and Marshes)<sup>37</sup> is particularly helpful, as well as the East Midlands Regional Landscape Character Assessment. Both studies are relatively recent and go into considerable detail about the area. Furthermore, the NCA profiles are expressly referred to in the NPPG under the heading '*How can the character of landscapes be assessed to inform plan-making and planning decisions?*' The Appellant's witness agreed in cross examination that the NCA profile is an important document and that significant weight can be attached to it.
158. It is important to note that the most recent NCA 42 Profile wasn't addressed in the Appellant's evidence and consequently, it did not assess the development against the Statements of Environmental Opportunity (SEO) that the profile indicates at page 2 are there to provide guidance on the critical issues, to help to achieve sustainable growth and a more secure environmental future. It is clearly necessary therefore to have regard to that guidance in the pursuit of sustainable development.
159. While the Appellant sought to dismiss the NCA profile as a broad assessment, it was accepted that a number of the key characteristics on page 7 of the profile applied to the area surrounding the appeal site - that there is undeveloped wild coast; parts of the surrounding area are tranquil - increasing as you move south away from the Humberston Fitties Conservation Area; and that the area is important for tourism and recreation. It is not suggested that every part of the profile will apply to the area surrounding the appeal site, but there are parts that are highly relevant and should not be ignored.
160. The Council highlights two of the Statements of Environmental Opportunity that are particularly relevant - SEO 2 and SEO 4. Part of SEO 2 is to encourage a strategic approach to land use planning to conserve and enhance the historic landscape and heritage features, encouraging initiatives which contribute towards green tourism, enhance green infrastructure links, manage the pressures of flood risk and climate change, and ensure that infrastructure developments, such as offshore wind turbines do not contribute negatively to the character of the area.

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<sup>36</sup> LPA Document 4

<sup>37</sup> CD 10.17

161. Further text accompanying the SEO on pages 24 and 25 give examples of how the opportunity might be achieved. The development conflicts with a number of them; it fails to retain key views of the Wolds from the coast and it fails to protect the tranquil and remote character of the flat, open, low-lying Outmarsh and the coastal area.
162. The Appellant's witness agreed in cross examination that the wind farm would occupy a prominent position given the proximity of the beach, the local opportunities for recreation, as well as nearby tourist development. Accordingly, the proposal also conflicts with SEO 4 that seeks to conserve and enhance the character of the traditional seaside resorts and the long sandy beaches which help to make the area an important tourist destination; improve opportunities to enhance people's enjoyment of the undeveloped areas along the wild coast with its expansive coast and marsh landscape and its coastal features and wildlife, while protecting high levels of tranquillity and the extensive, open views both inland to the Wolds and also out to sea.
163. As can be seen from viewpoint 4 [Figure 3.6]<sup>38</sup> and as was accepted by the Appellant's witness, the proposed turbines would become the dominant element in the view from that viewpoint towards the Lincolnshire Wolds AONB. While it is true that the development would be permeable, as the Council witness explained, the number and scale of the turbines meant they would draw attention away from the long distance views with the effect of dominating that part of the coast.
164. The words 'remote', 'tranquil' and 'isolated' appear time and again in all three of the landscape studies, as well as in representations made by members of the public. The Appellant's witness at 4.4.24 of his proof of evidence also comments that the site is "remote and isolated" although he sought to qualify his position on this matter. This follows from the Appellant's planning witness characterising the locality as 'developed'. A further 8 turbines does nothing to protect the remoteness and isolation that is indeed characteristic of the area.
165. It cannot be ignored that there is some development to the north, including Humberston and Thorpe Park, but both the Council and the Appellant are agreed that there is a transition between those areas to the north of the appeal site and the coast to the south of the Fitties once you get beyond the Conservation Area. At that point, there is little in the way of built development. The Council has explained in evidence that the existing Newton Marsh turbines have been accommodated, but a two turbine development is a very different proposition from a 10 turbines development of larger structures that are closer to people enjoying the area and the coast. The oil tanks referred to are also relatively inconspicuous; they do not break the skyline and do not interfere with views from the coast to the Wolds. Even the ES recognises that existing development (the oil tanks) are *'relatively inconspicuous as a result of sympathetic coloration which integrated the structures within the vegetated landscape.'*<sup>39</sup> It is clear to anyone visiting the appeal site, the beach to the east and the footpaths that surround it, that the area cannot fairly be described as 'developed'. That is not to say there are not visible human influences - but they do not detract from the overall experience.

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<sup>38</sup> CD 13.3 - SE12

<sup>39</sup> CD 13.1 p5-24, para 5.3.7.1.4

166. It should also be noted from the NCA profile that the character area as a whole is relatively inaccessible. Public rights of way are limited and only 1.4 per cent per cent of the NCA is publicly accessible. In contrast to that overall position, the area surrounding the appeal site is extremely accessible. Figure 3 produced by the Council's witness indicates the number and extent of footpaths and lanes in the area, and the Louth Canal promoted walk also encircles the appeal site. The area is clearly an important recreational resource and people who are there would be enjoying the landscape. It is not a place where people can just find themselves, or arrive at by mistake. They have to travel there, and the character of the area is the obvious attraction to those high sensitivity users. The Louth Navigation Trust walk leaflet 'Two Sea Forts and a Canal' confirms as much in the Introduction that tells the reader "*The experience is exhilarating yet tranquil, no wonder so many birds choose to live here*".
167. The Council has also considered the East Midlands Regional Landscape Character Assessment (EMRLCA)<sup>40</sup> which is a document produced by the Appellant. The document, as the Appellant agrees, goes into considerable detail about the area surrounding the appeal site, including the physical, cultural and perceptual elements. Appendix 2 of the Council's proof of evidence shows the character areas covered by the study. The appeal site falls within area 2a 'Settled Fens and Marshes' and is adjacent to area 1a 'Coastal Saltmarshes and Mudflats.
168. In terms of the land to the east of the site, where the Appellant accepts significant adverse landscape effects will occur, the profile gives an impression of a natural, wild, remote, tranquil and undeveloped landscape with little evidence of human intervention - albeit evidence of past military uses is noted. That same document acknowledges that the aim should be to protect the landscape and "*limit the long term impacts of human activity and ensure that existing and any future facilities and access to the saltmarshes are carefully controlled in order to retain the wild and remote character.*" Clearly the introduction of 8 new turbines is contrary to that aim. It will not retain the wild and remote character. That is so despite the fact the development is in the adjacent character area, and so the impact will be 'indirect'. The size of the turbines combined with the local topography and prominent location means that significant effects extend over a long distance.
169. In respect of the character area in which the development is to be located, the EMRLCA again uses the words 'remote', 'isolated' and 'tranquil'. They are recurring themes insofar as the location surrounding and including the appeal site are concerned. It was accepted in cross examination that those words fairly represent the area and that a wind farm would have an adverse impact on those qualities to varying degrees. Further, the document notes that "wind energy schemes are a common feature of this landscape due to the strength of the prevailing winds off the North Sea" and that "new wind energy schemes will create visual landmarks in this predominantly flat landscape and reduce the sense of remoteness and isolation." It is imperative therefore that such schemes are sensitively located.
170. The text goes on to suggest that "*schemes should be sited away from prominent locations. The impact on long distance views from the coast and areas inland should also be considered.*" The scheme fails against that aim in 2 ways. First, its

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<sup>40</sup> CD 10.14

proximity to the coast, tourist developments and well used footpaths means the appeal site is undoubtedly prominent. Secondly, the scheme would coalesce with the Newton Marsh turbines to create a visual barrier interrupting views between the coast and the inland areas extending to the Wolds.

171. The Appellant's case considers the impacts on visual receptors — it finds people to be 'neutral' because there is likely to be a range of opinion in which some people find wind farms attractive and others do not. However, that approach conflicts with the approach to landscape receptors where the effects of wind farm development are considered to be adverse. That is a difference between the parties, because the Council's evidence considers the impacts on people living in and visiting the area to be adverse.
172. It cannot logically follow that an adverse effect on landscape character could translate into a neutral effect for those people who are perceiving and enjoying the landscape. It might be right to say that some people will not consider the impact adverse (although to say that people who like turbines will like them in this particular location is something which cannot be known) but there are certainly those who won't. People don't presently visit the coast near the appeal site and walk the local footpaths in order to see wind farms. For those who enjoy looking at wind farms, there are a number of places they can go. For those who presently enjoy the open, remote and tranquil landscape in this area, they will be deprived of that experience for a significant length of time. Furthermore, it is of little assistance to the decision taker to categorise an impact as neutral - it does not assist in determining whether or not the development is acceptable in the proposed location and meets the test of paragraph 98 of the Framework.
173. Accordingly, it is fair to judge the impact of wind turbine development as adverse for visual receptors. The approach is supported by a number of documents before the inquiry.
- i) The SNH guidance on 'Siting and Designing Wind Farms in the Landscape' starts with the assumption that wind farms have an adverse effect on landscape and visual amenity that can be minimised if they are properly sited and designed [para 1.14].<sup>41</sup>
  - ii) NPS EN-1, under the heading 'Visual Impact' at 5.9.18 comments that; *"All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The IPC will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project."* The juxtaposition of visual effects with the benefits of the project clearly emphasises that the former is to be taken to be a negative impact. The same paragraph refers to the vulnerability of coastal areas to *"visual intrusion because of the potential high visibility of development on the foreshore, on the skyline and affecting views along stretches of undeveloped coast"*.
  - iii) Further, there are a number of appeal decisions that have fairly assessed the identified visual impacts as adverse. One example is the Laburnum

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<sup>41</sup> CD 10.8

Farm decision<sup>42</sup>. The Inspector in his report found that *"Though there are always some people who will find such simple structures elegant and attractive, it is fair to assess impact on the basis that it is adverse."*

174. Another area of disagreement between the Appellant and the Council is in respect of the distance over which there will be significant landscape and visual effects. It is useful to refer to the table<sup>43</sup> produced by the Council's witness at the start of his evidence that highlights the areas of disagreement. In summary the main difference is that the Appellant limits the significant impacts of the development to up to 1 km from the development, whereas the Council considers that in respect of the host (local) landscape character areas J1, and adjacent areas K1 and the Coastal Conservation Area, the significant effects extend up to 2km.
175. Despite the assertion in the Appellant's proof that *"significant effects on landscape character arising from wind farms are generally confined to the immediate vicinity, being of High magnitude within up to 1 km of the turbines (where the turbines may become the dominant characteristic of the landscape)"* the issue was narrowed significantly at the Inquiry with the Appellant's witness accepting there is no hard and fast rule and that significant effects could and did extend further.
176. The relevance is that the increased distance accepted extends to a much greater area of the adjacent coastal landscape in which there are a number of footpaths as well as the promoted Louth Canal Walk, and also the beach which is scarcely mentioned throughout the Appellant's extensive evidence. Accordingly, the significant impacts of "I am in, or at, a wind farm, where the turbines are the dominant characteristic" are much greater than the Appellant's original assessment.
177. The Council has produced two viewpoints from the beach itself (figures 4 and 5 in the appendices to the proof) demonstrating the dominance the turbines would have at those locations where there are no sand dunes to provide visual separation between the beach and the turbines. The wind farm would be an ever present feature that would significantly detract from the experience and enjoyment of the area.
178. A further difference lies in the treatment of the Coastal Conservation Area (CCA) designation. The area is protected by Policy C14, and while not a landscape designation, part of the reason the CCA was designated was to protect the undeveloped character of the coast. The Appellant's witness accepts that significant landscape effects can occur up to 1.5km from the appeal site which goes right into the CCA to the beach, and it is therefore an important material consideration in the determination of this appeal.
179. The CCA designation encompasses different character areas locally described as character areas J1 and K1 (or 2a and 1a in the EMRLCA). The full extent of the CCA can be seen on figure 3 prepared by the Council's witness appendices. Accordingly, it makes sense to consider the published characteristics of those LCAs in the assessment of the impact on the CCA. The Council considers the CCA to have a high/medium overall sensitivity such that the effect up to 2km is Major - Moderate and thus significant. The Council also considers the up-to-date

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<sup>42</sup> CD 8.34

<sup>43</sup> LPA Doc 4

guidance in GLVIA 3<sup>44</sup> in its evidence that makes reference to a range of criteria in establishing the value of any landscape. The guidance notes at p.80 that designations are usually the starting point, but at page 84, box 5.1, lists a range of factors that can help in the identification of valued landscapes.

180. Having carried out that an assessment in line with that guidance, the Council concludes that by applying current guidance on landscape value to the CCA, the area scores highly against most of the relevant criteria. Further the Appellant has had regard to the interrelationship between the CCA in determining the susceptibility of the landscape to change. Logically it falls between the 'medium' of character area J1 and the 'high' of K1.

181. Confusingly, the scale of impact is also categorised by the Appellant to be small, despite the approach taken to areas J1 and K1 where the scale of change is considered to be large. The inherent conflicts in the Appellant's approach do not add up and the Council's approach is to be preferred. There will clearly be a significant adverse effect on the CCA which is contrary to its reason for designation and will conflict with the aims of Policy C14.

182. In conclusion on landscape matters, the Appellant has failed to appreciate the full magnitude of the likely adverse effects of the appeal development. The appeal site is located in a prominent position, and in a landscape enjoyed by a high number of visitors who are highly sensitive to adverse change in the landscape. The true character of the area has been overlooked with the Appellant's evidence focusing on the few 'developed' elements within the landscape that ignores the reality of remoteness and tranquillity that is identified by the various landscape studies. While the differences have been narrowed through oral evidence, it is clear from the concession by the Council's witness in cross examination that the extent of the impacts has also been downplayed. This raises fundamental concerns about the accuracy of the Appellant's landscape and visual assessment.

#### *Heritage Assets - General*

183. The Council's heritage reason for refusal concerns a number of different heritage assets that will be addressed in turn. These are:

- i) Church of St Peter and St Paul, Tetney (Listed Grade I) ('Tetney Church');
- ii) Coastguard Cottages, Tetney Lock (Listed Grade II);
- iii) Haile Sand Fort (Listed Grade II);
- iv) Undesignated WWII coastal defence structures;
- v) Humberston Fifties Conservation Area ('HFCA').

184. As part of his appendices, the Council's heritage witness has produced a 'Summary of National and other Relevant Historic Environment Guidance and Advice'. He also outlines the recent High Court and Court of Appeal decisions in the Bamwell Manor<sup>45</sup> case from page 7 in his proof of evidence. It does not appear there is any disagreement between the Appellant and the Council that

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<sup>44</sup> CD 10.2 - Guidelines for Landscape and Visual Impact Assessment – Third Edition (2013)

<sup>45</sup> CD 7.5 and 7.6

those policy documents and decisions provide the appropriate decision making framework relevant to this appeal. In particular:

- i) It is agreed that no physical harm will occur to the relevant heritage assets - the harm to significance of the assets arises from harm to their setting;
- ii) Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged, because there will be no development within the Conservation Area itself - rather it is development in the setting to the HFCA;
- iii) Section 66 of the same Act is engaged in respect of the three listed buildings noted. That section provides that the decision taker shall 'have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses';
- iv) Preservation means doing no harm;
- v) Where section 66 is engaged, there is a presumption against the grant of planning permission, albeit that presumption is rebuttable.

185. The recent Court of Appeal decision in Barnwell Manor provided authoritative guidance on the correct interpretation of section 66. That decision has been followed in the recent Forge Fields<sup>46</sup> case where, in a key paragraph, Lindblom J said:

*"49 This does not mean that an authority's assessment of likely harm to the setting of a listed building or to a conservation area is other than a matter for its own planning judgment. It does not mean that the weight the authority should give to harm which it considers would be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But it is to recognize, as the Court of Appeal emphasized in Barnwell, that a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering."*

186. In this case it is accepted by the Appellant that the development would result in harm to the setting of Tetney Church, a Grade I listed asset deserving of the highest level of protection. In those circumstances, the section 66 duty applies with particular force. The Appellant also identified "adverse effects" to the Fifties Conservation Area. While section 66 doesn't apply there, it was agreed at the inquiry between the parties that the term "great weight" within para 132 NPPF has substantially the same meaning as "considerable importance and weight" in line with section 66. That is important, because unlike section 66, para 132 applies not just to Listed Buildings, but to any designated heritage asset such as Conservation Areas, and

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<sup>46</sup> CD 7.8

- the agreement confirms that the assets and indeed any harm to them are to be treated comparably.
187. Accordingly, even on the Appellant's case, following the Barnwell Manor and Forge Field Judgments, the 'strong' presumption against the grant-of planning permission is engaged. Further, even if the Appellant is right, and the harm is less than substantial, that does not amount to a less than substantial objection to the grant of planning permission; considerable weight attaches to the harm that has been identified even on the Appellant's case, and the presumption against the grant of permission applies. That presumption applies with even greater force if the Council is right and it is accepted that the harm caused to the assets identified is substantial.
188. In respect of the Framework, both the Council and the Appellant have had regard to part 12 concerning the conservation and enhancement of the historic environment. However, the Appellant identifies 'adverse effects of negligible magnitude' that he contends does not reach the Framework's definition of 'less than substantial harm.
189. That cannot be right, because the Framework only recognises 3 levels of harm. Either there is no harm, or if there is some harm, harm is either substantial or less than substantial. The Framework doesn't seek to set any other threshold, or indicate another level of less harm. It does not recognise a level of harm that is not great enough to meet the NPPF threshold such as the 'adverse effect of negligible magnitude' identified by the Appellant. There is no policy support for the approach taken by the Appellant - harm is harm. Furthermore, the Framework provides no guidance as to when harm will cross the threshold between less than substantial and substantial - that is a matter of judgment and is where the difference lies between the Council and the Appellant<sup>47</sup>.
190. The Council's witness sets out in evidence a methodology for addressing the threshold, but accepted in cross examination that the methodology was to provide a framework for decision taking - but not one that should be applied in mechanical way. He accepted that such an approach could lead to erroneous results, and that caution should be exercised in applying the matrices. So much is obvious from the ability of 'undesignated assets' to be assigned to any level of importance criteria in table 1.2 of the evidence - that in itself is recognition that all heritage assets are capable of ascending and descending the levels of importance within that table.
191. What is concerning about the tables however, is the criteria at table 1.1 for determining the magnitude of impact on the significance of heritage assets. Within that table, it is only the *'total loss or major alteration'* of an asset, or *'change in its setting, leading to the total loss or major reduction in the significance of the asset'* that will qualify as 'substantial harm' for the purpose of the Framework. Where there is a *'loss or alteration of one or more key elements of the asset or a change in its setting, leading to a considerable reduction in the significance of the asset'* then that will amount only to less than substantial harm.
192. It is clear that this methodology sets the threshold too high, for the following reasons.

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<sup>47</sup> It should be noted that the Appellant does not agree with paragraphs 188 and 189 above as explained in the Document APP 18, paragraph 6

- i) It was accepted that the significance of assets can be made up of a number of different elements – it was said in cross examination that it would be unusual to find an asset where there was only one element of significance. However, the Appellant assesses harm by impact on the significance of an asset as a whole rather than harm to any particular element of significance;
- ii) According to the Appellant's methodology, so long as one element of significance remains, there cannot be substantial harm because that would not be a 'total loss or major alteration'. The approach was confirmed in cross examination;
- iii) In respect of Tetney Church, the Appellant's witness, together with the Council identifies significance in the architecture of the building, and accepted in cross examination that applying his methodology, so long as the physical fabric of the Church remained intact, there could not be substantial harm, even if a turbine was erected next to the Church in the graveyard. In other words, it is only where the significance of an asset derives only from the setting that there could ever be substantial harm to it by development in its setting. Point i) above makes that unlikely<sup>48</sup>.

193. Such an approach does not find support in the Framework which does not set that threshold, or in the NPPG which says under the heading 'How to assess if there is substantial harm?' *"...In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting."*

194. The guidance focuses on 'a key element' of the interest and is therefore clear that there does not have to be an impact on all elements of the significance for there to be substantial harm, which is the approach taken by the Appellant. Further, the guidance makes clear in the same paragraph that *"What matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset. As the National Planning Policy Framework makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting"* thereby acknowledging that development affecting only the setting can lead to substantial harm.

195. The high threshold approach taken by the Council's witness has coloured his whole approach. Focusing on harm to the asset as a whole rather than elements of its significance dilutes the impact and in part, explains why he has found much lower levels of harm to the relevant assets than the Council.

196. The Appellant's approach has been further coloured by an erroneous view that the silence of English Heritage (EH) as to the harm the Council has identified in some way supports the Appellant's case. That cannot be right - if it had been, EH would have said so. What EH did in fact say was that the application should be

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<sup>48</sup> Inspector's Note - Although this subparagraph reflects the Council's understanding I concur with that of the Appellant at Doc APP 18, paragraph 7

determined *"in accordance with national and local policy and on the basis of your specialist conservation advice"*. That is precisely what the Council did. It was accepted in cross examination that that was a perfectly proper recommendation and that to construe the recommendation as confirmation that EH found no substantial harm to the relevant assets was pure conjecture.

#### *Heritage Assets – Specific Assets*

197. Tetney Church. The Church sits on slightly higher ground, and has an impressive tower commanding views over the marshes. The Council's witness explains that Tetney is recorded as Tatenaya in the Domesday Book, from the old English name Taete's island. Tetney, as its name suggests, is situated on a distinct island of land in a low lying marshy coastal area, and so *"it is reasonable to assume that it was marsh and pasture during the Middle Ages and the Anglo-Saxon period, as the place-name suggests. Consequently, the view of the church tower is long established and the historic settlement of Tetney which developed along this slightly higher ground - with the church occupying a visually dominant position right on the southern edge of the higher ground commanding views from 'the island' over the marshes but probably more significantly commanding the views from the marshes."*
198. The Council's witness also explains (by reference to the Statement of significance submitted by church architect for Faculty)<sup>49</sup> the archaeological, architectural and historical significance of the church as well as the particular contribution the views of the Church from the south makes to its significance. From the south, both historically, and today, the Church and particularly its 15<sup>th</sup> century tower is experienced as a dominating presence - that was the way it was intended to be experienced. It is the Council's case (as demonstrated by the Appellant's photomontage [CHVP 8 Figure 4.6b]<sup>50</sup>) that from the south, the setting of the Church will be 'crowded out by rotating turbines which loom up above, not just behind the Church' such that the visual dominance of the Church would be lost.
199. The Appellant accepts that there will be harm, albeit that harm will be less than substantial harm because he says the majority of the significance of this Church will be unaffected by the proposed wind farm. In cross examination, however, it was accepted that views of the Church from the south are a key element of its significance; that the Church was designed to be a visually dominant structure in the landscape; that the Church is a local landmark and a focal point in the parish; and that the turbines would introduce an element of visual competition, thereby harming the significance of the Church.
200. It is part of the Council's case that the harm caused by the competing turbines would cause substantial harm to the significance of the Church and while The Appellant focuses on the significance of the fabric of the Church, the Council makes the point that the way most people experience the asset is as a focal point in the landscape when they are travelling towards Tetney. From that perspective they are not appreciating the architectural particularities, but the dominance of the building designed to overlook the marshes.

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<sup>49</sup> Proof of evidence Appendix G

<sup>50</sup> CD 13.3, SEI2

201. The Appellant agreed that it is not possible to divorce the way in which an asset is experienced by ordinary people from the assessment of significance. Indeed, the EH Conservation Principle Guidance<sup>51</sup> recognises that "*The significance of a place embraces all the diverse cultural and natural heritage values that people associate with it, or which prompt them to respond to it*" and that "*In order to identify the significance of place it is necessary first to understand its fabric, and how and why it has changed over time; and then to consider: who values the place, and why they do so.*" Clearly the way in which an ordinary member of the public perceived an asset is a highly material consideration.
202. The dominating position of the church was mentioned by a number of local people in their representations to the Inquiry. One of those spoke in her presentation of the striking tower of Tetney Parish Church sitting on higher ground.
203. It may be that it is only one view of the Church that is harmed by the development, but the view is key. The EH guidance on setting<sup>52</sup> at page 19 lists a number of features that might form part of the experience of an asset within its setting, and includes "views from, towards, through, across and including the asset" and "visual dominance, prominence or role as focal point" and at page 6 acknowledges that "some views contribute more to understanding the significance of a heritage asset than others". That is certainly the case with the Church given that views from the north, east and west are largely obscured. That makes it even more important to preserve the view from the south in which the Church and its impressive tower overlooking the marsh should remain the dominant structure, and not visually intrusive industrial structures that compete with and obscure the significance of the Church.
204. The appeal proposal would undoubtedly cause substantial and unacceptable harm to the significance of Tetney Church. The Church is an asset of the highest significance and as such, substantial harm should be wholly exceptional.
205. Coastguard Cottages. The Council has assessed the significance of the coastguard cottages, and while much is still not known about these heritage assets, their location next to the Louth Canal is important. It is their *raison d'être*. The Council has carried out extensive research in respect of the cottages, and the changes that have taken place as their role in controlling trade along the canal evolved into a broader function associated with life saving. Originally, the cottages were built to control sea trade into the canal and are best experienced from their setting that includes the canal. From there their small scale and solid, almost garrison-like appearance is distinctive and memorable, as noted in evidence. The cottages are prominent despite their small size. However, the visible rotating turbines overhead would impact adversely on the way in which they are experienced - their relationship with the Louth Canal and their authoritative and defensive architectural distinctiveness and significance.
206. The Appellant accepts that the setting, close to the canal and lock, contributes to the historical interest and significance of the cottages. However, it is the Appellant's case that there will be only visual distraction, not competition, that the development

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<sup>51</sup> CD 9.5

<sup>52</sup> CD 9.1

will not impact on the ability to understand the setting of cottages, and as such there will be no harm to the significance of this asset.

207. The Appellant's witness agreed in cross examination that if the Council was right, and the cottages were intended to occupy a prominent position in relation to the canal, then there would be harm to the significance of the cottages through the competing effect of the turbines. The Council's evidence demonstrates that competing effect, and the resulting harm to the significance of the cottages.
208. Humberston Fitties. The Humberston Fitties (HFCA) were designated a conservation area because it was and is considered desirable to preserve its character and appearance. The Fitties are a collection of modest, eclectic buildings in a somewhat uncontrolled layout surrounded to the east and the south by open land and undeveloped coast. The appeal proposal, as was accepted in cross examination, would not be in keeping with the character and appearance of the HFCA.
209. The HFCA is unique - a fact that makes its conservation all the more important. It has a feeling of remoteness and being away from it all. It provides the transition between developed and built up areas to the north, and the wild undeveloped coast to the south which is a key part of its setting and character presently enjoyed by people staying in the conservation area.
210. The Council reproduced the Conservation Area Appraisal (heritage proof appendix Q) in respect of the HFCA. Not only does the appraisal demonstrate the lengths that have been gone to to attempt to preserve the character of the area, but at pages 9 and 10 of the appraisal the landscape of and surrounding the CA is explored. The HFCA is described as having "a rugged, windswept, sun-bleached environment" and "a natural look." Furthermore, under 'Negative Factors' it is recognised that the area is 'tranquil' and that is a quality threatened by increased traffic.
211. The tranquillity of the area would be lost if the proposal were to go ahead. It would change the underdeveloped nature of the coast south of the conservation area so that there would no longer be the clear break with the developed settlements to the north and the undeveloped coast to the south. The industrial turbine array would span a significant proportion of views from the conservation area and ultimately detract from the character and appearance of it.
212. The proposed wind farm would clearly be out of keeping with the character and appearance of the conservation area. The Appellant acknowledges that harm, but argues that given the limited nature and extent of the effect, the effect is negligible. However, that is an error because harm to any part of the CA is harm to the whole; as was accepted in cross examination, you don't have to harm each and every part to cause harm to the whole. Just because there may be areas within the wider CA where views of the turbines will not be possible, that does not mean harm to the southern side can be ignored. If a development had to harm the whole of the CA before it was considered to be significant, it would be almost impossible to cause harm to any CA. The PPG under the heading *What about harm in relation to conservation areas?* confirms that harm to a part of the conservation area can be taken to amount to harm to the whole.

213. The Council also makes the point in evidence that the adverse impacts of the development have the potential to impact on the long term viability of the assets concerned. That applies not just to the conservation area but also to the coastguard cottages and the Haile Sand Fort because a key element of what people appreciate about the particular building or area will have been lost, making it a less attractive place to live, visit or invest in.
214. Haile Sand Fort and Coastal Military Installations. The Council addresses the Haile Sand Fort together with the coastal pill boxes. They have a historic significance separately, but as the ES accepts, together they form 'an interlocking defensive system' from which a great deal of their significance is drawn. The setting of the Sand Fort extends across the estuary to the adjacent shoreline where there are other military infrastructures - the pill boxes. The Appellant does not criticise the Council for considering those assets together. The Appellant did not argue that the setting of the pill boxes extended over the appeal site, though the pill boxes were designed to respond to inland attack as well as from the shore.
215. The pill boxes are non-designated heritage assets. There is no disagreement about that, and accordingly, paragraph 135 of the Framework requires that the effect of the application on the significance of those assets should be taken into account in determining the appeal.
216. The text of the SEI<sup>53</sup> acknowledges the importance of the association between the pill boxes and the Sand Fort in line with EH guidance, which recognises that intentional intervisibility with other historic assets and associative relationships between them can contribute to the significance of a particular asset.
217. The Sand Fort is visually dominant at present - it is not supposed to be a structure of beauty, but was designed as a functional military installation charged with defending the Humber. The pill boxes sit in relative isolation along the sea bank, and are experienced in much the same way today as they would have been during World War II. The setting is bleak - there is an absence of vegetation and built development, but that is what allows for the crucial intervisibility between the various structures.
218. The Appellant's witness agreed in cross examination that the setting of the pill boxes is key to their significance and the way the assets are appreciated. He agreed that the appreciation of the military infrastructure is greatly assisted by the present open setting of the area that allows the interrelationship between the different structures to be appreciated. He also agreed that the setting is largely unaltered from what it would have been when the pillboxes and sand fort were in active use.
219. It is the Council's case that the open setting as it presently stands is key to the experience of the assets and that is fundamental to their significance. English Heritage guidance<sup>54</sup> also acknowledges the importance of experience at para 114 - *"The extent and importance of setting is often expressed by reference to visual considerations. 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 associations; and, by our understanding of the historic relationship*

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<sup>53</sup> CD 9.1 p19

<sup>54</sup> CD 9.3

*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...."*

220. The Appellant's witness did accept there would be 'a marked visual change' in the setting of these assets, but said that it wouldn't detract materially from the ability to appreciate them. One reason was that turbines are permeable. However, that ignores the reality of the scale, massing and dominance of the turbines at this location and it contradicts the Council's evidence that despite the ability to see through them, the array of turbines would bring a sense of enclosure to the area. Accordingly, the key element of openness in the setting of the assets would be lost.
221. The experience of the assets would not be what it was. It would be interrupted and dominated by the turbines that would be in very close proximity such that it would harm the significance of the assets and the ability of future generations to experience the historic significance of these defence relics. Just because a person might turn towards the sea and no longer have the turbines in sight does not mean they will not have an impact on the experience as a whole - they will be difficult to ignore, and will become the dominating feature of that part of the coast, as agreed in the landscape evidence before the inquiry.
222. Accordingly there are a number of heritage assets upon which the development will impact and cause harm. The incidence and indeed the level of harm is a matter that remains in issue between the parties. What the Council's case demonstrates, if nothing else, is the inappropriateness of the location for this particular wind farm. As was said in the Council's opening - this is not a site that is located away from important interests such that turbines can be readily accommodated. The Appellant has chosen a site sitting between settlements, adjacent to important and protected undeveloped coast, a conservation area, and sited among a number of important heritage assets.
223. Even if the Secretary of State were to conclude that the harm to each asset was less than substantial, the cumulative impact is greater than the sum of the parts. Such was the approach taken in the Asfordby Appeal Decision<sup>55</sup> where there was harm to a number of designated assets (including indirect substantial harm to a grade 11\* Church). The decision includes "*While the Secretary of State accepts that each of these assets may well suffer from less than substantial harm if considered separately as being the only asset of significance, he takes the view that, looking at the sum total of the impact on so many and varied assets, the harm caused is arguably greater than the sum of its parts.*"

#### *Policy and Planning*

224. At the outset of this section it is useful to say that both parties agree little weight should be attached to the emerging plan which is some way off adoption.
225. There is wealth of policy in support of renewable energy. The Council is aware of and supports the Government stance on renewable energy - it has attributed weight to the contribution the scheme would make towards the Government's targets for renewable energy, the reduction in greenhouse gas emissions and

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<sup>55</sup> CD 8.33

towards energy security and supply. The Council also considered the benefits to the energy industry as a whole and the employment it fosters. However, those benefits have to be weighed against the adverse impacts of the proposal - some of which are accepted by the Appellant.

226. In considering those significant adverse impacts the Government's position that the need for renewable or low carbon energy does not automatically override environmental protections is noted. The principle appears in the recent Planning Practice Guidance<sup>56</sup>, and as was confirmed by the Secretary of State for Communities and Local Government in his Written Ministerial Statement: 'Local Planning and Onshore Wind,' 6 June 2013<sup>57</sup>, the National Planning Policy Framework includes '*strong protections for the natural and historic environment*' and '*we need to ensure decisions get the environmental balance right in line with the framework and, as expected by the framework, any adverse impact from a wind farm development is addressed satisfactorily.*' The Secretary of State confirmed that approach again in April this year<sup>58</sup> in the Written Ministerial Statement on local planning and renewable energy developments.
227. The new guidance is clearly intended to address the misconceptions of some involved in the field, including decision takers who considered that the bar of acceptability for renewable energy schemes should be set low enough to ensure that sufficient schemes are permitted<sup>59</sup>.
228. The starting point for determining this appeal is the development plan, pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004. The Framework does not alter that approach, but instead provides advice to decision makers on a number of matters including the weight that might be given to development plan policies.
229. The relevant development plan policies in this instance were adopted prior to 2004 and as such "*due weight should be given to relevant policies in the existing plan according to their degree of consistency with the framework (the closer the policies in the plan to the policies in the Framework, the greater the weight they may be given).*" Further, para 211 says that policies "*should not be considered out-of-date simply because they were adopted prior to the publication of [the] Framework.*"
230. It is wrong to simply say the local plan is out of date because it is old. In fact the only way a policy can become out of date is if it is a policy for the supply of housing and there is not a five year supply of housing land. It is accepted that the plan is silent on renewable energy so as to activate paragraph 14 of the Framework. There was a previous policy - ENV1 Renewable Energy Generation - which can be seen to be deleted on page 29 of the Local Plan Document<sup>60</sup> but that no longer exists. However, even though there is no renewable energy policy that does not mean the rest of the plan can be ignored or that its policies in some way become demoted to material considerations only.

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<sup>56</sup> CD 2.5

<sup>57</sup> CD 2.4

<sup>58</sup> CD 2.8

<sup>59</sup> CD 8.9 para 84

<sup>60</sup> CD 1.1

231. It is important to look at the aims of the policy as well as the wording when considering their consistency with the Framework. The recent *Chase Milton* case<sup>61</sup> provides some useful guidance on how policies should be assessed. It states: *"Further, the impact of the framework on the development plan policies can only be on the weight to be considered appropriate by the decision maker to be given to those policies. Such an exercise requires a broader approach than merely giving a particular label to particular policies. The framework says due weight should be given to existing policies according to their degree of consistency with the framework. It does not ask for a detailed textual comparison or analysis of a policy in the framework with a development plan policy leading to a question whether the two are the same or similar or even consistent."*
232. Contrary to the approach taken in that case, the Appellant has done just that. The assessment at Appendix 3 of Mr Hendley's evidence ignores what the policies are actually seeking to achieve in favour of a pedantic textual analysis that yield peculiar outcomes - like the conclusion that a policy seeking to prevent unacceptable harm to amenity (A4) conflicts with the NPPF. It is difficult to conceive of a more sensible development control policy.
233. Further, the Appellant agreed that policies A4 and C14 are restrictive but that this was not necessarily in conflict with the NPPF. As said by the Judge in *Chase Milton* he was *"not at all convinced as to the merit of giving particular policies a label and then using that label as a means to argue that they inconsistent (sic) with other policies in the Framework."*
234. The *Chase Milton* case also dealt with the *Coleman*<sup>62</sup> case that was cited in argument before the court as well as in this appeal in support of the Claimant's case. It states: *"Further, as it seems to me, the question is about the weight to be given to certain matters. The Inspector in the case [Coleman] before Kenneth Parker J plainly properly considered and properly understood both the policies in the development policy plan and the framework. He judged the latter had substantial weight. In the case before me, there is nothing to suggest, as I would see it, that the Inspector misunderstood either the development plan or the framework. He considered the latter in gauging the weight to be given to the former. The attribution of weight, as I have mentioned, was for him. This was to produce a circumstance when he said the local plan policies could be given significant weight."* And *"The closer the policies in the plan to the policies in the framework, the greater the weight that may be given. That seems to me to reflect the approach of the Inspector in this case and it is also not inconsistent with the position in the Coleman case and the position taken by Kenneth Parker J, who had to deal with the argument as it was presented before him, which came to focus upon a comparison policy by policy rather than on an overall basis."*
235. The Council prefers the broader approach taken in *Chase Milton*. Accordingly, it is necessary to consider the consistency of the four local plan policies relied on by the Council with the Framework; it is the Council's case that the policies overall are consistent with the Framework for the following reasons.

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<sup>61</sup> CD 7.9 *Chase Milton Energy Limited v Secretary of State for Communities and Local Government* [2014] EWHC 1213

<sup>62</sup> CD 7.7

236. **Policy A4.** The aims of the policy are to prevent unacceptable harm to the amenity of people living or working close to a proposed development. It cannot seriously be suggested that is not a valid aim of planning control, or that the aim conflicts with the thrust of the Framework. It is a principle of good planning, and the protection of amenity remains an important consideration both in the Local Plan as well as the Framework.
237. It is a core planning principle (para 17 NPPF) that planning should *"always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings."* In some respects that policy could be said to go further than the Local Plan Policy which sets the bar at "unacceptable" meaning the Framework demands a higher standard.
238. It is therefore clear that the policy is compliant with the Framework. Local amenity is also considered to be important in the latest guidance<sup>63</sup> and that reinforces the fact it is an important consideration that should be given "proper weight" in planning decisions. The use of the term "proper weight" might well suggest that is not what has been given to those concerns in the past.
239. Further, local appeal decisions that were decided after the introduction of the Framework have supported policy A4 as being consistent with the objectives of National Planning Policy. Accordingly, the policy attracts significant weight as does the conflict identified with it.
240. The recent Causeway Bridge Farm Appeal Decision<sup>64</sup> in dismissing an appeal against the refusal of ELDC to grant planning permission for a single turbine also confirmed in respect of policy A4 that *"there is no inconsistency between the aim of [the] Policy and the Framework or with the PPG advice on the importance of the protection of local amenity as a consideration in planning decisions relating to renewable energy developments."*
241. **Policy A5.** This policy concerns the quality and design of development and refers explicitly to the Coastal Conservation Areas (CCA) as a place where the greatest attention will be paid to the design of development. The policy also refers to the Fens and Marshes, the landscape between the coast and the Wolds where the development would be located. It says that development will only be permitted where its design does not detract from the distinctive character of the locality, and where it incorporates features or characteristics that are important to the quality of the local environment including important medium and long distance views.
242. The development does not meet with any of those aims. It is located in a sensitive area that is unable to accommodate the scale of development proposed, and as noted in the landscape section of this case, interferes with important views from the coast to the Wolds.
243. The Council attaches full weight to the policy, which finds support in both the core planning principles at paragraph 17, and at paragraph 60 of the Framework that confirms it is proper to seek to promote or reinforce local distinctiveness. The Appellant agreed that the aims of the policy in seeking to promote good design and

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<sup>63</sup> CD 2.5

<sup>64</sup> CD 7.9

- protect local distinctiveness were broadly in line with the NPPF. The policy is also consistent with paragraph 109 of the Framework (also cited in the Council's first reason for refusal).
244. The Framework does not define what a valued landscape is. It is the Council's case that the particular landscape in question has to be assessed by reference to the landscape character assessments and a judgment arrived at. It is also the Council's case that the landscape affected by this scheme is a valued landscape. Part of it benefits from a local designation (CCA) and it is an important area for leisure and recreation that hosts a number of well used footpaths and beaches used by local people, as well as visitors from nearby tourist developments.
245. The development conflicts with policy A5 as well as paragraph 109 of the Framework because it neither protects nor enhances the landscape. To the contrary the proposal would cause significant harm.
246. **Policy C2.** This too is a policy that shares its fundamental aim with the relevant paragraphs of the Framework. The Appellant's witness agreed in cross examination that the broad thrust of Policy C2 is to protect heritage assets, which is reflected in the Framework.
247. What policy C2 does not do, however, is encapsulate all of the material expressed in the relevant chapter of the Framework on 'conserving and enhancing the historic environment' which runs to 16 paragraphs. It is not in conflict with it however, and because the Framework also strives to protect and enhance the significance of heritage assets great weight should be attributed to policy C2 as well as the Framework and to the harm identified.
248. **Policy C14.** This policy prevents development in the Coastal Conservation Area unless it is essential in that area. The Appellant does not suggest it is. The explanatory text explains that the aim of the policy is to "*protect the remaining natural character and interest of the coast*" and that in the coastal areas to which the policy applies, "*the need to protect their special qualities generally overrides the opportunity to develop visitor and tourism facilities or other new built development.*" The development conflicts with that policy, and significant weight should be given to the policy, not least because it represents decades of development control that have sought to achieve protection for the undeveloped coast. It is also strongly supported by the Framework which takes a similar approach to such areas, as at paragraph 114.
249. Part 6 of the Council's witness proof discusses coastal planning policy beginning with the Lindsey County Council (Sandhills) Act 1932<sup>65</sup>. The Act was designed to prevent enclosure and inappropriate development so as to ensure free public access to the Sandhills and the retention of their unspoiled character.
250. Over the next 70 years or so the commitment to protecting the coastal area including that adjacent to the appeal site remained. There is no dispute that the present CCA designation covers the appeal site but there was some debate at the inquiry about whether or not the appeal site and adjacent coast were included in the earlier 1986 Development on the Lincolnshire Coast Local Plan [Appendix 2 of the Council's planning proof]. The Plan includes policy CCA1 - 'Tetney to

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<sup>65</sup> CD 2.6

Mablethorpe'. This is a somewhat vague description given that Tetney is in fact some way inland. It can be noted, however, that the boundary of Tetney Parish at that time did extend over the appeal site and adjacent coast.

251. In any event, the boundary now does extend that far. Again, there was some disagreement between the Appellant and Council at the inquiry about why the CCA boundary should extend westwards as it does. The Appellant views it as an arbitrary area. But the Council's witness explained in oral evidence that the boundary is located inland partly because of the relationship with the coast road. Many visitors have their first view of the coast when travelling down that road and the views from the road to the coast are seen as particularly important. An important point to bear in mind is that the landscape experts agree that there will be significant adverse visual and landscape effects arising from the development on the adjacent coastal area. Likewise NPS EN-1 also refers to the vulnerability of Coastal areas to *"visual intrusion because of the potential high visibility of development on the foreshore, on the skyline and affecting views along stretches of undeveloped coast"*. Accordingly, in order to protect that area, the land to the west is and would have to be protected from development to prevent those effects arising.
252. Policy C14 finds support in the Framework at paragraph 114 which says that local planning authorities should *"maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast, and improve public access to and enjoyment of the coast."*
253. It is the Council's case that the coast to the east of the appeal site is undeveloped. The development (as accepted in the Appellant's landscape case) will have a significant adverse effect in visual and landscape terms on that area, and accordingly, it would not maintain the character of the undeveloped coast and so is contrary to policy C14 and paragraph 114 of the Framework.
254. It is agreed between all the parties that the policies in the Framework should be given full weight as an up to date expression of Government policy insofar as they are relevant to this appeal. Furthermore, in carrying out the balancing exercise pursuant to paragraph 14 of the Framework (if it applies), paragraph 114 of the NPPF is a specific policy indicating that development should be restricted. Consequently, a conflict with that policy ought to lead to the dismissal of the appeal.

*The presumption in favour of sustainable development.*

255. The Framework's consideration of sustainable development begins on page 3 of the Framework at paragraph 11. Having made clear that sustainable development has three dimensions (economic, social and environmental) at paragraph 7, and that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system, paragraph 11 then says that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 goes on to say that the Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up to date Local Plan should be approved, and proposed development that conflicts with it should be refused unless other material considerations indicate otherwise.

256. There is therefore a balancing exercise to be undertaken, as set out in the Framework generally, and also in paragraph 14 (if it applies). It is not without going through that exercise and demonstrating that the harm does not significantly and demonstrably outweigh the benefits that a development gets its 'badge' of sustainability. It is a process that must be undertaken carefully to ensure all material matters are taken into consideration.
257. In his evidence the Appellant's planning witness seemed to advance the proposition that wind energy schemes should be regarded as sustainable development for the purposes of the Framework. He is bolstered no doubt by the reference in the Carlton Grange Decision<sup>66</sup> at paragraph 41 to "inherent sustainability". However, the Inspector there does not say that there is no need for a balancing exercise to be undertaken. He expressly recognised this at paragraph 43 in saying "*The NPPF's presumption in favour of sustainable development makes particular sense in this regard. However, that is not to say that anything goes. Schemes which would cause significant and demonstrable harm should not be permitted, but those which can be accepted should be approved as soon as possible irrespective of whether a particular region or district has 'done its bit' in meeting any targets set out in the relevant development plan.*"
258. Rather, then, the proper analysis in cases such as this where the development plan is silent as to the need for renewable energy, is that the scheme should be viewed in the context of the presumption of sustainable development, not automatically as sustainable development in the first place. To do so would disregard an important process.
259. In addition there is no reference to inherent sustainability in the Framework. The Framework suggests that some development should be considered in the context of the presumption of sustainable development, such as at paragraph 49, but that is not the same as saying something is inherently sustainable. Furthermore, if it were correct that viewing something in the context of sustainable development meant that it were automatically sustainable development, then no housing scheme or wind farm, on the Appellant's case, could ever be refused. That conclusion would be irrational, and clearly not what the Framework intended to convey. Paragraph 98 explicitly recognises that applications should be approved only where their impacts can be made acceptable.

*The Framework Paragraph 119*

260. This states that "*The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.*"
261. The paragraph is relevant to this appeal because the decision taker will be required to carry out an appropriate assessment in respect of the proposed wind farm. A shadow assessment has been carried out indicating that there are unlikely to be significant effects arising from the development but that is not an end to the decision making process. Paragraph 119 still applies - if it were not

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<sup>66</sup> CD 8.9

meant to then it would have said so. Accordingly, when the paragraph is construed so that the words are given their plain meaning, it is clear that paragraph 14 does not apply to the determination of this appeal. No other interpretation is possible.

262. In the circumstances, the test is as it always has been - that the proposal should be determined in accordance with the development plan unless material considerations indicate otherwise. One material consideration is paragraph 98 of the Framework that says such applications should be approved if its impacts are or can be made acceptable. Accordingly, any residual unacceptable impact, no matter how small should lead to the refusal of permission. Importantly, what falls away as a result of paragraph 119 is the different standard that the development should be approved unless the adverse impacts of doing so would 'significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole' because that does permit a level of adverse impacts in the overall balance.
263. The issue of Framework paragraph 119 arose towards the end of the inquiry. The Council throughout its evidence has assessed the scheme against the paragraph 14 and 98 tests and concluded that the development cannot be made acceptable and that the adverse impacts of it significantly and demonstrably outweigh the benefits such that permission should be refused. The Council's position is strengthened if it is concluded that the test in paragraph 14 of the Framework does not apply.

#### *Other Appeal Decisions*

264. The Newton Marsh Appeal Decision<sup>67</sup> was cited by the Appellant in support of their case. The decision granted consisted of the two wind turbines at the nearby Sewage Treatment Works in 2009 which have recently become operational.
265. That decision (which was issued following the written representations procedure) was made a long time before the Framework, the latest ministerial statements, and guidance on wind energy developments. The proposal was for only two wind turbines and not a wind farm, and the Inspector arrived at conclusions that the Council's witnesses consider to be inapplicable in this appeal. For example, the Inspector considered that the turbines would add an 'interesting feature' to the 'horizontal monotony of the out-marsh.' However, up-to-date guidance recognises that wind turbines can have a damaging effect on landscapes that are predominantly flat as much as in hilly or mountainous areas.
266. The Council's landscape witness deals with his concerns about the decision in part 6 of his proof. In particular, he comments that the Inspector, in his opinion, "placed too much emphasis on the detracting elements of the local landscape, which are more notable when viewed from the west." This witness identified the wild and remote character of the coast, as well as the views inland towards the Wolds, which are features that were not addressed in the Newton Marsh Appeal decision.
267. The Council does however draw some comparisons between the present case and the Anderby decision<sup>68</sup>, where the Inspector dismissed the appeal having

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<sup>67</sup> CD 8.12

recognised that the CCA policy was an indicator of landscape sensitivity, and that the beach was an important feature of that area that attracted a lot of people.

268. After the close of evidence at the inquiry, the Louth Canal decision<sup>69</sup> was issued. The appeal was dismissed on the basis that:

- i) There would be harm, albeit not substantial harm, to the significance of Thoresby Warehouse (grade II listed) and the non-designated heritage asset, the Louth Canal. The Inspector found that the harm to the setting of Thoresby Warehouse would not be outweighed by the benefits that would be produced by way of renewable energy production of the level proposed and the associated economic benefits and modest habitat benefits;
- ii) There would be some modest harm to the landscape at a local level; and
- iii) There would be significant harm to the living conditions of Eastfield Farm.

269. Accordingly, the totality of the harms significantly and demonstrably outweighs the totality of the benefits, and because of that harm, the adverse impacts outweighed the reversibility of the project. The Secretary of State at DL paragraph 16 agreed that *"the proposed 25 year period for the development would represent a significant part of a human life span and that given his conclusions in respect of living conditions, the adverse impacts over that period of time are such to outweigh the reversibility of the project."*

270. The Inspector found in respect of Tetney Church that *"The main visual references for this building and its setting link to its role within the settlement and as a marker for the settlement so that the distant turbines would not be materially harmful. I note that the ES and EH do not set out any significant harm in respect of the setting of this listed building"*.

271. The situation with those turbines is materially different to the proposed Bishopthorpe array. While the Church can be viewed from the Louth Canal site, it is on the approach to the Church, when moving away from that site that its role as marker for the settlement is most obvious, and is it there that the Bishopthorpe proposal will be most visible and most harmful.

272. It is also interesting that the Inspector found the significance of the warehouse derives from a number of elements, including *"its age, traditional method of construction, historic materials and its historic role and function linked to its site alongside the canal. In this regard its significance relates to the economic development of the area and it also has a social function as a place of exchange and a route marker."* However, it was the harm to the setting and the impact of that on the significance of the warehouse that was deemed to be unacceptable, despite the remaining elements of significance being unaffected. The Secretary of State supported the Inspector's findings concluding that the harm *"falls not far short of substantial harm, largely because of the erosion of the prominence of the building and its canal side way-marking function which would be seriously diminished by the proposed development."*

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<sup>68</sup> CD 8.10

<sup>69</sup> APP/D2510/N13/2200887

### *Benefits of the Proposal*

273. It has been accepted by the Appellant that neither the Community Benefit Fund, nor the Green Energy Credit Scheme outlined in evidence are material considerations for the purposes of this appeal. They do not meet the relevant legislative<sup>70</sup> and policy tests<sup>71</sup>. The Appellant considers there could be £8.15 million spent in the local economy as a result of the proposal. There is however no evidence that that is achievable, and so that figure should be approached with caution. Even the Appellant's witness agreed the figures represent an 'opportunity' and not evidence of what will actually be spent in the local area. For example, there is no evidence that there are local firms with the necessary specialisms or capacity to compete for contracts; there is no evidence that such firms would be able to compete with businesses based elsewhere; and despite the Appellant giving significant weight to 'localness', there is no firm commitment to that by way of a 106 Agreement or otherwise. In any event, the benefits that arise will be short lived and only during the construction of the wind farm.

### *Conclusion*

274. In conclusion, the harm associated with development at this particular location significantly and demonstrably outweighs the benefits of renewable energy production as a whole. The UK as a whole is making good progress towards the relevant targets<sup>72</sup> and while there is a long way to go, the trend in the delivery of renewable energy projects is rising steeply. The adverse impacts of the proposal cannot be made acceptable and permission should not be granted.

### **The Case for Marsh Windfarm Action Group**

Much of the evidence of MWAG covers the same ground as the Council in relation to landscape and visual impact. I therefore record here the remaining main points of the MWAG case.

275. MWAG supports the evidence and stance of East Lindsey District Council planning officer and planning committee to refuse the application had it been in a position to determine prior to this appeal on non-determination, its continuing efforts to distinguish wind power proposals that are unacceptable, both individually and cumulatively and in doing so to protect the characteristics views across the Outmarsh from both the naturalistic coast and the Lincolnshire Wolds AONB landscapes. The area's unique and recognised value is clearly appreciated by the majority of the local impacted Parish Councils who objected to this proposal on legitimate grounds at the outset of this application. This was again clearly endorsed and expressed in the representation made to the inquiry by Mr John Loomes, Chairman of the Collaboration of Local Parish Councils, representing all 13 local Parish Councils (Tetney & Tetney Lock, Humberston, Holton le Clay, North Cotes, Fulstow Marsh Chapel, Conisholme, Covenham, North Thoresby, Ludborough, North Somercotes, Yarburgh and Utterby) as confirmed at paragraph 15 of his representation<sup>73</sup>This states:

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<sup>70</sup> Community Infrastructure Levy Regulations 2010

<sup>71</sup> Framework paragraph 204

<sup>72</sup> CD 6.43

<sup>73</sup> Doc Rep 13

*"Collectively we consider that due to the physically constrained area between the higher ground of the Lincolnshire Wolds AONB and the flat open Marsh landscape bordered by the coast the visual and landscape character impacts are significantly greater than other areas across the country".*

276. MWAG shares this concern, along with the potential impacts on visitors' appreciation and enjoyment of the area over the ensuing generations. ELDC's stance for refusal was also endorsed by the unprecedented number of 835 objection letters submitted by local residents from within the vulnerable rural communities in close proximity to and surrounding the Bishopthorpe Farm site, approximately up to 10km.
277. The Appellant's planning witness Mr D Hendley rebuttal document to MWAG/1 at paragraph 1.10 stated:
- "The appellant during the course of the appeal also submitted 372 letters of support for the development. These showed a significant number of supporters in the near vicinity of the site, including in the villages in East Lindsey nearest the development and Humberston, in North East Lincolnshire".*
278. MWAG's analysis of this late submission to the inquiry, actually revealed that of the '372 support letters' canvassed by those commissioned on behalf of the appellant, of the identified letters located '*in the near vicinity of the site*', these did not amount to the '*significant numbers*' claimed by this witness. MWAG found that these '*letters of support*' in this late submission are as follows; Humberston Fitties just 2 letters, Thorpe Park 2, Humberston Parish responses were a nominal 25, Cleethorpes 30, Grimsby 3, New Waltham 2, Holton le Clay 2, North Cotes 1, Conisholme 2, North Thoresby 2, Marsh Chapel 2, and Fulstow 2. There were a scattering of a few other letters from across various villages in surrounding area of East Lindsey, e.g. Manby 4, Theddlethorpe 4, Grimoldby 4, Scamblesby 1, Belchford 1, as the accompanying map indicated, along with letters as far away as Dundee, Glasgow, Leicester, Teesside etc. But again by far the largest number of 190 (51%) were from resident respondents within Louth. Although as stated in verbal evidence at the inquiry, MWAG is not engaged merely in a 'numbers game', MWAG is cautious in accepting the validity of even these Louth responses, because without careful scrutiny and further verification, many of these letters may have been duplicated from the initial support letters gained from the same source in Louth, which questions the weight this evidence can be given.
279. MWAG does have the support of the majority within the communities impacted by this proposed development. Whilst accepting the perceived broad consensus and the opinions of members of the communities that climate change is an important issue that requires a response within the context of the planning balance, those residents within the urban setting of Louth Town are less likely to experience the daily impacts caused by large scale turbines from their residences. This contrasts with the majority who have sincerely objected and whom, if this proposal is approved, will have no choice in the matter (apart from moving away), and will be overshadowed by yet more large scale industrial wind turbines as they live and conduct their daily activities travelling through the local countryside.
280. MWAG has carefully assessed ASC's submitted EIA, and highlights legitimate concerns that the proposal reveals. MWAG notes with extreme concern ASC's

submission contained in SEI 2 Volume 1 text Chapter 3 Landscape and Visual page 3-20 that:

*Paragraph 114 of the NPPF ... states that local planning authorities should: "maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast, and improve public access to and enjoyment of the coast." Locally, the character of the CCA, away from the coastal edge and intertidal areas, is altered by the presence of the operational Newton Marsh wind turbines (which establish a context and precedent for development in CCA 1) and by other large-scale man-made features within or adjacent to the CCA including the water treatment works and oil terminal at Tetney, the Pleasure Island complex (visible from the northern fringes of the CCA) and commercial shipping within the estuary; with reference to NPPF paragraph 14, the northern section of the CCA is clearly not undeveloped, whilst its distinctiveness is derived from the coastline and intertidal components which (as stated above) would not be significantly affected by the Development.*

281. The notion that a previous Inspector (Mr Cullingford) in May 2009, granted approval for the 2 now operational turbines at Anglian Water's largely screened facility at Newton Marsh, should be used or argued as a precedent for a further 8 x 115m high turbines is in the local communities collective view, not a justification for this proposal. Even more so when considered against the comparatively contained Tetney oil storage tanks within the surrounding countryside, and the relatively small scale rides at the nearby Pleasure Island complex, which does not have a wide ranging prominent presence. The proposed development is considered to be a separate additional large scale development, totally out of proportion to the 2 latterly operational turbines. Therefore by definition it is widely considered as an 'unsustainable development' when sensitively calibrated in the planning balance.
282. ASC, in MWAG's view, are acknowledging that *"the visual presence of turbines does have an impact on perceptions of remoteness and unspoilt landscape<sup>74</sup>".* In addition to this ASC concedes that in effect, once the precedent had been established by granting permission for a pair of turbines, and if other wind farms in planning are constructed, it *"would potentially lead to a need to include wind farms as a distinctive feature of the character area"*. Thus it appears to those facing this overall prospect, i.e. local receptor communities, that by definition even more applications will automatically follow on.
283. This is further confirmed by the appellant's landscape witness in evidence submitted which reveals the emerging cumulative impacts, forming a line of wind farms along the coastal outmarsh. Whilst ASC's LVIA considers this to amount to *"generally very localised significant effects cumulatively arising from the development"*, in addition the appellant's landscape witness also considered that the visual and character effects are judged to be of a negligible magnitude on the designation of the CCA as a whole. MWAG contends that the appellant has consistently understated the overall landscape character and visual impacts that this development will have not only on the low lying flat open outmarsh countryside, but on local communities and further afield from the long views gained within the Lincolnshire Wolds AONB.

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<sup>74</sup> SEI Vol 1, 3-23

284. Landscape witnesses for the Appellant and Council entered into detailed discussion of the minutiae of landscape impacts. MWAG noted that those members of the local communities present were somewhat bemused and baffled as to how the landscape character they know, understand and appreciate, could some-how appear to be intimately dissected, categorised and in the case of the appellant's witness particularly, minimalised in what they perceived to be a justification of their 'acceptable impacts' arising from 8 x 115m high turbines added to the 2 existing turbines that by 'any stretch of the imagination', will be highly prominent. The professional judgement of the Council's landscape witness goes to the heart of the MWAG case.
285. MWAG has provided additional landscape evidence which deals with views from alternative viewpoints, particularly Covenham Reservoir and Wanderlust Way. At Covenham Reservoir wide open views are obtained from the elevated position on top of the reservoir bank. There are clear expansive views across to the Lincolnshire Wolds AONB to the west. This is a key recreational view point for walkers, anglers, and club sailing, with cumulative impacts arising through 360 degrees, north, south, east and west. In good conditions of visibility, distances exceed 30 km to the north, east and south, with only the rising ground of the Wolds restricting the distance of the views to the west. The operational 2 x 105m Newton Marsh Turbines are now prominent in the view and would form an extensive cluster with the Bishopthorpe Farm turbines.
286. To the west in close proximity to the AONB the 4 x 115m turbines in planning at Damwells Farm between Ludborough and North Thoresby would extend the visual presence of turbines across the marsh landscape. Northwards the views extend to the north bank of the Humber and the Out Newton Wind Farm. The southern views clearly show the Conisholme turbines lining up along the reservoir bank along with the Limes turbine. Gayton le Marsh when constructed at 115m along with the operational turbines at Bambers Farm will also increase the cumulative impact. These potential cumulative impacts include 163 turbines consisting of 90 onshore plus the 73 offshore in the Humber Gateway project.
287. MWAG has produced the Wanderlust Way panoramic montage<sup>75</sup> to enable a judgement to be made. MWAG note that all available landscape visual character guidance when assessing photo montages state that they are a useful tool in being a representation of the potential effects a wind farm proposal will create. MWAG stand by this and note that it is highly probable that such a panoramic montage has never been prepared before for presentation at an inquiry. This is the most informative and dramatic representation in relation to the growing accumulation of potential wind projects at all stages of the process from scoping to operational which would be seen from the same location in the northern part of East Lindsey, especially as seen from the key feature of the eastern edge of the Lincolnshire Wolds AONB. The present project represents a tipping point in this process, at a point when the landscape can still be considered as attractive rural countryside, but which is on the brink of becoming a vast wind farm landscape.
288. This location and panoramic view is superior to the three produced by LDA the Appellant to represent the visual cumulative landscape character views,

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<sup>75</sup> MWAG 2, Appendix 1

specifically from the AONB, because it represents an open and sequential view from a well-used location within a typical landscape of designated AONB Wolds character. In contrast the Appellant's VP6 is on the AONB boundary and not representative of the designated area; VP7 although noted to be close to the Wanderlust Way above Hawerby Hall, is at a slightly more elevated location within the AONB, and the southerly vistas from this point are curtailed by the high hedgerow boundary on the left. VP12 is also interrupted by vegetation towards the south, is not on the Wanderlust Way, and lacks the clarity and completeness of view of MWAG's panoramic substitute.

289. Offshore wind turbines are also in view and cannot be ignored, and can be contrasted with existing land based turbines to the north of the Humber. Land based turbines are about 80m high, but those offshore are more than double the height. The effect of the offshore turbines is clearly shown on the Wanderlust Way montage. They would be located behind the appeal proposal in the view.
290. The offshore turbines would also be visible from elsewhere, such as Horseshoe Point, and the Appellant has had too little regard to the impact of these offshore structures which are now being installed.
291. MWAG does not contest that in some views the Tetney oil storage tanks are visible, but the extent of this is a localised presence. They do not break the horizon of the Lincolnshire Wolds and do not have a dominating presence over the wider landscape. The Appellant overstates their impact. Similarly the sewage treatment works are obscured by planting and not a notable landscape feature.
292. MWAG also contends that the recently published PPG statement alongside the NPPF does carry weight and *"that the need for low carbon and renewable energy projects does not automatically override environmental protections and that protecting local amenity is an important consideration which should be given proper weight in planning decisions."*
293. There are two particular points that should be referred to within the guidance. Firstly, paragraph 5 stresses that it is important that the planning concerns of local communities are properly heard in matters that directly affect the general public. Secondly, Paragraph 15, second bullet point, stresses that cumulative impacts require particular attention. It is considered that the Appellant, based on current evidence, has failed to demonstrate to the affected rural communities surrounding the site that they have adequately assessed the true cumulative landscape character impact both in terms of other schemes in the vicinity of the appeal site and in terms of the wider issue of landscape's ability to absorb the incremental change towards creating a wind turbine landscape.
294. MWAG's evidence leads to the conclusion that in terms of relevant planning policy at local and national level the energy benefits to be gained do not outweigh the harm that would result. As a result it argues that this proposal should be refused planning permission in line with ELDC's putative refusal and the appeal should be dismissed.
295. Presentations were made at the inquiry from 17 people from a broad range of concerned members and representatives of the local communities. These are: Cllr Mr T Bridges, District Cllr ELDC & LCC Tetney Ward, Cllr Mr S Harness, District Cllr NELC's Humberston Ward, Cllr Harness also represented Cllr J Fenty

& Cllr S Newton, from within NELC, Cllr Mr B Rea, Humberston Parish Council, Cllr Ms A Winslow, Cllr Mr R Lukehurst & Cllr Mr G Lane representatives of Tetney & Tetney Lock Parish Council, bordering on to the site, Cllr Mrs W Van der Horst, North Cotes Parish Council, Cllr Mrs S Pearce, North Somercotes Parish Council, Mrs L Hague, Secretary of the Humberston Fitties Tenants' Association & Reverend P Salmon. These submissions were well prepared, reasoned, heartfelt presentations of salient material and valid evidence, covering a wide spectrum of negative impacts this proposal would cause if approved.

296. A limited number of representations were heard from others in support of the appeal on the basis of '*catastrophic climate change*'. The strident notion was also expressed, that local communities are not mindful of this important issue, and '*to object to this wind farm proposal is a denial of climate science*' along with the dismissive and presumptuous assertion that '*they do not have the required grasp of climate science*'. The implication is that when considering raising legitimate planning concerns, they should, a) without any other consideration set aside these concerns and b) that they should by default be summarily disregarded as material matters before this inquiry. This goes against the planning principles outlined by the SoS in the recently published PPG, which has again been confirmed within the recent Causeway Bridge Farm appeal which MWAG introduced as evidence at this appeal, in addition to recent appeal decisions within the East Lindsey District (APP/D2510/A/14/2214037 and APP/D2510/A/2200887 for example).
297. MWAG also highly commends and rigorously supports the Council's cultural heritage witness, who has presented a well-researched, balanced and credible case, which again puts into the correct planning context the true impacts on the Church of St Peter and St Paul Tetney, which is a highly valued, important listed building. The evidence concerning the cultural history and setting of the Coast Guard Cottages at Tetney Lock also carefully and thoroughly sets out the extremely valuable historical context of this heritage asset, which is highly appreciated and valued by locals and visitors. The evidence is further endorsed by the personal representations made by Cllr G Lane, Ms C Belton, Mr T Burgess & Mrs S Lamming.
298. MWAG concurs with the objections and evidence submitted by Bourne Leisure and considers that the case this other party to the appeal has presented to the inquiry is legitimate and substantial in also requesting that the appeal be dismissed.
299. In the planning balance the harm arising from this proposed development outweighs the benefits, in terms of visual, landscape character, and cumulative impacts both in combination with on shore and off shore turbines. Unacceptable cultural heritage impacts arise on the highly valued Parish Church of St Peter and St Paul, Tetney, the Coast Guard Cottages at Tetney Lock, the WW2 relics on the coastal path south of the Humberston Fitties, the historic forts located in the Humber Estuary, and Humberston Fitties Conservation Area. There would be unacceptable impacts on residential and recreational amenity, both local to the natural environment gained from the unspoilt nature of the site and the wider impacts on the surrounding communities. This stance is supported by the constituent MP Sir Peter Tapsell, local District and Parish Councillors, the Humberston Fitties Residents Association, and the majority of the residents within the local communities.

## **The Case for Bourne Leisure Ltd**

The main points are:

300. The case on behalf of Bourne Leisure is essentially a simple one. This proposed wind farm, immediately adjoining their Thorpe Park holiday centre, is seen as a serious potential business risk as it would materially change the outlook, setting and amenity of Thorpe Park thus adversely affecting the enjoyment of the guests at the Park and adversely affecting their future holiday choices. It is for that reason and that reason alone that Bourne Leisure has opposed this proposal.
301. Decision makers should recognise and accept the position of risk identification by the relevant businesses and take it into account in the planning balance. A wind farm may have some localised beneficial socio economic effects, but is also likely to have local economic harm as well. There is no reliable evidence of precise impacts of wind farms on tourist businesses, but operators generally regard wind farms as a business risk.
302. In essence, and notwithstanding the enormous amount of material that has been produced, particularly by the Appellant, the decision that faces the Secretary of State is also essentially a simple one. That is, does the harm from this specific scheme in this specific location outweigh the strong generic policy support for onshore renewable energy installations? The position of Bourne Leisure, and of the Council and MWAG, is that it very clearly does.
303. Thorpe Park has a large number of holiday homes – over 1500 privately owned. There are about 16000 families visiting between March and October. Owners and guests will spend some £3.5m in retail excluding site fees and holiday costs, representing a total spend of about £10m in the local economy. Many local businesses are heavily reliant on Thorpe Park. In addition capital spend on Thorpe Park in the last 7 years has been about £13m. These significant local benefits would be harmed by the proposal, and loss of tourist income would be likely to reduce the incentive to invest in Thorpe Park.
304. Methodology used in the landscape and visual impact assessment (LVIA) does not fully accord with guidance and is inconsistent, and as a result understates the sensitivity of receptors, the magnitude and significance of effects. Key receptors with Thorpe Park are also omitted. Furthermore the LVIA does not fully assess residential amenity for properties within Thorpe Park and Humberston Fitties. Justification is therefore demonstrated for the dismissal of the appeal based on significant adverse landscape and visual effects.
305. Noise Policy Statement for England (NPSE) introduces the concept of 'significant observed adverse effect level' (SOAEL). This is the level above which significant adverse effects on health and quality of life occur. ETSU-R-97 cannot be used as a proxy for describing likely significant effects. Using BS4142 a difference of 5 to 7 dB would lead to a significant impact, and 8dB or more to a major impact.
306. At Thorpe Park there would be some impact during the day, but of marginal significance. At night some 200 to 300 properties would suffer significant adverse impact at some wind speeds. In addition there would be a high risk of amplitude modulation on this site as a result of turbine configuration and high

wind shear. ETSU is not the only method of assessing noise impacts, and it has been held in other cases that non ETSU factors can play a part in making a determination.

307. In cross examination of the Bourne Leisure witnesses the Appellant's advocate addressed himself to various matters that might best be described as being around the edges or the margins of the evidence. He did not attack the core of the analysis or the core conclusions in any way.
308. In terms of the interest of Bourne Leisure he was critical of the lack of detail as to the activities at Thorpe Park and the associated lack of details as to how these might be affected. However, such a line of questioning displays a lack of understanding of the approach taken by a business such as Bourne Leisure in circumstances such as this. It does not actually matter, in terms of risk analysis, whether activity (a) would be adversely affected by 10% or 20% whilst activity (b) might only be adversely affected by 5% etc. Rather the risk assessment is that the whole setting, ambiance and amenity of Thorpe Park would be so adversely affected by having a major wind farm as a neighbour that consequential adverse effects on the clients and on the operation as a whole would be unavoidable. Therefore, it is the totality of the likely effects that constitutes the business risk rather than the disaggregation of those effects.
309. The only cross examination by Bourne Leisure was of the noise witness for the Appellants. In cross examination he gave three answers that are important in the determination of the appeal. He agreed, after some reference to chapter 10 in the original ES, that in respect of noise he had not assessed the significant environmental effects. He agreed that there would be some loss of amenity for the occupiers of the nearest chalets at Thorpe Park, although he disagreed with the extent of the loss and he relied on the balancing aspect of ETSU. He did not disagree with the figures in Appendix 1 of the Thorpe Park noise proof of evidence but, in effect, he disagreed with the colour coding used there. Therefore, the loss of amenity is agreed and the disagreement is about the extent of that loss – effectively the harm that will arise.
310. However, more importantly, for what is an EIA application, the Appellant's witness has confirmed that the Appellants have not assessed the significant environmental effects in respect of noise. Bourne Leisure are not aware of any legal provisions that allow the setting aside of the EIA requirements in respect of wind farm noise. The Inspector is, therefore, invited to consider whether or not it would be safe to consider approving this development in the absence of an EIA in respect of noise.
311. The opportunity for extensive unaccompanied site visits will have demonstrated how, in this flat landscape, the existing Conisholme Fen wind farm – 20 turbines at 89m high – stands out in many views, often dominating the landscape. Several views of the two Newton Marsh turbines will also have been clear, especially noting the views from inland towards the coast on the A1031, noting how relatively unobtrusive the oil storage tanks are in the same location.
312. The accompanied site visit to Thorpe Park will have demonstrated just how close the proposed turbines would be to the chalets, the golf course and popular walking routes and a bridleway. The more restricted views of the two Newton Marsh turbines will have been evident and will enable a judgement as to the effects of more turbines, much closer to the Thorpe Park facilities.

313. The Secretary of State has recovered this appeal because it is a renewable energy development. However, to understand his approach, it is necessary to first look at the June 2013 Ministerial Statement<sup>76</sup>. In that the Secretary of State sets out that *“current planning decisions on onshore wind are not always reflecting a locally-led planning system”* and *“we need to ensure that protecting the local environment is properly considered alongside the broader issues of protecting the global environment.”* He then advises that new planning practice guidance will, amongst other things, clearly set out that *“the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities”*.
314. It is also necessary to consider the subsequent Statement of 9<sup>th</sup> April 2014<sup>77</sup>. In that Statement the Secretary of State explains why he is extending, for a further 12 months, the recovery of appeals for renewable energy developments. The Statement repeats the policy guidance set out above.
315. Having regard to these two Statements it is considered that the likely adverse local amenity effects that led directly to the perception of risk by Bourne Leisure are exactly the types of planning concerns that are recognised by the Secretary of State. Therefore, Bourne Leisure welcomes the recovery of this appeal.
316. In relation to Local Plan Policy A4 the proposal would cause unacceptable harm in the form of visual and noise impacts. The development would not improve the quality of the local environment, as sought by Policy A5. Bourne Leisure contends that Policy C11 is in play and that the proposal would harm the landscape features that contribute to the Lincolnshire Wolds. The development is not essential in the proposed location and Policy C14 is offended. This proposed development would therefore be contrary to the terms of these saved policies.
317. The age of the development plan means that other material considerations are important. The NPPF, although supporting renewable energy, does not do so if the impacts would be unacceptable. In this case significant harm cannot be avoided, mitigated or compensated for. There would be significant landscape, noise and tranquillity impacts. The technical matters in NPS EN-1 and NPS EN-3 do not alter this situation. PPG and the proposed draft Core Strategy also do not alter the balance.
318. In conclusion the determination of this appeal does come down to the simple consideration of the balance between the broad policy support for renewable energy and the harm to local amenity and the consequential concerns that would flow from the adverse effects of the proposed wind farm development.
319. In considering that balance it is of critical importance to have regard to the geography of what is involved. This is not a proposed wind farm that is some distance from Thorpe Park. Rather it will be its immediate neighbour. That is why the business risk is seen as being so significant. The anticipated adverse effects all arise directly from that geography. Furthermore, those anticipated adverse effects are adverse effects on local amenity that constitute significant harm.

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<sup>76</sup> CD 2.4

<sup>77</sup> CD 2.8

320. The general policy support for renewables does not override that significant harm to local amenity and, therefore, the appeal in respect of this proposed wind farm is one that should be recommended for refusal and then refused by the Secretary of State.

### **Other Appearances - Objections**

321. A number of local residents appeared at the inquiry and some of the submissions made overlapped in content. I record here the main points made, but do not repeat all that each speaker presented if it has already been covered elsewhere.

322. **Mr Bernard Rea**<sup>78</sup>, Vice Chairman, Humberston Parish Council. Humberston is the closest village to the development and has its own historical sites which should be taken into consideration and the impact considered. Humberston has over 1000 new homes permitted closer to the wind turbines than the current housing and the Parish Council is opposed to the wind farm because of this. Members of the public staying at the Fitties have objected to the proposal. Views towards the appeal site from Humberston/Cleethorpes are available and should be taken into account. The proposed wind farm is in the wrong place.

323. **Mr Terry Burgess** has provided a written submission of his concerns<sup>79</sup>, particularly regarding the submitted ornithological surveys. He is the founder Director of Creative Nature UK Ltd, has received awards for conservation work, and founded the Fitties Nature Reserve (this is not identified or designated formally). Mr Burgess assisted in implementing bio diversity improvement alongside the late Mr Rodney Dawson at Bishopthorpe Farm during the late 1960's and 1970's, in an era of farming practices that placed more importance on maximising land use and crop production, and before Natural England and DEFRA sponsored schemes were developed.

324. There is a lack of assurance of the reliability of the Appellant's ornithological surveys and subsequent mitigation proposals. These are insufficiently robust to ensure that there are not unacceptable ornithological impacts arising from the historically recorded 7,000 Golden Plover, 1,000 Lapwings, 1,000 Dark Bellied Brent Geese and the thousands of migratory birds passing through the area during the spring and autumn. In addition there are concerns regarding over 40 species of breeding birds, including rarities such as Hen Harriers and Bittern for which the Fitties Nature Reserve is a haven. It is likely that the reserve will suffer detrimental impacts if the development goes ahead. There are also concerns of visual impact from Mr Burgess's dwelling house, and concerns regarding impacts on Tetney Lock, particularly the popular public house, The Crown & Anchor.

325. **Mrs Sally Lamming**<sup>80</sup> has lived in her childhood family home at Tetney Lock since returning in 1999, having originally moved to Tetney Lock with her parents as a child in 1970. She has continued to run the small family Angling Club and Certified 5 van Caravan Club site started by her parents in the late 1970s. There is concern that the proposal to site 8 additional turbines (in addition to the

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<sup>78</sup> Document Rep 1

<sup>79</sup> Document Rep 2

<sup>80</sup> Document Rep 3

existing 2) has already raised negative comments from her guests. Guests specifically come to enjoy Lincolnshire's open views and farming countryside as well as walking in the area and bird watching and the like. Guests also enjoy the longer walks along the Louth Canal in order to appreciate the wider views towards the Lincolnshire Wolds. The return towards Tetney Lock from the south enjoys the views towards Tetney Parish Church and the area around the Coastguard Cottages. Until now the area has been able to absorb change, but the big skies and the marsh landscape is being eroded by encroaching turbines. There is worry that those proposed will affect the business as guests choose to go elsewhere.

326. **Ms Chris Belton**<sup>81</sup> has provided a detailed submission of the Louth Navigation Trusts walks (*Two Sea Forts and a Canal*, and *To the Sea with LNT*) along the Louth Canal with a series of photographs outlining the visual and landscape character impacts over a wide area. The leaflets on the walks provide a guide to the area and the routes covered. There are few places where the presence of wind turbines is not felt in this area, and they will be a feature of these routes. Just because there are other wind farms in this area does not make it right that there should be more. Making bad decisions to follow previous bad decisions is not right. The idea that the development would be for 25 years is a myth. As has happened at Coal Clough<sup>82</sup> there would be likely to be a re-powering and replacement turbines in due course. There are enough wind farms in the area and common sense reasons have been put forward for rejection of this scheme.
327. **Mr Stephen Harness**<sup>83</sup>. Resident and Ward Councillor for North East Lincolnshire Council (NELC), Humberston and New Waltham ward. At least 2 other NELC Ward Councillors are opposed to the construction of the wind farm. There would be major visual impact over Humberston, the Fitties and Thorpe Park. It would effectively create a wind turbine barrier in southerly views. There is also concern that the developer has not adequately addressed the impacts on the naturalistic coast, ornithology and heritage. Benefits do not outweigh the significant harm.
328. **Mr Tony Bridges**<sup>84</sup>, District Councillor for the Tetney and North Cotes Ward. Tetney is renowned for its rural feel and its landscape and big skies are valued by residents and visitors. The area includes a nature reserve, Blow Wells, and is close to beaches and Tetney Marshes, which form extensive coastal mudflats, salt marshes, lagoons and dunes. There is a site of Special Scientific Interest and Special Protection Area present. Hence this is an important and valued part of the country.
329. **Mrs Linda Hague**<sup>85</sup> secretary of the Humberston Fitties Tenants Association. The impacts on the Humberston Fitties, and the evidence from both Bourne Leisure and the Council, is endorsed. The proposal is already causing issues, with owners' experiencing problems selling their properties because of the threat of this proposed development. If granted it would detract from the uniqueness and tranquillity of the area. It is possible to walk just a few metres to gain

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<sup>81</sup> Document Rep 5

<sup>82</sup> An established wind farm located in the Pennines

<sup>83</sup> Document Rep 6

<sup>84</sup> Document Rep 8

<sup>85</sup> Document Rep 9

access to the beach and to the swan lake. From the beach it is possible to look towards the Humber Lighthouse at Spurn Point and towards Tetney and North Cotes and the marshes between, observing the comings and goings of wildfowl. The visual impact on this area will be significant as the wind turbines already erected are visible from areas of the Fitties Conservation Area, on the beach, along the approach road (Kings Road in Cleethorpes) and from the centre of Cleethorpes. An additional 8 turbines will cause a disproportionate impact in close proximity just over the boundary fence of Thorpe Park's extremely popular golf course. Humber Gateway turbines would also be visible. There are also worries that the cost of manufacturing the concrete bases, transportation, earth moving, loss of land to agricultural production and reduced ability to absorb flooding will all outweigh any benefits.

330. **Mr Roger Lukehurst<sup>86</sup>**, member of Tetney and Tetney Lock Parish Council. In a questionnaire for the group working on the Tetney and Houlton-le-Clay Neighbourhood Development Plan over 90% of residents expressed a desire for the open skies vistas around the settlements to be maintained. The Parish Council supports this majority view. The Parish Council also supports other objections made. The suggestion that the Newton Marsh turbines justify this proposal is a specious argument. A further 8 turbines would obliterate the skyline. The view from the north-east of Tetney would be fully obstructed, and any comparison with the oil storage tanks is unjustified. The tanks are less than a third as high as the turbines and shielded by trees. In addition the cost of subsidies and higher electricity prices would be borne by householders generally.
331. **Mrs Anne Winslow<sup>87</sup>, Parish Councillor**. Moving to Tetney having lived in other parts of the area had a number of prerequisites that there should be no nearby pylons, substations, motorways, busy roads industry or factories. These would have brought negative effects. There is concern that the proposed turbines would result in noise and low frequency energy, and hence the effects of turbine syndrome would be felt by some people who are sensitive to such frequencies. This leads to concern for the wellbeing of local people. Just because it is not felt by all doesn't mean that it isn't real and dangerous.
332. Tetney has good walks and cycle routes, and the idea of 8 more turbines in addition to the 2 Newton Marsh turbines is unpleasant and upsetting. The Haile and Bull Sand Forts and coastal pill boxes are also an important part of our heritage. The coastal bank also offers opportunities to see local wildlife frequenting the marshes. The proposed wind farm would ruin the open countryside and its peace and tranquillity.
333. The village has a right to retain its open spaces, walks, peaceful and healthy environment. There is also concern for the visitors to the area and the impact which might occur to Cleethorpes tourism. There is strong objection to this proposal.
334. **Mr A McLaren<sup>88</sup>**. The area is now blighted by wind turbines. The 20 turbines at Conisholme are 2 miles from home with another turbine less than a mile away.

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<sup>86</sup> Document Rep 10

<sup>87</sup> Document Rep 11

<sup>88</sup> Document Rep 12

Newton Marsh is about 6 miles away and Mablethorpe is also visible at times. Gayton has been approved and will sit between Conisholme and Mablethorpe.

335. The Under Secretary of State at DECC has indicated that wind turbines can be turned down because of local concerns, and that wind turbines are a small part of the energy mix. But they keep on being proposed and it is getting out of control. Much of the support for the proposal emanates from Louth and is not local in the sense that the individuals would be affected by the proposal. Of those living in the surrounding villages there were 630 in opposition and 40 in support. Those seeking support have been using scare tactics by suggesting energy is running out.
336. This predominantly flat area will soon be an endless vista of wind turbines, with more out to sea. Local people are forced to fight to defend the area from being destroyed whilst the developers hold local people in contempt.
337. **Mr John Loomes, on behalf of the Collaboration of Local Parishes**<sup>89</sup>. Following a number of public meetings held in individual parishes to discuss wind turbine proposals it was decided that a collaboration of local parishes be set up to represent wider views. The group has 13 parishes.
338. The group has noted the Written Ministerial Statement and Planning Practice Guidance indicating that proper weight should be given to landscape, heritage and local amenity. This is welcomed.
339. The Newton Marsh turbines provide a strong visual marker, and the anemometry mast at Damwells Farm is causing local concern about the incremental change to a wind farm landscape. This will be aggravated by the schemes approved, in planning or scoping and which will be visible from the Wolds. Character impacts are also becoming apparent from the off shore turbines under construction. The open coastal marsh is thus under threat of losing its sense of long views and big skies. There is also concern about the impact on Humberston Fitties.
340. The group does not agree with the conclusions of the Appellant's landscape professional. The unique character of the Lincolnshire coastal area would be severely damaged for at least a generation if the proposal was to go ahead.
341. **Mr John Loomes**<sup>90</sup> – personal statement. As part of a group which walks regularly in the Wolds, or in the Tetney and the Louth Canal area, we have become increasingly concerned by the despoliation by wind turbines of vistas over the land towards the coast. There are a number of objections to the wind farm.
- Damage to views from the Wolds towards the coast;
  - Disruption during construction, and ongoing, to established paths and tracks;
  - Change of a quiet rural location to an industrial complex;
  - Turbine rotation close to footpaths;
  - Potential damage to the water table and underground aquifers causing foundation instability;

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<sup>89</sup> Document Rep 13

<sup>90</sup> Document Rep 14

- Potential for decline in populations of, for example, little egret, buzzard and marsh harrier;
  - Potential for damage to overflying birds such as cranes and ospreys;
  - The cumulative impact of existing and proposed turbines on the watersports centre at Covenham so that sailing would no longer be in a rural area, but in a turbine industrial landscape. This could lead to decline in membership and closure of the club.
342. **Mrs S Pearce, resident of North Somercotes and Parish Clerk**<sup>91</sup>. This proposal, together with others as existing and proposed, would be inappropriately sited and would impact negatively on the coastal conservation zone, causing irreparable damage. The area cannot absorb the development. The current open skies would be hemmed in by industrial structure which are inappropriate in this setting. Visitors come to enjoy the unspoilt landscape and the impact could be considerable for businesses and individuals, with consequences for long term viability of communities. It is not necessary to sacrifice conservation zones and heritage assets to provide alternative forms of power. Solar panels are less intrusive and more suited to important landscapes. In addition cumulative impacts on migratory birds could be considerable.
343. **Mr & Mrs S Edwards**<sup>92</sup> of Braybrook Cottage, who along with the Humberston Fitties and Thorpe Park, is potentially the closest resident to the appeal site. Mr Edwards stated that he *'did not object to the 2 turbines at Newton Marsh now in place, although at that time did not fully appreciate their visual and landscape impacts'*. Mr Edwards expresses concern particularly for the effect of 10 dominant industrial turbines extending across the wider view from the end of his paddock and the manege where his wife and daughter train and ride their horses. The full dominant impacts on his property will be more pronounced during the winter months when there will be a clear view of most of the turbines from the property and particularly as his family engage in their out of doors recreational amenity pursuits, riding their horses and walking their dogs in the countryside around their property. The family already experience noise impacts from the 2 existing turbines and there is concern regarding the cumulative noise from what will be in effect 10 large scale turbines. Despite assurances to the contrary there are more and more cases of noise pollution coming to notice as the proliferation of turbines expands to worrying levels.
344. An appeal for a wind turbine was recently dismissed near Manby, some 9 miles from the appeal site, and consistency suggests this scheme should also be rejected. The existing wind farms cannot be concealed, and East Lindsey depends on tourism as a major part of its economy. The cumulative impact of more wind farms would have a damaging effect on tourism and significantly affect the open skies and lifestyle of residents.
345. **Mr G Lane**<sup>93</sup>, Tetney Parish Councillor. The community feels very strongly about wind turbines and is against them being erected across the marshland to the east of the Wolds. A number of facts relating to the local area have been seemingly dismissed. The proposed turbines would be clearly visible from the

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<sup>91</sup> Document Rep 15

<sup>92</sup> Document Rep 16

<sup>93</sup> Document Rep 17

AONB, the Coastal Conservation Area and SSSI. The impact on residents and visitors would be significant, especially when vegetation cover is absent. The view over Tetney Parish Church would be compromised and the turbines would compete with the welcoming Church tower for prominence. The tower is a reminder of the connection to the foundations of Lincolnshire's Christian pastoral landscapes from which parish boundaries originate.

346. The Tetney Coastguard cottages are a significant landmark for visitors, including those using the local circular walks. The turbines would tower over Tetney Lock and its popular local pub, and would be likely to impact upon tourism. Tetney Lock Angling Club has already seen a reduction in business since the erection of the Newton Marsh turbines. The wind farm would also be prominent in views from local houses and gardens. Additional concerns relate to vibration and noise. Noise from the Newton Marsh turbines has been remarked upon. The local community values the countryside highly and see incremental wind farm proposals as justification for the next one. The Appellant is not in the best position to judge the impact upon the community. Although not considered a material consideration residents are also concerned in relation to property values.
347. The turbines would be dominating from long distance and would be clearly visible from beyond Grimsby. In comparison the Tetney oil storage tanks are of lesser impact. Supporters of the scheme are largely based outside the area visually impacted by the development.

#### **Other Appearances - Support**

348. **Mr Biff Vernon**<sup>94</sup>. The overriding issue is global warming. The lives of future generations will be made impossible by reckless burning of coal, gas and oil, which has already led to melting ice sheets. Mitigation of further damage is still possible if greenhouse gas emissions are stopped quickly. Onshore wind turbines are the fastest and cheapest tool to do that. Objecting to this wind farm is a denial of climate science and an abrogation of our responsibility to future generations. The overriding issue has to be to increase capacity of renewable energy as fast as possible. Wind farm developers should be encouraged.
349. There is confusion in government about climate change science and our system produces politicians who have to please electors rather than do what is right. The failure to replace fossil fuel burning will lead to catastrophic climate change. One impact will be the appeal site being flooded as sea level rises, but this is not considered in the planning process. A clear signal should be sent to government that we want planning decisions to maximise mitigation of climate change. This wind farm should be built as soon as possible.
350. **Mr James Pocklington**<sup>95</sup>, **Lincolnshire Pro Wind Alliance**. The Chief Scientific Adviser to the Government recently said "The climate change debate has to move on from the arguments over the reality of global warming to more pressing questions of what the country should do in response." At present some 2.5% of world electricity is provided by wind turbines, and this is projected to increase to between 15% and 18% by 2050. Wind turbines are a sensible,

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<sup>94</sup> Document Rep 4

<sup>95</sup> Document Rep 7

partial response to decarbonising energy supply and improving energy security. It would be irrational and irresponsible to oppose the findings of respected scientists and prevent the introduction of renewable energy technology. Any delay will exacerbate the challenge for the future.

351. The British Medical Association recognises that climate change is the greatest threat to human health of the 21<sup>st</sup> century. It has urged that awareness is raised of the economic and health benefits of reducing greenhouse gas emissions, and transferring investment from fossil fuel energy companies to renewable energy companies. The district is ideally placed to accommodate this wind farm and their impact should be tolerated, residents most affected should be compensated, and we should be proud of our contribution towards reducing carbon emissions.

### **Other Appearances - Neutral**

352. **Ms Sue Fortune and Mr James Murphy, Lincolnshire Community Foundation.** The Foundation attended not to support or oppose the wind farm, but to explain how community funds can be used. The Foundation currently manages 2 wind farm community funds. The benefits are huge and consultation is carried out to find out what the community wants. The wind farm would produce about £100,000 per annum and benefits could be a more cohesive community, habitat creation, or youth facilities for example. The nearest communities are given priority.

### **Written Representations**

353. Very many written representation have been submitted both at application and at appeal stages of this proposal. The points raised in those representations have been covered in the sections above. However, I record here the representations from 3 people who could not attend the inquiry, but whose statements were read by Mr Grosvenor of MWAG on their behalf.
354. **Mrs Wendy van der Horst<sup>96</sup>, resident and Parish Councillor of North Cotes.** This part of Lincolnshire is rural and agricultural, with great importance for wildlife. Recent surveys demonstrate the variety of birds using the area. Permanent wind turbines would cause carnage for any birds blown off course. Birds do fly into them, and bats are also affected.
355. North Cotes will have buried power lines from offshore turbines, leading to fields and roads being dug up, causing holdup and inconvenience. The general feeling is that offshore turbines can be accepted, and that disruption is temporary.
356. It feels as if the area is being cut off from the remainder of Lincolnshire by a wall of turbines, and with the offshore turbines we could be living in a corridor between turbines. This will ruin the landscape and the wide open skies. The appeal site is too close to residential areas, tourist areas, SSSI sites and archaeological and historical areas of importance. More turbines would also be a hazard to the local flying club and the RAF. The area is in danger of being overrun with turbines.

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<sup>96</sup> Document AG 2

357. Local roads are not suitable for extra traffic for installation and maintenance of the wind farm and the impact can only be negative. The road to Tetney is already subsiding, and roads are narrow with sharp bends. Large lorries would worsen the condition of the roads. There would be no benefit to the local community visually, financially or in job creation. The visual and audible effects on residents, wildlife and tourists lead to the conclusion that this proposal should be rejected.
358. **Mr R A Bartczak<sup>97</sup>, local resident.** The existing Newton Marsh turbines are intrusive from our garden and house and it is doubtful that they generate enough power to pay back their cost. The garden of my property is a haven for wildlife and a sanctuary of peace and tranquillity, having taken thousands of hours to create. Previous open views are already despoiled and the appeal proposal would change the view further to that of an industrial site. It is not what we came here to see.
359. **Reverend Paul Salmon<sup>98</sup>.**
360. For many years the landscape of our heritage has been occupied by the presence of historic parish churches, in many cases built on prominent sites. A considerable number are listed buildings. The parish Church has occupied a space in people's lives in response to their spiritual needs.
361. The visual impact of turbines is having a far reaching effect for many communities in the county. Established views have been compromised and the lives of people have been negatively affected. The southerly view of Tetney Church is a case in point, where the 15<sup>th</sup> century tower would be subjugated by a row of 10 turbines across the skyline. The turbines purport to deliver more than can be achieved with the result of desecration of the landscape to satisfy the greed of energy companies. Forcing such development on local communities could well breed resentment amongst those holding differing views.
362. Wherever one stands in the area wind turbines are beginning to dominate. They overshadow not only churches, but other important places and buildings. It is difficult to make any reasoned decision about whether the turbines are to the benefit of society, but the balance suggests that they are a waste of resources and that benefits are outweighed by harm. Information provided by energy companies is not easily understood by members of the public and is a subversive tactic to potentially mislead.
363. The historical landscape character and cultural heritage of the countryside should be considered. It is essential that there is some sensible preservation. It is to be regretted that local decisions are sometimes overturned by officials with little connection to the local community who cannot relate to or appreciate the local area. Decisions are often formed through arguments of developers' advocates and witnesses, a costly resource out of reach of local people. It is time some common sense was brought to the issue. This means making sensible decisions about controversial issues with far reaching consequences, and not allowing decisions to be skewed by unreliable evidence from developers. Local people should be listened to and this proposal should be refused.

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<sup>97</sup> Document AG 3

<sup>98</sup> Document AG 4

## Conditions

364. A list of conditions was presented at the inquiry, which is largely agreed. The list is appended at the end of this report. I agree that the conditions suggested are reasonable and necessary for the reasons given, but make the following comments in relation to specific suggested conditions.
365. Condition 1. The Council would prefer a 3 year time limit for commencement in order to give some certainty and prevent unnecessary delay and anxiety for residents. However, the lead in time for many matters in such cases can be quite long, and I agree with the Appellant that a 5 year commencement limit is more reasonable. This is commonly applied in cases of this nature.
366. Conditions 19 and 20. The Council would prefer that mitigation be agreed before any erection of turbine components to avoid the risk of turbine towers standing without blades for an unspecified period. I am informed by the Appellant that the conditions reflect a contractual requirement to use best endeavours to secure the condition as worded, which is insisted upon by NATS (En Route) plc. Whilst noting that, and recognising the Council's concerns, it seems unlikely to me in any event that the Appellant would wish to invest large sums in erecting turbine towers if there was any risk that a radar mitigation scheme could not be approved quickly. On balance I agree that the conditions preferred by the Appellant are reasonable.
367. Condition No 27 h). There was lengthy discussion at the inquiry (and in writing subsequently) about the principle and practicality of imposing a condition (or in this case including it within the noise condition) dealing with excess amplitude modulation (EAM). Such conditions are unusual and it can be difficult to formulate them in a way which meets the tests in PPG. In this case, though, the Appellant accepts the necessity for such a condition based on a number of factors relating to the perceived risk of EAM occurring.
368. The condition suggested would require, first, a complaint being made as set out in the condition, but indicating that the complaint is flagging up a possible EAM issue. As a result the consultant appointed would be required to submit to the Council a scheme for approval which would be required to investigate the incidence of EAM, and to implement the approved scheme. Secondly, a further guidance note (No 5) sets out what the scheme should include, including recording, methodology, proposals for mitigation, and implementation of mitigation.
369. The Good Practice Guide to the application of ETSU-R-97 which was issued in May 2013 indicates that evidence relating to EAM is still developing and at present the practice is not to assign a planning condition to deal with AM. Although recognising that situation it seems to me that the parts of the condition suggested, which is accepted by all parties, is clearly relevant, reasonable, necessary in the circumstances of this site, and precise in so far as it indicates clearly what has to occur. On balance, therefore, I agree that the tests are met and that the condition should be imposed. In relation to timing of the study there are differing views on how long should be allowed for the submission of a scheme to deal with the EAM complaint. In my judgement 7 or 14 days is too short a time to prepare a scheme, whilst 28 days would be generous. I therefore find that 21 days would be an appropriate timeframe.

370. If the Secretary of State grants planning permission I commend the conditions appended.

## Conclusions

371. In this section the numbering in square brackets refers to the paragraphs in the preceding sections.

372. The Council would have refused planning permission for 2 main reasons relating to impact on the landscape and on heritage assets. Other matters have been legitimately raised by MWAG, Bourne Leisure and local residents. As a result I find the main considerations in the appeal to be as follows.

- i) The impact of the proposed development on the character and visual qualities of the surrounding landscape;
- ii) The impact of the proposed development on designated and non designated heritage assets;
- iii) The impact of the proposed development on the living conditions of nearby occupants, including on outlook and by reason of noise and disturbance;
- iv) The impact of the proposed development on tourism in the area;
- v) Whether there would be any impact on the nearby SPA and Ramsar sites;
- vi) The benefits of the proposal and the overall planning balance.

***Landscape and Visual Impact*** [72-98, 155-182, 275. 280-294, 304, 311, 312, 325-347, 354-356, 361, 362]

373. A significant number of photomontages and other visual evidence have been submitted with the application and appeal. In addition I have spent a good deal of time walking the area and viewing the appeal site from viewpoints used by the parties, and from other locations. I therefore do not refer in great detail to specific viewpoints unless it is warranted. In general I have taken a more rounded approach to assessing the landscape and visual impact of the proposal, whilst recognising the value of the submitted material in aiding my assessment.

374. There are 3 Landscape Character Assessments (LCAs) which relate to the area around the appeal site. These are at national, regional and local level. Whilst the larger scale assessments are useful in setting context it is the finer grain of the more local assessments which is most helpful in setting out an understanding of landscape character in the locality. In broad terms the appeal site lies within the coastal plain between the Lincolnshire Wolds to the west and the North Sea/Humber Estuary to the east.

375. The coastal plain itself is not homogenous. Even the national character area (Character Area 42 – Lincolnshire Coast and Marshes<sup>99</sup>) description makes the distinction between the flat land and salt marshes close to the coast and the gently rising and undulating land at the foot of the Wolds. This distinction is further broken down by the Regional Character Assessment, in which the coast and sea is broken down into smaller units<sup>100</sup>. The appeal site lies within the area described as settled fens and marshes, with coastal salt marshes and mudflats to

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<sup>99</sup> CD 10.15

<sup>100</sup> CD 10.14

the east, and fen and marsh margin farmlands to the west. This theme is carried forward in to the East Lindsey character assessment, with the site appearing in Tetney Lock to Skegness coastal outmarsh (LCA J1). To the east is the Donna Nook to Gibraltar Point naturalistic coast (LCA K1), and to the west the Holton le Clay to Great Steeping middle marsh (LCA I1). Immediately to the north of the site, within the North East Lincolnshire LCA the land is described as Humber Estuary flat open farmland (LCA Aii).

376. The area of settled marsh, or coastal outmarsh, has the same boundary in the regional and East Lindsey district assessments in the vicinity of the appeal site. Descriptions are also similar, and include such phrases as low lying, flat, agricultural, open views, big skies, dykes, geometric patterns. These are the essential characteristics of the locality and the assessment of the open farmland to the north carried out on behalf of North East Lincolnshire identifies similar characteristics. In essence it is a large scale and simple landscape. As such it is capable of absorbing some large scale and simple development. There is a scatter of settlements which in these character areas tend to be well spaced. In the immediate vicinity and to the south of the appeal site the Newton Marsh sewage treatment works (with its 2 existing wind turbines) and Tetney oil storage tank farm bring a degree of development which is not characteristic of the whole area. These elements have some impact on the character of the immediate surroundings. Similarly the land to the north is in part occupied by Humberston Fitties and Thorpe Park with its associated leisure pursuits such as the golf course. These too impact on the character of the area.
377. Settlement is a greater characteristic of the land to the west and north than to the east and south. Here, within middle marsh and beyond the Humber Estuary LCA Aii, are settlements of greater size, such as the villages of Tetney and Holton le Clay, and the even larger settlement of Humberston, which itself lies just to the south of Cleethorpes and Grimsby. This middle marsh area attracts descriptors such as gently undulating, arable, medium scale, scattered blocks of woodland, frequent villages, predominantly arable. This is a fair summary of the main elements of the character of the land to the west and north. It is less open than the outmarsh, with more enclosed field patterns and greater influence of settlement and communication infrastructure.
378. In some ways the land to the east of the outmarsh is more difficult to characterise. This is loosely termed the tidal zone. It contains mudflats, salt marsh, beach, and sand dunes (or sand hills) along the boundary with the outmarsh. But the character is not consistent – in some locations salt marsh predominates, whilst in others it is the beach and dunes. To the east of the appeal site the flood defence banks are a notable feature, as are the salt marsh and beach beyond it. Humberston Fitties is located on the inland side of a range of dunes, and beyond all of these is the wide expanse of the Humber estuary, with its constantly changing seascape. There are extensive views across the sea, with accompanying big skies. Settlement is largely absent, but man made influences are not. These tend to be associated with military use, such as the coastal pill boxes and sand forts, and the Donna Nook training area, or with infrastructure, such as the pipeline works associated with the oil storage depot in the outmarsh. In the northern section of this landscape character area, where it is closest to the appeal site, it is a curious mixture of a natural landscape which is rather windswept and has a sense of some remoteness, but which is heavily influenced by the nearby impacts of human activity, be it the shipping in the

Humber, the views of amusements at Cleethorpes or the military installations. Further to the south the human intervention declines and the sense of remoteness intensifies and grows, so that at locations such as Horseshoe Point and Donna Nook there is a real sense of being 'away from it all'.

379. Overlying much of the outmarsh and tidal zone is the Council's designation of the Coastal Conservation Areas (CCAs). These follow from the long standing objectives of the Lindsey County Council and subsequent Structure Plan iterations. The CCAs are designed to protect the remaining natural character and interest of the coast. The majority of the site is within CCA1. CCAs themselves seem to stem from the recognition that the coastal area of Lincolnshire, including the sand dunes or sandhills, was a resource which required a degree of protection. They are not Conservation Areas in the usual sense of the term. The Lindsey County Council Sandhills Act had earlier permitted purchase of some of these areas with a view to offering control and protection. Hence, though not a landscape character assessment as such, it is clear that Coastal Conservation Areas were established in relation to concerns that the character of the area was under pressure for change. It follows that the CCA areas identified were regarded as being of some value, and in the context of paragraph 109 of the NPPF that they can, in general, be regarded as valued landscapes. However, the boundaries of the CCA in the vicinity of the appeal site seem to be wholly arbitrary, and I do not accept that the driving force in setting the boundary could be the views of the coast from the road to the west. The coast is not really visible from the road at that point, and indeed I find it difficult to accept that the appeal site is on the coast as such for the purposes of paragraph 114 of the NPPF as it is a little way inland in the outmarsh area. In this case therefore it seems to me that the CCA designation of itself offers little other than interesting historical background and an indication of the value attached to the landscape. The designation links back to the development plan (Policy C14) but does not add much for landscape character assessment purposes beyond what is available elsewhere.
380. It is somewhat mechanical to seek to ascribe sensitivity to each landscape character area because they merge and meld into each other to varying degrees. However, it is fair to observe that to the north and south of the site the landscape is simple and large scale, but also influenced by existing developments. I regard these areas as having a low to medium susceptibility to change. To the west there is less influence from the likes of infrastructure and built development, and the landscape begins to take on a smaller scale character. The susceptibility to change here can be classified as medium. The tidal area to the east, with its different character, is also influenced by external factors and I would assess its sensitivity as no more than medium to high in this vicinity.
381. In relation to landscape character the proposed wind farm would inevitably have an unmissable impact. Despite the presence of the existing turbines at Newton Marsh the increase in numbers from 2 to 10 (overall) would be marked and clear. In the immediate environment up to about 1km from the nearest turbine the scale of change would be high. Of course it would be impossible to describe an accurate boundary where scale of effect declines from high to moderate and so on, but in my judgement the perception of large scale change would begin to decline somewhere between 1km and 2km distant. I note that in these terms there is not much between the Council's evidence and the

Appellant's evidence, or indeed my own assessment of that evidence. This is helpfully summarised in the table submitted by the Council<sup>101</sup>.

382. It is of course usual (and in my judgement fair) to make the assumption that the impact and its significance would be adverse, whilst also acknowledging that there will be some people who positively enjoy the change a wind farm would bring.
383. Taking these matters overall, therefore, I consider that the impact on landscape character can be briefly summarised. First, when very close to the wind farm (or when passing through the resultant array on the path between the proposed turbines and the existing turbines at Newton Marsh) it would be possible to perceive being within a localised wind farm landscape. This would be a major and adverse impact. Secondly, there would be large scale effect within about 1km (or just over) and when combined with the susceptibility to change this would result in major to moderate adverse impact. In simple terms there would be a perception that the nearby landscape has a wind farm within it, and is heavily influenced by its presence. Thirdly, beyond 1km or just over the impact begins to decline, and the perception would be of a landscape 'over there' (to use the Appellant's terminology) having a wind farm within it. This would result in a moderate but declining adverse impact. The essential character of the LCAs would quickly be reasserted with distance from the wind farm even though the turbines would remain as prominent features.
384. I turn then to visual impact. In this I agree with the assessment of the Council and other objectors that users of nearby public rights of way, users of the beach, and visitors to the RSPB nature reserve at Humberston Fitties should be assessed as being high sensitivity receptors. Each of these groups would be visiting primarily for the purposes of recreation and to enjoy the landscape and that which lies within it. I also agree that it is fair to ascribe an adverse impact though again acknowledge that some people would welcome a wind farm here.
385. In some respects the assessment is less easy to make than for landscape character, because walkers and visitors would be subjected to varying degrees of exposure to the wind farm, and this would affect the overall impact. For example, there are areas along local footpaths where there would be no view of turbines despite being quite close to the site, because of vegetation. Similarly users of the beach may well have no view because of intervening sand dunes.
386. Covenham Reservoir attracts those interested in water based activities as well as those enjoying the countryside. The proposal would be seen from that location, and views would be uninterrupted when on top of the reservoir bank. The turbines would be at some distance, about 7.5km, and whilst visible I cannot agree that the impact would be severe. The wind farm would be in view, but in my judgement the impact would be slight to moderate at worst.
387. There is little between the Council and Appellant in their respective judgements (again helpfully included in the Council's table referred to above). I have already noted that I consider that impact should be recorded as being adverse, and not neutral as suggested by the Appellant. There is general consensus that magnitude would fall within the high and high to medium

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<sup>101</sup> Document LPA 4

- category, and I concur with that. These impacts would occur for distances up to 5km from the nearest turbine. I therefore have no reason to disagree that there would be major adverse visual impact which would decline with distance, and depending on the location I consider that the decline in significance of impact would begin to occur at about 2km and continue thereafter.
388. I address here the matter of the Lincolnshire Wolds AONB. This lies some 8km or more to the west and can be seen on the horizon when looking west from the coast. It is fair to say that the Wolds are beginning to lose prominence the further north towards the Humber that they run. There are 2 concerns - views towards the Wolds, and views from the Wolds.
389. Views towards the Wolds are at long distance wherever the viewer stands in relation to the proposed wind farm. They form a low range of hills on the horizon. Their character is not apparent at such long range and they appear as a rather minor element in the view. That is not to belittle their presence or value in themselves, but as a component of the landscape here the Wolds are not a major feature. There is no perception that the distant low hills are in any way exceptional or especially scenic, such as can be experienced when looking towards the Lake District or Dartmoor from a similar range for example. In my judgement the impact of the development on views towards the Wolds would be localised and negligible.
390. Looking outward from the Wolds gives a very different perspective. Here it is possible to see the wide sweep of the coastal plain and the Humber Estuary, especially from viewpoints such as the Wanderlust Way (which is referred to in the reported cases above). What the views from the Wolds emphasise is that the character of the land leading to the coast is low lying and agricultural. There are obvious signs of habitation and infrastructure such as roads, and the Tetney oil storage depot can be picked out. Existing wind energy developments are also visible, and those at Newton Marsh form a good proxy for assessing this proposal. Other wind farms and single turbines can be seen in the vista from East Yorkshire, through the Humber Gateway offshore development, to the wind farm at Conisholme and beyond.
391. The MWAG composite view (though of great quality of reproduction) must of course be treated with caution as it includes developments in scoping which cannot reasonably be included in any visual assessment given their stage of development. A further cautionary note must be added in relation to the method of photography of that view. There is a tendency for the foreground to be lost due to the focal length of lens used, and for the prominence of existing development to be overemphasised. This was noticeable to me at my site visits to that location.
392. What this perspective clearly demonstrated to me at those visits was that the landscape has successfully absorbed development without significantly altering the ability to understand the nature of the view from the Wolds. It is still possible to see the sweep of low lying land leading to the sea and estuary, still possible to see clearly that it is sparsely populated with the exception of the coastal area of North East Lincolnshire, and still possible to recognise that the landscape is agricultural in nature. The view from the AONB has been changed, and would be changed in the event of this proposal being permitted. Some people would not like the turbines being in view, but the change would not

prevent an appreciation of the landscape and its relationship with the Wolds. Overall, therefore, I consider that the impact on the character of the Wolds and the visual appreciation of their surroundings would be little changed by this proposal.

393. This leads me to the cumulative impact of the proposal. A number of schemes are either operational, have permission, or are in planning or scoping. Cumulative impact would be most obvious from the higher ground of the Wolds, though each scheme would be seen in a wide landscape context as I have noted above, and at varying distances. I do not agree that wind energy development across the Humber has any material impact in cumulative terms – it is simply too far away to be significant in the view. Similarly the schemes which are operational and permitted beyond Conisholme, and those offshore, are too far distant to have any significant visual impact in combination with this proposal. That is not to say that they won't be visible at all, but the degree of visual interaction would be so small that it would be unrealistic to conclude that there would be any material harm in being able to see the schemes simultaneously or sequentially. Travelling within the area would bring different wind energy developments into vision, but there would be no overriding impression of being in an extensive landscape dominated by such developments.
394. Realistically, cumulative impacts would therefore be limited to those schemes which would be seen in the same sector of the coastal plain when seen from a fixed viewing point (either in the same view of when turning at the viewpoint) or in sequence when travelling through the localised area. I regard the cumulative impact of the Newton Marsh turbines as a given since they would effectively become part of a larger cluster dominated by the proposed scheme.
395. A geographical representation of wind energy developments and their stage of development is provided in Appendix 4 of the Appellant's proof of evidence on landscape matters. It should be noted, however, that the Louth Canal scheme (3 turbines) has since been dismissed on appeal. The nearest potential schemes would therefore be Fen Lane, Fulstow Top and Damwells. If any or all of these go ahead there would be an element of 'infilling' of the gap between the appeal site and Conisholme and The Limes. This would be visible from the higher ground and the Wolds to the west and it would be possible to see the turbines in the same view from the north-east and the south, including from Covenham Reservoir. However the distance between the individual schemes and the appeal site would mean that they would not be perceived to merge into one large agglomeration because the difference in location of each would alter their relative visual scales significantly. This would enable them to be differentiated.
396. As I have already indicated I do not consider that there would be a likelihood of any development beyond Conisholme being significant in cumulative terms. It would of course be possible to see successive developments when travelling through the area, but there would be large gaps between them so that the impact would be manageable in this flat and generally large scale landscape. In addition, offshore turbines would be sufficiently distant and small scale elements of the landscape/seascape that no material additional impact would occur.
397. Taken in the round I acknowledge the cumulative impact with Newton Marsh, an inevitable result of this development being located adjacent to those turbines. However that cumulative impact would not be materially greater than the appeal

scheme alone. There would be some cumulative impact, but at a moderate level at worst, should development at Fen Lane and Damwells proceed. These findings generally concur with the assessments of the Council and Appellant. The viewpoints included within Appendix 4 of the Appellant's landscape evidence offer representations of the cumulative situation.

398. I can therefore summarise my findings on the impact of the proposed development on the character and visual qualities of the area as follows:

- There would be a major adverse impact on landscape character when close to the turbines, but this would reduce to moderate impact after about 1km, and quickly recede thereafter;
- There would be a high to medium adverse visual impact within 5km of the wind farm, with the highest level of impact generally within 2km;
- The impact on the character and visual qualities of the Lincolnshire Wolds AONB would be minor and not significant.
- Accepting the inevitable cumulative impact with Newton Marsh, there would be some, but limited cumulative impact in combination with Fen Lane, Damwells and Fulstow Top if those schemes are developed.

399. When assessed against the development plan it is not clear that the landscape character and visual impacts would be significantly harmful to the amenities of people living and working in the area in the sense that it would impact upon the conditions experienced as they go about their lives. Thus I do not find conflict with the thrust of Local Plan Policy A4. There would, though, be some apparent conflict with Policies A5 and C14, though the weight attached to this conflict is minimal as a result of the limited weight attaching to those policies. The conflict noted and the harm identified will be considered in the overall planning balance later in this report.

***Heritage Assets*** [99-141, 183-223, 297, 326, 327, 329, 332, 339, 345, 346, 356, 363]

400. I begin by establishing the statutory duties, which apply to decision makers and which I have followed in this report. The duty under S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to have special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72 of the same Act requires the decision maker to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area.

401. It is useful next to establish those assets which are not at issue between the Council and the Appellant, but which have been referenced by others. These are the Humberston Conservation Area, the listed buildings within Humberston, the Louth Canal and associated structures.

402. Humberston is one of the nearest settlements and it has a small historic core, which includes a number of listed buildings. These include St Peter's Church (listed II\*) and a number of buildings listed at Grade II as well as a Scheduled Ancient Monument (SAM). Most of the listed structures are within the Conservation Area, but 2 lie to the north and south respectively. There is no suggestion that the fabric of any of the historic assets would be directly affected

by the proposed development. However, during my site visits I assessed the settings of all the assets. It is apparent to me that the settings of the buildings within the Conservation Area are restricted and defined by their limited curtilages, other development and strong structural vegetation. The significance of the setting of the assets is therefore similarly restricted, and I agree with the Council and Appellant that there would be no impact on these settings. Furthermore I agree that there would be no impact on the Humberston Conservation Area or the 2 outlying listed buildings in the village.

403. The Louth Canal has been noted as historic infrastructure, and the adjacent building at Thoresby Bridge, which was associated with the transport of canal borne goods, has been brought to my attention. This is a listed warehouse building. Its significance lies in the links with the canal and its setting is therefore tied in with that watercourse. The wind farm would be visible from the setting of the listed building at some distance, but would have no impact on its relationship with the canal. I am satisfied that there would be no impact on the significance of the setting or the assets.

404. I turn, then, to those heritage assets about which there is dispute. Again, however, there is no suggestion that the fabric of any would be harmed, and the issue centres on the significance of the settings to the asset, whether their settings would be affected, and if so whether that would result in harm to their significance.

405. *St Peter and St Paul Tetney*. This Church is listed Grade I and is a nationally important asset. As with many ancient churches I accept that it was built as a focal point for the community, and to some extent at least as a marker within the surrounding countryside. However, I find it difficult to accept that the site of the church was chosen in part because it is on higher ground, in order that it could 'dominate' the surroundings. Whilst the ground may be higher, it is almost imperceptibly so. The main element of significance of the Church is undoubtedly in its fabric (the listing does not mention its setting or surroundings at all). But that does not mean that the setting has no significance. It clearly does, and I do ascribe some significance to its setting at the heart of the community and as a marker within the surrounding countryside.

406. The real point of contention is to what extent the approach to Tetney from the south (which cannot be other than within the historic setting of the church as a destination for people in the surrounding area wishing to visit the village) would be subjected to impact from the proposed turbines.

407. There are 2 cultural heritage viewpoint photomontages and wirelines which assist. These are

- Figure 6.6 in the Environmental Statement Volume II, Figures, of September 2012, and
- Figures 4.6a and 4.6b of Supplementary Environmental Information 2, Volume II: Figures and Annexes, of September 2013.

408. The representations in these figures are taken from slightly different locations, and as a result the height of the turbines in relation to the tower of the Church is seen to vary slightly both in relative height and in lateral position. However, the

evidence of the Appellant persuades me that the figures are a good representation from those locations.

409. What the figures show is that on the approach from the south the church has a noteworthy, though not obviously elevated, presence, with a backdrop and surroundings of mature trees and a hint of the village itself. In fact from the viewpoint of Figure 6.6 the Church is already becoming partially obscured by trees. The view is not a designed one. The existing Newton Marsh turbines are visible. The foreground setting of the Church has importance as the land which takes in the journey towards the Church and enables the Church to be picked out as a signpost for itself and the village.
410. Those factors would not change if the development were to proceed. The change would be in the relative influence of the Church in the view across the setting. A greater number of wind turbines with moving blades would become part of the view, and would appear and recede depending on the location of the viewer. But, importantly, the closer to the village the greater the prominence of the Church, and the lesser the prominence of the turbines. This is because the intervening features would blot out the wind farm as the village was approached, until there would be no view of it from some distance to the south.
411. The effect on the setting of the Church would therefore be transitory and variable, but not of a scale which would seriously detract from the view of the Church or the importance of the land to the south as part of its setting. In my judgement the viewer would be clearly able to differentiate the Church from the distant turbines, and the presence of the Church as a signpost for the village would remain clear. As such the interpretation of the significance of the asset would not be harmed. The only area in which there might be said to be harm would be in the visual competition between the turbines and the Church tower. The turbines might be a slight visual distraction from afar, but at such distances the Church itself is not prominent and the substantial bank of mature trees around it is the most noticeable visual feature.
412. In view of the competition for attention which the turbines would pose in some locations I can only conclude that there would be some harm to the setting given the presence of wind turbines in the same view. But the turbines would not be seen to visually dominate the setting of the Church or hinder the appreciation of its contribution to significance. Hence the harm to the significance of the Church and setting would not be substantial. In my judgement it would be very much at the lower end of the scale of harm. Nonetheless recent case law has established that even where there is less than substantial harm there is a presumption against the harm unless the benefits of the proposal outweigh that harm. This matter must be afforded considerable importance and weight in the balance of considerations.
413. *Tetney Lock Coastguard Cottages*. These cottages at Tetney Lock are a row of small brick built dwellings, listed grade II. I do not agree that the cottages are prominent. They are low and set down in the landscape. Their significance stems from their historical and architectural interest as well preserved early examples of their type. They were designed to control shipping along the Louth Canal as well as exercise a safety function. The setting close to the canal and the passage inland and to the sea is therefore important to their significance. The setting to the north, away from the canal and the functional reason for the

- presence of the cottages, is restricted. Although some windows face north, the principal elevations face south, clearly being orientated towards the canal. In my view there would be no impact on setting to the north.
414. The Newton Marsh turbines can be seen above and beyond the cottages when viewed from the south, and the proposed wind farm would add to the array on view. However, the cottages are hardly visible from the south side of the canal, and it is not until the viewer is close to the cottages that their form and function is fully appreciated. The photomontages submitted as Figures 1c and 2c of the Council's heritage proof of evidence demonstrates these points.
415. The turbines become more prominent as the viewer moves away to the south, but equally the significance of the assets diminishes at the same time. When the cottages are most appreciated in their relationship with the canal the turbines begin to be lost to view. This means that the impact of the turbines on the setting of the cottages is essentially lost when the cottages themselves are fully experienced. Hence it is my judgement that the proposed development would not diminish the understanding or experience of the setting of the cottages, and no harm would accrue to the significance of the asset.
416. *Humberston Fitties Conservation Area*. This is located relatively close to the appeal site. The Fitties is an eclectic mix of small dwellings which has great charm. Its significance is as a remnant and reminder of its origins as, initially, a location for camping, then a camp for military personnel, and later as a collection of early self built holiday chalets for urban workers. The group of chalets 'hunkers down' to the rear of sand dunes, and has an inward looking character at the end of the road. It therefore has some sense of remoteness, though this has been eroded by the adjacent Thorpe Park. It is doubtful whether more than a handful of the buildings out of the total of over 300 have an opportunity to look outwards from the settlement. The role of the surroundings of the Fitties is as the location of land where holidaymakers would enjoy their leisure time.
417. However, the special qualities which have led to designation are the history, nature and configuration of the chalets themselves and this is concentrated within the built area. This is confirmed by reading the Conservation Area Appraisal and Management Statements of March 2003<sup>102</sup>. This gives detailed accounts of the history and development of the chalets, but has limited reference to the surroundings. There is mention of the coastal location and the dominance of the sounds and smells of sea and wind, and of the open spaces within the area and up to the coastal dunes. The analysis of landscape features does not go beyond the dunes, and indeed the area is described as having restricted views into or out of the development. As a result it is my judgement that the surroundings of the Conservation Area, or its setting, do not contribute materially to its significance. In any event I am conscious that S.72 of the relevant Act does not refer to Conservation Area settings in establishing the statutory duty.
418. So the real issue is whether the proposed development would preserve or enhance the character or appearance of the Conservation Area. Certainly from the edges of parts of the Conservation Area, including the dunes, the turbines would be visible. But from within the area there would be little impression of them. When within the area the essential character leaps out in the tight knit

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<sup>102</sup> Appendix Q of the Council's Cultural Heritage Proof

layout, variety of design, small well kept plots and narrow access streets. The impact of the turbines would be marginal at worst. Even when standing on the dunes and looking across the Fitties the character and attractive appearance of the jumble of small dwellings in the foreground would remain. Any impact would be negligible and I am satisfied that there would be no harm to the character or appearance of the Conservation Area (or its setting) and hence both would be preserved.

419. *Haile Sand Fort*. This is a grade II listed building set at the mouth of the Humber. As a pair with Bull Sand Fort to the north it was designed to protect the estuary from enemy vessels. Its significance lies in its interest as a surviving example of a defensive structure. Given this significance the understanding of the asset is closely entwined with its military function and clearly the setting at the mouth of the Humber is integral to that. The setting therefore makes an important contribution to its significance. I agree with the Appellant that the main reference points for understanding the functioning of the 2 forts is on the nearest shoreline.
420. Viewing the Haile Sand Fort from the southern Humber shore there would be no view of the proposed wind farm as the turbines would be to the rear. The proposed development would therefore have no effect on the setting. From the north shore the wind farm would be at some 9km distance as a minimum, and from there Bull Sand Fort would be of greater prominence. In such a situation the connection between the forts, their function and their setting, would remain apparent. I do not accept that the presence of wind turbines in the background when viewed from the north shore of the Humber would have any material impact on this situation. I am satisfied that there would be no harm to the setting of Haile Sand Fort and therefore no harm to the significance of the asset.
421. *Coastal Pillboxes*. These pillboxes are located along the sea bank to the south of Humberston Fitties. They are not formally designated but have historic interest resulting from their form and defensive role. They are intervisible with Haile Sand Fort and are part of the same coastal defensive formation. The relationship with the surroundings is clearly of importance to their significance since they were designed to protect the land on all sides. The setting is therefore an important part of their significance.
422. For the most part the wind turbines would have no impact since they would be behind the pillboxes. Intervisibility with the sand forts and other defences along the sea bank would be uninterrupted. It is only the rearward setting, inland, which would encompass the wind farm. The nearest turbine would be over 700m away.
423. I have noted the Council's forensic examination of the range of weapons which might be used at the pillboxes to define setting, but I am not persuaded that this is helpful. A more useful exercise is to visit the pillboxes and imagine what it would be like to be under attack from the landward side. Having done that I can see no real relevance of the range of weaponry – rather the importance of the landward views is in the appreciation of what the experience of attack from the flat and exposed terrain would be like. It is possible to imagine that area being defended from enemy fighters, and as such it is likely that the effective setting would have been, and still is, relatively close to the pillboxes. The presence of the turbines in the landscape beyond would not affect the ability to interpret and

understand the role of the structures. The wind turbines would be beyond the setting. It is my judgement, therefore, that the proposed development would not affect the contribution of the setting to the significance of these undesignated assets.

424. Overall on this issue I have found less than substantial harm to the setting of Tetney Church, but no harm to the setting of any other designated or undesignated heritage asset. The harm I have identified attracts weight as described above, and will be included in the balancing exercise later in this report. I note here that I do not subscribe to the view that the development proposed would deter investment in any upkeep or development of any of the heritage assets (as suggested in evidence) since there is no evidence of that at all.

***Living Conditions*** [63-70, 299, 305-312, 316, 331, 343, 346, 358]

#### Outlook

425. I turn now to matters which are not contested by the Council. The first of these is the impact on outlook from chalets at Thorpe Park, and from dwellings surrounding the appeal site. I start by reiterating the well known principle that a view is not something which is protected, per se, in land use planning decisions. For there to be a finding of material harm which would be unacceptable in the public interest it is necessary to go further. It has often been held, and I agree, that the crucial matter is whether the impact of a development would be such as to cause a dwelling to be rendered an unattractive and unsatisfactory place to live so that the effect of allowing development would, in reality, make the dwelling unbearable as a place to reside. This might occur, for example, if a development was to be so dominant and overbearing that it would be unreasonable to expect anybody to live there. Such a situation would not be in the public interest.

426. It is fair to say that some of the nearest chalets at Thorpe Park, which look out over the Thorpe Park golf facility, would have clear views of the turbines. I was able to see the outlook for myself on my site visits. The views of the turbines would be inescapable when using the terraced areas of those chalets, and I do not doubt that part of the reason for their orientation is to take advantage of the open aspect to the south-west. It must be acknowledged, though, that some of the chalets are protected by vegetation, and some do not have windows directly facing the wind farm site. The number affected, therefore, is limited, and is illustrated on Figure 1 of the Bourne Leisure objection document<sup>103</sup>. At the inquiry it was indicated that 15 to 17 of chalets would be affected. The Newton Marsh turbines are already in view from these chalets, but those proposed would be closer, greater in number, and fill a larger visual arc of the outlook. However, visibility does not equate to an overbearing presence, domination of the view, or unacceptable harm.

427. In my judgement the wind turbines, though prominent, could not be said to be a presence of sufficient dominance or overbearing nature that it would render the affected chalets to all intents and purposes uninhabitable. Whilst I have no doubt that the view would be significantly changed, the outlook from the chalets would

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<sup>103</sup> Which can be located in the folder with Documents BL1 and BL2

still predominantly focus on the golf course and the medium range views. These views are curtailed by vegetation, and it is beyond the vegetation that the turbines would lie. Hence the wind farm would be seen as a somewhat distance feature which, though prominent, would not be unduly disruptive of the view to be enjoyed. I therefore find that the outlook from Thorpe Park would not be significantly harmed by the proposal.

428. I was able to visit a number of surrounding dwellings during my accompanied site visit. The view from The Homestead already includes the Newton Marsh turbines and those proposed would lie either side, widening the arc of view. But because of distance that arc of view is relatively narrow. Although the garden of the property enjoys open views across countryside the wind farm would be perceived as being at some considerable distance. I do recognise the fact that the occupants would not welcome the extra turbines in their valued view, but I cannot reach a position where it is possible to say that the outlook from the property would be affected in a way which would make the property an unacceptable or unpleasant place to live.
429. Some properties at Tetney Lock, including the Crown and Anchor, the Angling Club and Caravan site, and the Coastguard Cottages, would have views towards the wind farm. Impact at the Crown and Anchor would be primarily external where the front outdoor seating is provided. The turbines would be seen above the village and vegetation. However, it seems to me that this would be unlikely to materially affect the enjoyment of a visit to the pub. The visibility of the turbines would not make this an unattractive place to live or visit.
430. Impact at the Angling and Caravan site would be more wide ranging, and I understand the concerns that more wind turbines would discourage visits. There would be visibility of the wind farm from places around the angling lake, and from the area where caravans park. I noted at my visit, however, that there are areas within the grounds which are shielded by vegetation, so the impact would not be inescapable or universal. The wind farm would be prominent and noticeable from much of the property, but not to the extent that it could be assessed as being dominant or overbearing. A similar judgement applies to the views from the residential property on site, where I was able to observe from bathroom, laundry room and kitchen.
431. Coastguard Cottages are a little closer and their rear windows would face out towards the wind farm. The rear of the cottages enjoy small enclosed yards but not extensive gardens, so impact here would essentially be limited to views from windows. Although I was not able to see inside these properties I have the benefit of photographic evidence which is attached to Document Rep 17. This illustrates that the wind farm would be visible in northerly views, and in combination with the photomontage at VP3 of the Environmental Statement Volume II: Figures, provides a good basis for assessing impact. It is clear that the spread of turbines would be seen, filtered by vegetation, and to an extent receding beyond the Newton Marsh turbines. Although prominent it is not possible to reach a judgement that this would make the properties unacceptable places to live.
432. Braybrook Cottage is a little way north of Tetney Lock. It is not suggested that the wind turbines would have any material impact on the outlook from the dwelling itself, and I was able to observe the proposed turbines would be heavily

screened and filtered by vegetation. In the external area to the north of the dwelling, where the manege is located, the proposed turbines would extend to the right of those existing at Newton Marsh, and would be visible between trees and other vegetation in a wider arc of view than exists now. I accept that the occupants would not welcome the change, but nonetheless it is not possible to conclude that the impact would be such as to result in a dominant or overbearing presence so that the property would become an unacceptable place to live.

433. Other properties not individually visited would have views of the wind turbines, for example properties in and around Tetney, and in and around Humberston. However, there is nothing in the evidence before me which makes an arguable case that any such property would be affected to the extent that the impact of the wind farm would be so great that it would make the property effectively uninhabitable.

#### Noise

434. The Council accepts that noise from the wind farm, in combination with Newton Marsh turbines, or on its own, would meet the objectives of ETSU-R-97<sup>104</sup>. ETSU is the preferred method of assessment and it has the support of the Government as expressed in National Policy Statements EN-1 and EN-3, as cross-referenced by footnote 17 of the NPPF. Furthermore, PPG published in March 2014 indicates that ETSU should be used. The Appellant has followed that advice.
435. I do recognise, though, that there have been occasions when ETSU compliant schemes have been refused because of particular circumstances in those cases. For the most part, though, it is reasonable to assume that compliance with ETSU would achieve a satisfactory standard at surrounding dwellings and other property. However, I have considered whether any factors in this case are sufficiently unusual to make the ETSU advice unreliable. Despite the precautionary approach advocated by Bourne Leisure, I do not find that such circumstances exist. I am also not persuaded that the EIA process has been flawed in respect of noise. The ES dealt with this matter clearly and came to a justifiable conclusion. There is nothing in current policy which indicates that a lower night time level should be adopted, and I do not consider the area around Thorpe Park or its golf course to be especially quiet and tranquil – it is after all a holiday park catering for hundreds of families.
436. There are other concerns expressed in relation to dwellings in different locations, and the occupants of Braybrook Cottage have indicated that the turbines at Newton Marsh can be heard on occasion. However, inaudibility is not the objective. ETSU seeks to arrive at a situation where a reasonable noise environment is retained, and I have nothing before me to suggest that has not been achieved here. In passing I note that a noise Statement of Common Ground has been agreed between the Appellant and Bourne Leisure<sup>105</sup>.
437. Other impacts on living conditions have been referred to, such as the effect of shadow flicker. This would be expected to be at a low level, and a condition has been agreed which could adequately address this phenomenon should it occur.

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<sup>104</sup> The Assessment and Rating of Noise from Wind Farms

<sup>105</sup> Document APP 9

438. Taking this issue in the round it is my judgement that there are no grounds for concluding that the impact on living conditions of this proposed development would be sufficient to withhold planning permission. This is also the position taken by the Council.

**Tourism** [59-62, 298, 300-303, 306-308, 319, 322, 325, 326, 328, 329, 333, 342, 344, 345, 346]

439. This part of Lincolnshire has a significant tourist industry and it is understandable that tourist operators are wary of anything which might adversely affect trade. In this case concerns have been expressed by Bourne Leisure at the large end of the business and others such as the operators of Tetney Lock Angling and Caravan Site at the smaller end.
440. The Bourne Leisure site, Thorpe Park, is extensive, and includes its own leisure pursuits such as the golf course. There is no doubt that some users of the golf course (which I walked on my site visits) may be distracted by the presence of the proposed turbines. But this would not be on every hole as some face away from the appeal site. There is also tree cover in places which would interrupt vision towards the site. It is difficult to know the reaction of golfers to the proposal, and the question really is whether there would be a likelihood of business being lost as a result of visitors not wishing to use the course. There is simply no evidence either way, but I find it surprising that Bourne Leisure has not sought to quantify its concerns by asking its guests for their opinion.
441. There is also a lack of evidence relating to the likelihood of losing bookings to stay at the holiday park. Again there has been no dialogue with guests. In any event Thorpe Park is organised into distinct areas, each with well vegetated surrounds. In the vast majority of the park I would not expect there to be any material impact to the visitor experience as a result of the proposed development. As it stands the Bourne Leisure assertions are not credible. They may be a response to a perceived business risk, but without evidence that business risk cannot be verified or afforded any material weight. In addition it was accepted at the inquiry that there are no instances in England where a wind energy development has been refused on the grounds of harm to tourism.
442. A similar situation in relation to evidence exists at smaller sites. There is reference in representations<sup>106</sup> to current visitors being 'horrified' by the proposed development alongside the Newton Marsh turbines, but no substantive evidence that it would affect any future plans. Whilst reiterating my understanding of the concerns expressed I must base my judgements on evidence. Here I have none to indicate that there would be any material impact on local tourism.
443. The same considerations apply to the more generic concerns expressed in relation to this issue, including the leisure pursuits undertaken when walking the Wolds, the Louth Canal routes and water based activity. Many of those who engage in those pursuits will not enjoy the sight of wind turbines in the landscape, many will be ambivalent, and no doubt many will have no objection. In any case there is no evidence before me that this scheme would have any material impact on tourism in the area. This matter cannot therefore weigh against the proposal.

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<sup>106</sup> Document REP 3

**SPA and Ramsar Sites** [30, 37, 40, 260-263, 323, 324, 332, 341, 354]

444. The Humber Estuary Special Protection Area (SPA) and Ramsar (and Site of Special Scientific Interest (SSSI) but note that this is not a European site) lies about 0.6km to the east of the appeal site. Potential significant effects were identified in the Humber Estuary SPA and Ramsar in relation to 8 avian receptors. These are dark-bellied brent goose, shelduck, marsh harrier, hen harrier, peregrine falcon, golden plover, lapwing and curlew. The factors potentially affecting these receptors were habitat loss, disturbance and/or displacement, and collision.
445. As a result work was undertaken to assess the risks to these species. The results of the assessment are contained within the ES and its supplementary information, and have been reviewed by Natural England (NE). The Environmental Statement and Supplementary Environmental Information 2 (September 2013) proposed mitigation, enhancement and monitoring measures.
446. The latest advice from NE is dated 19 August 2014, before the close of the inquiry. I have included this as a Council document<sup>107</sup>. In its response NE makes it clear that it concurs with the conclusions of the assessment provided in the Environmental Statement and Supplementary Environmental Information (which may be taken as a 'shadow' Appropriate Assessment) providing that the mitigation measures are secured in any planning permission granted. The means for providing those mitigation measures has been included within the conditions which I recommend are attached to any planning permission.
447. I am therefore satisfied of 2 matters. First, that the proposed development requires an Appropriate Assessment under the Habitats Regulations in light of the identified likelihood of potential significant effects on a European site – in this case affecting avian species. Secondly in relation to likely significant effects on disturbance and displacement on avian species, that the mitigation, enhancement and monitoring proposed (and required by condition) would result in no adverse effect to the integrity of European sites.
448. Therefore it is my judgement that the Secretary of State, in carrying out the Appropriate Assessment can safely conclude that the proposed development would not adversely affect the integrity of any European site so long as suitable conditions are imposed.

**Other Matters** [30, 56, 57, 240, 264-272, 326]

449. I visited the private Nature Reserve referred to in representations<sup>108</sup> at the request of its founder. This lies to the west of Thorpe Park. Much of the area is well wooded and the existing wind turbines at Newton Marsh are not prominent (or even seen) in most of the site, being occasionally glimpsed as one progresses from north to south. At its southern end, though, there would be clear views out over the wind farm at close range.
450. There is no conflicting evidence relating to the species which are present as residents or visitors at the site, but equally there is nothing which provides persuasive evidence that the wind farm would be harmful to any of those species.

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<sup>107</sup> Document LPA 6

<sup>108</sup> Document Rep 2

For that reason I cannot give the concerns expressed material weight. In a wider sense the impact on ecological matters has been dealt with in the Environmental Statement. The conclusions there are clear and there is no conflicting substantive evidence to suggest that the conclusions of the ES are unsafe.

451. Many other appeal decisions have been supplied and referred to in evidence. It would be impossible to address them all. However, of recent note is the Louth Canal decision (APP/D2510/A/13/2200887) which has been referred to by both parties and which was issued prior to the receipt of closing submissions in this appeal. In the Louth Canal case the appeal was dismissed on grounds relating to a heritage asset, and on the impact on amenity at a residential property. Of greater interest is the fact that the Secretary of State found only marginal harm to the prevailing landscape character, and no material conflict with the objective of protecting distinctive landscape in relation to the AONB. That scheme was clearly a different scheme to that in this case (with fewer turbines) but would have been located in a landscape with similar characteristics and a short distance away. It is also notable that the Secretary of State afforded greater weight to the NPPF than the Local Plan in that case, a situation which also applies here.
452. Other appeal decisions reflect the considerations of importance in their individual cases. I do not find that there is sufficient similarity in any of them to be of great assistance with this case. In particular there are no other decisions of which I am aware which have similarly juxtaposed land uses such as Thorpe Park. Matters such as landscape and visual impact, and impact upon residential amenity must of course be assessed in the light of the circumstances of the individual case in any event.
453. The wind farm would have a design life of 25 years, and its reversibility is a matter which is referred to in national advice. It is a material consideration, and of some weight, particularly in regard to the impact on heritage assets. But 25 years is something close to a generation. Impacts would therefore last for a significant period, and it would be unlikely that the intention to decommission in 25 years would make the difference between acceptability or otherwise in this case. This is not a matter which I regard as determinative here.
454. Other matters raised include such matters as impacts on the highway network, on the water table, and as a result of low frequency noise and vibration. I acknowledge that these and other concerns are of importance to the people making the representations. However, the matters have either been dealt with in a manner which results in regulatory authorities having no objections, or else there is insufficient evidence to enable a finding that any harm is likely.

### ***Summary conclusions on main considerations***

455. My conclusions on the main considerations can be summarised here as these:
- i) There would be a major adverse impact on landscape character when close to the turbines, but this would reduce to moderate impact beyond about 1km, and quickly recede thereafter;
  - ii) There would be a high to medium adverse visual impact within 5km of the wind farm, with the highest level of impact generally within 2km;

- iii) The impact on the character and visual qualities of the Lincolnshire Wolds AONB would be minor, with no conflict with the objectives of Local Plan Policy C11.
- iv) Accepting the inevitable cumulative impact with Newton Marsh, there would be some, but limited cumulative impact in combination with Fen Lane, Damwells and Fulstow Top if those schemes are developed;
- v) There would be less than substantial harm to the setting of Tetney Church, but no harm to the setting of any other designated or undesignated heritage asset. The harm to setting, though very limited and not of material significance to the interpretation of the asset, must attract considerable importance and weight and results in conflict with Local Plan Policy C2;
- vi) There are no grounds to conclude that the living conditions of nearby residents or visitors would be unacceptably harmed;
- vii) There is no evidence of the likelihood of any material harm to tourist enterprises either individually or generically;
- viii) There is sufficient information to conclude that an Appropriate Assessment would conclude that there would be no adverse effect to the integrity of the Humber Estuary SPA and Ramsar;
- ix) No other matters brought to my attention militate against the proposal.

456. With regard to the development plan there was a good deal of agreement during the course of the inquiry that the development plan is out of date, and silent, in relation to renewable energy schemes. As such it was initially argued that paragraph 14 of the NPPF should come into play. However, it was latterly recognised that such a position could not be sustained in light of the contents in footnote 9 of the NPPF. That refers in turn to paragraph 119 which indicates that the presumption in favour of sustainable development does not apply where development requiring Appropriate Assessment under the Birds or Habitats Directives is being considered, planned or determined. Therefore the presumption in favour of sustainable development at paragraph 14 does not apply here.

457. I have identified above the conflict with the development plan which can be drawn from this proposal. In other respects I find that the policies set out at the beginning of this report are of limited relevance (for the reasons given) such that they do not carry material weight, or that there is no conflict in any event. In particular I find Policies A5 and C14 of no real assistance for a proposal of this nature. There is no conflict with Policy A4 in my judgement.

***Benefits of the Proposal*** [149, 225, 273, 299, 318, 320, 348-351]

458. There can be no doubt of the Government's support for renewable energy as it is expressed in the NPPF. PPG advice does not change that support – the approach remains one of assessing the planning balance. There is no constraint set by targets and any renewable energy production is to be welcomed if it is an acceptable development. It is not necessary to remind the Secretary of State of

all the supporting advice and commitments which sit alongside national planning policy, but the mandatory target of the Renewable Energy Directive 2009/28/EC, to reach 15% of energy from renewables by 2020, is of note. I agree with the Appellant that the greatest burden for this will fall on electricity production and that an acceleration of supply is required.

459. The wind farm would have an installed capacity of between 16 and 24 MW and would be capable of generating significant amounts of electricity. The potential is to supply between about 36 and 55 GWh, enough to supply between 7,626 and 11,451 homes. Carbon dioxide savings would amount to more than 15,000 tonnes per annum, up to perhaps 23,685 tonnes. These figures as quoted in proofs of evidence can only be estimates, and have been based on performance as recorded in the Digest of UK Energy Statistics (DUKES) 2013. However at the inquiry the figures were updated as a result of the publication of DUKES 2014<sup>109</sup>, so that the estimated homes supplied would now be between 8,884 and 13,327. CO<sub>2</sub> savings would be in the order to 17,417 to 26,126 tonnes. Whichever figures turn out to be most accurate these matters are clearly of substantial weight in the overall balance.
460. I note also that in terms of security of energy supply DUKES 2013 figures indicate a dependency rate of some 43% on imported energy. There is clearly a need to do more to ensure security of supply, in accordance with Government policy. This is of significant weight.
461. Sustainability has 3 strands – social, economic and environmental. Social benefits would be provided by the provision of renewable energy and the assistance in combating climate change. It must be recognised, however, that the case against the proposal includes matters related to the enjoyment of the locality, and these matters can be taken to be of some social relevance. Environmental matters are tied up with landscape and visual impact as dealt with earlier. Economically there would be undoubted gains in the provision of employment and services associated with the proposal. I note the intention to secure local contractors, but this cannot be assured. Hence economic benefits would not be guaranteed to be felt in the local area and there is no firm basis for accepting the figures advanced by the Appellant. Nonetheless, in a general sense, and to some extent locally, I accept that there would be economic benefit from the proposal. There would also be economic benefit in assisting with the security of national energy supply. In the round the proposal can be regarded as a sustainable development.

***The Overall Balance*** [146-153, 225-274, 299, 318-320]

462. It was agreed at the inquiry that community benefits or Green Energy Credit is not material in planning terms, and cannot be a factor in the planning balance.
463. There have been a great many objections made to this development. But there have been a great many supporters too, including some who came forward to speak at the inquiry. I note the comments relating to the canvassing of support, and the location of supporters. But there are many supporters from the area close to the wind farm, as well as many objectors. Inevitably opinions are split, but I am by no means convinced that the weight of public opinion here is

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<sup>109</sup> CD 6.43

against the proposal as firmly as suggested. Hence I do not consider that the suggestion that local objection is so strong that it must be of great weight can be accepted. The split of opinion leads me to conclude that this matter should be neither seen as a factor in support or against the proposal. In my judgement the case should be determined on the merits of the cases put without reference to numbers of people reported as supporting one side or the other.

464. The proposal would not be without harm, as is inevitable in a case such as this. Taken overall there would be moderate harm to landscape character (higher when closer, lesser with distance) and a similar impact on visual amenity. However the landscape is of a character which can absorb a development of this nature with some success. In my judgement these matters attract moderate weight.
465. There would be limited harm to the setting of one heritage asset, but no harm to any others. Although less than substantial harm to a heritage asset must be considered in the light of S.66 of the Act noted above, and attracts considerable importance and weight.
466. There would be conflict with the development plan in some respects, but development plan policies here are of limited assistance and weight. The NPPF is of greater weight in the balance.
467. The benefits of the proposal are outlined above and in my judgement attract substantial weight in favour of the proposal. In overall terms I consider that it should be regarded as sustainable development when considered against the NPPF taken as a whole. The negative impacts would be acceptable in this instance when weighed against the positive benefits. In the terms of the NPPF, it is my professional judgement that the impacts are acceptable. It follows, in accordance with paragraph 98 of the NPPF that I consider planning permission should be granted.

## **RECOMMENDATION**

468. I recommend that the appeal is allowed and that planning permission is granted for the development subject to the conditions set out in the attached Annex.

*Philip Major*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Thea Osmund-Smith She called	Of Counsel
Mr R Walker Dip Land Admin DipTP DipConstudies(York) MRTPI IHBC	Senior Conservation and Design Officer, East Lindsey District Council
Mr G Holliday BA(Hons) MPhil CMLI	Director, FPCR Environment and Design Ltd
Mr D Loveday BSc(Hons) MRTPI	Interim Planning Officer: Planning and Built Environment, East Lindsey District Council

### FOR THE APPELLANT:

Mr M Trinick He called	Queen's Counsel
Mr M Reid BSc AEIMA MIOA	Principal Acoustic Consultant, Arcus Consultancy Services Ltd
Dr S Carter BSc PhD MIfA FSAScot	Senior Consultant, Headland Archaeology (UK) Ltd
Mr C Goodrum BSc(Hons) DipLA FLI	Senior Partner, LDA Design
Mr D Hendley MRTPI	Principal Planning Consultant, Arcus Consultancy Services Ltd

### FOR MARSH WINDFARM ACTION GROUP (Rule 6 Party):

Mr M Grosvenor	Presented evidence as Agent for the Action Group Mr Grosvenor also read statements from 3 local residents who could not attend the inquiry
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### FOR BOURNE LEISURE (Rule 6 Party)

Mr I Kelley MRTPI	Head of Planning, Graham and Sibbald
Mr Kelley gave evidence and also called	
Mr M Steele BA DipLD CMLI	Mark Steel Consultants Ltd
Mr D Bowdler FIOA FICBS MCIA	Acoustic Consultant

**INTERESTED PERSONS:**

Mr B Rea	Humberston Parish Councillor and Local Resident
Ms Sue Fortune	Lincolnshire Community Foundation
Mr J Murphy	Lincolnshire Community Foundation
Mr T Burgess	Local Resident
Mrs S Lamming	Local Resident
Mr B Vernon	Local Resident
Ms C Belton	Local Resident
Mr S Harness	N E Lincs District Councillor and Local Resident
Mr J Pocklington	Lincolnshire Pro Wind Alliance
Mr T Bridges	E Lindsey District Councillor and Local Resident
Mrs L Hague	Resident of Humberston Fitties
Mr R Lukehurst	Tetney Parish Councillor and Local Resident
Mrs A Winslow	Tetney Parish Councillor and Local Resident
Mr A McLaren	Local Resident
Mr J Loomes	Chairman of the Collaboration of Parish Councils and Local Resident
Mrs S Pearce	North Somercotes Parish Council and Local resident
Mr S Edwards	Local Resident
Mr G Lane	Tetney Parish Councillor and Local Resident

**DOCUMENTS SUBMITTED BEFORE THE CLOSE OF THE INQUIRY**

**FROM THE COUNCIL**

LPA Doc 1	Notification letter for the inquiry
LPA Doc 2	Opening Statement
LPA Doc 3	Case report – Chase Milton Energy Ltd v SoS for CLG
LPA Doc 4	Comparison table of assessed landscape and visual effects
LPA Doc 5	Letter from Natural England dated 19 August 2014
LPA Doc 6	Closing Submissions

**FROM THE APPELLANT**

App Doc 1	Opening Statement
App Doc 2	Correspondence fro the Environment Agency
App Doc 3	Updated Noise Assessment tables
App Doc 4	Scottish Executive – PAN 45 – <i>Renewable Energy Technologies</i>
App Doc 5	Decision relating to development at Auchtermuchty
App Doc 6	Planning Policy Wales – TAN8 – <i>Planning for Renewable Energy</i>
App Doc 7	Decision relating to development at Nantglyn
App Doc 8	Decision relating to development at Bradford
App Doc 9	Statement of Common Ground in relation to noise
App Doc 10	Tetney Marsh Nature Reserve information
App Doc 11	Aerial view of Action Group photomontage location
App Doc 12	Letter and location plan relating to letters in support of the proposal
App Doc 13	Outline Ecological Management Plan
App Doc 14	Letters from Natural England relating to ecological mitigation
App Doc 15	Draft suggested conditions

- App Doc 16 Draft suggested excess amplitude modulation condition
- App Doc 17 Closing Submissions
- App Doc 18 Comments on the Council's closing submissions

FROM THE ACTION GROUP

- AG Doc 1 Opening Statement
- AG Doc 2 Representation from Wendy van der Horst read by Mr Grosvenor
- AG Doc 3 Representation from R A Bartczak read by Mr Grosvenor
- AG Doc 4 Representation from Rev Paul Salmon read by Mr Grosvenor
- AG Doc 5 Appeal decision relating to development at Manby, Louth
- AG Doc 6 Checklist of appearances from local residents and other opposing the wind farm
- AG Doc 7 MWAG Closing Statement

FROM BOURNE LEISURE LTD

- BL Doc 1 Opening Statement
- BL Doc 2 Closing Submission

STATEMENTS FROM LOCAL RESIDENTS AND OTHERS WHO APPEARED

- Rep 1 Statement from Mr B Rea
- Rep 2 Statement from Mr T Burgess
- Rep 3 Statement from Mrs S Lamming
- Rep 4 Statement from Mr B Vernon
- Rep 5 Statement from Ms C Belton
- Rep 6 Statement from Mr S Harness
- Rep 7 Statement from Mr J Pocklington
- Rep 8 Statement from Mr T Bridges
- Rep 9 Statement from Mrs L Hague
- Rep 10 Statement from Mr R Lukehurst
- Rep 11 Statement from Mrs A Winslow
- Rep 12 Statement from Mr A McClaren
- Rep 13 Statement from Mr J Loomes (Collaboration of Local Parishes)
- Rep 14 Statement from Mr J Loomes (personal representation)
- Rep 15 Statement from Mrs S Pearce
- Rep 16 Statement from Mr S Edwards
- Rep 17 Statement from Mr G Lane

## **APPENDIX – SUGGESTED CONDITIONS**

### **Time Limits, Decommissioning and Site Restoration**

1. The development hereby permitted shall commence before the expiration of 3/5 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 1 week after the event.

*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.

2. The development hereby permitted shall be removed in accordance with condition 3 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be given to the Local Planning Authority and Humberside International Airport Limited no later than 1 calendar month after the event.

*Reason:* In recognition of the expected lifespan of the development, in the interests of safety and amenity once the plant is redundant and in the interests of aviation safeguarding.

3. 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 turbine foundations to a depth of 1 metre below ground level. The scheme shall also include proposals for the management and timing of any works, a traffic management plan and restoration measures. The approved scheme shall be implemented as approved.

*Reason:* To ensure that the development is decommissioned and the site restored at the expiry of this permission.

4. If any of the wind turbines hereby permitted fail to operate for a continuous period of 9 months following the First Export Date, a scheme shall be submitted to the Local Planning Authority for its written approval within 3 months of the end of that 9 month period for the repair or removal of the relevant turbine. The scheme shall include a proposed programme of remedial works where repairs to the relevant turbine are required or a method statement relating to the removal of the relevant turbine and the works solely associated with that turbine and for site restoration. The scheme shall be implemented as approved.

*Reason:* To ensure that appropriate provision is made for turbine decommissioning or repairs.

## **Appearance of the Development**

5. The wind turbines shall have 3 blades which shall rotate in the same direction and the overall height of the wind turbines shall be between 105m and 115m to the tip of the blades when the turbine is in the vertical position and the hub height of the wind turbines shall be between 63m and 75m.

*Reason:* For the avoidance of doubt and in the interests of the character and appearance of the area.

6. No wind turbine shall be erected on site until details of the finish and colour of the turbines, meteorological mast and any external transformer units have 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, meteorological mast or any external transformer units other than those required by law. 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 the character and appearance of the area.

7. The construction of the onsite temporary construction compounds shall not commence until details of the external appearance, dimensions, layout and materials for the buildings and any associated parking area and details of surface and foul water drainage from the compounds have been submitted to and approved in writing by the Local Planning Authority. The construction shall proceed in accordance with the approved details.

*Reason:* In the interests of visual amenity.

8. The switchgear and control building shall not be erected on site until details of its external materials have been submitted to and approved in writing by the Local Planning Authority. The building shall then be built in the approved materials.

*Reason:* No such details have yet been submitted and in the interests of visual amenity.

9. All electrical cabling between the individual wind turbines and the switchgear control building shall be installed underground.

*Reason:* In order to ensure a satisfactory appearance in the landscape.

10. Save as provided for within conditions 12 and 18 or as required by law there shall be no external lighting of the site.

*Reason:* For the avoidance of doubt and in the interests of visual amenity.

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

11. 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 details for the:

- a) routeing of construction traffic;
- b) scheduling and timing of movements;
- c) management of junctions to and crossings of the public highway and other public rights of way;
- d) access from the site to the public highway and a timetable for the implementation of these works;
- e) temporary warning signs and any temporary or permanent works required in the public highway to enable the construction of the development; and
- f) proposals for the transportation of abnormal loads to the site.

The CTMP shall be implemented as approved by the Local Planning Authority.

*Reason:* In the interests of highway safety.

12. No development shall commence 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, subject to any variations approved in writing by the Local Planning Authority. The CMS shall include details of the following:

- (a) the timing of construction works;
- (b) a Health and Safety Plan reflecting the details contained within Chapter 13 of the Environmental Statement at paragraphs 13.5.4 and 13.7.4.4;
- (c) the formation of the temporary construction compounds, access tracks and any areas of hard standing;
- (d) the provision of parking, loading and unloading facilities, and manoeuvring areas for vehicles within the site;
- (e) the methods of working to be employed in the construction of the cable trenches, crane pads and foundation works;
- (f) site illumination during the construction period;
- (g) the siting and details of wheel washing facilities;
- (h) the prevention of pollution of ground or surface water;
- (i) the method of disposal of foul drainage and sewage;
- (j) a surface water drainage scheme;
- (k) dust management;

- (l) details of emergency procedures;
- (m) a site Construction Environmental Management Plan to include details of measures to be taken during the construction period to protect wildlife and habitats;
- (n) the cleaning of the entrance to the site and the adjacent public highway and the sheeting of all heavy goods vehicles taking spoil or construction materials to or from the site to prevent spillage or deposit of any materials on the highway;
- (o) the disposal of surplus materials;
- (p) proposals for the restoration of the site following the completion of the development; and
- (q) a Construction Noise Management Plan (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out and any necessary mitigation measures).

*Reason:* To ensure a satisfactory level of environmental protection and to minimise disturbance to local residents during the construction process.

### **Construction Hours**

13. (a) Save as provided within Condition 11(b), construction work and any associated traffic movements to or from the site shall only take place between the hours of 07.00 to 19.00 Mondays to Fridays inclusive and the hours of 07.00 to 13.00 on Saturdays with no such work or associated traffic movements on a Sunday or Public Holiday.
- (b) The following works may take place outside the hours specified in Condition 13(a): -
- Works in the case of emergency (to be notified to the Local Planning Authority by telephone as soon as practicably possible and in writing within two working days).
- (c) The following works may take place outside the hours specified in Condition 13(a) with the prior written approval of the Local Planning Authority: -
- Pouring of concrete for the wind turbine foundations; and
  - Delivery of turbine and crane components for the erection of wind turbines.

*Reason:* In the interests of amenity to restrict noise impact and the protection of the local environment.

### **Archaeology**

14. No development shall commence on site until the developer has secured the implementation of a programme of archaeological work which programme shall be

undertaken in accordance with a Written Scheme of Investigation (“WSI”), which has been submitted to and approved in writing by the Local Planning Authority.

*Reason:* In order to protect any features of archaeological importance.

### **Telecommunication Interference**

15. Turbine 1 should not be erected until a scheme (to be implemented as approved) has been submitted to and approved in writing by the Local Planning Authority providing for the re-routing of a link operated by the Joint Radio Company Ltd on behalf of Northern Powergrid.

*Reason:* In order to protect the integrity of the existing telecommunications links.

### **TV Interference**

16. No development shall commence on site until a scheme providing for the investigation of any interference to television signals by the operation of the development and for the remediation of any interference caused by the operation of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme (which shall be implemented as approved) shall provide that complaints from users of television signals in the area may be made either to the developer or to the Local Planning Authority, that complaints made to the developer shall be notified to the Local Planning Authority, and that complaints must be made within 12 calendar months of the First Export Date.

*Reason:* In the interests of amenity for nearby residents.

### **Micro-siting**

17. The wind turbines and supporting infrastructure shall be sited in the position as shown on Figure 3.1 of the Environmental Statement (September 2012) save that: -

- (r) The turbines may be sited within 25m of their approved positions provided that: -
  - (i) Without the written approval of the Local Planning Authority Turbine 4 may not be sited more than 5m eastwards of its approved position;
  - (ii) Turbines 7 and 8 may not be sited closer to the dwellings at Bishopthorpe Farm than their approved positions;
  - (iii) No turbine may be sited within 8m of an existing drainage ditch; and
  - (iv) Access tracks and crane pads may be sited so as to accord with the positions of the turbines.
- (s) A meteorological mast and other infrastructure associated with the development may be sited within 5m of the position shown on the approved plan.

For the avoidance of doubt, subject to the micro-siting provision of this condition, the turbines and meteorological mast shall be erected at the following grid co-ordinates:

<b>Turbine</b>	<b>Easting</b>	<b>Northing</b>
1	533078	403582
2	533385	403870
3	533086	404274
4	533020	403944
5	532684	404051
6	532685	403620
7	532380	403758
8	532260	404032
<b>Met Mast</b>		
Permanent	532417	403408

The submitted plans are:

Site Location Plan (drawing 001)  
 Planning Application Boundary (drawing 002)  
 Access from Newton Marsh Lane – Option 1 (drawing 012)  
 Access from A1031 – Option 2 (drawing 013)  
 Site Layout (Figure 3.1)

Within one calendar month of the First Export Date the developer shall send the Local Planning Authority a plan of the development as built.

*Reason:* To enable necessary minor adjustments to the position of the wind turbines, meteorological mast and all other associated infrastructure to allow for site-specific conditions.

### **Aviation**

18. The developer shall install MOD-approved infra-red warning lighting at the highest practicable point on all turbines. Each turbine will be erected with this lighting installed and the lighting will remain operational throughout the duration of this permission.

*Reason:* In the interests of aviation safety.

19. No blades shall be fitted to the turbines comprised within the development until the Developer has agreed a Primary Radar Mitigation Scheme (PRMS) with the Operator which has been submitted to and agreed in writing by East Lindsey District Council in order to mitigate the impact of the development on the Primary Radar Installation at Claxby.

For the purpose of this condition:

“Operator” means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of

the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

“Primary Radar Mitigation Scheme” or “Scheme” means a detailed scheme agreed with the Operator which sets out the measures to be taken to mitigate at all times the impact of the development on the Claxby primary radar and air traffic management operations of the Operator.

*Reason:* To mitigate the impact of the development on the Primary Radar Installation at Claxby and associated air traffic management operations.

20. No blades shall be fitted to the turbines comprised within the development unless and until the approved Primary Radar Mitigation Scheme has been implemented and the development shall thereafter be operated fully in accordance with such approved Scheme.

For the purpose of this condition:

“Operator” means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

“Primary Radar Mitigation Scheme” or “Scheme”) means a detailed scheme agreed with the Operator which sets out the measures to be taken to mitigate at all times the impact of the development on the Claxby primary radar and air traffic management operations of the Operator.

*Reason:* To mitigate the impact of the development on the Primary Radar Installation at Claxby and associated air traffic management operations.

21. No turbines shall be erected until an Air Defence Radar Mitigation Scheme (“ADRMS”) has been submitted to and approved in writing by the Local Planning Authority. The ADRMS means a detailed scheme to mitigate the adverse impacts of the development on the air defence radar at RRH Staxton Wold and the air surveillance and control operations of the Ministry of Defence. The scheme shall set out the appropriate measures to be implemented to that end.

*Reason:* In the interests of aviation safeguarding.

22. No turbines shall become operational until:

- a) the approved mitigation measures which the approved scheme (as referred to in condition 21) requires to be implemented prior to the operation of the turbines have been implemented; and
- b) any performance criteria specified in the approved scheme and which the approved scheme requires to have been satisfied have been satisfied; and
- c) that implementation and satisfaction of the performance criteria have been approved by the Local Planning Authority.

The developer shall thereafter comply with all other obligations contained within the ADRMS.

*Reason:* In the interests of aviation safeguarding.

### **Shadow Flicker**

23. No generation of electricity to the grid shall take place until a scheme setting out a protocol for the avoidance of shadow flicker at any dwelling which is lawfully existing or has planning permission at the date of this permission has been submitted to and approved in writing by the Local Planning Authority. The approved protocol must be implemented in its entirety.

*Reason:* In the interests of amenity for nearby residents.

### **Ecology**

24. No development shall commence on site until an Ecological Management Plan ("EMP") has been submitted to and approved in writing by the Local Planning Authority. The EMP shall include (but not be limited to) the mitigation and enhancement measures referred to in Sections 7.6.1, 7.8, 8.6.5 and 8.6.6 of the Environmental Statement and Section 5.6 of the Supplementary Environmental Information 2 (September 2013) and provide full details of the means by which the mitigation measures will be both secured and delivered as well as the mechanism for their long term management and monitoring. The EMP shall be implemented as approved.

*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.

25. No development shall commence until a scheme providing for pre-construction surveys of breeding birds including any nests on the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.

*Reason:* In the interests of nature conservation and to safeguard protected species.

### **Flood Prevention**

26. The development hereby approved shall be carried out in accordance with the details in Sections 5.2 and 5.3 of the Supplementary Environmental Information 1 (February 2013), Section 2.1 – 2.3 of the Supplementary Environmental Information 3 (April 2014) and the Flood Risk Assessment contained in Technical Appendices A9.1 and A9.2 to the Environmental Statement (September 2012).

*Reason:* To reduce the risk of flooding to the proposed development.

## **Noise**

27. The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

a) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data 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) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

b) Within 21 days of this condition coming into force the wind farm operator will 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.

c) Within 21 days from receipt of a written request from the Local Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise 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 and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

d) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. 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 written request of the Local Planning Authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.

e) Prior to undertaking noise monitoring at Bishopthorpe House, the wind farm operator will submit for the approval of the Local Planning Authority, evidence of the financial involvement of the occupants of this property. If this evidence meets with the approval of the Local Planning Authority, the limits detailed in the Tables attached to these conditions for Bishopthorpe House (if involved) shall apply, otherwise those limits detailed for Bishopthorpe House (if not involved) shall apply. Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the noise limits shall be those of the physically closest location listed in the Tables. For such dwellings, the wind farm operator may 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 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.

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 for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

g) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c), 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 (d) above unless the time limit has been extended in writing by the Local Planning Authority.

h) If a written request made by the Local Planning Authority under condition 27(c) contains a notification that the complaint may relate to amplitude modulation (as defined in Guidance Note 5) the independent consultant approved under this condition shall: -

(a) Within 21 working days submit a scheme for the investigation and the assessment of amplitude modulation to the Local Planning Authority for its written approval. The scheme, which shall be implemented as approved, shall include the matters specified in Guidance Note 5;

(b) Implement the scheme immediately following its written approval by the Local Planning Authority.

**Table 1 – Noise limits applicable in the event that Louth Canal Wind Farm does not become operational**

Location	Standardised 10 m Wind Speed, ms <sup>-1</sup> as determined within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit, dB, L <sub>A90,10min</sub>											
<b>Daytime (0700 to 2300)</b>												
1 Coastguard Cottages	34.6	34.6	34.6	35.3	37.7	40.4	43.2	46.0	48.5	50.4	52.3	53.6
The Old Barn	45.0	45.0	45.0	45.0	45.0	44.9	44.9	46.4	49.3	52.2	55.4	58.4
Braybrook Cottage	34.5	34.5	34.5	35.2	37.6	40.3	43.2	45.9	48.5	50.5	52.3	53.6
Braybrook Farm	34.6	34.6	34.6	35.3	37.7	40.4	43.2	46.0	48.5	50.6	52.3	53.6
Humberston Fitties South	34.9	34.9	34.9	35.5	37.9	40.6	43.4	46.1	48.6	50.4	52.4	53.7
Southfields Farm	34.4	34.4	34.4	35.1	37.5	40.2	43.1	45.8	48.4	50.3	52.3	53.6
Foreman's Cottage	45.0	45.0	45.0	45.0	45.0	44.9	44.9	46.4	49.3	52.2	55.4	58.4
Bishopthorpe House (if not involved)	34.8	34.8	34.8	37.7	39.3	41.4	43.8	46.5	49.3	52.3	55.4	58.4
Bishopthorpe House (if involved)	45.0	45.0	45.0	45.0	45.0	44.9	44.9	46.5	49.3	52.3	55.4	58.4
Thorpe Caravan Park South	34.8	34.8	34.8	35.4	37.9	40.6	43.4	46.1	48.6	50.4	52.4	53.7
Wad Farm	34.9	34.9	38.7	40.4	42.7	45.5	48.5	51.5	54.6	57.4	59.8	61.7
Whitegates Farm	34.4	34.4	34.4	35.1	37.5	40.2	43.1	45.8	48.4	50.3	52.3	53.6
Willow Farm	34.5	34.5	34.5	35.2	37.6	40.3	43.2	45.9	48.5	50.3	52.3	53.6
Willow Farm House	34.5	34.5	34.5	35.1	37.6	40.3	43.1	45.9	48.5	50.3	52.3	53.6
Yew Tree Farm	34.5	34.5	34.5	35.2	37.6	40.3	43.2	45.9	48.5	50.3	52.3	53.6
<b>Night-time (2300 to 0700)</b>												
1 Coastguard Cottages	42.9	42.9	42.9	42.9	42.9	42.8	42.7	42.5	43.1	46.7	49.8	52.5
The Old Barn	45.0	45.0	45.0	45.0	45.0	44.9	44.9	44.8	44.7	48.2	52.2	56.1
Braybrook Cottage	42.9	42.9	42.9	42.9	42.9	42.8	42.6	42.4	45.5	49.4	53.3	57.1
Braybrook Farm	42.9	42.9	42.9	42.9	42.9	42.8	42.7	42.5	45.6	49.4	53.3	57.1
Humberston Fitties South	43.0	43.0	43.0	43.0	43.0	42.9	42.9	42.8	43.5	46.9	49.9	52.6
Southfields Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.5	42.2	42.7	46.5	49.7	52.5
Foreman's Cottage	45.0	45.0	45.0	45.0	45.0	44.9	44.9	44.8	44.7	48.2	52.2	56.1
Bishopthorpe House (if not involved)	43.0	43.0	43.0	43.0	42.9	42.9	42.8	42.7	44.3	48.3	52.3	56.1
Bishopthorpe House (if involved)	45.0	45.0	45.0	43.0	42.9	42.9	42.8	42.7	44.3	48.3	52.3	56.1
Thorpe Caravan Park South	43.0	43.0	43.0	43.0	43.0	42.9	42.9	42.8	43.4	46.9	49.9	52.6
Wad Farm	43.0	43.0	43.0	43.0	43.0	43.0	44.9	48.4	52.1	55.8	59.4	62.9
Whitegates Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.5	42.2	42.8	46.5	49.8	52.5
Willow Farm	42.9	42.9	42.9	42.9	42.9	42.8	42.6	42.4	43.0	46.6	49.8	52.5
Willow Farm House	42.9	42.9	42.9	42.9	42.9	42.8	42.6	42.3	42.9	46.6	49.8	52.5
Yew Tree Farm	42.9	42.9	42.9	42.9	42.9	42.8	42.6	42.4	43.0	46.6	49.8	52.5

**Table 2 – Noise limits applicable in the event that Louth Canal Wind Farm becomes operational**

Location	Standardised 10 m Wind Speed, ms <sup>-1</sup> as determined within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
	Noise Limit, dB, L <sub>A90,10min</sub>											
<b>Daytime (0700 to 2300)</b>												
1 Coastguard Cottages	34.5	34.5	34.5	35.1	37.6	40.3	43.2	45.9	48.5	50.3	52.3	53.6
The Old Barn	45.0	45.0	45.0	45.0	44.9	44.9	44.8	46.4	49.3	52.2	55.4	58.4
Braybrook Cottage	34.4	34.4	34.4	35.1	37.5	40.3	43.1	45.9	48.5	50.5	52.3	53.6
Braybrook Farm	34.5	34.5	34.5	35.2	37.6	40.4	43.2	45.9	48.5	50.6	52.3	53.6
Humberston Fitties South	34.8	34.8	34.8	35.5	37.9	40.6	43.4	46.1	48.6	50.4	52.4	53.7
Southfields Farm	34.1	34.1	34.1	34.9	37.3	40.1	43.0	45.8	48.4	50.2	52.2	53.6
Foreman's Cottage	45.0	45.0	45.0	45.0	44.9	44.9	44.8	46.4	49.3	52.2	55.4	58.4
Bishopthorpe House (if not involved)	34.7	34.7	34.7	37.7	39.2	41.3	43.8	46.5	49.3	52.2	55.4	58.4
Bishopthorpe House (if involved)	45.0	45.0	45.0	45.0	45.0	44.9	44.9	46.5	49.3	52.2	55.4	58.4
Thorpe Caravan Park South	34.8	34.8	34.8	35.4	37.8	40.6	43.4	46.1	48.6	50.4	52.4	53.7
Wad Farm	34.9	34.9	38.6	40.4	42.7	45.5	48.5	51.5	54.6	57.4	59.8	61.7
Whitegates Farm	34.2	34.2	34.2	34.9	37.3	40.1	43.0	45.8	48.4	50.3	52.3	53.6
Willow Farm	34.3	34.3	34.3	35.0	37.4	40.2	43.1	45.9	48.4	50.3	52.3	53.6
Willow Farm House	34.3	34.3	34.3	35.0	37.4	40.2	43.1	45.8	48.4	50.3	52.3	53.6
Yew Tree Farm	34.3	34.3	34.3	35.0	37.4	40.2	43.1	45.9	48.4	50.3	52.3	53.6
Windy Ridge	33.0	33.0	33.0	33.0	30.2	38.1	43.9	50.0	56.0	57.5	57.5	57.5
<b>Night-time (2300 to 0700)</b>												
1 Coastguard Cottages	42.9	42.9	42.9	42.9	42.9	42.8	42.6	42.4	43.0	46.6	49.8	52.5
The Old Barn	45.0	45.0	45.0	45.0	44.9	44.9	44.8	44.7	44.6	48.2	52.2	56.1
Braybrook Cottage	42.9	42.9	42.9	42.9	42.9	42.8	42.6	42.3	45.4	49.4	53.3	57.1
Braybrook Farm	42.9	42.9	42.9	42.9	42.9	42.8	42.7	42.5	45.5	49.4	53.3	57.1
Humberston Fitties South	43.0	43.0	43.0	43.0	43.0	42.9	42.9	42.8	43.5	46.9	49.9	52.6
Southfields Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.4	42.0	42.6	46.4	49.7	52.4
Foreman's Cottage	45.0	45.0	45.0	45.0	44.9	44.9	44.8	44.8	44.7	48.2	52.2	56.1
Bishopthorpe House (if not involved)	43.0	43.0	43.0	43.0	42.9	42.9	42.8	42.7	44.3	48.3	52.2	56.1
Bishopthorpe House (if involved)	45.0	45.0	45.0	43.0	42.9	42.9	42.8	42.7	44.3	48.3	52.2	56.1
Thorpe Caravan Park South	43.0	43.0	43.0	43.0	42.9	42.9	42.9	42.8	43.4	46.8	49.9	52.6
Wad Farm	43.0	43.0	43.0	43.0	43.0	42.9	44.8	48.4	52.1	55.8	59.4	62.9
Whitegates Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.4	42.1	42.7	46.5	49.7	52.5
Willow Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.5	42.3	42.8	46.6	49.8	52.5
Willow Farm House	42.9	42.9	42.9	42.9	42.8	42.7	42.5	42.2	42.8	46.5	49.8	52.5
Yew Tree Farm	42.9	42.9	42.9	42.9	42.8	42.7	42.5	42.3	42.8	46.6	49.8	52.5
Windy Ridge	42.5	42.5	42.5	42.5	42.2	42.1	41.3	41.0	40.7	40.6	40.3	38.5

**Table 3: Coordinate locations of the properties listed in Tables 1 and 2**

Receptor Name	Eastings (m)	Northings (m)
1 Coastguard Cottages	534137	402397
The Old Barn	531903	403742
Braybrook Cottage	534325	402998
Braybrook Farm	534401	402818
South Fitties	533637	405028
Southfields Farm	533446	402246
Foreman's Cottage	531873	403742
Bishopthorpe House	531661	403695
Thorpe Caravan Park South	533506	404898
Wad Farm	532791	405312
Whitegates Farm	533679	402296
Willow Farm	533744	402216
Willow Farm House	533800	402310
Yew Tree Farm	533925	402346
Windy Ridge	533193	400726

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

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

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 Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

#### **Guidance Note 1**

(a) Values of the  $L_{A90}$ , 10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be

undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

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

(c) The  $L_{A90}$ , 10 minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational datalogged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second 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. All 10 minute arithmetic average mean wind speed data measured at 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 Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter.

(e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels 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).

### ***Guidance Note 2***

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

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

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the  $L_{A90}$ , 10 minute noise measurements and corresponding values of the 10- minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

### **Guidance Note 3**

(a) Where, in accordance with the approved assessment protocol under paragraph (d) 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 is to be calculated and applied using the following rating procedure.

(b) For each 10 minute interval for which  $L_{A90}$ , 10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods 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, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

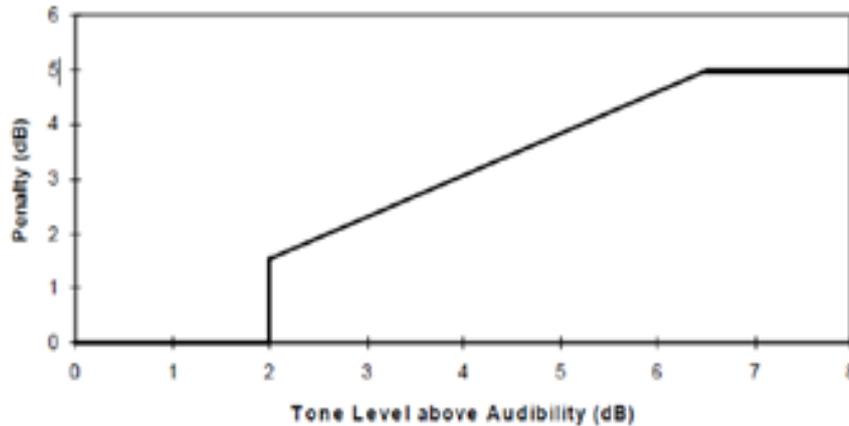
(c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.

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

(e) A least squares "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean

shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



#### **Guidance Note 4**

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

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

(c) 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 (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

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

(e). Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) 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:

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

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

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 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 (e) 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 (e) of the noise condition then the development fails to comply with the conditions.

#### **Guidance Note 5**

1. Amplitude modulation (AM) is the variation in the level of aerodynamic noise created by the wind turbines at the blade passing frequency.
2. Condition 27(h) requires the submission of a scheme to the Local Planning Authority. This scheme should include details of the following matters: -
  - (i) A requirement for complainants to maintain a record of the times at which the alleged incidents of AM occur and the precise locations in or in the vicinity of a dwelling where such occurrence is observed;
  - (ii) A methodology for measuring and assessing the degree of AM and assigning an upper limit of acceptability for AM, taking into account the frequency and duration of occurrence, the degree of modulation as measured using a metric also to be approved under the scheme, the absolute level of wind turbine noise during development periods and other factors requested by the Local Planning Authority as relevant in a particular case;
  - (iii) Proposals for the mitigation of AM if measured and assessed as above the upper limit of acceptability approved under the scheme which has been approved under condition 27(h); and

- (iv) Provisions for the implementation of a mitigation scheme, reports to the Local Planning Authority about the effectiveness of the approved scheme and requirements for further measurement and assessment to demonstrate the acceptance of the mitigation scheme.

*Reason:* In order to ensure that a reasonable noise environment is retained.



# 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.