



Department for
Communities and
Local Government

Mr Andrew Philpot
AAH Planning Consultants
2 Bar Lane
York
YO1 6JU

Our Ref: APP/N2739/A/13/2204642
Your ref: AAH/1701/13PLA

15 May 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY MR JOHN SHERWOOD
LABURNUM FARM, WISTOW LORDSHIP, SELBY, NORTH YORKSHIRE
APPLICATION REF: 2013/0280/FUL**

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 undertook a site visit on 31 January 2014 as part of his consideration of your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the failure of Selby District Council ("the Council") to give notice within the prescribed period of a decision on an application for planning permission for the siting of 1 x 35m high (hub) wind turbine with a tip height of 61m, dated 19 April 2013, in accordance with application ref:2013/0280/FUL.
2. The appeal was recovered for the Secretary of State's determination on 4 March 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, following the Secretary of State's announcement on 10 October 2013 of his intention to consider for recovery appeals for renewable energy developments to enable him to consider the extent to which the new practice guidance referred to in his announcement is meeting the Government's intentions.

Inspector's recommendation

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

Policy Considerations

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals

be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the Selby District Core Strategy (2013) and the saved policies of the Selby District Local Plan (2005) (IR3); and the Secretary of State agrees that the most relevant policies for this case are those set out by the Inspector at IR4-5.

5. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (“the Framework” – March 2012) and the associated planning guidance (March 2014); the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3); the Overarching NPS for Energy (EN-1); and the Written Ministerial Statements on ‘Local Planning and onshore wind’ (DCLG) and ‘Onshore wind’ (DECC).
6. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has also paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess
7. In December 2013, Renewable UK published new research and a proposed planning condition covering the regulation of Other Amplitude Modulation, with accompanying guidance notes. However, this has not yet been reflected in an update to the current good practice guidance that accompanies ETSU-R-97 and, as it has not been endorsed by Government, the Secretary of State gives it very little weight and has not considered it necessary to seek the views of parties on it.

Main issues

8. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR83.

Character and appearance

9. For the reasons given at IR84-90, the Secretary of State agrees with the Inspector’s conclusion at IR91 that the impact on the character of the landscape would be significant and adverse within about 1km, and that the visual impact would also be significant and adverse in a similar zone. Whilst the Secretary of State acknowledges that the landscape around the site does not have any protective designation, he sees no reason to disagree with the Inspector’s assessment that it should be ascribed a moderate sensitivity to change which, when added to the substantial visual impact which would affect users of the area, would result in a significant and adverse visual impact. The Secretary of State also agrees with the Inspector (IR91) that, although the effects of the turbine would be reversible, 25 years is a long time so that the fact that the development may be removed at a later time carries limited weight.

Living conditions

10. For the reasons given at IR92-96, the Secretary of State shares the concerns expressed by the Inspector with regard to the noise assessment evidence. He has also carefully considered the Inspector’s conclusions about other aspects of living conditions (IR97-100). He agrees with the Inspector that, for the reasons given at IR98, it seems unlikely, on balance, that the proposal would have an unacceptably harmful effect on living conditions through its impact on the views available to

nearby residents; and he also agrees (IR99) that any shadow flicker issues could be dealt with by condition. The Secretary of State also notes the Inspector's conclusion at IR100 that there is no substantive evidence on which to conclude about sleep deprivation and other potential impacts on the health of nearby residents beyond the general point that sleep disturbance caused by noise can adversely impact on health. Overall, therefore, the Secretary of State agrees with the Inspector (IR101) that the evidence on noise is insufficient to be satisfied that the appeal scheme could proceed without causing unacceptable harm to the living conditions of nearby residents and that this is not outweighed by the low likelihood of harm to living conditions in other respects.

Heritage assets

11. For the reasons given at IR102-104, the Secretary of State agrees with the Inspector's conclusion at IR104 that the appeal proposal would have no material impact upon the setting of Selby Abbey. He similarly agrees that the setting of All Saints Church, Wistow, would not be materially affected (IR105); and that, overall (IR106) the proposed development would not be harmful to the fabric or setting of any heritage asset.

Other matters

12. The Secretary of State agrees with the Inspector (IR107) that the matters considered at IR108-114 do not fall to be assessed as main considerations, and he also agrees with the Inspector's conclusions on each of them. He does not consider that they are matters to be included in the overall planning balance.

Planning balance

13. The Secretary of State agrees with the Inspector (IR115) that there are matters pulling in two directions in this case as set out at IR116 and 117; and for those reasons he agrees with the Inspector's conclusion at IR118 that, on balance, the collected instances of significant harm likely to be caused by the appeal scheme outweigh the acknowledged benefits.

Conditions

14. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions (IR119-123), as well as his recommended conditions as set out in the Annex to his report (IR pages 20-21). The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that they overcome his reasons for dismissing the appeal.

Overall conclusions

15. Despite giving substantial weight to the acknowledged environmental benefits which the appeal scheme would offer as a contribution to the Government's priority for the need to support the delivery of renewable and low carbon energy, and also taking account of the fact that there would be no harm to heritage assets or their settings, the Secretary of State concludes that the benefits of the scheme are outweighed by its significant and adverse visual impact coupled with the real risk of noise disturbance.

Formal Decision

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the siting of 1 x 35m high (hub) wind turbine with a tip height of 61m, dated 19 April 2013, in accordance with application ref:2013/0280/FUL.

Right to challenge the decision

17. 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.

18. A copy of this letter has been sent to Selby District Council, and a notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

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: 2 April 2014

TOWN AND COUNTRY PLANNING ACT 1990

SELBY DISTRICT COUNCIL

APPEAL BY MR JOHN SHERWOOD

Site visit made on 31 January 2014

Laburnum Farm, Wistow Lordship, Selby, North Yorkshire YO8 3RR.

File Ref: APP/N2739/A/13/2204642

File Ref: APP/N2739/A/13/2204642**Laburnum Farm, Wistow Lordship, Selby, North Yorkshire YO8 3RR.**

- 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 Mr John Sherwood against Selby District Council.
- The application Ref: 2013/0280/FUL is dated 21 March 2013.
- The development proposed is the siting of 1 x 35m high (hub) wind turbine with a tip height of 61m.

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

1. I carried out an accompanied site visit for this proposal on 31 January 2014. The appeal was subsequently recovered for determination by the Secretary of State by letter dated 4 March 2014. The reason for the recovery is that the appeal involves a renewable energy development.

The Site and Surroundings

2. The proposed development would be located in a moderately remote rural area. The site itself is a small part of a flat arable field, with access taken from the nearby narrow lane. The surroundings generally are similarly flat, interspersed with occasional farmsteads and other dwellings, more distant villages, and a few stands of trees. Minor public roads cross the area, and there are a few public footpaths, but none in the immediate vicinity of the site. There are few hedgerows, fields being delineated in the main by dykes and ditches. Fields tend to be large and featureless, which lends the whole landscape a simple form. There are few vertical features nearby, though there are distant views of Selby, which includes some tall buildings. The nearest village is Wistow, which lies about a mile to the north-west. The nearest residential properties are to the north, some 400m or more away. A prominent flood bank snakes through the area to the east.

Planning Policy

3. The development plan is made up of the Selby District Core Strategy (adopted in October 2013) and saved policies of the Selby District Local Plan of 2005. A number of policies from each document are cited and I briefly outline those of greatest relevance below. Policy numbers have changed in the pre and post adoption versions of the Core Strategy (CS) which occurred during the course of this appeal. For ease of reference the equivalent policies are noted in this table.

Pre adoption Core Strategy reference	Post adoption Core Strategy reference
LP1	SP1
CP12	SP15
CP14	SP17
CP15	SP18
CP16	SP19

Core Strategy

4. CS Policy SP1 (*pre adoption Policy LP1*) is a general policy which follows the guidance of the National Planning Policy Framework (NPPF) and seeks to approve proposals for sustainable development. Policy SP15 (*CP12*) also seeks to promote sustainable development, including the incorporation of decentralised renewable and low carbon forms of energy generation. Policy SP17 (*CP14*) is supportive of low carbon and renewable energy, subject to the meeting of criteria, including being located to protect the environment and local amenity, and benefits demonstrably outweighing any harm. Policy SP18 (*CP15*) seeks to protect and enhance the natural and man made environment, including landscape character. Policy SP19 (*CP16*) expects high quality design having regard to the local character, identity and context of its surroundings.

Saved Local Plan Policies

5. Saved Policy DL1 is restrictive of development in the countryside unless there is support from other policies and it would be appropriate in a rural area. Saved Policy ENV1 supports good quality development which takes account of the character of the area and amenity of adjoining occupiers. Saved Policy ENV2 seeks to avoid development which, amongst other things, would give rise to unacceptable levels of noise. Saved Policy ENV6 is supportive of renewable energy subject to a number of criteria: those of importance here being that there would be no significant adverse effect on the immediate or wider landscape, and that there would be no nuisance by virtue of noise.
6. My attention has also been drawn to the Wistow Village Design Statement Supplementary Planning Document (SPD) of 2009. Amongst other things this describes the rural surroundings and the open vistas to neighbouring villages.

National Planning Practice Guidance

7. The suite of NPPG documents was published on 6 March 2014 and replaces a number of former guidance documents, including *Planning practice guidance for renewable and low carbon energy*. The main parties have been consulted on this change and no comments have been received.

The Proposal

8. The proposal is for a 3 bladed wind turbine. It would have a hub height of 35m and height to blade tip of about 61m. The intention would be to finish the structure in a light, neutral matt finish.

The Case for Mr John Sherwood

The main points made by the appellant flow from the former advice relating to wind turbines contained in *Planning practice guidance for renewable and low carbon energy*. Although this guidance has now been replaced it is convenient to retain the structure of the representations made here.

Landscape and Visual Impact

9. The landscape carries no formal designation at a national or local level and the proposed turbine is unlikely to be seen from any landscape so designated. The site is within the national Humberheads Landscape Character Area. Characteristics of the landscape include the fact that it is low lying and flat; that

there are views of distant horizons which are often long and unbroken, with big expansive skies and vertical elements such as water towers, power stations and wind turbines; and that there are remnant lowland heaths supporting some woodland.

10. A more localised assessment of landscape character can be found in the Core Strategy Background Paper – Landscape Appraisals of 2011. The main purpose of the paper is to inform the Core Strategy of those areas where the landscape has a higher sensitivity to development. The appeal site is within the Wistow area, which exhibits a number of characteristics. These are a flat and open landscape; large arable field patterns; fragmented hedgerows and small or sporadic tree cover; a prominent flood bank and the River Ouse to the east; and power lines in the west. The Wistow appraisal identifies few features of intrinsic value. The landscape has been assessed as having low sensitivity to development.
11. Prominent features in the local landscape are the flood defence bank, and industrial units some 2.5km to the south-east. The turbine would be seen in relation to these features, which do not add value to the landscape. The landscape appraisal carried out indicates that the landscape can accommodate a turbine at the lower end of the medium size range, as proposed here. The impact assessment table forming part of the Landscape and Visual Impact Assessment shows that the main features contributing to landscape character would remain largely unaffected. There would be slight or moderate adverse impact to some characteristics, but the overall impact on the landscape would be slight and adverse. Ultimately, however, these impacts would be reversible because of the likely life cycle of the turbine at about 25 years.
12. Visual impact is also assessed and photomontages show the effect from sensitive locations, including residential property and heritage assets. This demonstrates that in a number of cases the turbine would not be visible because of intervening buildings, landform and vegetation. In other viewpoints it is apparent that the visual impact of the turbine would be acceptable. Although visible from a number of viewpoints, visibility does not equate to unacceptable harm. This is illustrated, for example, by the viewpoint to the south-east (VP9) where the turbine would be visible, but would be put into scale and context by existing power lines. Outside a radius of 1km, therefore, the visual impact of the turbine would be acceptable, with no significant harm.
13. Within a radius of 1km there would be views from residential property. But there is no right to a view unless the proposed development changes outlook to such an extent that it would impact on amenity. The nearest residential property would experience a change in view. But its scale, distance, and the presence of other features including vegetation and telegraph poles, would put the turbine in context and mean that it would not be an isolated feature. Big skies and wide landscape would ensure that the turbine would not be overly dominant. In the case of other residential property their orientation and intervening development would restrict views of the turbine.
14. The nearest public footpath, to the west, is about 900m distant. The turbine would be visible but visual impact would be mitigated by distance, the scale of the turbine, and vegetation. Overall, within a radius of 1km from the turbine it

would be visible from some residential properties and other viewpoints, but the visual impact would reduce rapidly with distance.

15. The turbine would not be visible in any views which would result in significant cumulative visual impact. There are few other such structures in the area, and intervening features means that cumulative visibility from public viewpoints would be insignificant.

Noise

16. At the time of the planning application a desk based study had been completed, but following objections a site specific noise assessment was carried out in accordance with guidance of ETSU-R-97¹. The desk based assessment indicated that noise experienced at the nearest residential property would be at about 38.1dBa, which is within the upper limits that can be set by the local planning authority. The site specific assessment included monitoring of background noise levels over a period of 7 days in June and July 2013.
17. ETSU-R-97 recommends that during daytime periods noise levels at receptor properties should not rise above the greater of either 5dB above background noise or not more than a value of 35-40dB(A). For night time periods the corresponding levels are 5dB above background noise or 43dB(A).
18. Noise monitoring for background purposes could not be undertaken at the appeal site as it is open and insecure. Consequently a decision was taken to monitor background levels at the Laburnum Farm residential property, about 700m away. As this is a more sheltered location away from working farmland it is likely to be a more robust location than the appeal site, and to lead to a more onerous assessment.
19. Using the data gathered it is demonstrated that the noise emissions of the wind turbine would comfortably comply with fixed night time criteria. During the day background noise levels are higher, and less restrictive variable limits have been applied at wind speeds of 7m/s and above. Compliance is achieved at all wind speeds.
20. Even if using the ETSU-R-97 fixed daytime limit of 35dB the maximum noise immission is assessed at 38dB at a wind speed of 12m/s. This would apply to only 3 properties, and because of the high wind speed concerned, would be expected infrequently.
21. The proposed development is therefore compliant with national guidance, would not unacceptably impact upon residential amenity, and would comply with Policy ENV6(4) of the Local Plan.

Heritage Assets

22. There are relatively few heritage assets in the immediate area. The closest is about 1.5km distant and is a Grade II listed building, Manor Field House. The distance between the turbine and the building is such that its setting is not affected.

¹ The Assessment and Rating of Noise from Wind Farms – Energy Technology Support Unit

23. Selby Abbey, about 2.5km away, is a Grade I listed building. The Abbey is seen from the appeal site, and would be seen from some viewpoints in the same view. But visibility of the Abbey does not equate to harm. There are many intervening buildings within Selby and its setting would not extend as far as the appeal site. Similarly there is intervening vegetation which would reduce any impact. The turbine itself would not be visible from any public viewpoint at the Abbey.
24. No statutory objections have been raised in relation to the impact on the setting of heritage assets generally and it can be concluded that the proposed development would not result in substantial harm to any such asset. The proposal therefore accords with Local Plan Policy ENV1(5).

Shadow Flicker and Reflected Light

25. The proposed turbine would generate a maximum of 23 hours of shadow flicker per annum for a single dwelling. This does not amount to an unacceptable impact on residential amenity.

Safety

26. The proposed turbine is well outside the topple distance of total height plus 10%. Furthermore there are no power lines nearby which would be affected. Impact on aviation interests would not be unacceptable, as evidenced by responses to consultation. Overall, therefore, safety is not a concern.

Electromagnetic interference

27. Relevant consultations have been carried out which confirm that the proposed development would have no impact on radio transmission. The proposal therefore complies with saved Policy ENV6(3) of the Local Plan.

Ecology

28. The wind turbine has been sited in a location which minimises risks to any ecologically important species. The nearest protected site is some 5km away and there is unlikely to be any significant impact on that site. Any impact at all would therefore be localised.
29. The turbine would be more than 50m from any trees or hedgerow, complying with Natural England guidance for the protection of bats. The site is an arable field and is therefore species poor. There have been no objections from any conservation consultee and it can be concluded that the impact on ecology is not likely to be significant. As a result the proposal complies with Local Plan Policy ENV1.

Horses, Highways, Flood Risk and Decommissioning

30. The separation of the turbine from bridleways or routes used by horses is well in excess of the former non statutory advice relating to separation distances; hence there would be no significant impact on horses and riders.
31. Delivery of the turbine would be relatively easy along local highways, facilitated by its scale. The Highway Authority has not raised any objections to the proposal, subject to the imposition of a condition.

32. The flood risk assessment submitted demonstrates that the proposal would not create a flood risk. The Environment Agency has no objections.
33. The turbine would have a lifespan of about 25 years and a condition requiring its removal, and reinstatement of the land, would be acceptable.

Conclusion

34. To the above points it is necessary to add that the turbine would generate benefits in the form of renewable energy generation – it would have a significant generation capacity sufficient to power some 530 residential properties. The benefits would exceed any perceived impact.
35. The proposal accords with the aims and guidance of the NPPF and with local policies in the Local Plan and Core Strategy, and planning permission should be granted.

The Case for Selby District Council

The main points are:

General Policy Considerations

36. There is a strong presumption in favour of sustainable development, and strong policy support in favour of renewable energy development. These matters can be found in, for example, the UK Renewable Energy Strategy of 2009 and the EU Renewable Energy Directive.
37. The commitment is reflected in paragraph 97 of the NPPF, which asks all communities to recognise the responsibility to contribute to energy generation from renewable and low carbon sources. Applications should be approved if impacts are, or can be made, acceptable. This principle is accepted in the Local Plan.
38. The renewable energy study for Yorkshire and the Humber identifies that wind energy is a key opportunity. The study also indicates that Selby District is theoretically capable of significant wind power generation in the period to 2025 because of the lower landscape sensitivity to that form of development than some other parts of the region.
39. There is therefore a high level of support for renewable energy generation at national level. The Council seeks to facilitate renewable energy development as reflected in Core Strategy Policy SP17. Considerable weight should be attached to the environmental and economic benefits of the proposed development and its contribution to meeting national targets for renewable energy.

Open Countryside and Landscape Character

40. Renewable Energy projects should be acceptable in their proposed location. The key assessment is whether the proposed development overrides environmental protection. Core Strategy SP17 sets the local criteria for development proposals for renewable energy. These are that proposals are designed and located to protect the environment and local amenity; or that wider environmental, economic and social benefits outweigh any harm caused to local amenity; and that impacts on local communities are minimised.

41. The proposed development would be in an open arable field some distance from the appellant's property. The landscape is flat and open, with few natural and semi-natural features. There are a few vertical structures such as telegraph poles. Extensive views across the site are available, including long distance views encompassing Drax power station. As a result the landscape has a low sensitivity and some capacity to accommodate wind energy. The landscape has no protective designation.
42. The turbine would be highly visible from a number of vantage points, and concealment would not be possible. It would have a significant impact on the character of the area. The proposed colour of the turbine would mitigate to some degree, and it would be of a slim design. There is also some vertical context in the area. However, the Council accepts that the issue is whether the impact is outweighed by other considerations.
43. Taking these matters into consideration the Council believes that there would be some harm to the rural character of the area, but that only moderate weight should attach to this harm. This harm must be weighed against the wider public benefits, and the Council contends that the harm to character would not, of itself, be sufficient to outweigh the benefits of renewable energy provision. Hence the scheme is acceptable, on balance, in terms of landscape character impact, having regard to Local Plan Policy ENV1 and Core Strategy Policy SP17, the NPPF and Practice Guidance.

Noise

44. Local Plan Policy ENV1 requires the effect on the amenity of adjoining occupiers to be taken into consideration. This is also a theme in Core Strategy SP17. Paragraph 123 of the NPPF also seeks to avoid significant adverse impacts as a result of noise, and to mitigate adverse impacts, whilst recognising that development will often create some noise, and that business should not be unduly hampered by unreasonable restrictions.
45. Practice Guidance expects the use of ETSU-R-97 and the associated good practice supplement to be used by local planning authorities when assessing and rating noise from wind energy development. That supplement recommends that where a survey is required agreement should be sought on the locations for measurement. Such agreement has not been sought.
46. The guidance also recommends that noise measurements should be carried out in the vicinity of noise sensitive receptors, principally houses. Any proxy location should be chosen such that it can reasonably be claimed that it is representative of non surveyed locations. In this case noise survey information was obtained at the appellant's working farm, not at the nearest noise sensitive dwelling. There is likely to be a difference in background noise levels at the different properties.
47. Notwithstanding this, it is apparent that readings taken demonstrate a low noise environment below 30dB(A), with some below 20dB(A). The fixed limit specified in ETSU-R-97 would therefore seem to be appropriate. The fixed quiet daytime limit is 35 – 40dB(A) with justification required for the point chosen within that range. There is no justification for any increase in the lower noise limit in this case.

48. Although conditions have been imposed elsewhere as suggested in paragraph 25 of ETSU-R-97 that would not be appropriate here. Without further information the Council could not be sure that a condition could be complied with. This would be contrary to national guidance. As a result the appellant has not adequately demonstrated that the development would not have a detrimental impact on the amenities of nearby occupiers. The proposal is therefore in conflict with Local Plan Policy ENV1 and Core Strategy Policy SP17.

Heritage Assets and Archaeology

49. The appeal site is not located in close proximity to any heritage asset, and nor is the site known to be of any archaeological value on which ground works would impact. There would be no adverse impact on the setting of any nearby listed buildings given the distance to heritage assets and the intervening landscape features.

Ecology

50. The proposed wind turbine would be located more than 50m from any hedgerows and trees, thereby complying with Natural England guidance. There are no objections lodged to the proposal from any statutory consultees in respect of protected species. As a result there is no objection on ecological grounds, and the proposal complies with the NPPF and Local Plan Policy ENV1.

Flood Risk and Drainage

51. Although located in Flood Zone 3 there have been no objections to the proposal from Yorkshire Water, the Drainage Board, or the Environment Agency. The sequential approach is not required in relation to proposals such as this. However, it must pass the exceptions test and be shown to have wider sustainability credentials which outweigh any flood risk. The submitted flood risk assessment shows that the development would contribute to the UK's energy targets, so demonstrating its wider sustainability credentials. The proposal therefore passes the exceptions test. It would not contribute to flooding, nor be adversely affected by flooding.

Shadow Flicker, Electromagnetic Interference, Aviation

52. Shadow flicker has the potential to affect 3 properties but would not be likely to exceed 23 hours at any of those properties, even in a worst case scenario. Although there is no guidance on what is an acceptable maximum exposure to shadow flicker, the Council accepts that in this case it would not be so significant as to warrant refusal of the proposal.

53. There have been no objections from any operator of equipment using the electromagnetic spectrum. The Council is content that the proposal would not have a significant impact in this regard.

54. In similar vein there have been no objections from aviation interest, including the National Air Traffic Service, the Ministry of Defence, and local airport operators. Subject to a condition requiring lighting as requested by the MoD the Council does not object on this basis.

Highway Safety and Construction Impact

55. Although there are no objections in principle to the proposed development the Highway Authority has requested that a condition be imposed requiring that the route to the appeal site be approved prior to commencement of development. The Council therefore concurs that the scheme is acceptable in highway terms. Construction impact would also be acceptable.

Design, Materials, Additional Landscaping and Other Matters

56. The turbine design would be standard and no further landscaping is proposed or necessary. Subject to a condition relating to finished colour the design is acceptable.
57. Although there would be a minor loss of agricultural land this would not be significant and surrounding land would continue to be managed by the landowner.

Other Representations

A number of other representations have been submitted. These are summarised below.

The Wistow Turbine Objection Group

58. The proposed development would impact unacceptably on residential amenity, landscape and visual amenity, heritage and ecology. Benefits associated with renewable energy do not outweigh these adverse impacts. As such the proposal fails to accord with national and local planning policy.

Noise

59. Noise and residential amenity has been inadequately considered by the appellant. In the first place, the distance to the nearest residential property is incorrect. The nearest dwelling lies 370m away, not 410m. In addition, the garden of that property is even closer, at 350m. This introduces inaccuracy in the noise data submitted.
60. Secondly, the background levels have been measured at Laburnum Farm, and not the nearest noise sensitive receptor, which is not in accordance with accepted guidelines. Circumstances at each location are different and it cannot therefore be claimed that the background noise measurements are representative of the nearest dwelling. There is also an issue with the use of wind speed data from a meteorological station located some 8km away, as well as an unknown height of wind speed monitoring.
61. Data has been plotted using a linear regression rather than the recommended 3rd order polynomial. In addition there has been no adjustment made for wind shear for a turbine with a 35m hub height. These are departures from guidance. It is also notable that there are measured noise recordings at the measurement location which may not be present at the nearest dwelling.
62. Overall, therefore, the noise assessment has significant departures from established guidance and cannot be considered to be robust.

Residential Visual impact

63. Hawthorn Farm is located 370m from the turbine site, the garden boundary being some 350m from the site. Windows of habitable rooms face towards the site. A number of other properties to the north-east would also experience visual exposure to the development from habitable rooms. The sensitivity of these receptors is high. The nearest viewpoint used by the appellant is to the west and is not a fair representation. There is a lack of screening for the turbine and it would represent an overwhelming and unavoidable presence in the main views from these properties. They would be regarded as an unattractive and unsatisfactory place to live.
64. There is no published guidance which sets out criteria for establishing whether the visual presence of a wind farm impacts unacceptably on living conditions, but it has been addressed in a number of appeal decisions. It is accepted that there is no right to a view. But in the case of the appeal site the impact would be so overwhelming and dominating that it would have significant adverse impact on residential amenity. The appellant's assessment of a moderate adverse impact is not accepted.
65. Properties which would suffer an unacceptable impact on residential amenity are Hawthorn Farm, Mulberry Farm Cottage, Parks Farm Cottage, April Cottage, Parks Farm, and Lilac Farm. Other properties along Lordship Lane also face the appeal site. Properties at a greater distance from proposed turbine development, such as that in Carleton, Cumbria at 420m, have been assessed as being subjected to overwhelming and intolerable harm. As here, there was no intervening screening in that case. Other similar cases have found unacceptable visual harm at greater distances than apply in this instance.

Shadow Flicker

66. A shadow flicker assessment has demonstrated that the proposal would have the potential to generate some 23 hours of shadow flicker per annum at the worst affected property, with 9 hours and 7 hours at the other 2 affected properties. No justification is provided and no mitigation is proposed. It can only be concluded that shadow flicker could impact on residential amenity and therefore conflict with the objectives of Local Plan Policies ENV1 or ENV2.

Landscape Impact

67. The site is within the Humberhead Levels character area. This is characterised by the flat, low lying, large scale agricultural landscape. Long and unbroken views are a key characteristic. The Wistow Village Design Statement Supplementary Planning Document (SPD) stresses the importance of views to and from the village.
68. There are concerns in relation to the accuracy of some of the viewpoints used to assess the proposal. A more robust assessment should have been produced, with additional viewpoints from properties closer to the turbine and from the closest public right of way. As has been recognised in other decisions the suitability of a project must depend on the capacity and sensitivity of the landscape in which it is intended to be set.

69. The proposed turbine would be clearly seen in the landscape and would be an alien and isolated feature which is out of character with an area identifiable for its long unbroken views. The cumulative impact has not taken account of all development, such as the 5 permitted turbines at Cleek Hall which are not yet in operation. Overall the proposal is in conflict with Local Plan Policies DL1 and ENV1, and with the SPD.

Heritage

70. No assessment has been carried out to consider the impact of the proposal on heritage assets as defined in the revised design and access statement.
71. Selby Abbey is some 2.7km from the appeal site and is Grade I listed. It must be afforded great weight when considering the impact of the proposal. The landscape and visual impact assessment does not accurately represent the heritage asset in association with the wind turbine.
72. Manor Field House is a Grade II listed building some 1.5km from the appeal site. There is no assessment in the material submitted by the appellant. There are also several other listed buildings in Wistow and Barlby which mean that a thorough assessment should have been undertaken. There is potential harm to these heritage assets. Given the lack of assessment the proposal does not meet the guidance of paragraphs 129, 132 or 134 of the NPPF, or the criteria of Core Strategy CP15 (now SP18) and Local Plan Policy ENV1.

Ecology

73. There has been little consideration of any potential ecological impact. Neither wildfowl movements associated with the Humber Estuary SPA nor bat movements associated with the local habitat have been taken into consideration. Correspondence with the Yorkshire Wildlife Trust records the limited information. As such the proposal fails to meet the criteria of the NPPF paragraphs 109 to 117, Core Strategy Policy CP15 (now SP18) and Local Plan Policy ENV1.

Livestock

74. There is a risk to surrounding livestock, particularly horses. A horse paddock is some 70m from the site. The British Horse Society recommends a starting point for separation of 4 times overall height for equestrian routes, 3 times height from roads, and 200m elsewhere. Although not a statutory requirement it is clear that this separation has not been provided as Sand Lane is less than 100m from the turbine. Hence there could be impact on horses in the locality.

Other Written Representations

75. Many of the representations made by other people are included in the matters reported above. I include below any material matters which have not been previously included.

Health

76. The proposal could introduce unacceptable levels of sleep disturbance and consequent adverse impacts on health. This is likely for anyone living with an external noise level of more than 32dB(A).

Safety

77. There are examples of catastrophic failure of wind turbines, with blades or part blades being thrown substantial distances. This would be a risk to those living in and passing through the locality. There is a further risk of subsidence caused by coal mining in the area; this could put the stability of the wind turbine at risk.

Highways and Access

78. Local roads are narrow and there would be risk of damage as a result of heavy traffic being used to access the site. In addition the roads through Selby and Wistow are narrow, with tight turns. As a result access to the site would be a major road safety hazard. Access roads are not suitable

Recreation

79. This area of Wistow Lordship provides a safe haven for recreational use by many local organisations and schools. It is a much valued resource for cyclists, joggers, walkers and horse riders which would be unacceptably harmed by the proposed development. There would be undoubted danger to horse riders using Sand Lane, and the potential for harm to local livery businesses. The loss of a tranquil area for recreation would impact adversely on local residents.

Alternatives

80. There are more acceptable methods of reducing CO2 emissions. A case in point is the biomass conversion of the nearby Drax power station. The appellant could install photo voltaic panels on his buildings as an alternative.

Other Matters

81. Property values would be reduced as a result of this development and if approved it would prove to be a precedent for other developments of a similar nature in the area.

Appraisal

82. In this section the numbers in square brackets refer to the paragraphs in the preceding sections.
83. The main considerations are:
- a) The effect of the proposed development on the character and appearance of the surrounding rural area;
 - b) The effect of the proposed development on the living conditions of nearby residents;
 - c) The impact of the proposal on heritage assets.

Character and Appearance [9-15, 40-43, 67-69]

84. There is much agreement about the baseline character of the landscape in this locality. It is a flat and open landscape dominated by agricultural activities. Whilst there are distant views of urban and industrial features such as the town of Selby and the mass of Drax power station the overriding character is dominated by the lack of development and the wide open spaces. There are 'big skies' and long range views largely uninterrupted by vegetation. There are few hedgerows and trees (though some are scattered around) and boundaries are more often delineated by dykes, roads and tracks. Vertical structures are few, and the tallest of these are distant, such as those in Selby or at Drax.
85. In this context the proposed wind turbine would stand out as being in conflict with the established local landscape character. The large vertical structure (though of medium scale in wind turbine terms) would be a discordant feature which would be at odds with the generally horizontal nature of the landscape. Nothing in the vicinity would be as tall or as prominent.
86. The existing landscape does have a degree of scale and simplicity resulting from the large fields and lack of notable features, and to some extent would be capable of accepting development which mirrored that scale and simplicity. A wind turbine would do that to an extent, and this would mitigate the impact on character to a degree. However, the proposed development would be an unmissable feature and would clearly have an impact on the existing character of the landscape for some distance.
87. In this case, the landscape around the appeal site is not a busy location, and does not exhibit features such as significant roads or other urban structures nearby. Because the area is relatively free of man made structures and infrastructure the influence of the turbine on character would therefore be more marked than might be the case elsewhere. In my judgement the character of this locality would be significantly affected to a distance of something around 1km, depending on viewing point. Within this range the adverse effect on character would be significant. 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. Beyond the distance of 1km or so the impact on character would be less marked, and would quite quickly reduce with increasing separation.

88. In visual terms the turbine would also, of course, become less prominent as the viewer (or receptor) moved away. From the edge of Selby, for example, visual impact would be less than significant, though the turbine would still be visible in available views from that direction. Anyone passing through the landscape to the north of Selby would be likely to perceive the landscape as having some attraction because of its freedom from development. But the visual impact would be likely to be less of a concern to those using the Selby to Cawood road as a means of moving from A to B.
89. Of greater concern is the visual effect on those using the area for other purposes? I have no doubt that the information relating to leisure and recreational use is accurate, or that the value attached to the landscape hereabouts is strong. I observed at my site visit a range of recreational use despite relatively inclement weather. These users (or receptors) are to be regarded as being of high sensitivity, and I have noted the adverse comments made in relation to this proposal. It is therefore apparent that there are many people who would find the presence of the wind turbine objectionable, and that it would detract from their experiences of using the landscape for recreational purposes. I regard that impact as substantial.
90. The landscape does not, of course, have any protective designation, but the NPPF indicates that recognising the intrinsic character and beauty of the countryside is a core principle of policy. The landscape here is flat and simple, but that does not mean that it is without charm. Its very lack of interference by roads and infrastructure gives it a tranquil ambience. However, this area cannot attract the greatest degree of sensitivity to change (such as would be found in National Parks, for example) but it is fair to ascribe a moderate sensitivity. When that is added to the substantial visual impact which would affect the users of the area, my overall judgement is that visual impact would be significant and adverse. I differ from other assessments here largely because of the somewhat unique characteristics of the locality around the site and Wistow Lordship.
91. To sum up on this consideration, I find that the impact on the character of the landscape would be significant and adverse within about 1km, and visual impact would also be significant and adverse in a similar zone. There would be conflict with CS Policies SP17 and SP18, and with saved Policies ENV1 and ENV6. Whilst I recognise that the effects of the turbine would be reversible, 25 years is a long period and the fact that the development may be removed at that later time carries limited weight.

Living Conditions [13, 16-21, 25, 44-48, 52, 59-66, 76]

92. The primary concern of the Council in this regard relates to noise. The appellant has produced a range of documentation and has referenced it to the correct guidance, ETSU-R-97. However, I have concerns in some respects.
93. My principle concern is that although there has been a background noise survey, it was carried out at a single point for a short period of time. The monitoring location was not agreed beforehand and is a significant distance from the nearest noise sensitive dwelling relative to the turbine site. The actual location is unclear because of the small scale plan used to identify its general position. I am not satisfied that it has been shown that this location is an adequate proxy for the potentially affected dwelling(s). As the survey results are almost a snapshot in time they must necessarily be treated with caution. It is readily apparent from

the graphical results that there were relatively few data points from which to draw conclusions.

94. Put simply, background noise levels at the nearest receptor locations remains unknown. In those circumstances the assumption that a level of noise immission of about 38dB would be acceptable cannot be reliable. Such a level may still be disruptive if background were to be very quiet.
95. I am also unclear as to the methodology used for measuring wind speeds, which appears to have been readings taken close to the noise monitoring location, checked by reference to data collected some distance away. The wind monitoring location appears to be close to buildings, and could conceivably have been affected by them. Whilst the data from elsewhere may be similar to the conditions at the monitoring location at those times I am concerned that there is a lack of clarity in the exercise which potentially renders the results unreliable.
96. I am not seeking to cast doubt on the expertise of those carrying out the work, but I am not persuaded that the results as presented offer sufficient clarity and robustness to be able to conclude that the living conditions of nearby residents would not be unacceptably harmed by noise from the wind turbine. In this regard I note that there is also disagreement about the distance to the nearest dwelling and its garden. Further doubt must be placed on the noise assessment conclusions because of that. I have noted that the Council's Environmental Health Officer has reached a similar conclusion.
97. I turn now to other aspects of living conditions. The nearest dwellings would have a clear view of the turbine. I was able to see this first hand from Hawthorn Farm. In land use terms there is no right to a view, but there is a point when visual impact becomes unacceptable because of the dominance and overbearing nature of a development. When that point is reached for occupants of residential property it can make the dwelling an unpleasant and undesirable place to live. However, that is quite a high test to reach.
98. In this instance the turbine would be within a narrow arc of view, albeit a prominent one as the closest dwellings to the north and east tend to have main windows facing south and west. So it is the case that the turbine would form a new and primary part of the outlook from those dwellings, particularly Hawthorn Farm. The closest distance to the turbine would be some 350m to the boundary with the Hawthorn Farm garden (as measured by that property owner). From that garden there would remain extensive views across the landscape, with the turbine prominent in it. However, the distance involved means that the turbine would not be overbearing or a domineering presence. It would be readily visible and would significantly change the view, but that does not equate to an impact which makes the property an unpleasant or undesirable place to live. Other properties are progressively further away and would be affected to a lesser degree. On balance, therefore, I do not accept that the proposal would have an unacceptably harmful effect on living conditions in this regard.
99. The matter of shadow flicker has also been raised, and it is acknowledged that there would be the potential to cause this phenomenon for a few hours annually. The figures quoted are a worst case aggregate scenario, and would amount to relatively short periods of time when weather conditions were 'favourable'. It seems to me that this is not a matter of such significance that it should count

against the proposal, and in any event could be controlled by condition if necessary.

100. I have no substantive evidence of sleep deprivation and health concerns caused by wind turbines, though I acknowledge the general point that sleep disturbance caused by noise can adversely impact on health. I have indicated above my concerns in respect of noise, but cannot add further in relation to the potential to impact on the health of nearby residents.
101. On this issue therefore I find that the evidence on noise is insufficient to satisfy me that the proposed development could be developed without causing unacceptable harm to the living conditions of nearby residents. This would conflict with CS Policy SP17 and saved policy ENV2. The fact that I do not find the likelihood of harm to living conditions in other respects does not outweigh the likely adverse noise impacts.

Heritage assets [22-24, 49, 70-72]

102. The Council and the Appellant do not disagree on this matter, but it is argued by third parties that the setting of heritage assets would be affected by this proposal. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act of 1990 imposes a duty that, when considering whether to grant planning permission, special regard must be given to preserving the setting of a listed building. Selby Abbey is a Grade I listed building, as is the Church of All Saints, Wistow. There are a number of Grade II listed buildings in Wistow and Barlby, the nearest villages.
103. The NPPF makes it clear that substantial harm to, or loss of, Grade II listed buildings should be exceptional, and in the case of Grade I listed buildings wholly exceptional.
104. I have carefully considered the arguments put forward. Selby Abbey is located some distance from the appeal site, and although it is visible in views towards the town, it does not have the same prominence as some greater ecclesiastical buildings. The Abbey is relatively self-contained in the centre of the town, and I have not been informed of any views from public viewpoints from the Abbey towards the appeal site. The setting of the Abbey is restricted in that its influence is quite local, being surrounded by other buildings. It does not seem to reach out beyond the confines of the built up area and exert any material influence over the rural hinterland. For that reason I consider that the proposed turbine would have no material impact upon the setting of Selby Abbey.
105. All Saints Church is small and similarly surrounded by the built development of Wistow. It too has a restricted setting enclosed by the village it serves. Hence for similar reasons I do not consider that the setting of that building would be materially affected by the proposed development.
106. Other listed buildings brought to my attention are principally domestic properties and I have been provided with no evidence that the buildings or their settings would be adversely affected. I am satisfied that they would not. There are no known archaeological implications of the proposal. Overall on this issue I therefore concur with the Council and the Appellant that the proposed development would not be harmful to the fabric or setting of any heritage asset.

Other matters

107. I deal now with other matters which do not fall to be assessed as main considerations, but which nonetheless have been brought to my attention.

Ecology[28, 29, 50, 73]

108. I have been provided with little information on the likely ecological impacts of the proposal. However, the development would not be close to a sensitive area and the site itself is currently an arable (and therefore species poor) field. There are no likely habitats such as bat foraging which would be affected. This is not a matter which can weigh against the proposal.

Safety [26, 30, 31, 55, 74, 77, 78, 79]

109. The roads in the vicinity are narrow, but the Highway Authority has not objected to the proposal. With careful use I accept that there should be no undue impact on highway safety. It is also unlikely that the turbine would collapse or throw a blade (though such things do occur on rare occasions) so this is a matter which cannot attract any weight. The safety of horse riders is less clear cut, but I have nothing before me to suggest that there are particular hazards here. Whilst riders no doubt utilise the minor lanes hereabouts there are alternative routes and it would not be necessary for riders to pass the closest point to the appeal site if they had any doubt about the ability of their mount to cope.

Flood Risk and Drainage [32, 51]

110. There are no objections to the submitted flood risk assessment and it seems unlikely that there would be any significant impact from a development of such small ground coverage. This is not a matter of concern in this case.

Alternatives [80]

111. Although several third parties have made mention of alternative sources of low carbon energy this is not a matter of great weight. Guidance makes it clear that there is no requirement to provide evidence of need for the proposal, and there is no upper limit on provision. Whilst alternative sources of low carbon energy are available, they should be regarded as additional to this proposal, and not instead of it.

Residual Matters [26, 27, 53, 54, 56, 57, 81]

112. There have been no objections from the appropriate authorities and consultees in relation to the impact on aviation interests, and no suggestion that there would be any difficulty caused by reason of electro magnetic interference.

113. The design and construction materials of the turbine would be 'standard' and not unusual, and the finish could be controlled by condition.

114. The potential for property value to be affected by the proposal has been raised as a concern. However this is not a matter which can be afforded weight in a land use planning balance. Similarly the suggestion that this proposal would create a precedent for other wind energy development carries little weight. Each proposal must be assessed in the light of the particular circumstances of the individual case.

The Overall Balance

115. There are matters pulling in 2 directions in this case.
116. There is undoubted support both nationally and locally for the provision of renewable energy. This is expressed in the documents noted earlier, the NPPF and the development plan. The provision of a significant amount of renewable energy is a benefit of some weight. This must carry considerable weight in the planning balance. There would be no harm to heritage assets or their settings.
117. On the other hand there would be harm to the character and appearance of this tranquil rural area, which I assess as significant and adverse within the immediate locality, but reducing with distance. Furthermore, there is insufficient evidence for me to conclude that there would be no harm to the living conditions of nearby residents. In this case I am satisfied that it has been shown that there is a real risk of noise disturbance, and this is a further significant detrimental impact of the proposal. These factors conflict with the development plan as noted above, and with the advice of the NPPF.
118. Taking these considerations into account it is my judgement that the collected instances of significant harm likely to be caused by this proposal, on balance in this case, outweigh the acknowledged benefits.

Conditions

119. A number of conditions have been suggested in the event that the Secretary of State wishes to allow the appeal and grant planning permission. In order to give maximum protection to the local area conditions requiring details of external turbine finish and undergrounding of cables are necessary. In order to ensure that development only proceeds when its benefits can be realised a condition requiring grid connection to be permitted before development commences is reasonable. For safety reasons it is necessary to include a condition requiring appropriate lighting at the highest possible point on the turbine.
120. In order to minimise intrusion in the longer term conditions are necessary to time limit the planning permission to 25 years, and to require decommissioning at the end of that period, or if the turbine ceases to operate before that time. To protect the living conditions of nearby residents conditions are necessary to ensure that noise nuisance is kept to a reasonable level.
121. Although not suggested by the Council I have noted that the Highway Authority has requested that a condition be imposed requiring details of vehicle routing. In light of the narrow lanes giving access to the site this is a reasonable requirement for safety reasons.
122. As I have noted above it would be possible to impose a condition to control the impact of shadow flicker. However, as the occurrence would be so limited in this instance I do not consider that it would be reasonable or necessary to impose such a condition in this case.
123. The conditions set out in the Annex to this report are recommended if planning permission is to be granted. I have altered the suggested wording where necessary for precision and clarity.

Recommendation

124. For the above reasons I recommend that the appeal is dismissed and that planning permission is refused.

Philip Major

INSPECTOR

ANNEX

PROPOSED PLANNING CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of the external appearance (including colour finishes) of the turbine hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 3) All electrical cabling between the turbine and the connection point to the grid network or transformer shall be located underground. Any excavated ground shall be reinstated to its former condition within three months of the connection of the wind turbine to the electricity grid.
- 4) No development shall take place until confirmation in writing has been provided to the local planning authority that the off-site grid connection has received the necessary consents.
- 5) No development shall take place until details of the routes to be used by HCV construction traffic have been submitted to and approved in writing by the local planning authority. Thereafter the approved routes shall be used by all vehicles connected with construction on the site.
- 6) The turbine hereby approved shall not be brought into operation until details of 25 candela omni-directional red lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest point, have been submitted to and approved in writing by the local planning authority and have become operational. The works comprising the approved lighting scheme shall thereafter be retained for the lifetime of the development.
- 7) The planning permission hereby granted is for a temporary period only, to expire 25 years after the date on which electricity from the development is first exported to the electricity grid. The local planning authority shall be advised in writing within one month of the date of the grid connection.
- 8) Not later than 12 months after the date on which the planning permission hereby granted expires, the development shall be dismantled and removed from the site and the land reinstated to its former condition and quality in accordance with a scheme to be submitted to the local planning authority for written approval prior to the commencement of development. The scheme to be submitted shall include the dismantling and removal of the wind turbine, ancillary equipment, buildings, and any access roads above existing ground levels, and the removal of the turbine's foundation structures to below existing ground levels.
- 9) If the turbine hereby permitted fails to produce electricity for a continuous period of 12 months the wind turbine, ancillary equipment, buildings, and any access roads above ground, and foundation structures below ground, shall be removed from the site within a period of 9 months from the end of the 12 month period and the land restored to its former condition in accordance with a scheme to be submitted to and approved in writing by the local planning authority.

- 10) The level of noise emissions resultant from the operation of the wind turbine as measured at any dwelling, which does not have a financial interest in the wind turbine developments, lawfully existing at the date of this permission, shall not exceed
 - i) 35 dB(A)L90 10min between 07:00 and 23:00 hrs (Day-time) measured at a point on the property nearest to the turbine location agreed by the local planning authority, in wind speeds up to 10ms-1 at 10m height.
 - ii) 43 dB(A)L90 10min between 23:00 and 7:00 hrs (Night-time) measured at a point on the property nearest to the turbine location agreed by the local planning authority, in wind speeds up to 10ms-1 at 10m height.
- 11) The level of noise emissions resultant from the operation of the wind turbine as measured below at any dwelling with a financial interest in the wind turbine development, lawfully existing at the date of this permission, shall not exceed:
 - i) 45 dB(A)L90 10min between 07:00 and 23:00 hrs (Day-time) measured at a point on the property nearest to the turbine location agreed by the local planning authority, in wind speeds up to 10ms-1 at 10m height.
 - ii) 45 dB(A)L90 10min between 23:00 and 7:00 hrs (Night-time) measured at a point on the property nearest to the turbine location agreed by the local planning authority, in wind speeds up to 10ms-1 at 10m height.
- 12) At the request of the local planning authority following a complaint, the operator of the development shall instruct an independent qualified acoustic specialist to measure, at the operators expense, the level of noise emissions resultant from the operation of the wind turbine generator in accordance with the methods stipulated in Section 7 of 'The Assessment and Rating of Noise from Wind Farms, ETSU-R-97'. The location of the survey monitoring points shall be agreed with officers of the local planning authority prior to the commencement of measurements. Wind speeds shall be measured on site and referenced to a height of 10m above ground level. Where wind speed is measured at a height other than 10m the wind speed data shall be converted to 10m height, accounting for wind shear by a method whose details shall also be provided to the local planning authority. Where tonal noise emissions are resultant form the operation of the turbine unit they shall be assessed and rated in accordance with ETSU-R-97. Selby District Council may at any point prior to any noise assessment being undertaken require alteration to the assessment method. The alternative assessment shall be agreed in writing between Selby District Council and the operator. Mitigation for noise immissions at residential properties which exceed the limits set out in the preceding conditions (Nos 10 and 11) shall be agreed in writing with the local planning authority, and implemented, within 6 months of the results of the noise monitoring being provided.



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.