



Department for
Communities and
Local Government

Mr Craig Barks
Bagshaws LLP
Vine House
15 Church Street
Ashbourne
Derbyshire DE6 1AE

Our Ref: APP/Y2810/A/13/2203312

Your Ref: A Haigh

17 November 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR ALASTAIR HAIGH AGAINST A REFUSAL BY DAVENTRY
DISTRICT COUNCIL FOR THE INSTALLATION OF A FARM SIZED WIND
TURBINE AT LONG FURLONG, CATESBY, DAVENTRY NN11 6LW-
(APPLICATION REF: DA/2012/0854)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Graham Dudley, BA (Hons) Arch Dip Cons AA RIBA FRICS, who held an inquiry on 12-14 February 2014 into your client's appeal against Daventry District Council's ("the Council") refusal to grant planning permission for the installation of a farm sized wind turbine at Long Furlong, Catesby, Daventry NN11 6LW (Application reference DA/2012/0854).
2. On 27 March 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 disagrees with the Inspector's conclusions and recommendation, dismisses the appeal and refuses planning permission. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

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

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

Procedural matters

4. Following the closure of the inquiry the Secretary of State received representations from Mr Tony Gulliver and Ms Patricia Laing of Ryton Hill House about the impact of the proposed development on bats, and Natural England's advice on this issue.
5. The Secretary of State has taken account of these representations in his consideration of the appeal before him but does not consider that they raise any new issues requiring circulation to assist his decision. He does not consider it necessary to summarise the representations here or attach them to this letter. Copies of the correspondence can be made available upon written request to the address at the foot of the first page of this letter.

Policy Considerations

6. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, he agrees with the Inspector (IR21) that the development plan includes the Daventry District Council Local Plan saved policies (LP), and that LP Policies EN42 and EN1 are relevant in this case. The Secretary of State has also taken into account the West Northamptonshire Joint Core Strategy (CS), and agrees with the Inspector that CS S11 and B5 are relevant, though he has given these limited weight as the CS has yet to be adopted.
7. 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.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the planning practice guidance; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); and the Community Infrastructure Levy (CIL) Regulations 2010 as amended. The Secretary of State has also taken into account the Written Ministerial Statements on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government and the Written Ministerial Statement on renewable energy published by the Secretary of State for Communities and Local Government in April 2014.

Main Considerations

9. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR121.

Heritage Assets

10. In accordance with section 66(1) of the LB Act, the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess. He has also taken into account the Barnwell Manor judgement.
11. The Secretary of State has had regard to the planning practice guidance which states that as the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets; and that, depending on its scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.
12. The Secretary of State has also had regard to paragraphs 132-134 of the Framework when considering the impact of the proposed development on the significance of heritage assets, whether through alteration or destruction of the heritage asset or development within its setting.
13. The Secretary of State agrees with the Inspector (IR126) that considerable importance and weight should be given to the desirability of preserving the setting of a listed building, even where any harm is less than substantial.

Long Furlong Farmhouse

14. For the reasons set out at IR126-7 the Secretary of State agrees with the Inspector that the development would impact on views to Long Furlong Farmhouse, a Grade II listed building. He further agrees (IR128) that the wind turbine would appear in many views to and from the listed building. However, while he agrees that the wind turbine would not change the overriding use of the farmland, he does not agree that the wind turbine would not significantly change the character of the farmland, or that it would contribute to the continued development of the farm and would not be out of place. He concludes that while this is a working environment/setting with changes to the setting relating to changing needs in modern farming, it is also farmland centring on a listed building dating from the 18th century, and thus that the introduction of a piece of large, prominent modern equipment will inevitably change its setting.

15. The Secretary of State further disagrees (IR129) that the impact on views of the listed building from some aspects would only have a limited impact on the overall significance of the listed building, as he concludes that the introduction of a large, modern, aerodynamic structure, of a different scale and appearance to most other features that are found in the countryside, into the vicinity of an 18th century listed farmhouse, would substantially alter the significance of that farmhouse. He agrees with the Inspector that the impact on views would create change, and that the introduction of the wind turbine could not be seen as an enhancement. He agrees with the Inspector's assessment that it would not preserve the setting of the listed building, for the reasons given at IR129. However, he disagrees with the Inspector's conclusion that the actual harm to the significance would be small and would in terms of the Framework be classified as "less than substantial harm", so should attract little weight, given the impact of the development on the views of the listed building, which affect its significance. He agrees, however, that there is harm related to the conflict with s66(1), which requires considerable importance and weight to be given to the desirability of preserving the setting of the listed buildings. He agrees that in this respect the proposal would not accord with LP Policy GN2 and CS Policy BN5.

Other Heritage Assets

16. The Secretary of State agrees with the Inspector that the other heritage assets which need to be considered in this appeal are those listed at IR130. The Secretary of State agrees with the Inspector at IR131 that the significance and special architectural and historic interest of these heritage assets relate to their historical significance, designers, historical links, design and materials. For the reasons given at IR131-3 the Secretary of State agrees that the turbine would not alter the relationship of the parkland with Sharman's Hill or other features, or significantly affect the pleasant, tranquil and rural character and appearance of the parkland and Fawsley Estate. For the reasons given at IR134 the Secretary of State agrees that the presence of the turbine in some views would not have an impact on the significance of the heritage assets.
17. For the reasons given at IR135 the Secretary of State agrees that the turbine, when seen in views along the lane, would not harm the significance of the listed buildings or registered parkland and would preserve their special architectural and historic interest. Similarly, he agrees with the Inspector at IR136 that the turbine, when seen when travelling along the main road, would not impact on the significance of the heritage assets.
18. For the reasons set out by the Inspector at IR137 the Inspector agrees that the significance or special interest of Fawsley Farmhouse and the associated well house would not be harmed by the proposed development. He similarly agrees that the lantern house and its setting would not be impacted by the proposed turbine. As such he agrees that, in respect of the Fawsley Estate, the proposal would accord with the aims and objectives of LP Policy GN2 and CS Policy BN5.

Character and Appearance

19. The Secretary of State has considered the Inspector's assessment of the potential impact of the wind turbine on the character and appearance of the countryside at IR 138–145.
20. The Secretary of State agrees with the Inspector at IR140 that wind turbines are different in scale and appearance to most other features that are found in the countryside, and that their introduction in any part of the country would have a significant impact on the appearance of the immediately surrounding countryside. However, he accepts that wind turbines are a necessary part of providing a reasonable part of our energy infrastructure, and that the prominent, large, modern telephone infrastructure nearby has not downgraded the landscape quality in the surrounding area.
21. The Secretary of State agrees that (IR141) it is inherent in current policy that inland wind turbines will change the appearance of the countryside to some extent, and thus be in some conflict with policies designed to protect the countryside. However, he concludes that, even given this, he is still required to weigh carefully the need to protect the character and appearance of the countryside and the policies which aim to protect it, when considering an appeal for a renewable energy development.
22. He concludes, as does the Inspector, that the proposal is not fully in accordance with the aims and objectives of LP Policy GN1, GN2 and EN42 and CS Policy S11. He agrees with the Inspector (IR124) that the LP policies aimed at protecting the countryside are not out of date or silent for the purposes of the Framework, for the reasons given at IR124.
23. He agrees that the turbine would have relatively little physical impact on the surrounding countryside and that the existing rural character and agricultural use of the countryside would be retained and continue.
24. For the reasons given at IR146 the Secretary of State agrees that the turbine, when considered with other turbines and the tall structures of the telephone towers, would not result in additional harm to the area by reason of the cumulative impact of the structures.
25. For the reasons given at IR142 the Secretary of State agrees that that views of the turbine would be masked from a large proportion of the surrounding area and from some nearby residences. He further agrees, for the reasons set out at IR143, that when viewed from the west the turbine would not be a prominent feature on the horizon. For the reasons given at IR144 he agrees that the turbine would be seen from the north in the context of the farm complex, and that views from the south would be intermittent.

26. The Secretary of State agrees with the Inspector (IR145) that the agricultural use of the surrounding land would be little changed, and that views of the countryside would remain in front of and beyond the turbine. He further agrees that the impact on the character and appearance of the area have been limited by careful siting. However, he does not agree that the turbine would have relatively little impact on the area. He concludes that the addition of a large piece of modern infrastructure, of a different scale and appearance to most other features that are found in the countryside, will inevitably have an impact, which is of moderate weight in the planning balance.
27. The Secretary of State agrees with the Inspector (IR147) that while changing the appearance of the landscape, the proposed wind turbine would not be unacceptable in terms of the changed appearance nor significantly change the overall rural character of the area, either when considered in isolation or cumulatively with other modern infrastructure. However, while the Inspector considers that there would be some limited to moderate harm in relation to the effect on the appearance of the area, the Secretary of State gives it moderate weight, for the reasons given at paragraphs 20 and 26 above.

Living Conditions

28. For the reasons set out at IR149, the Secretary of State concludes, in agreement with the Inspector, that the development would not cause a material impact on the outlook of the occupiers of Royton Hill House. He further agrees (IR150) that the development would have not material impact on the outlook of the occupiers of Haycock Hill Farm. As such the proposal would accord with the aims and objectives of LP Policy GN2.

Bats

29. The Secretary of State has given careful consideration to the potential impact of the development on the local bat population. For the reasons set out at IR 152-162 he concludes that the risk posed to bats by the proposed turbine has been adequately assessed and is reasonable, and that the proposal would accord with the aims and objectives of CS Policy S11.

Other Matters

30. The Secretary of State concludes for the reasons set out at IR163-4 that the archaeological investigations undertaken were adequate, and that, as far as archaeology is concerned, the proposed development would be acceptable, subject to suitable conditions. He further concludes that the conditions set out at Annex A of the IR are suitable and satisfactory in this regard.
31. For the reasons given at IR165 the Secretary of State is satisfied that an Environmental Statement is not needed for this proposal.

32. For the reasons given at IR166, the Secretary of State agrees with the Inspector that there would not be any adverse noise impact on the residents of Ryton Hill House from the turbine. Long Furlong Farmhouse is closer to the turbine, but this is a financially involved property, so he does not attach any weight to this consideration.

Renewable Energy Generation

33. In favour of the appeal, the Secretary of State agrees with the Inspector about the policy considerations in relation to renewable energy at IR172. He notes the assessments of potential energy generated by the turbine at IR173, which vary from an estimate of sufficient capacity to serve fewer than 32 domestic properties to 130 domestic properties.

Other Benefits

34. The Secretary of State agrees with the Inspector at IR173 that the proposal would have a small benefit in terms of employment. He further agrees that it would provide some benefits in terms of farm diversification, for the reasons set out by the Inspector at IR173.

Planning Balance

35. The Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Secretary of State concludes that the proposal does not accord with the development plan or the emerging CS, taken as a whole, for the reasons set out at paragraphs 15 and 22 above. He has then gone on to consider the relevant material considerations. The Secretary of State has given serious consideration to the requirements in paragraph 97 of the Framework that all communities have a responsibility to help increase the use and supply of green energy, but also that this does not mean that the need for renewable energy will automatically override environmental protection and the planning concerns of local communities.
36. The Secretary of State agrees with the Inspector at IR171 that great care should be taken to ensure that heritage assets are conserved in a manner appropriate to their significance, including impact on views important to their setting.
37. The Secretary of State agrees that the proposal would cause some harm to the setting of Long Furlong Farmhouse and therefore Section 66(1) of the LB Act requires considerable importance and weight to be given to the desirability of preserving the setting of a listed building. However, he does not agree that the siting of the turbine is such that it minimises the harm to the affected asset or its setting, or that, in terms of Long Furlong Farmhouse its harmful impact would be limited, for the reasons given at paragraphs 14-15 above. He therefore gives substantial weight to the impact of the development on the setting of Long Furlong Farmhouse. He also gives moderate weight to its impact on the character and appearance of the area.

38. Against these harms, the Secretary of State weighs the potential benefits of the proposal. The Secretary of State notes the policy considerations in relation to renewable energy and the assessments of potential energy generated by the turbine at IR172-3, which vary from an estimate of sufficient capacity to serve fewer than 32 domestic properties to 130 domestic properties. He gives the potential renewable energy benefits of the development substantial weight.
39. The Secretary of State has taken into account the small benefit in respect of employment and farm diversification offered by the project, as set out at IR173. He gives these benefits limited weight, given their modest scale.
40. Therefore on balance he concludes that the weight to be attached to the benefits in terms of renewable energy provision is not sufficient to outweigh the harms attendant on the proposed development.

Conditions

41. The Secretary of State has had regard to the schedule of conditions at Annex A of the IR. He is satisfied that the Inspector's proposed conditions would meet the tests of paragraph 206 of the Framework. However, he concludes that they are not sufficient to overcome his reasons for dismissing this appeal.

Formal Decision

42. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the installation of a wind turbine at Long Furlong, Catesby, Daventry NN11 6LW (Application reference DA/2012/0854).

Right to challenge the decision

43. 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.
44. A copy of this letter has been sent to the Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf



The Planning
Inspectorate

Report to the Secretary of State for Communities and Local Government

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Date: 9 July 2014

The Town and Country Planning Act 1990

Appeal by Mr A Haigh

Daventry District Council

Hearing held on 12-14 February 2014

Long Furlong, Catesby, Daventry NN11 6LW

File Ref: APP/Y2810/A/13/2203312

Long Furlong, Catesby, Daventry NN11 6LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The application is made by Mr Alistair Haigh to Daventry District Council.
- The application Ref DA/2012/0854, dated 19 October 2012, was refused by notice dated 24 April 2013.
- The development proposed is the installation of a farm-sized wind turbine.

Summary of Recommendation: The appeal be allowed.

Procedural Matters

1. This report includes a description of the application site and surrounding area, the gist of the cases made at the hearing and my conclusions and recommendation. I have attached all documents, including statements and plans submitted to the hearing. These are as originally submitted and do not take account of how the evidence may have been affected during the hearing.
2. The appeal was recovered for decision by the Secretary of State by a direction, made under section 79 of the Town and Country Planning Act 1990, on 27 March 2014. The reason given for making the direction was because the proposal involves a renewable energy development.

Recommendation

3. I recommend that the appeal is allowed and planning permission is granted for the installation of a farm-sized wind turbine at Long Furlong, Catesby, Daventry NN11 6LW in accordance with the terms of the application, Ref DA/2012/0854, dated 19 October 2012 and the plans submitted with it, subject to the recommended conditions listed in annex A.

The Site and Surroundings

4. The site is situated in open countryside to the north of the Fawsley Estate. Long Furlong Farmhouse is a grade II listed building, and the landscape is within a Special Landscape Area [SLA] designated under saved LP Policy EN1. The site is currently in agricultural use and slopes up towards Sharman's Hill. The landscape is relatively flat towards the west, where there are more open views and hilly towards the east, limiting views from the east of the site.
5. Sharman's Hill generally lies between the appeal site and the Fawsley Estate where there are important listed buildings, including Fawsley Hall, Church and associated parkland. The nearest residence apart from Long Furlong Farmhouse is Ryton Hill House, which is to the north east of the appeal site and around Sharman's Hill from the appeal site.
6. There are a number of footpaths in the area, including one running along the old railway line to the west of the appeal site, which is also very close to the Jurassic Way, a long distance footpath. Another long distance path is the Knightley Way that runs along the ridge and through Fawsley Park. From here there are views to Sharman's Hill, with the appeal site behind.
7. The old railway line has a number of tunnels along its length, including near to the appeal site and there is evidence of some bat activity associated with these.

Planning Policy¹

8. The development plan includes the Daventry District Council Local Plan [LP]. LP Policy GN2 is a general policy indicating that planning permission will normally be granted, provided it is of a scale and design in keeping with the locality and does not detract from its amenities, will not adversely affect a conservation area or a building listed as being of special architectural and historic interest or their setting, will not adversely affect a Special Landscape Area and has the full requirement of agriculture and the need to protect the best and most versatile agricultural land from development that is irreversible.
9. LP Policy EN42 relates to design and indicates planning permission will be granted if the design promotes and reinforces local distinctiveness and enhances its surroundings. The scale, massing and height should combine to ensure the proposal blends well within the site and surroundings and the arrangement should ensure that environmental impact is minimised.
10. LP Policy EN1 relates to Special Landscape Areas within which planning permission will normally be granted provided that development is agricultural, forestry, recreation or tourism development and would not adversely affect the character of the local landscape.
11. The Joint Core Strategy [CS] was submitted on the 31 December 2012 and examination took place in April and was due to reconvene in March 2013. CS Policy S11 relates to renewable energy proposals and expects them to provide wider environmental benefits and have no significant adverse impact on matters such as heritage assets, landscape and landscape character or nature conservation interests. CS Policy BN5 relates to the historic environment and landscape.

Planning History

12. An application (DA/2012/225) for a similar turbine was refused and subsequently dismissed at appeal, essentially on the basis of lack of information relating to bats². A subsequent application was made, but withdrawn (DA/2013/0611).

The Proposals

13. The application is described as the proposed installation of a farm-sized wind turbine. At the hearing it was confirmed that this would be a turbine limited in height to 45m to the tip of the blade. The application is for a single wind turbine (generating capacity of 250kW): 30m to nacelle with 15m radius blades. The column is 2.8m wide at its thickest. The cabling is underground and the majority of the access to the road network is along existing farm tracks. I have considered the proposal on the basis of the appeal description, with this limit controlled by condition. The proposal is described on the plans³.

¹ The policies are on the appeal file

² Doc 1

³ Plans 5 - 10

Other agreed matters between the appellant and Council

14. The council screened the proposal and found it not to be EIA development⁴. The Secretary of State also undertook a screening and directed that the development is not EIA development⁵.

The Case for the Appellant

The case for the appellant is set out in Docs A1 to A14. The material points are:-

15. The council's Landscape Architect, Conservation Officer and Planning Officer recommended the proposal for approval on two occasions. There is also no objection on environmental health grounds. The previous Planning Inspector would have granted planning permission on appeal apart from the lack of information relating to bats⁶.
16. There has been no material change in the heritage issues and/or the character and appearance of the area and no material change in planning policy. Significant weight should attach to the previous decision because there should be consistency in administrative decision making (P. 70.38 Planning Encyclopaedia Vol II). C3/09 B29 provided and the aim is continued in the Planning Practice Guidance, that it is unreasonable for a council to persist in objections to a scheme which the Secretary of State or an Inspector has indicated would be acceptable. In addition, the council should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible⁷.
17. The council now accepts that the survey evidence on bats is adequate and there is no outstanding request for any further information, so there is no reason for refusal on ecology. Natural England does not object in the light of the further survey work.

The Application

18. The wind turbine is positioned away from and below the crest of Sharman's Hill, which has a substantial screening effect. The wind turbine would be seen as part of a modern arable farm.
19. The appellant does not contest the passion that residents of the area have against the proposal, but the level of objection is not a material consideration. It must be based on evidence and analysis. A sense of proportion and perspective is therefore required in the analysis of adverse impacts.
20. It should also be stressed that this application should be determined on its own merits (section 38(6)). Having heard the concerns of objectors, it is quite clear that they fear that this application will set a precedent for much larger and more numerous turbines. Indeed, it is only this concern which explains the strength of local objections which cannot be objectively justified on the evidence. Precedent is a legal concept. Mere fear or a generalised concern is not enough. There needs to be some evidence for reliance on it. In this case, the council does not rely on it. It has not identified any applications for which this would be a precedent.

⁴ Doc 2

⁵ Screening on file

⁶ Doc 1 paragraph 51

⁷ NPPF paragraph 87

EIA Development

21. This application is not for EIA development. This has been the independent conclusion of the council, the Secretary of State and previous Inspector. While the Fawsley Estate challenged the decision of 7th November 2013, in the light of such a challenge, PINS made a fresh decision (see further letter 27th January 2014), which states *inter alia*: "...impacts are not likely to be significant..."⁸
22. This is consistent with the position of English Heritage, Natural England, the council's professional officers, the appellant and previous Inspector. There is no issue on which further evidence is required, which would be secured by an expensive and time consuming EIA.

Heritage Assets

23. It is common ground between the council, appellant, Fawsley Estate Trustees, English Heritage and previous Inspector that there will be "less than substantial harm" in terms of the Framework. There is no dispute that it is only the setting of heritage assets that is involved in this case. The approach is to assess the significance of the asset, the contribution made by the setting of the asset to its significance, the contribution made by the appeal site to the significance of the asset (as part of its setting), the change to the setting caused by the development and the impact to the significance of the asset.
24. **Long Furlong Farmhouse (Grade II)** was derelict in the 1950s and only re-inhabited after significant refurbishment in 2000. It is significant because it is an early 18C farmhouse of vernacular construction and local materials. Its setting is compromised by an assortment of modern agricultural buildings and a large hardstanding. The appeal site may form part of the setting, but does not contribute to the significance (as identified and agreed by the council). A decision on whether Long Furlong Farmhouse should be de-listed is pending with English Heritage. There will be no harm to the significance of this asset.
25. **Fawsley Hall (Grade 1)**. Fawley Estate's case is that Fawsley Park provides the setting to the Hall (See FET 4 at 4.2 and 4.19). The wind turbine is not in the parkland and therefore not in the setting of the Hall, which is orientated to the east. The wind turbine would be unlikely to be seen or experienced "in association with the Hall"⁹. The Conservation Officer did not express any concern about the impact on the Hall and neither do the Fawsley Estate. Its evidence does not suggest harm to the significance of the Hall. It addresses harm to the visual setting of the parkland (a different designated heritage asset). The impact on the Hall's significance is properly considered to be "negligible"¹⁰.
26. The **Fawsley Registered Parkland (Grade II*)**¹¹ is significant because it forms the formal designed setting for the Hall. The wind turbine would have no impact on this aspect of the significance of the parkland, which will continue to perform the role. It is common ground that the parkland has its own setting which can be defined in 3 parts¹²: (i) the designed setting, (ii) the estate setting and (iii) the wider visual setting. The wind turbine would be located

⁸ See letter on file and Doc 2

⁹ Doc 1 – previous Inspector's decision paragraph 33

¹⁰ Doc 1 – previous Inspector's decision paragraph 33

¹¹ Doc F1 appendix 4, page 10a – map of registered park coloured red

¹² Doc F1 appendix 4 paragraph 4.11

within the wider visual setting¹³. The wider visual setting is considered to be relevant because of designed views out from the parkland.

27. The Fawsley Estate has provided a single wire frame of a view from inside the parkland on the Knightley Way¹⁴. The wire frame shows that, even if you were to stop your walk and stare towards the appeal site, the impact of the development (at 2.68 km) would be negligible¹⁵. Your eye would more likely be drawn by the two existing nearby towers. The turbine would be barely discernible and in any case, the impact would be transient and filtered by tree and vegetation as one walks along the Knightley Way. There would be no significant impact from the parkland.
28. There is concern about the impact of the wind turbine on the sense of “arrival” at Fawsley Hall, but the wind turbine would not be visible as you drive towards the Hall. Even when leaving the Hall and parkland the wind turbine would not be visible, as can be seen from the photomontages and wire frame diagrams¹⁶. The wind turbine is not perceptible in wire frames 3 and 4, given the intervening vegetation (even in winter). It becomes visible at wireframes 1 and 2. These viewpoints are not in the Registered Parkland. They are as you approach the junction of the main road. The viewer is orientated away from the Parkland and the Hall. The junction and cars moving along the road are also components in the view. The adjacent fields are in intensive agricultural production. The viewer is not sharing the experience of Capability Brown and the impact is fleeting as the viewer continues their journey.
29. The appellant has accepted on this basis that there may be less than substantial harm to the experience of the Registered Parkland, but it can only be afforded very limited weight in the Framework (paragraph 134) balance.

Impact to the Character and Appearance of the Area

30. The wind turbine would be a tall, vertical, man-made structure and would move and be visible in the landscape, which is inevitable with any turbine. Given the Framework (paragraphs 97 and 98) and the National Planning Statements (EN 1 and 3), planning permission cannot be refused based on the inevitable impacts of a wind turbine. However, it is acknowledged that just because impacts are inevitable, that does not mean they are acceptable. A balanced, objective and independent appraisal is therefore required which takes such factors into account on a site specific basis.
31. The appellant has undertaken a full landscape and visual impact assessment. Its conclusions are balanced and fair. Its conclusions are consistent with the conclusions of the council’s landscape architect and previous Inspector, both of whom have undertaken a balanced and independent analysis. All have specifically taken into account the site’s location in the Special Landscape Area.
32. There is, therefore, a consensus of professional opinion which robustly and independently concludes that there will only be limited to moderate harm to the character and appearance of the area¹⁷. On the first application, the council’s landscape officer concluded that the wind turbine could be “accommodated within the existing landscape.”

¹³ Doc F1 appendix 4 paragraph 4.20

¹⁴ Doc F1 appendix 4 and document F2 have photomontages from the Fawsley Estate

¹⁵ Doc F2 photomontage 9 from Knightley Way

¹⁶ Doc F1 Appendix 4 – photomontages at appendix 2 – taken from road leading to Fawsley Hall

¹⁷ Doc 1 at paragraphs 14 – 26

33. The council confirmed its position that the most adverse visual impacts will be at Viewpoint's 2, 6 and 8, which are on public rights of way very close to the appeal site. It is inevitable that some harm would occur in close proximity but, as was noted in the previous decision, from viewpoint 6 there would only be limited harm¹⁸, from viewpoint 2 only moderate harm¹⁹ and from viewpoint 8 some limited visual harm²⁰, demonstrating that the material adverse impacts will be relatively constrained.
34. A concern is raised by the Council for the Protection of Rural England (and others) regarding cumulative impact. It is allied with the concern over precedent. There is no inter-visibility with any other wind turbine. The nearest is at Boddington Reservoir 6km away. The LPA has not identified any other wind turbine which would require a cumulative assessment and no objection is taken on this ground by the council.

Residential amenity

35. It is a locational advantage of this wind turbine that there is a single objection on this ground, from a property which accepts that it could not see the wind turbine from inside the property (including upstairs windows) and the council does not support this objection.
36. The relevant 'test' is the *Lavender 'Test'*. Countless Inspectors and the Secretary of State decisions have used it. The 'test' is not one of visibility. If seeing a moving turbine blade from a garden demonstrated an unacceptable impact, no wind turbine would be consented. In this case the appellant's evidence is that the wind turbine would not be visible from the garden of Ryton Hill House because Sharmans Hill is in the way. There is simply no weight to give to this objection, which the previous Inspector specifically addressed: Ryton Hill House would "continue to enjoy a very pleasant rural outlook"²¹.

Ecology

Bats

37. There is no dispute that bats are a European Protected Species. The application of the relevant legal tests is set out by the Supreme Court in *Morge v Hampshire DC* [2011] UKSC 2.
38. "...Where as here, Natural England express themselves satisfied that a proposed development will be compliant with article 12, the planning authority are to my mind entitled to presume that it is so."
39. Natural England has appraised critically the evidence submitted by this appellant. It had objected in relation to previous applications. In the light of the first appeal decision, the appellant undertook bat surveys (Phase 2 Bat Surveys Rev B Nov 2013)²². In the light of such surveys, the Natural England position (4/2/14) is that harm to bats is unlikely. It is the Secretary of State's statutory consultee on the Directive and 2010 Regulations. It considers that all of the relevant legal tests are met. Significant weight must be attached to its evidence.

¹⁸ Doc 1 paragraph 20

¹⁹ Doc 1 paragraph 21

²⁰ Doc 1 paragraph 22

²¹ Doc 1 paragraph 36

²² Doc A7

40. Further, Natural England specifically endorses the appellant's ecologist's position (contrary to the position adopted by Northants Bat Group) that TIN051 applies to this application. The wind turbine would be 100m from treelines and 60m from hedges. The guidance is met.
41. There is no outstanding request for any further survey work from either the council or Natural England (neither of whom suggest planning permission should be refused). The residual concern in the previous appeal has been met.

The Benefits of the Development

42. The Government's approach to climate change is well known as set out in the previous decision. The update to the Roadmap states that the Coalition Government is committed to increasing the deployment of renewable energy across the UK and recognises that renewable energy has a pivotal role to play in the UK energy mix beyond 2020.

(a) Energy Generation

43. The appellant's case is that the capacity factor will be 24.4% and would generate enough electricity to supply the equivalent of 130 typical households/year and displace 290 tonnes of CO₂.
44. The Secretary of State recognises that "even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions" (The Framework at paragraph 98). The council/Secretary of State should therefore approve the application if the impact is (or can be made) acceptable. These are important wider environmental (public) benefits of the scheme which must be weighed in the overall planning balance.

(b) Benefits to the Farm

45. The site lies on a family farm. The appellant is a second generation farmer (his father and wife both work the 300 acres of arable land). The operation is marginal. The appellant works as a labourer/driver to supplement his income. His turnover is £100,000, with fuel costs of £25,000. Prices at the farm gate have not increased since the 1960s, while the cost of fuel has increased exponentially. This development will produce a revenue stream which will offset his fuel costs (in a sustainable way). This is a benefit of significant weight, which would promote the development (and diversification in the terms of Policy S11) of an agricultural business (see the Framework paragraph 28) and would constitute sustainable economic growth, to which the Framework attaches "significant weight". Planning should operate to encourage and not to act as an impediment to sustainable economic growth.
46. Together the benefits of this development should therefore be afforded "considerable weight".

Local Plan

47. The Inquiry into the Local Plan took place in 1994/1995 in the context of a Structure Plan which has been superseded by Regional Strategies and now revoked. It was adopted in June 1997 and ran from 1991 to 2006. Therefore, the evidence base is out of date; the policy background has been revoked; it is time expired and there can be no doubt it is "out of date" for the purposes of the Framework paragraph 14.

48. Further, there are no policies which address (i) renewable energy or (ii) wind energy. There is no presumption in favour of development (the Framework paragraphs 197 and 14). The local plan is therefore “absent” or “silent” because it fails to (i) deliver a positive strategy to promote renewable energy or (ii) “maximise” renewable energy development while ensuring adverse impacts are addressed satisfactorily. This was the conclusion of the council and the Inspector last time²³.
49. The Local Plan is therefore plainly “out of date” for determining wind energy development. The development may conflict with ENV 42 and GN 2 but (as the previous Inspector observed) this hardly comes as a surprise (when the policies were not intended to address wind turbines).
- EN 42 (C) – “...blends well with the site...”
 - GN 2 (A) – “...in keeping with the locality...”
 - No turbines could realistically comply with such policies (objectively applied) which constitute a moratorium on wind turbine development, which is not consistent with the Framework;
 - EN 42 (E) – landscaping will not materially reduce the landscape and visual impact of the wind turbine.
 - GN2 (G) – the test is “adversely affect” the Special Landscape Area – this is not consistent with the cost/benefit analysis of the Framework (14 and 134). If there is any adverse impact it must be weighed in the balance.
 - GN2 (E) – this is not consistent with Chapter 12 of the Framework, especially paragraphs 134 and 135.
50. The Framework at paragraph 215 is therefore engaged. The Local Plan was not passed under the Planning & Compulsory Purchase Act 2004 and more than 12 months have passed. Weight can only be attached to these policies if they are consistent with the Framework. They are not and no weight should attach to them. This point is additional to the point that the local plan is absent, silent and out of date²⁴.

The Emerging core strategy

51. Policy S11 (p.48)²⁵ is therefore important given the absence of policies in the local plan. There are no extant objections to this policy and (whilst the Core Strategy Inspector will have to decide whether it complies with the Framework) significant weight can attach to it. Based on the evidence, there are no significant adverse impacts.
52. The council does not allege conflict with this policy and the previous Inspector found that this application complied with it.

Ministerial Statements and Planning Guidance on Renewable Energy

53. The documents need to be read in full. They do not signal a change in policy. Rather, they seek to affirm that the appeal should be determined in accordance with the Framework. They require that great care be paid to local impacts and

²³ Doc 1 paragraph 7

²⁴ Doc 1 paragraph 36

²⁵ See Policies on main file

the concerns of local residents. This has always been the case. However, it is a fundamental precept of the planning system that the weight to be attached to the positive and negative impacts is a matter for the decision-maker. The previous Inspector's decision letter addressed all relevant issues with the required care. He just didn't accept that they outweigh the benefits with particular emphasis on bats.

Noise

54. The council's environmental health officer was satisfied that the appellant's assessment complied with ETSU-R-97. This issue can be addressed by a condition. If the relevant (agreed) condition is imposed, there will be no unacceptable impact on the occupants of Ryton Hill House. They have not provided any positive evidence to suggest that the agreed approach of the council and appellant, with the agreed noise limit, would not safeguard their amenity. The previous Inspector had no concerns over noise²⁶, especially given the "very large separation distance" with Ryton Hill House and the acceptance by their previous consultant that there would be "no adverse effect on amenity".

Conclusion

55. The appellant has never denied that the wind turbine would be visible. That is an inevitable consequence of wind turbine development. However, the appellant, the council's landscape architect and previous Inspector agree that the harm will be limited to moderate. The harm to the significance of heritage assets is "very limited" and less than substantial. Against this, the benefits of the development should be afforded significant weight. Applying the relevant legal tests and the Framework paragraphs 14 and 134, the benefits clearly outweigh the harm.

The Case for the Council

The case for the council is set out in Docs C1 and C2. The material points are:-

56. The planning application related to this appeal was determined before the appeal decision of the previous application was issued, but the council has had regard to that decision in preparing for the appeal²⁷. It remains the council's opinion that the proposed turbine would have a detrimental impact on the character and appearance of the landscape and designated heritage assets and be contrary to LP Policies GN2 and EN42.
57. The area is in the Northamptonshire Uplands, characterised by elevated, rolling landscapes with isolated hills and is designated as a Special Landscape Area. The Special Landscape Area, which includes the turbine site and Fawsley Park, is a county designation which recognises and seeks to protect the most representative and best preserved parts of Northamptonshire's landscape. The surrounding network of public rights of way, including two key county footpaths (Jurassic Way and Knightley Way), allow extensive public access and appreciation of this landscape.

²⁶ Doc 1 paragraphs 37 and 38

²⁷ Doc C1 pg 12 paragraph 5.2

58. Locally the area is designated ironstone hills²⁸ and forms a distinct line along the western boundary of Northamptonshire. The rounded, undulating hills are prime examples of the environmental quality of the locality.
59. The many hills and valleys in this part of the county afford wide and expansive views across to Fawsley House and its registered parkland and out to the wider countryside beyond. These large and beautiful views are an integral element of the designed setting of Fawsley Hall and its registered park.
60. There are manmade elements in the landscape, including the BT Tower to the west of the application site which are seen in the wider landscape. Unlike the BT tower, the wind turbine would have moving parts, which would have a distracting impact on the landscape. The BT tower has eroded the character and appearance of the landscape locally, but adding another alien feature would erode its intimate nature, because of the rotating blades and the design and strident appearance of the structure. The turbine would protrude 5m²⁹ above Sharman's Hill, although it is noted that there would be some intervening vegetation.
61. LP Policy GN2 allows for development of a type, scale and design in keeping with the locality, not detracting from its amenities, but this proposal would not achieve these aims and would be a more strident object than the telecommunications masts, because of its appearance and moving blades making it a distracting feature. LP Policy GN42 allows for development of appropriate scale, density, massing and height. The proposal would not achieve this but would have a harmful impact on the nearby heritage assets and the Special Landscape Area.
62. The grade I listed Fawsley Hall and its grade II* registered parkland are designated heritage assets of the highest significance, recognised for their architectural, historic, archaeological and aesthetic value. The parkland, of which some 330 hectares is designated, provides the designed setting of the 16th Century Hall. The landscape today represents many centuries of occupation and use.
63. The Hall and its associated ancillary buildings, which form the core of the park, and the historic approaches to it; the close relationship of the Hall with the grade I listed parish church of St Mary's and the archaeological evidence for the medieval village of Fawsley, which once surrounded it; the medieval deer park (within the ancient woodland of Badby Wood at the northern edge of the designated area) and the many rides within and around it; and the further manipulation of the landscape throughout the 18th and 19th century by the Knightley Family (surviving in a series of important views and vistas, formal planting of parkland trees and avenues and the lakes) all contribute to the character and special interest of this landscape.
64. The Hall is approached from the A361 along a country lane, and historically was the main approach to Fawsley and remains so today. There are several structures associated with the Hall situated along this route, including the walled kitchen garden, estate cottage and farmhouses. Little Fawsley occupies a prominent location at the roadside, approximately halfway along the drive. The gate piers of this are listed Grade II and are part of the historical entrance

²⁸ Doc C1 pg 14 paragraph 6.1

²⁹ Doc C1 pg 15 paragraph 6.5

to the Hall, contributing to its significance and setting. The greatest significance of the route is the approach it provides to the Hall and St Mary's church.

65. Views to the turbine, travelling away from the Hall, would initially be screened by Horseground Clump, but it would become visible in views towards the junction with the main road. The tall, manmade structure would not be in keeping with the overall character of the parkland landscape.
66. The introduction of a tall, industrial structure with moving blades, which is such a contrast to the established features of this largely unspoilt, historic, rural landscape, has the potential to encroach on the setting of the designated heritage assets. Even partial or glimpsed views of rotating blades between trees or over hills would be visually distracting and would detract from an appreciation of the designed setting. In landscape and visual amenity terms, even minor change of an incremental nature, as a result of development of an inappropriate nature, can harm the essential character and those qualities of an area that are valued by residents and visitors. The harm that would arise to the heritage assets would be 'less than substantial' in terms of the Framework, but this still represents a loss of value to society. This needs to be weighed against the public benefits of the scheme.
67. There are a number of footpaths through the parkland and the turbine would be visible from many vantage points within the parkland. Although the turbine would not directly obstruct or interfere with views from the Hall or church the council considers that the visual impact of the turbine on the overall character and appearance of the heritage asset would be harmful.
68. While the council appreciates that the turbine would generate a green form of energy, which would contribute to climate change targets, this contribution would be very minor. The actual benefits from the scheme would be mostly personal to the landowner. These do not outweigh the harm to the significance and setting of the designated heritage assets or the character and appearance of the Special Landscape Area.
69. Since the last appeal was determined, the Planning Practice Guidance for Renewable Energy and Low Carbon Energy has been published. This allows the decision maker to consider the 'capacity factor' of the turbine, if the case is finely balanced. The capacity factor of the turbine is unknown and as a result the decision maker cannot fully assess the benefits against harm. The weight in favour of the proposal does not outweigh the harm to the landscape and heritage asset.

The case for the Fawsley Estate Trustees

The case for the Fawley Estate Trustees is set out in Docs F1 to F5. The material points are:-

70. The Trustees are involved as the development cuts across what they seek to achieve with restoration of the Fawsley Estate and improvements for the wildlife that use it. The Fawsley Estate and all components of it are very special revealing considerable historic information. Much of the parkland has been restored recently and more will be in the future. Habitats include the Fawsley lakes for bats and birds, and the Charwelton tunnel for bats. Overall, the local environment is too sensitive for this development. A single wind turbine causes a large amount of the harm for a small benefit.

71. The screening direction by the planning inspectorate (7 November 2013) is legally flawed. It makes no mention of the effects of important interests including historic environment, archaeology and ecological matters, particularly bats. These are the reasons the turbine would be likely to have a significant effect on the environment. Regulation 4(6) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 criteria in Schedule 3 are to be taken into account in coming to the decision. Relevant criteria in Schedule 3 includes cumulation with other development, the absorption capacity of the natural environment, paying attention to landscapes of historical, cultural or archaeological significance. The direction letter was inadequate³⁰.
72. Concerns have been raised about the impact on heritage assets, not just by the Trustees, but also by the local planning authority, the county council, English Heritage and others. There has, in this case, been no serious attempt by the appellant to address cultural heritage effects as required by the Framework, despite the planning practice guidance requiring "careful consideration" and "great care" in doing so. The visualisations are accepted by the appellant to be sub-standard. The previous Inspector found them to be "poor". The landscape and visual assessment does not grapple with historic environment impacts.
73. This is an unspoilt rural setting, where views are a key feature, and where Sharman's Hill is important in the local landscape and in the setting of the Fawsley Estate. With the turbine there will be movement, drawing the eye, creating activity in an otherwise tranquil and still landscape, of a scale and nature which is alien here, and far larger and more prominent than anything which affects the Estate currently.
74. In terms of European protected species, there are omissions in the survey and assessment by the appellant. The likely effect on protected species is undeniable, and is shown even by the appellant's evidence. The law and policy requires adequate information prior to determination, including on the extent to which species may be affected, taking into account the specific characteristics of each species and their circumstances, including their rarity and conservation status. This is required under the Habitats Directive, the Habitats Regulations, cases such as *Morge*, and Circular 06/05. These matters need to be considered and addressed regardless of Natural England's position.
75. As the survey information and assessment is missing or inadequate, a conclusion about the effects on bat populations cannot be determined and it cannot be judged whether there is harm and if any harm, that it would be minimised, so permission cannot be granted on the available evidence and a condition would not resolve the situation as was identified by the previous Inspector. The new material has not provided appropriate information.
76. There is also a range of harm which are identified in current and emerging development plan policy and the Framework, namely in relation to heritage assets, the character and appearance of the countryside – landscape and visual impacts, local amenity including public rights of way, and ecology – bats in particular. Significant harm results. Weight needs to be ascribed to each impact individually and then considered together.

³⁰ Doc F1 pages 4/5 paragraphs 12 to 21

77. The decision is not a simple overall balance, s38(6) must be applied. As well as the Local Plan, there is the Core Strategy, which is close to adoption and can be given considerable weight. These policies set out tests to be applied. Even within the Framework there are a range of provisions engaged. It is not a simple balance. That would be to set aside all policy provisions. Even under the Framework, whether impacts are “acceptable” is not a balance. Here the impacts are not acceptable.
78. The benefits should be given limited weight. There is good progress in wind turbine provision indicated by the 2020 range in the Roadmap. Only a tiny amount of electricity would be generated by this turbine: four ten-thousandths of 1% of the 2020 target. We are told the electricity is for use on the farm. That would be private financial gain not a public benefit.
79. The local environment is too sensitive for this development in this location. The impacts are substantial and unacceptable.
80. It is accepted that the previous appeal decision is a material consideration. The matters where the Trust disagree with that Inspector are matters of judgement and open to a different decision in this appeal. In addition there has been a change in policy following the Secretary of State’s ministerial statement and subsequent Planning Policy Guidance and now Planning Practice Guidance. The officer’s report³¹ has little relevance as it was rejected by the planning committee.
81. In terms of planning policy, the development is not of a type, scale and design such that it is in keeping with the locality, and the development detracts from the amenities of the locality (Policy GN2). It would adversely affect the setting of a listed building (Policy GN2). It would adversely affect sites of archaeological importance and/or the setting of such sites (Policy GN2). It would adversely affect a special landscape area (Policies GN2 and EN1). It would be of a scale and height which means that it would not blend well with its surroundings (Policy EN42). The development’s landscape and environmental impact would not be minimised (Policy EN42). It would also not accord with the emerging Core Strategy Policies S11 or BN5³².
82. It is considered the policies are not out of date, and in any case in relation to paragraph 14 designated heritage assets are an exception to the approach promoted. Even if it were considered that the policies were silent in relation to renewable energy proposals, that does not mean that the other policies should be set aside. In any case, the emerging Core Strategy Policy S11 is a material consideration and relevant.

Heritage Assets

83. There are different elements to the landscape around Fawsley Hall. It is not just the park, but a designed setting beyond the park, an estate setting with designed access routes and a wider visual setting. This wider visual setting, which includes the appeal site, plays an essential role in the significance and appreciation of the park. Designed views to the wider rural setting are an integral part of the designed landscape setting, with views from high points framed by planting.

³¹ Doc F1 pages 8/11 for comments on that report

³² Doc F1 pages 14 and 15 paragraphs 47-50

84. The elements most affected are the historic western approach and the historic drive to the south west, as well as the Badby Ridge and Knightley Way. Sharman's Hill forms an historic part of the setting of the park, which was designed with views to the wider landscape in mind, especially from the drives. The wind turbine would result in harm to the park's significance and designated setting. The setting of Fawsley Hall is not separable from the park, with entry via the park, which is part of the experience of the Hall. As these are of the highest significance, even impacts of a moderate type can have serious impacts.
85. English Heritage notes the assets here being of particular importance and more than special interest and that the turbine would be visible from the ornamental ride along Badby Ridge and from the drive heading west from the Hall and that the park encouraged views to the landscape beyond, which are part of the setting. It is English Heritage's view that the information is not adequate to make a decision.
86. The effect of the two BT towers is not comparable with a moving turbine, particularly in relation to the setting of the park. The towers are not visible from much of the park, whereas the turbine would be much more visible. However, the towers do indicate the impact that such features can have.
87. The impact on Long Furlong Farmhouse (grade II) also has to be assessed as this would perhaps receive the greatest impact of all the heritage assets. The appellant has not described the significance of the park, but it is addressed in the Cookson Tickner report. It is the view that the proposal would cause substantial harm and it is this harm that needs to be brought into the balance with public benefits. Such harm should be wholly exceptional. Even if it were found to be less than substantial harm, it still would not be outweighed by public benefits. There is also no evidence to show that the conflict has been minimised.

Archaeology

88. Sharman's Hill has prehistoric importance and is an area of archaeological interest. The appellant's report shows burial remains at the turbine location, so it would have a harmful effect on archaeological deposits. Further information is necessary to properly assess the impact of the development on archaeology and should not be dealt with by condition.

Ecology

89. This is an area known for bats and where two rare species have been identified. It is close to the Charwelton railway tunnel, a known hibernaculum and swarming site. The site also lies between the tunnel and Fawsley Lakes. The local and wider landscape is connected by hedgerows, tree lines and minor watercourses.
90. Natural England at one stage required further information from the appellant. It is the Trust's view that the survey information is still inadequate and that what is provided shows there would be harm to bats. There were significant numbers of medium risk Pipistrelle (common and soprano) and Myotis recorded, and also high risk species (nocule and leisler's bats) at the location of the turbine. There would be significant harm contrary to the Habitats Directive and the Framework. Reference is also made to the findings of the Northants Bat Group.

91. Although more work has been done since the last appeal, it does not provide the information required for the adequate assessment sought by the previous Inspector. It would not be reasonable to grant permission subject to a condition requiring further survey work³³, deferring a proper assessment. It would not be possible to judge whether a condition would make what is unacceptable acceptable. In relation to other matters there has been no field survey work in relation to reptiles and great crested newts³⁴.
92. There is no evidential base that the proposal would not cause a noise nuisance and no consideration has been given to compliance with ETSU-R-97³⁵. ETSU-R-97 is required to be applied. No consideration is given to the noise impact on Ryton Hill House or Long Furlong Farmhouse and no adequate noise condition has been proposed in case an assessment is necessary before the condition can be considered, including an assessment of background noise.

The Case for Mr Gulliver and Ms Laing – Ryton Hill House

The case for Mr Gulliver and Ms Laing is set out in Docs R1 to R3. The material points are:-

93. Apart from Long Furlong Farm, Ryton Hill House is the closest residential property to the appeal site. The likely effects of the appeal proposal on residential amenity are therefore would be felt most keenly at Ryton Hill House and it is the current occupants' position that those effects would substantially detract from their enjoyment of their property to such a degree that the development ought not to be permitted. The occupants of Ryton Hill House object to the appeal on two points: visual impact and noise.

Policy Framework

94. The policy framework against which this appeal must be judged is substantially altered from that which faced the previous Inspector. The policy landscape has changed as a result of the July 2013 Planning Practice Guidance [PPG] for Renewable and Low Carbon Energy which represents a clear statement that substantial weight should be attributed to the views of local residents and the harm occasioned to residential amenity by renewable energy developments.
95. The PPG should also be seen in light of paragraph 17 of the Framework; a core planning principle is that planning decisions should "always seek to secure... a good standard of amenity for all existing and future occupants of land and buildings". "A good standard" is a meaningful and positive standard of amenity and sits alongside other references within the Framework to "avoiding adverse impacts on quality of life"³⁶, consideration of whether impacts are "acceptable" and "finding ways to enhance and improve the places in which people live their lives".
96. These policies should be seen in the context of the existing Local Plan and emerging Core Strategy³⁷ which both seek to protect the Special Landscape Area from harm and minimise potential impacts on people and residential amenity.

³³ Doc F1 page 38 paragraph 134

³⁴ Doc F1 appendix 14

³⁵ Doc F1 page 41 paragraph 141 onwards

³⁶ NPPF paragraph 123

³⁷ LP policy GN2(A) and CS policy S11

97. The *Lavender 'test'* proposed by the appellant, which is based on making a property an unacceptable place to live, is therefore entirely incongruous with the policy framework relevant to this appeal.

Visual Impact

98. At present, Ryton Hill House and its grounds are in residential use and sit within and form part of the Special Landscape Area. The property benefits from an elevated position on the North Eastern side of Sharman's Hill – the second highest point in Northamptonshire. It is a particularly isolated, rural and tranquil location, which is particularly sensitive to visual harm.
99. The previous Inspector concluded³⁸ that the Special Landscape Area is of moderate sensitivity and the proposal would be a prominent addition to this, causing moderate harm. These conclusions apply with greater force to any views from Ryton Hill as the turbine, as well as occasioning this harm to the wider area, also impacts upon the residential amenity of the occupants or Ryton Hill House.
100. The visual intrusion into Ryton Hill House and its grounds is likely to take the form of around 5m of the blade tips being seen on the horizon, protruding over the top of Sharman's Hill. The occupants are concerned that this moving, flickering, object will draw the eye and provide a visual distraction in the landscape which will act to the detriment of their enjoyment of their property and the wider place in which they live and go about their daily lives.
101. The matter of residential amenity should be given increased weight over and above that which it was afforded by the previous Inspector because of the clear and unambiguous guidance provided by the PPG which states that "proper weight" should be afforded to protecting local amenity. There is clearly a huge strength of feeling amongst residents of the locality, which should be given substantial weight in light of the PPG.

Noise

102. The development cannot safely be permitted without any attempt being made to assess the impact of the proposal on residential amenity by the noise generated from the turbine. Local and National policy³⁹ dictate that development ought to be refused if there is an overly adverse impact on residential amenity. Without any assessment of the likely noise impact, it is impossible to know whether this is the case; accordingly, it is impossible to make a finding that there will be no such adverse impact.
103. The information submitted by the appellant falls far short of what would be reasonably expected in order to form the basis of proper finding as to the likely noise impact. The figures produced are for a particular turbine model and output, in contrast to the description of development which places no restriction on size, power generation or model of the turbine, only the height. The figures are therefore of no meaningful assistance.
104. In any event, the Institute of Acoustics Good Practice Guide⁴⁰ states that declared sound power values should be treated with caution. The situation of Ryton Hill House takes this case outside of the norm so that standardised

³⁸ Doc 1 paragraphs [15], [17] and [18]

³⁹ GN2(A), S11 and NPPF 98 and 123

⁴⁰ At 4.2.2

figures are likely to bear little relation to the noise, as it will be experienced in reality by the occupants of Ryton Hill. The house is high up and level with the blades rather than the base of the turbine, which is unusual. Standardised figures can take no account of the unusual topography in this location. It is unknown whether sound will attenuate in the same manner as it travels up-hill as opposed to the unknown topography that the figures consider. The turbine aims to capture 80% south westerly winds, so Ryton Hill House would be directly to the North East, and would be disproportionately affected by any noise generated.

105. It cannot be assumed that the noise impact will be as it appears in the appellant's stated figures and, without any proper basis for reaching a determination as to the likely impact, it is submitted that the appeal should be dismissed. It is not appropriate to deal with unknown and unassessed impacts by a condition in the place of a proper assessment.
106. Conditions are only appropriate where they are necessary to make a development acceptable and overcome harm. The harm remains unassessed, so it is not possible to have confidence that any proposed condition would remedy harm.
107. Whilst ETSU-R-97 guidance makes reference to single turbines being controlled by condition, this is in the specific circumstances envisaged⁴¹ i.e. where a developer can demonstrate that a noise condition would be met. That has not been done, so this case is outside of the circumstances envisaged by ETSU-R-97 for control by condition alone.
108. If one accepts the appellant's figures, it is not possible to have a high degree of confidence that a condition set at the ETSU-R-97 limit of 35dB(A) would be achievable. The graph shows that at approximately 500m from the turbine, the noise experienced would be 34dB(A) – far too close to 35dB(A) for comfort and well within any margin of error. Therefore, if a slightly different turbine is used or the graph or the turbine does not operate precisely as envisaged, the condition would be breached.

Written Representations

Letters related to the application are contained in the red folder. Representations submitted during the hearing are in the documents H1 etc.

109. **CPRE**⁴² have similar concerns to other parties in relation to the impact on the character and appearance of the surrounding area. They also identify cumulative impact noting the county has exceeded the target set for it 10 times over.
110. **Councillors Bob Patchett, Elizabeth Griffin and Jo Gilford and the Woodford Ward Members**⁴³ also identify similar issues in relation to character and appearance of the area and heritage assets. They note that not all wind turbines are refused, only those which are considered to have an unacceptable impact. It is the elevated location that causes most concern. They refer to recent guidance from the minister and the subsequent planning policy guidance.

⁴¹ At p.66 of ETSU

⁴² Doc H9

⁴³ Doc H7

111. **Mrs Wilson**⁴⁴ refers to wind turbines elsewhere in Northamptonshire and potential for cumulative impact. She supports the case made by the council.
112. **Tyler Parks**⁴⁵ represent Hand Picked Hotels Ltd owners of Fawsley Hall. It supports the case being made by the council and the Fawsley Estate Trust.
113. **English Heritage**⁴⁶ passed assessment of the application to the local authority, noting that any harm would be 'less than substantial' and that in its view the supporting information was of a poor quality.
114. **Northamptonshire County Council Assistant Archaeologist**⁴⁷ refers to the evaluation carried out by the appellant, which identified the remains of a Romano-British cremation burial found at the site. Based on that evaluation and its findings, it was identified that there would be a need for a programme of archaeological works and that this could be the subject of a condition.
115. **The Northants Bat Group**⁴⁸ identifies inaccuracies and issues with the bat survey work, including that the transect survey did not include any survey beyond the hedgerows and did not therefore cross the open fields, leaving them un-surveyed. No commuting route survey was undertaken. No survey at height was undertaken. No dawn survey was undertaken. No search for or survey of nearby roosts was undertaken and no spring survey was undertaken.

Conditions⁴⁹

The council's suggested conditions are contained in Doc C1 appendix B and H10 and my recommended conditions are attached as annex A to this report.

116. The highway authority has requested that the access track be hardsurfaced for 15m back from the highway⁵⁰. However, there is already a very large farm track to the road, with a hard surface. While this is in need of maintenance, I do not consider there is a need for the single wind turbine to require any further hard surfacing. While there will be some vehicle movements during construction, once complete the vehicle traffic associated with the turbine would be likely to be very low and would not justify any different surfacing. In my view, it is not reasonable or necessary to require this in relation to the development proposed.
117. It might be interesting to undertake follow-up surveys of bats⁵¹, but this proposal is for a medium sized single turbine only. TIN051 indicates that post installation monitoring should be considered in high risk situations. The survey evidence does not indicate that this is a high risk situation. In my opinion, considering the findings of the survey work already undertaken, it would be disproportionate to the development proposed to require additional follow up survey work and therefore unreasonable. For similar reasons there would be no need for a condition requiring the turbine to be shut down at night.
118. In terms of removal of the turbine at the end of its working life, I do not consider that there is a need for a traffic management plan as this is a single

⁴⁴ Doc H5

⁴⁵ Doc H6

⁴⁶ Letter dated 17 December 2012 on file and letter of 22 August 2013 in the red folder

⁴⁷ Letter dated 18 October 2013 on file

⁴⁸ Three letters in red folder

⁴⁹ Doc C1 Appendix B and Doc H10

⁵⁰ Doc C1 condition 4

⁵¹ Considered during the hearing and not part of the council's list in Doc C1

turbine and unlikely to require a plan to be approved by the local planning authority.

119. It is reasonable that the acoustic properties of the turbine be controlled by condition to protect amenity. The application relies on the noise characteristics of the turbine proposed to demonstrate an acceptable noise environment and therefore it is reasonable that conditions should be imposed requiring any change to the turbine to be limited in dimensions to that confirmed at the hearing and to have noise characteristics the same or better than that proposed.
120. It is reasonable that, should the turbine cease to produce energy, conditions require it to be removed and land made good. It is also reasonable and necessary that the appellant should implement a programme of archaeological works in accordance with an approved written scheme.

Inspector's Conclusions

[In this section the numbers in parentheses [n] refer to the preceding paragraphs.]

Main Issues

121. The main issues are:

- The effect on the significance and special architectural and historic interest of heritage assets.
- The effect on the character and appearance of the area.
- The effect on the living conditions of nearby occupiers.
- The effect on bats.
- The balance of any benefits of the proposal against any harm identified.

122. The development plan [8] includes the Daventry District Local Plan saved policies [LP]. LP Policy GN1 requires the granting of planning permission to be guided by the need to protect and enhance the environment. LP Policy GN2 is a general policy normally permitting development providing, amongst other things, it would be of a scale, type and design in keeping with the locality and does not detract from amenities and will not adversely affect a special landscape area. LP Policy EN42 notes planning permission will be granted for development, provided that the design promotes or reinforces local distinctiveness and enhances its surroundings, and its scale, massing and height combine to ensure that the development blends well within the site and with its surroundings.

123. Also relevant is the emerging core strategy which is at a relatively advanced stage and the policies referred to are not themselves the subject of suggested change [11]. CS Policy S11 promotes maximising low carbon and renewable energy, but subject to it being sensitively located to minimise adverse impacts, including on landscape character, biodiversity and heritage assets. CS Policy BN5 indicates that designated and non-designated heritage assets and their settings will be conserved and enhanced in recognition of their cumulative and individual significance.

124. The appellant suggests that the LP policies aimed at protecting the countryside are out of date or silent in respect of turbines for the purposes of the Framework [47]. LP plans have various policies that cover different aspects and because a particular policy does not mention a specific form of development does not make that policy out of date. In my view, these policies are not out of date for the purposes of the Framework. However, I accept that there is no adopted policy relating to the provision of wind turbines to help guide in the provision of these. Clearly the benefit of wind turbines in relation to the provision of renewable energy is a considerable material consideration that is to be weighed in the balance against any harm found in relation to current development plan policies, together with consideration of the emerging policies.

Heritage Assets

125. When considering applications that may affect a listed building or its setting, section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act

- 1990 requires special regard to be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Framework notes that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The Framework describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.
126. In enacting Section 66(1), Parliament intended that the desirability of preserving the setting of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but that it should be given 'considerable importance and weight' when the decision-maker carries out the balancing exercise. Even where 'less than substantial' harm is identified, Section 66(1) requires considerable importance and weight to be given to the desirability of preserving the setting of a listed building when carrying out the balancing exercise. LP Policy GN2 indicates granting permission for development if it would not adversely affect a listed building.
127. Long Furlong Farmhouse is described in the list description as a farmhouse grade II built early in the C18. While the appellant has indicated he is attempting to have the building de-listed [24], that has not occurred and I attach limited weight to that. In my opinion, its significance and special architectural and historic interest relate to its history and construction with a number of interesting features described. Its setting is the surrounding working farmland which it will have been associated with in the past and still is directly associated. This clearly has been a working environment/setting with changes to the setting relating to changing needs in farming, with, in particular, the construction of large, modern shed-type buildings close by.
128. The wind turbine will be relatively close to the listed building and will form a prominent part of the complex and will appear in many views to and from the listed building. However, as described under character and appearance, the wind turbine will not significantly change the character or overriding use of the farmland and the turbine will be another part of the working farm. In that sense it would contribute to the continued development of the farm and would not be out of place.
129. It will impact on views to the listed building from some aspects, but that would only have a limited impact on the overall significance of the listed building. The impact on views would create change, and the introduction of the wind turbine could not be seen as an enhancement. I therefore consider that, while it would form a part of the working environment, because of its size and effect on appearance it would not preserve the setting of the listed building. However, I consider the actual harm to the significance would be small and would in the terms of the Framework be classified as 'less than substantial' harm, so would in that respect attract little weight. But added to that is the harm related to conflict with Section 66(1), which requires considerable importance and weight to be given to the desirability of preserving the setting of the listed building when carrying out the balancing exercise. In this respect the proposal would not accord with LP Policy GN2 and CS Policy BN5.

130. Other heritage assets are also to be considered: Fawsley Hall (grade I) and its Park (grade II*), including Fawsley Farmhouse (grade II) and its well-house (grade II) and its outbuildings, Little Fawsley gate piers (grade II) , Lantern House, the remains of the dower house (grade II) and St Mary's Church (grade I). [23] [62] [72]
131. The significance and special architectural and historic interest of these buildings clearly relates to their historical significance, designers, historical links, design and materials. These are all directly linked with the owners of the estate and with the estate itself and the surrounding agricultural landscape and are all clearly buildings and parkland of great importance. The direct setting of many of the listed buildings relates to the historic parkland and particularly the registered parkland. So, while listed buildings such as the remains of the dower house, Fawsley Hall and church would have no potential views or direct relationship with the proposed turbine, their setting could be indirectly affected because of the potential impact on the setting of the parkland and the interrelationship of all the assets. I will consider the overall setting of all buildings with consideration of the park land and surrounding land.
132. The significance of the parkland relates to its designer and design and responds to the buildings and the surrounding landscape. The setting of the parkland is the surrounding countryside and includes Sharman's Hill. However, while the park and registered park and many of the listed buildings were part of an important designed landscape, the land outside of the parkland, such as Sharman's Hill was not part of that 'designed' landscape. However, I acknowledge that the presence of hills, such as Sharman's Hill and copses such as Houseground Clump would have been prominent features taken into consideration when the parkland was designed.
133. It would not be realistic, sensible, reasonable or necessary to consider that all the land comprising the setting of the parkland should be unchanging. That has not happened in the past, with many changes having occurred to the surrounding landscape, including part of the former parkland reverting to agricultural use. To my mind, the significance of the wider setting to the parkland and Fawsley Estate is that it provides a pleasant, tranquil and rural character and appearance. The turbine would not alter the relationship of the parkland with Sharman's Hill or other features or significantly affect the pleasant, tranquil and rural character and appearance.
134. Of particular concern is the impact on the parkland and views out from it along the ridge, and the approach to and from the Hall, from the main road and from walks and paths within the parkland [27] [84]. The turbine would be visible from registered parkland in some views. However, the turbine is located a considerable distance away and there are intervening features, including Sharman's Hill and vegetation. Because the turbine would be on the lower slope behind Sharman's Hill, generally only the very upper part of the turbine would be potentially visible and even when this occurs intervening trees would significantly limit the views to the turbine blades. When the considerable distance is taken into account with the relative size of the turbine seen, I do not consider that the presence of the turbine would have an impact on the significance of any of the heritage assets. Fawsley Estate's own visual representations of the turbine in the landscape indicate this to be the case [27].

135. I have carefully considered the views along the lane which, in my opinion, are more important in relation to the turbine when leaving the estate [28] [84]. Along this road, which has the listed gate piers and Little Fawsley Hall, there will be views almost directly towards the turbine location. However, as noted above, much of the turbine would be hidden behind the hill side and the upper parts would be generally well screened by trees and other vegetation. Its presence, while detectable, would not harm the significance of the listed buildings or registered parkland and would preserve its special architectural and historic interest.
136. It would be possible to see the turbine in some views when travelling along the main road, before turning off to Fawsley Hall but, in my opinion, at that stage there would be little direct or indirect association with the estate and this would not impact on the significance of the heritage assets.
137. I have also taken into consideration Fawsley Farmhouse and the associated well-house, but these are located down a slope and there would be limited views, again with the hill, trees and vegetation partially intervening. There would be no harm to the significance or special interest of Fawsley Farmhouse and the associated well-house. The lantern house is described in the listing as an octagonal ironstone building with plain tile roof, formerly the lodge to Fawsley Park. This is a very attractive building located near the main road. However, it is on the opposite side of Sharman's Hill from the proposed wind turbine and has significant numbers of trees around it, limiting views in and out. The setting will include the surrounding countryside, particularly the road and track to which it relates. However, the presence of the turbine would have no impact on the setting or significance of this building. In respect of the Fawsley Estate, the proposal would accord with the aims and objectives of LP Policy GN2 and CS Policy BN5.

Character and Appearance

138. The appeal site forms part of the Ironstone Hills Landscape Character Type and part of the Staverton Hills Landscape Character Area, as defined in the Northamptonshire Landscape Character Assessment. The distinctive qualities include the ironstone hills and ridge, arable and pastoral land, scattered farmsteads, dwellings and trees, and the vicinity of the appeal site is enhanced by the presence of Fawsley Hall and its landscaped park and the nearby Badby Wood. The area is identified as a Special Landscape Area. Public perception of the landscape in the area is mainly achieved from the road network and public footpaths, many of which are part of recognised long distance routes, and from Fawsley Park and Badby Wood. There are distant views across the area, particularly when seen from the higher ground.
139. Concern was raised about the visual information provided by the appellant and its compliance with normal recommendations for such work [72]. The appellant acknowledged this concern, agreeing, amongst other things, that the camera type used was not normal. I acknowledge this, but note that visualisations are only an aid. In coming to my judgement, I have relied on my site visit and drawings of the proposal, taking care to compare what is actually seen on site with what is shown in the visualisations. I have the information that I require to form a judgement of the proposal and have also referred to visualisations produced by the Fawsley Estate.

140. Wind turbines are large, modern aerodynamic structures that are of a different scale and appearance to most other features that are found in the countryside, and their introduction in any part of the country would, in my opinion, have a significant impact on the appearance of the immediately surrounding countryside. Government policy has been consistent for a significant period, and continues with the coalition, that inland wind turbines are a necessary part of providing a reasonable part of our energy requirement on a low carbon basis. In addition, while the presence of the prominent, large, modern telephone infrastructure nearby does not set a precedent for further infrastructure, its presence has not meant downgrading of the landscape quality in the surrounding area, and the beauty of the landscape remains to be appreciated.
141. It is inherent with the current policy to provide inland wind turbines that there will be, to some extent, a change to the appearance of the countryside and some potential conflict with policies aimed at protecting the countryside [30]. However, wind turbines are a modern solution to address climate change and needs arising through the development and growth of the country.
142. The proposed turbine has been carefully located in order to mitigate its impact on the surrounding landscape. In particular, it has not been located at the top of the hill, but to one side. This substantially masks the view of the turbine from a large proportion of the surrounding area and from some nearby residences. In particular, it would substantially limit views of the turbine towards its position from Badby Wood and Fawsley Park.
143. The land to the west is relatively open and from this general direction there will be some short distance views of the turbine from nearby roads, long distance footpath and the bridleway near to the old railway tunnel. There will be longer distance views from the more distant roads, paths and hills. However, generally from this direction, because the turbine would be located down the side of Sharman's Hill, the turbine would be seen mainly with the hill as a back drop and not as a prominent feature on the horizon, with just a small part of the turbine being visible above the skyline.
144. From the northern side there will also be views towards the turbine, and in these views there would be no close back drop provided by Sharman's Hill. However, the turbine would be seen in the context of the farm complex, with the large, modern farm buildings in the foreground and in the context of various trees that would be seen in these views. The turbine would also be seen against the skyline in views from the south, particularly from the main road near to Charwelton. However, even in these views there is some intervening vegetation, ensuring the views would be intermittent.
145. I consider the turbine, with its aero dynamic structure of slender form, would have relatively little physical impact on the surrounding countryside, allowing views of the countryside to remain in front of and beyond the turbine. The agricultural use of the surrounding land would also be little changed, the turbine and track being of a very modest size. The essential existing rural character and agricultural use of the countryside would be retained and continue, with the impact on the appearance of the surrounding area being limited by the careful siting.
146. I have taken into consideration any harm potentially resulting from the cumulative impact of wind turbines [34] [109] [111]. While noting the

presence of other turbines in the district, there were none in such proximity to the appeal site that there would be a cumulative impact. The nearest turbine identified from the appeal site at the visit was that near Boddington, but this is a considerable distance and not seen as a prominent feature and would not cause a cumulative impact in relation to the proposed wind turbine at the appeal site. I have also taken into consideration the tall structures of the telephone towers, which are seen as modern features, but very different from the proposed turbine and in my view, these in conjunction with the proposal would not result in cumulative harm to the area.

147. I conclude in terms of character and appearance that, while changing the appearance of the landscape, the proposed wind turbine would neither be unacceptable in terms of the changed appearance nor would significantly change the overall rural character of the area that is mainly based on agricultural use, either in itself or cumulatively with other modern infrastructure. Nevertheless, I acknowledge that there would be some limited to moderate harm in relation to the effect on the appearance of the area, with limited blending in and enhancement and this harm needs to be balanced against the potential benefits along with harm associated with Section 38(6) of the TCPA.
148. I conclude that the proposal would not fully accord with the aims and objectives of LP Policy GN1, GN2 and EN42 and CS Policy S11.

Living Conditions

149. The proposed turbine has been well considered in relation to nearby properties and impacts have been carefully mitigated through location. The nearest non-financially involved property would be about 600m from the proposed turbine [93]. For a turbine of the proposed height, this is a good distance, and in relation to Ryton Hill House, the wind turbine would be set behind Sharman's Hill. The house itself is located next to a very steep incline in the direction of the turbine and would have no view of the wind turbine at all. The garden is generally well enclosed by a hedge and some trees, so outlook from it is generally limited by the hillside. There would potentially be some views from the boundary of the garden, but even here views out are difficult to obtain because of the substantial vegetation and there would be some intervening trees on the horizon. Even then the turbine would be down the opposite slope. In my view, there would be no material impact on the outlook of the occupiers of Ryton Hill House.
150. I have also taken into consideration Haycock Hill Farm, which is in the same direction as Ryton Hill House and further away from the turbine. There is some potential to see the wind turbine, as indicated by the theoretical zones on visibility from parts of the grounds, but given the position of the wind turbine, down the opposite slope of Sharman's Hill, and the presence of some trees in between, the view would only potentially be of the tip of the turbine blades. This would be at such considerable distance it would have no material impact on the outlook of the occupiers of Haycock Hill Farm.
151. In this respect I conclude that the proposal would accord with the aims and objectives of LP Policy GN2.

Bats

152. In relation to the previous appeal for a wind turbine at the appeal site, the Inspector concluded the risk/uncertainty to protected species (bats) when weighed in the balance tipped against granting permission. Since then the appellant has arranged for specialist surveys of the site in relation to bats. I was fortunate to have two well informed experts at the hearing, one representing the Northants Bat Group and the other representing the appellant. A main concern of the objectors was that the survey work that has been undertaken was not sufficient to assess the potential risk to bats [37] [89] [114].
153. A substantial amount of survey work has been undertaken at the appeal site, including transect surveys around the perimeters on various days and times and setting up a static bat detector on the proposed site of the turbine. Surveys of surrounding buildings and trees have been undertaken to look for roosts. The Bat Group refers to the requirement for surveys at dusk and dawn, but the Bat Conservation Trust's Best Practice Guidelines, in relation to surveys for turbines, does not mention this has to undertaken and the appellant identified the nearest minor roost site at the farm, with no roosts found in nearby trees.
154. The need for detection of bats at height on the sites is considered in the guidelines. These note that automated surveys at height are often difficult and expensive to implement, so their use needs to be justified. Given the very limited amount of activity recorded at the proposed turbine position static detector, I do not consider that monitoring at height would be justified for a single, moderately-sized wind turbine. It was considered that the survey would not pick up quiet bats, such as brown long-eared bats. The appellant's expert notes that brown long-eared bats do often echo locate quietly, but that the equipment used for the survey detects these if present. It was also noted that these are, by their nature, a woodland bat that is more likely found at low level and following features.
155. The Northants Bat Group suggests the surveyors have been mistaken in considering that bats follow hedge lines when moving across the country. In my view, the evidence clearly shows that the appellant is not mistaken. The expertise of the appellant's witness was plain to see, and it was clear his knowledge of bats was substantial, with clear explanations and logical and balanced reasons given for the work undertaken. It is not feasible that he would not know movement characteristics of the many species of bats. I accept that the hypothesis was that at the appeal site, the majority of movements would be along hedge features and this is borne out by the surveys. However, the static survey at that turbine location was clearly to pick up movements across the site if there were any.
156. It was argued that transects across the site are needed to ensure that any bats flying over the site of the turbine are identified. However, the appellant identified that transects were taken around the perimeter of the appeal site, while at the same time a static detector, providing more continual monitoring' was located at the proposed site of the wind turbine. In my view, the combination of the two methods would enable good evidence to be provided of the bats at the appeal site. The findings showed that over the many surveys the number of bats passing over the wind turbine site was very low and of these, the species more prone to collision with turbines (noctule and leislers)

were minimal. The vast majority of recordings related to bats along the hedge/tree lines.

157. I acknowledge that much more survey work could have been done. More transects across the site, electronic tagging and many more surveys could have been undertaken in the evenings and mornings and all could have reinforced the findings. However, what is important is that the survey work that is undertaken is proportionate to the proposal to allow suitable experts to reasonably assess the risk a proposal would pose to protected species. In this case that clearly has been achieved.
158. It was argued that the routes of the bats were not identified, with particular concern being in relation to the old railway tunnel and the foraging area provided by Fawsley Lakes and Park. I can understand from the perspective of the Bat Group that it would be interesting to have detailed information relating to the railway tunnel. However, the appellant's survey, which in my opinion was comprehensive for the development proposed, clearly shows minimal activity at the site of the turbine and does not indicate that the survey work the Bat Group considers necessary is warranted.
159. I accept the experts' conclusion that, while a very few high risk species are present in the area, the survey evidence indicates they are moving over the location of the appeal site on an occasional basis and in very low numbers, so the risk to them from the proposed turbine is minimal. TIN051 Bats and Onshore Wind Turbines notes that, in many cases, risk could be minimised by locating turbines so that their blade tips are at least 50m from the highest part of hedges, tree-lines or woodland in the vicinity, as bat activity beyond this declines significantly. While bats are still active further away from linear features, the level of bat activity is likely to be so low that there is very little risk of impact. This accords with the survey findings.
160. The appellant's expert demonstrated at the hearing why the level of survey work that has been completed was more than adequate for an expert to fully identify the likely risk to bats and to advise appropriate mitigation measures. In this case the turbine would be located away from trees and hedgerows and recommended set off distances are achieved and mostly far exceeded. I conclude that the risk posed to bats by the proposed turbines has been adequately assessed and is reasonable.
161. I have also taken into consideration the concerns of objectors relating to the findings of Natural England. I have found independently that the evidence clearly demonstrates that risk to bats has been fully assessed and appropriate mitigation methods taken. I am therefore not surprised that Natural England came to a similar conclusion. However, whether or not Natural England had all the information now available, I am satisfied from the evidence presented that bats have been fully taken into consideration and for this reason I consider that I have the information that the previous Inspector found was missing.
162. I note the concern in relation to TIN051 and that this identifies turbine blades 'usually' being 20-50m long and towers 'currently' between 50-125m tall, (though it is likely that taller masts will become available). However, there is nothing to say that the advice in the whole document is limited to turbines within those limits, particularly as there is anticipation that things could change in the future. In any case, the proposed turbine is close to the limits identified and Natural England considers that it is the appropriate document to use for

guidance. I conclude that the proposal would accord with the aims and objectives of CS Policy S11.

Other Matters

163. An archaeological investigation has been undertaken in relation to the proposed project and this included an investigation trench being dug on the appeal site. A report of this investigation has been provided, including to the County Council [114]. The report indicates that further information is to be provided in relation to a cremation burial found on the site, including radio carbon dating. The radio carbon dating was provided, but no further report on the burial is available. However, on the basis of the report, the county archaeologist is satisfied that the development can go ahead without harm, providing that a condition is imposed requiring the site of the turbine to be fully recorded prior to construction commencing.
164. It is the objectors' view that planning permission should not be granted until the full report is seen, to ensure that any archaeology is protected, particularly as the investigation identified burials on the site [88]. I do not agree with this. The original investigation has revealed the presence of some archaeology on the site and even with this the county archaeologist accepts that work can proceed without harm. Further information about the cremation may be interesting, but not likely to lead to any different opinion being formed. The site foundations of the turbine would be relatively small and the extent of land affected by the development small. In my view, the investigation that has been undertaken is adequate and the proposal would, subject to condition, be acceptable in relation to archaeology.
165. Objectors consider that the Environmental Impact Assessment screening process was inadequate and that the screening opinion should have identified the need for an Environmental Statement [71]. However, a screening assessment was made, and later checked when questioned, and this demonstrated that an Environmental Statement was not required for the proposal. Some of the main concerns referred to were in relation to ecology, heritage assets and archaeology. Having considered these matters in some detail in the course of this hearing, I conclude that the scoping was reasonable and that there was nothing to indicate that an Environmental Statement should have been prepared. In forming my decision on this appeal, I have taken into consideration the environmental information submitted before and at the hearing and evidence from statutory consultation bodies and other organisations.
166. The evidence provided does not indicate that there would be any adverse impact from noise on the nearest non-financially involved property – Ryton Hill House. This house would be a substantial distance from the wind turbine and would have the hill in between. In addition, the specification for the turbine proposed demonstrates that at that distance the sound level would be acceptable. The evidence presented does not indicate the need for a background noise survey. I acknowledge that Long Furlong Farmhouse is nearer to the turbine, but this is a financially involved property. While I acknowledge that ownership could change in the future, a prospective owner would be able to make their own assessment in relation to the position of the turbine.

Planning Balance

167. A number of representations relate to the ministerial statement made last year. This mentioned, amongst other things, that the coalition government is making the planning process more accessible to local communities, because it works best when communities have the opportunity to influence decisions that affect their lives. It notes that current decisions for onshore wind are not always reflecting a locally-led planning system, referring to the previous government's top-down regional strategies which the present government has abolished and referring to the introduction of the Framework. It notes that in order to ensure that decisions provide proper weight to environmental considerations such as landscape, heritage and local amenity, it must be ensured that decisions get the environmental balance right in line with the Framework.
168. The minister noted that to help ensure that planning decisions reflect the balance in the framework, his department would issue new planning practice guidance to assist councils and planning inspectors in relation to forming development plans and for individual planning applications. Shortly afterwards, Planning Practice Guidance for Renewable and Low Carbon Energy [PPG] was issued. I have made this decision in the light of ministerial statements, paying particular attention to the PPG and the Framework.
169. The identification of the need for renewable energy was maintained in the PPG, noting that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.
170. The PPG identifies that the Framework explains that all communities have a responsibility to help increase the use and supply of green energy, but that does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. As with other types of development, it is important that the planning concerns of local communities are properly heard in matters that directly affect them and in relation to this decision local representations have been taken into consideration. However, equally there is nothing in the documents to indicate that local opposition is overriding.
171. It is clear the PPG sees local and neighbourhood plans as the key to delivering development that has the backing of local communities. Identifying areas suitable for renewable energy in plans would give greater certainty about such development will be permitted. Local people should get involved in this process and actively identify where they want the wind turbines to be sited in their areas. The PPG notes, in determining planning applications, that amongst other things, cumulative impacts require particular attention and that local topography is an important factor in determining whether wind turbines could have a damaging effect on the landscape. Great care should be taken to ensure that heritage assets are conserved in a manner appropriate to their significance, including impact on views important to their setting. It is also noted that proposals near to a national park, where there could be an adverse impact on the protected area, will need careful consideration and that local

amenity is an important consideration which should be given proper weight in planning decisions.

172. I note that the road map indicates that provision of energy from on shore wind turbines is well on track in relation to the indicated ranges. However, the central ranges do not represent technology specific precise targets or the level of ambition for that provision. The range is there so that the rate of provision can be monitored. The fact that provision is within the range does not mean that substantial weight should not be given to further energy provision from on-shore wind turbines, as there is a continuing long term need for renewable energy production. In terms of considering energy produced, the Framework notes that when determining planning applications it should not be required for applicants to demonstrate the overall need for renewable or low carbon energy and it should be recognised that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
173. The CPRE estimates output from the turbine as enough to serve fewer than 32 domestic properties, while the Fawsley Estate indicates in its assessment a capacity factor of about 20%, which would lead to an annual output of 438 MWh per annum, a usage equivalent of about 97 domestic properties. The appellant estimates a capacity factor of about 24.4% and that the turbine would generate enough electricity to supply the equivalent of about 130 domestic properties, although there are no calculations to demonstrate that. There is also little to back up the very low estimate provided by CPRE. Even if I base the renewables benefit on the basis of the Fawsley Estate estimate, this is a significant amount of energy production. I therefore attach substantial weight to the likely public benefits of the proposed turbine, in terms of renewable energy and low carbon technologies. The turbine would also have a small benefit in terms of employment associated with its construction and would provide some benefits to the farmer in terms of farm diversification in the income provided from use of the land.
174. The proposal would not fully comply with policies to protect the landscape and weight associated with Section 38(6) of the Town and Country Planning Act applies against it. In addition, the proposal would cause some harm to the setting of Long Furlong Farmhouse and therefore Section 66(1) requires considerable importance and weight to be given to the desirability of preserving the setting of a listed building. In relation to this I have noted that the overall siting of the turbine has been such that it minimises the harm to the surrounding area, and in terms of the Long Furlong Farm its harmful impact would be limited, appearing as another modern feature of the farm.
175. Overall, when taking into account policy and legislative provisions and the harm identified with material considerations, I conclude that the weight to be attached to the renewable energy provision clearly outweighs the other harm.

Graham Dudley

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr G Cannock LLC MA (Cantab) Of Counsel
M G Holliday BA, MPhil, CMLI
Mr C G Barks BA MRICS
Mr A Haigh Appellant
Mr J Fallconbridge BSc (Hons)
MRes, MCIEEM

FOR THE LOCAL PLANNING AUTHORITY:

Ms K Daniels MRTPI Senior Planning Officer
Ms R Booth BSc (Hons) MSc
(Oxon)
Mr M Venton BA (Hons) Dip LA

THE FAWSLEY ESTATE

Mr R Honey Of Counsel
Mr M Tickner MLPM (Hons)
CMLI
Mr P W Richardson MA FBNA Northants Bat Group
Ms D Beatty

OCCUPIERS OF RYTON HILL HOUSE

Ms S Knowles Of Counsel
Mr T Gulliver
Ms Laing

INTERESTED PARTIES

Mr J Delingpole
Cllr J Gifford PPC Woodford Ward Member
Cllr B Aldridge
Ms K Alexander
Ms R Thomson
Ms L Pilcher
Mr D J S Wilson
Mrs S E Wilson
Ms A Rogers
Mr E Evenden
Mr I Dobson
Mr L Signey
Mr A Devine
Mr B Skittrall
Mr P Greaves
Ms L Mordue Assistant County Archaeologist

DOCUMENTS SUBMITTED AT THE HEARING

| | | |
|----------|-----|--|
| Document | H1 | Email 4 Feb 2014 relating to Natural England |
| | H2 | Institute of Acoustics extract |
| | H3 | Institute of Acoustics A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise |
| | H4 | Cookson Tickner Technical Review |
| | H5 | Submissions by Mrs S Wilson |
| | H6 | Letter from Tyler Parkes 10 Feb 2014 |
| | H7 | Submission from Cllr Patchett, Cllr E Griffin, Cllr G Gilford, and the Woodford Ward Members |
| | H8 | List descriptions |
| | H9 | Submission from CPRE Northamptonshire |
| | H10 | Noise condition |
| | H11 | Map with other turbines identified |
| | H12 | CS Policies S11 and BN5 |
| | H13 | Closing summary on behalf of Mr Gulliver and Ms Laing |
| | H14 | Council's closing statement |
| | H15 | Closing submissions of Mr A Haigh |

APPELLANT'S DOCUMENTS

The application documents are in the buff folder in the main file and interested parties' letters are in the red folder.

| | | |
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| Document | A1 | Written Statement - Bagshaws |
| | A2 | Ecological Assessment Nov 2012 – Landscape and Science Consultancy Ltd (LSC) |
| | A3 | Response to Ecological Review April 2013 (LSC) |
| | A4 | Ecological Assessment and Phase 2 Bat Survey Rev A (LSC) |
| | A5 | Email re ecological assessment – Rev B supersedes Rev A |
| | A6 | Further response to Northant's Bat Group Objection 26 August 2013 (LSC) |
| | A7 | Ecological Assessment and Phase 2 Bat Surveys Rev B |
| | A8 | Landscape and Visual Impact Assessment September 2012 – Bagshaws |
| | A9 | Additional Landscape and Visual Impact Assessment Information November 2012 – Bagshaws |
| | A10 | Landscape and Visual Appraisal Jan 2014 – FPCR |
| | A11 | Archaeological Evaluation April 2013 – Archaeological Services and Consultancy Ltd |
| | A12 | Closing Submissions |
| | A13 | Letter from Bagshaws 10 April 2014 |
| | A14 | Further submissions |

COUNCIL'S DOCUMENTS

Document C1 Council's statement
C2 Closing Statement

FAWSLEY ESTATE DOCUMENTS

Document F1 Statement and Enclosures
F2 Technical Review January 2014 – Cookson Tickner
F3 Comments on the Barnwell Manor Judgement
F4 Comments on Planning Policy Guidance
F5 Transcript of closing submissions

MR GULLIVER AND MISS PATRICIA LAING – RYTON HILL HOUSE

Document R1 Written Statement
R2 Comments on the NPPG
R3 Closing summary

OTHER DOCUMENTS

Document 1 Previous appeal decision for turbine at appeal site
APP/Y2810/A/12/2186969
2 Council's EIA Screening
3 Fawsley Hall listing
4 Letter Natural England 13 March 2014
5 Letter Natural England 4 February 2014
6 Letter Natural England 20 January 2014 with enclosures
7 Site visit route

PLANS

Plans 1 VO1 – photomontage and wire frame
2 VO2 – photomontage and wire frame
3 VO3 – photomontage and wire frame
4 VO4 – photomontage and wire frame
5 Location plan
6 250-00-1500 / 1 3D drawing
7 250-00-1500 / 2 Elevations
8 Zones of theoretical visibility – hub
9 Zones of theoretical visibility – tip
10 Block plan

ANNEX A

Recommended conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development shall be carried out strictly in accordance with drawing 250-00-1500, Block Plan, Location Plan, as registered on 16 November 2012.
3. The wind turbine shall not exceed 45m in height to the tip of the blade.
4. If the wind turbine hereby permitted fails to produce electricity for a continuous period of 12 months, the wind turbine and its associated ancillary equipment shall be removed from the site, to a depth of at least 1m below ground, and the land shall be reinstated within a period of 6 months from the end of the 12 month period, in accordance with a scheme to be submitted to and approved in writing by the local planning authority, prior to the commencement of development. The scheme shall include details of the management and timing of the works and shall be implemented as approved. The developer shall provide operational data for the turbine to the local planning authority on reasonable request.
5. No development shall take place until the applicant or his agents or successors in title has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
6. If a different wind turbine is used, the noise characteristics (sound pressure level) of the turbine shall be the same as, or better (quieter at all distances), than those of the turbine identified in the application (Wind Technik Nord WTN 250 kW).
7. The rating level of noise immissions from the effect of the wind turbine (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 turbine 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 turbine 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) No electricity shall be exported until the wind turbine operator has submitted 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 turbine operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise immissions from the wind turbine 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 a 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) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind turbine operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. 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 turbine 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 further assessment of the rating level of noise immissions from the wind turbine is required pursuant to Guidance Note 4(c), the wind turbine 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.

Table 1— Between 07:00 and 23:00 — Noise limits expressed in dB LA90,10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

| Location | Standardised wind speed at 10 meter height (m/s) within the site averaged over 10 minute periods | | | | | | | | | | | |
|------------------------|--|----|----|----|----|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Highfield Farm | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Ryton Hill House | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Steppington Farm House | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Sharmans Farm | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Long Furlong Farm | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |

Table 2 — Between 23:00 and 07:00 — Noise limits expressed in dB LA90,10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

| Location | Standardised wind speed at 10 meter height (m/s) within the site averaged over 10 minute periods | | | | | | | | | | | |
|------------------------|--|----|----|----|----|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Highfield Farm | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Ryton Hill House | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Steppington Farm House | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Sharmans Farm | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Long Furlong Farm | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |

Table 3: Co-ordinate locations of the properties listed in Tables 1 and 2

| Property | Easting | Northing |
|------------------|----------------|-----------------|
| Highfield Farm | 453255 | 258414 |
| Ryton Hill House | 454037 | 257861 |
| Steppington Farm | 452879 | 256831 |
| Sharmans Farm | 453706 | 256666 |

Note to Table 3: The geographical co-ordinate 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 turbine 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 LA_{90,10} 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 turbine 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 LA_{90,10} minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind turbine 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 LA_{90,10} 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.

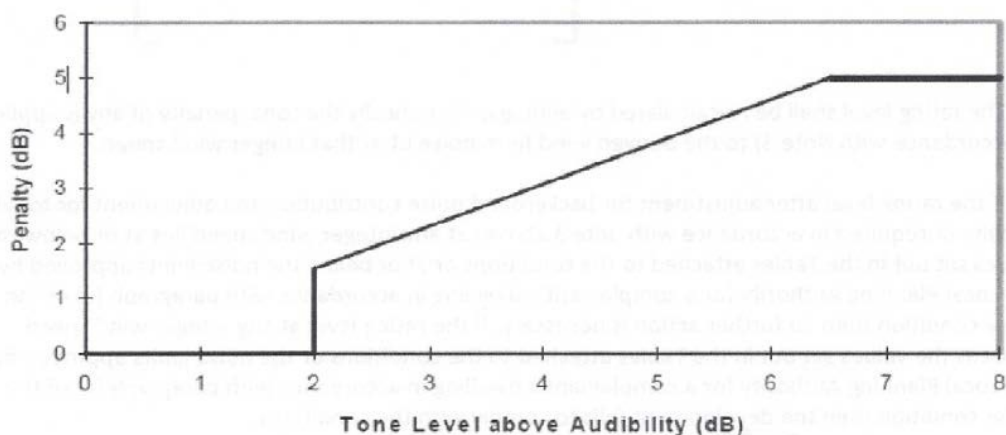
(b) For each 10 minute interval for which $LA_{90,10 \text{ minute}}$ data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals 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 turbine 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 turbine switched off, and determining the background noise (L_3) 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 (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

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

(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 L_1 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.



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.