



Department for
Communities and
Local Government

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Our Ref: APP/Y1138/A/14/2217719

10 August 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR ADAM WESTAWAY
STONE BARN, PHILHAM FARM, CHULMLEIGH, DEVON, EX18 7EQ
APPLICATION REF: 13/00654/FULL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul Griffiths BSc(Hons) BArch IHBC, who made site visits on 23 March 2015 and 18 June 2015 into your client's appeal against the refusal of Mid Devon District Council ("the Council") to grant planning permission for the installation of an Endurance E-3120 (50kW) wind turbine, 24.6m hub height and 34.2m to blade tip, in accordance with application ref.13/00654/FULL, dated 7 May 2013.
2. On 7 October 2015, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, the Secretary of State directed that he would determine this appeal. The reason given for the direction was that: the Secretary of State noted that among the reasons the application was refused was the adverse impact of the turbine upon the Scheduled Ancient Monument at Stone Barton.

Inspector's recommendation and summary of the decision

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

Policy and Statutory Considerations

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan for the area includes the Mid Devon Core Strategy 2026, adopted in July 2007, and the Mid Devon Local Plan Part 3: Development Management Policies, adopted in October 2013. The Secretary of State considers that the development plan policies of most relevance to this appeal are those identified by the Inspector at IR13-18.
5. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework, March 2012 ('the Framework'); the National Planning Practice Guidance ('the guidance'); the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also taken into account the WMSs on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government; the WMS on renewable energy published by the Secretary of State for Communities and Local Government in April 2014; and the English Heritage/Historic England guidance entitled "The setting of Heritage Assets" as updated in July 2015; and the Written Ministerial Statement ('WMS') on local planning of 18 June 2015. This is the planning policy and guidance referred to by the Inspector in IR19-22. Given its relevance to this case, the Secretary of State attaches substantial weight to the WMS as the most recent expression of government planning policy for onshore wind development.
6. The June 2015 Statement includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this appeal proposal the Secretary of State has considered the representations reported at IR44-51.
7. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess

Main Issues

8. The Secretary of State considers that the main issues in this case are those identified by the Inspector at IR 59.

Landscape

9. The Inspector believes that the landscape character is of medium sensitivity and does not consider that the proposal would cause a significantly adverse degree of harm (IR65). However, he concludes that the proposal would have a harmful impact on the

landscape, as a man-made imposition of relatively significant scale. He states that given the nature of the receiving landscape, the specific characteristics of the wind turbine proposed, alongside that at Mounticombe Farm, and the site chosen, that harm would be no more than moderate, in a landscape of medium sensitivity to change (IR68).

10. The Secretary of State agrees with the Inspector (IR64) that the imposition of a man-made, moving object is almost bound to have something of a harmful impact. He further agrees that the anachronistic nature of the structure would bring the proposal into conflict with CS Policy COR2 and LP DM2. He has carefully considered the Inspector's assessment of landscape impact and cumulative impact at IR64-68. He agrees with the Inspector that the landscape character is of medium sensitivity and concludes that there would be limited cumulative harm for the reasons given by the Inspector. He also agrees that the overall harm from this proposal would be moderate (IR68).

Heritage Impacts

11. The Inspector assesses the impacts of the proposal on a Scheduled Ancient Monument (SAM), at IR70-75, and on three listed churches at IR76-81.
12. In relation to the SAM, the Inspector states that in addressing the matter in the reason given for recovery, he believes there would be no adverse impact on the SAM itself. The appeal site is approximately 1km away from the SAM (IR70). The Inspector notes that, like the wind turbine at Mounticombe Farm, the wind turbine proposed would be visible from it and, as such, it would have an effect on the setting of the SAM (IR71). He concludes, however, that the proposal would have no harmful impact at all on its setting, or its significance (IR75). There are also two Grade I listed and one Grade II* listed churches in the area. The Inspector finds that the proposal would cause no harm to the setting, or the significance, of either the Church of St Mary in Cheldon (IR78), or the other two churches (Church of St James in Chawleigh and the Church of St Mary Magdalene in Chumleigh, both Grade I listed).
13. The Secretary of State notes the Inspector's analysis of heritage impacts at IR69-81, and agrees with this conclusion for the reasons given by the Inspector.

Living Conditions

14. The Secretary of State agrees with the Inspector's assessment of visual impacts on the living conditions of nearby residents at IR82-85 and IR88. He agrees with the Inspector's conclusion that the proposal would have no harmful impact on their living conditions through visual impact.
15. The Secretary of State also agrees with the Inspector's assessment of noise impacts on the living conditions of nearby residents at IR86-88. He agrees with the Inspector's view that the proposal would have no harmful impact on the living conditions of local residents through noise. As such, the proposal complies with LP Policy DM7 and the Framework, in these terms.

Tourism

16. The Secretary of State agrees that there is no empirical evidence that visitor numbers to Devon have decreased by the presence of wind turbines, and he agrees with the Inspector's conclusion at IR89 that the proposal would not have an adverse impact on tourism.

Other Considerations

17. The benefits of the proposal are covered by the Inspector at IR90-93. Like the Inspector, the Secretary of State affords significant weight to the renewable energy the turbine would generate. He also gives significant weight to the income the turbine would generate for a farming enterprise. The Secretary of State agrees with the Inspector that these benefits are consistent with the provisions of the NPPF to support a transition to a low carbon future and to promote the development of agriculture by generating an income stream that would benefit the farming enterprise and allow for greater investment in it.

Written Ministerial Statement

18. The Secretary of State also takes account of the WMS of 18 June 2015. As the appeal proposal predates the WMS and the development plan does not identify suitable sites, the transitional provision within the WMS is applicable. This states that 'local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing'.
19. The Secretary of State notes that the affected local community has raised concerns regarding planning impacts in relation to living conditions (including visual impact), landscape (including cumulative impact), and impact on heritage sites, noise, and impact on tourism. The Inspector concludes that the impacts of the scheme are, or can be made, acceptable and he is of the view that this means that the planning impacts identified by the local community have been addressed.
20. It is the Secretary of State's view that the siting of the proposed turbine will result in moderate harm to the landscape for the reasons given by the Inspector. He has carefully considered the representations on landscape and other evidence before him in this case, and finds no evidence that local concerns regarding landscape harm and cumulative impacts have been addressed, or that they are no longer present. He therefore concludes that the planning impacts identified by affected local communities have not been addressed in the circumstances of this case. Accordingly, he considers that the transitional provision within the WMS has not been satisfied, and he gives substantial weight to this conflict.

Conclusions

21. The Secretary of State has given very careful consideration to the Inspector's concluding remarks at IR94-98 but disagrees with his overall recommendation.
22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary

of State concludes that the appeal proposal conflicts with CS Policy COR 2 and LP Policy DM2, but accords with LP Policies DM5, DM27 and DM7 and CS policy COR 2.

23. The Secretary of State concludes that the proposed wind turbine would accord with the development plan when read as a whole. The Secretary of State has then gone on to consider whether there are any material considerations justifying determining the case other than in accordance with the development plan.
24. The Secretary of State accepts that the turbine would make a contribution to the attainment of national and local renewable energy policy objectives and targets and he gives significant weight to this. He also notes that the scheme would allow Philham Farm to diversify which would assist in securing its viability in the future, to which he also gives significant weight.
25. However, the Secretary of State has taken account of paragraph 5-007 of the PPG which states that 'the need for renewable or low carbon energy does not automatically override environmental protections'. He therefore weighs the harms to landscape character and appearance against the proposal, affording them moderate weight. He also weighs the conflict with the provisions of the WMS, to which he affords substantial weight.
26. Having taken into account all material considerations, the Secretary of State has concluded that overall those considerations indicate that the proposal should be determined other than in accordance with the development plan and that the adverse impacts outweigh the benefits of the proposal.
27. Given this, the Secretary of State does not agree with the Inspector's overall recommendation that the appeal should be allowed.

Formal Decision

28. For the reasons given above, the Secretary of State dismisses your client's appeal and refuses planning permission for the installation of an Endurance E-3120 (50kW) wind turbine, 24.6m hub height and 34.2m to blade tip, in accordance with application ref.13/00654/FULL, dated 7 May 2013.

Right to challenge the decision

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
30. A copy of this letter has been sent to Mid Devon District Council. A letter of notification has also been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Phil Barber

Authorised by the Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date: 7 January 2016

The Town and Country Planning Act 1990

Appeal by

Mr Adam Westaway

Against the decision of

Mid-Devon District Council

Site visits made on 23 March 2015 and 5 June 2015

Stone Barn, Chulmleigh, Devon EX18 7EQ

File Ref: APP/Y1138/A/14/2217719

File Ref: APP/Y1138/A/14/2217719

Stone Barn, Chulmleigh, Devon EX18 7EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Adam Westaway against the decision of Mid-Devon District Council.
- The application Ref.13/00654/FULL, dated 7 May 2013, was refused by notice dated 5 December 2013.
- The development proposed is the installation of an Endurance E-3120 (50kW) wind turbine, 24.6m hub height and 34.2m to blade tip.

Summary of Recommendation: The appeal be allowed, and planning permission granted, subject to the conditions set out in Annex 1 to this report.

Procedural Matters

1. My first visit to the site took place on 23 March 2015. There were a lot of interested persons present and given the need to take in a number of relatively far-flung viewpoints, I asked for a representative of those people to accompany myself, the appellant, and the Council, in doing so. Ms Debbie Holland of the Cheldon, Chawleigh & Chulmleigh Landscape & Heritage Protection Group¹ kindly obliged and after I had visited the appeal site itself with the appellant, and the representative of the Council, we embarked upon visiting the various viewpoints, dwellings, and other features, together.
2. Unfortunately, after a long period spent doing that, the appellant informed me that he needed to attend to milking his cattle and could not continue. In those circumstances, I decided to continue the site visit on an unaccompanied basis, given that all the remaining viewpoints were on public land, and did so. Afterwards, representations were received on behalf of CCCLHPG, expressing dissatisfaction with that, because it had prevented Ms Holland from pointing out various features, as she had intended. Concerns were also raised about visibility, given the prevailing weather conditions towards the end of the visit.
3. For my part, I felt that I had seen enough from the viewpoints to arrive at a decision, and that visibility had been reasonable. Nevertheless, in the interests of fairness, I agreed to set up a further accompanied site visit where the remaining viewpoints could be revisited. That additional site visit took place on 5 June 2015 and once again, I was accompanied by the appellant, a representative of the Council, and Ms Holland. The visit took in the remaining viewpoints, and further dwellings to which access had not been possible to gain first time.
4. Shortly after that second visit came the Written Ministerial Statement on Local Planning of 18 June 2015² and the concurrent changes to Planning Practice Guidance³. I invited representations from the appellant, the Council and CCCLHPG on the implications of the WMS and the changes to the PPG⁴ and I have taken those into account in compiling this report.

¹ Referred to hereafter as CCCLHPG

² Referred to hereafter as WMS

³ Referred to hereafter as PPG

⁴ These can be found on the case file

5. The advent of the WMS and the changes to the PPG also resulted in CCCLHPG making representations to the effect that the appeal ought to be dealt with through a hearing. This was not supported by the appellant, or the Council. Having considered the request, I judged that a site visit was a perfectly adequate, and proportionate, means of dealing with the appeal, and proceeded on that basis.
6. The then MP for North Devon, Nick Harvey made representations in support of those opposed to the proposal at application, and appeal stage⁵. The candidate MP for North Devon, Peter Heaton-Jones, and the MP for Devon Central, Mel Stride, after receiving correspondence from constituents, made representations to the Secretary of State⁶ requesting that the appeal be recovered⁷ in March and April 2015.
7. On 7 October 2015, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, the SoS directed that he would determine this appeal. The reason given for the direction was that: *the Secretary of State notes that among the reasons the application was refused was the adverse impact of the turbine upon the Scheduled Ancient Monument at Stone Barton. The Secretary of State wishes to consider for himself any such impact and the appeal is therefore being recovered because of the particular circumstances.*

The Proposal

8. The proposal involves the erection of a 50kW rated Endurance wind turbine installed on a tower. The hub height of the wind turbine would be 24.6m above ground level, and the blades would be 9.6m long. The height of the structure to the tip of the blades, in an upright position, would be 34.2m. There would be a cast in-situ concrete foundation supporting the wind turbine, a GRP control cabinet, and an underground cable trench to run the cables to the nearest telegraph pole, from where it would link up to the farm complex, and the grid connection point.

The Site and Surroundings

9. Philham Farm is an organic dairy enterprise. The wind turbine would be sited at a height of about 185-186m AOD, in a large field, laid to pasture, bounded by field hedges to the east and west. A farm track, branching off the access to Stone Barn, where the appellant resides, cuts across the field, leading to other fields further west. This would be used to provide access to the site of the wind turbine for construction purposes. The field where the wind turbine is proposed to be located is in the central part of the overall holding. The northern boundary of the field forms the boundary between the administrative areas of Mid-Devon District Council and North Devon District Council.
10. There is an existing wind turbine, of an identical specification to that proposed, about 600m away from the appeal site, in a field to the north-east, at a similar elevation, serving Mounticombe Farm. That wind turbine is in the administrative

⁵ The correspondence can be found on the case file

⁶ Referred to hereafter as SoS

⁷ The correspondence can be found on the case file

area of North Devon District Council, who granted planning permission for it. There is another wind turbine of the type proposed at Nutson Farm, about 3.1km away from the appeal site.

11. The site of the proposed wind turbine is about 2 km north-east of Chawleigh, around 3 km east of Chulmleigh, and approximately 1.5 km north-west of Cheldon. Aside from the appellant's home, which is about 200m away, and that of other members of the family, 385m away, near the Philham Farm buildings, the closest dwellings are at West Dockworthy House and Cheldon House, about 550m south-east of the appeal site, and Edgiford Farm, about 650m west of it.

Planning Policy

12. The development plan for the area includes the Mid Devon Core Strategy 2026, adopted in July 2007⁸, and the Mid Devon Local Plan Part 3: Development Management Policies, adopted in October 2013⁹.
13. The Council has made reference to both. CS Policy COR 2 refers to local distinctiveness and requires development to sustain the distinctive quality, character and diversity of Mid Devon's environmental assets through: high quality sustainable design which reinforces the character and legibility of Mid Devon's built environment and creates attractive places; the efficient use and conservation of natural resources of land, water and energy; and the preservation and enhancement of the distinctive qualities of Mid Devon's natural landscape, supporting opportunities identified within landscape character areas.
14. CS Policy COR 5 deals with climate change and says that measures will be sought which minimise the impact of development on climate change, and contribute towards national and regional targets for the reduction of greenhouse gas emissions, including: a) the development of renewable energy capacity will be supported in locations with an acceptable local impact, including visual, on nearby residents, and wildlife; b) energy efficiency improvement measures will be supported with an acceptable impact on historic interest and; c) it is intended that all new development will be carbon neutral in development and use as soon as a detailed approach can be developed through the preparation of a SPD on the subject. This is likely to be through appropriate choice of materials, energy efficiency measures, transport management, renewable energy generation, and transport fixing. Until such time as the SPD is adopted all development should take positive measures to reduce carbon emissions to a realistic minimum.
15. Following closely the line of the Framework¹⁰, LP Policy DM1 sets out a presumption in favour of sustainable development. LP Policy DM2 requires development to attain high quality in design, based upon, amongst other things, a clear understanding of the characteristics of the site, its wider context, and the surrounding area; and a positive contribution to local character including any heritage or biodiversity assets, and the setting of heritage assets.
16. Of more direct application, LP Policy DM5 deals with renewable and low carbon energy. It sets out that the benefits of renewable and low carbon energy will be

⁸ Referred to hereafter as CS

⁹ Referred to hereafter as LP

¹⁰ The National Planning Policy Framework

weighed against its impact and such proposals will be permitted where they do not have significant adverse impacts on the character, amenity and visual quality of the area, including cumulative impacts with similar development within the parish or adjoining parishes. Development must consider: a) landscape character and heritage assets; b) environmental amenity of nearby properties in accordance with LP Policy DM7; and c) quality and productivity of the best and most versatile agricultural land (Grades 1, 2 and 3a); and d) biodiversity.

17. LP Policy DM7 is concerned with pollution and is permissive of development where direct, indirect and cumulative effects will not have an unacceptable negative impact on health, the natural environment, and general amenity.
18. LP Policy DM27 refers to development affecting heritage assets. Heritage assets are referred to as an irreplaceable resource. As such, the Council¹¹ will: a) apply a presumption in favour of preservation in situ in respect of the most important heritage assets; b) require development proposals likely to affect heritage assets and their settings to consider their significance, character, setting and local distinctiveness, and the opportunities to enhance them; c) only approve proposals that would be likely to substantially harm heritage assets and their settings if substantial public benefit outweighs that harm, or the requirements of paragraph 133 of the Framework are met; d) where a development proposal would lead to less than substantial harm, that harm will be weighed against any public benefit, including securing optimum viable use; and e) require developers to make a proportionate but systematic assessment of the impact on setting as set down in the English Heritage guidance: 'The Setting of Heritage Assets'.
19. All that chimes with the approach of the Framework, one of the core principles of which is that the intrinsic character and beauty of the countryside should be recognised. Paragraph 109 says that the planning system should protect and enhance valued landscapes. Moreover, paragraph 132 says 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 significance. Also, another of the core principles of the Framework is to always seek a good standard of amenity for all existing, and future, occupants of land and buildings.
20. Paragraph 18 tells us that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition, and a low carbon future. Moreover, reflective of wider national energy policy, and the statutory requirements of the Climate Change Act 2008, it is also a core principle of the Framework that planning should support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources (for example, by the development of renewable energy).
21. Paragraph 93 tells us that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability, and providing resilience to the impacts of climate change, and supporting the delivery of renewable energy and associated infrastructure. This, we are told, is central to the economic, social and environmental dimensions of sustainable development. As an aid to decision-making, paragraph 98 says that we should not require applicants for energy development to demonstrate the overall need

¹¹ And by extension any other decision-maker using the LP

for renewable energy and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. In simple terms, applications should be approved if impacts are (or can be made) acceptable.

22. There is also the recent WMS to consider. For proposals like that at issue in this appeal, where the transitional provisions apply, we are told that local planning authorities¹² can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.

The Case for the Council

23. The Council refused planning permission for the proposal for two reasons. The first relates to what is termed its unacceptable landscape impact, alone, and in combination with the existing wind turbine at Mounticombe Farm. The second relates to its significant adverse impact on the setting and special qualities of the SAM at Stone Barton, and other (unspecified in the reason for refusal) heritage assets in the area. In simple terms, the public benefits of the proposal were not considered by the Council to be sufficient to outweigh the harmful impacts.
24. The Council's position on the originating application is fully articulated in the report prepared by Officers to inform the decision¹³. In response to the appeal the Council submitted a Statement dated June 2014, and some observations on the submissions of CCCLHPG dated June 2014¹⁴. I have used all those as the basis for this brief summary.
25. In landscape terms, the Council commissioned a review of the appellant's Landscape and Visual Impact Assessment¹⁵. This raises doubts about several of the conclusions therein. Armed with those conclusions, the Council says that the wind turbine would be erected in an area that has an open, hill-top nature and on one of the highest points in the Parish of Chawleigh.
26. The extent to which any particular wind turbine would have an impact on the receiving landscape is derived not just from the physical change to that landscape but also by how that landscape is experienced, and valued, and the extent to which it has the capacity to accommodate change.
27. The prominent position of the wind turbine proposed means that it would be highly visible, and break the skyline, especially when viewed from points to the south; the Chawleigh direction. This would cause significant harm to the landscape itself, and the experience of it; harm that would be exacerbated by the existing wind turbine of a similar specification to that proposed, at Mounticombe Farm, and others already present in the landscape. It is accepted that all wind turbines will have something of a landscape and visual impact. However, in this instance, the harmful impact is so great, that it would outweigh any benefit the wind turbine would bring forward.

¹² And I take that to include the Secretary of State, or those acting on his/her behalf

¹³ Attached to the Questionnaire

¹⁴ Both marked on the Case File

¹⁵ By the Cooper Partnership, dated July 2013, it is attached as Appendix 3 to the Council's Statement

28. In heritage terms, attention is drawn to the implications of the *Barnwell Manor* judgement for proposals like that at issue. Drawing support from the views expressed by English Heritage, it is suggested that substantial harm would be caused to the setting and thereby the significance of the SAM at Stone Barton by the wind turbine proposed.
29. On top of that, its presence in the landscape would cause harm to the setting and thereby the significance of the Church of St James in Chawleigh, the Church of St Mary Magdalene in Chulmleigh, both Grade I listed buildings, and the Church of St Mary in Cheldon, a Grade II* listed building, whose dominance in the landscape is a key component of their setting, and their significance. Despite the separation distances involved, the wind turbine would vie for supremacy with them and reduce their dominant presence in the landscape to the detriment of their setting, and significance.
30. Bearing in mind the strong presumption against granting planning permission for development that would have harmful impacts on listed buildings, or their settings, again, the benefits the proposal might bring forward are insufficient to provide justification for it.
31. While not a reason from refusal cited by the Council, there are concerns too about noise. While it is accepted that there are no grounds to suspect that the wind turbine proposed might cause difficulties in terms of Amplitude Modulation or Excess Amplitude Modulation, and no justification for a condition to address this issue, there are concerns about the enforcement of any noise condition because of the potential for the wind turbine at Mounticombe Farm to interfere with any monitoring. In the absence of any suggestion from the appellant as to how this issue might be dealt with, it cannot be concluded that local residents could be properly protected from potential noise impacts and this adds to the concerns about the harmful impact the proposal would have on the landscape, and the designated heritage assets, set out.
32. On that overall basis, the proposal runs contrary to CS Policies COR 2 and COR 5 and LP Policies DM1, DM2, DM5, DM7 and DM27, and the Framework. As a consequence, the appeal should be dismissed.
33. Moreover, there is the WMS of 18 June 2015 and consequent changes to the PPG to consider. There is significant local opposition to the proposal, from the Parish Councils, and local residents affected. It cannot be said to benefit from their backing.

The Case for the Appellant

34. In pursuance of the originating application, the appellant submitted a series of documents including a Supporting Statement, a Design and Access Statement, a Heritage Impact Assessment¹⁶, a Landscape and Visual Impact Assessment¹⁷ and a series of wireframes and photomontages, and additional documentation was submitted in the period when the application was before the Council. In pursuance of the appeal, an Appeal Statement was submitted, and subsequently,

¹⁶ Referred to hereafter as HIA

¹⁷ Referred to hereafter as LVIA

a Response to the Council's Statement. Comments were also received about the WMS and the consequent changes to the PPG¹⁸.

35. The LVIA concludes that the wind turbine would lead to some changes in landscape character and in some views. The central question, bearing in mind the approach of the development plan, and LP Policy DM5, is whether it would cause significant landscape harm, alone, or in combination with the existing wind turbine at Mounticombe Farm.
36. Of course, the wind turbine would be a visible, moving, element on the skyline, and prominent, particularly within a range of 1.5km. However, the character of the receiving landscape is robust; it is a working, agricultural landscape that is of medium sensitivity. It is able to absorb the impact of a wind turbine of the nature and height proposed, without any serious adverse effects. The existing wind turbine at Mounticombe Farm demonstrates that. Careful choice of coloured finish could aid that assimilation and there would be no significant cumulative impact. On that overall basis, the degree of landscape harm the proposal would cause could not reasonably be described as significant. The various wireframes and photomontages demonstrate as much.
37. In heritage terms, the conclusion of the HIA is that there would be a moderately harmful impact on the setting and thereby the significance, of the Church of St James in Chawleigh, a Grade I listed building, and the Church of St Mary in Cheldon, a Grade II* listed building, as a result of the introduction of an element into their settings, that would provide slight competition for dominance, when viewed from some directions. Given the degradation from modern agricultural practices that has already taken place, there would be an impact of low significance on the setting of the SAM at Stone Barton. The concerns in this regard highlighted by the Council, local residents, and English Heritage, have been exaggerated. Overall, these adverse impacts are not considered sufficient, alone, or in concert with other adverse impacts, to outweigh the benefits that the proposal would bring forward.
38. In terms of those benefits, the wind turbine proposed would provide all of the existing farm's energy needs with any excess being fed into the National Grid, thereby assisting with the UK's commitment to increase the proportion of final energy consumption from renewable sources to 15% by 2020. This will generate a new source of income that will support the rural enterprise in a way that helps reduce its carbon footprint, and encourage investment in it. These benefits should be afforded significant weight.
39. On the subject of noise, the position of the Council in relation to conditions dealing with Amplitude Modulation and Other (or Excess) Amplitude Modulation is noted and agreed with. There is no good reason why a noise condition could not be enforced when either the wind turbine at issue, or the wind turbine at Mounticombe Farm could be switched off in order to identify the source of any noise.
40. While concerns have been raised, the wind turbine proposed would not be close enough to any dwelling to have any significant visual impact.

¹⁸ All attached on the case file

41. While the importance of the landscape in attracting visitors is noted, there is no good evidence that wind turbines have depressed tourist numbers.
42. On that overall basis, the proposal accords with the development plan, and LP Policy DM5 in particular, and the Framework. The appeal should therefore be allowed, subject to conditions.
43. In relation to the WMS of 18 June 2015 and the subsequent changes to the PPG, it is relevant to note that the Framework remains unchanged. Given that the proposal accords with the Framework, its planning impacts have been fully addressed and it can be taken to have the backing of the local community.

The Case for Local Residents

44. There was a significant level of response from local residents to the originating planning application¹⁹. The same is true of the appeal. There has also been interest from the previous and current MPs for North Devon, and the current MP for Central Devon.
45. The CCCLHPC submitted a Statement of Case in response to the appeal. This document fully articulates the case made by the group on behalf of local residents and I have used it to form the basis of this brief précis. There are several angles of objection explored. In the first instance, CCCLHPC supports the view of the Council about the impact the proposal would have on the landscape, including its cumulative effects, and on the setting, and thereby the significance, of designated heritage assets, bolstered by a series of photographs and photomontages said to be more accurate depictions than those provided in support of the proposal by the appellant.
46. The group expressed concerns about noise that went beyond those now expressed by the Council. In particular, attention was drawn to the inadequacies of ETSU-R-97 and the need for a 'Den Brook' style condition to deal with Amplitude Modulation and Excess Amplitude Modulation. Attention is drawn to the approach of the then SoS to Amplitude Modulation in the Turncole Wind Farm decision²⁰, in this regard. If planning permission is granted for the proposal, a similar condition should be attached.
47. While not dealt with directly by CCCLHPC, it is clear that many local residents are concerned about the visual impact of the wind turbine proposed when seen from their property²¹. This it is said would have a detrimental impact on their living conditions.
48. Much is made in the submission of the strong feelings of many local people against the proposal and the positions adopted by the Parish Councils in the area. It is suggested that great weight ought to be attached to this resistance. This submission is broadened in their written response to the WMS of 18 June 2015 and the accompanying changes to the PPG. This concludes that because the local planning authority has refused planning permission, and the planning impacts identified by affected local communities have not been fully addressed, the proposal does not have their backing and so the appeal should be dismissed.

¹⁹ All attached to the Questionnaire

²⁰ APP/X1545/A/12/2174982, 2179484, and 2179225 (Condition 25)

²¹ Evident from several written representations at application and appeal stage

49. Points are made in that representation supplementing previous doubts about the benefits claimed for the proposal. In particular, attention is drawn to the statement made by the SoS for Energy and Climate Change on 18 June 2015 that in order to meet 2020 targets, there was no need to erect any more wind turbines beyond those already permitted. The benefits claimed, already exaggerated, it is suggested, need to be seen in that light.
50. It is also pointed out that tourism is an important contributor to the local economy and it is posited that a proposal that would have such a major detrimental effect on the local landscape, a significant draw to the area, would be bound to have an adverse impact on the local economy.
51. Overall, the strongly expressed view of CCCLHPC is that the appeal should be dismissed.

Conditions

52. The Council has suggested a series of conditions that it would favour in the event the appeal is allowed. I have considered these in the light of advice in paragraph 206 of the Framework, and advice in the PPG. The standard commencement condition is a necessity and so too, is a condition setting out the approved plans.
53. Another is suggested to deal with the situation where the wind turbine becomes redundant for the purposes of generating electricity. However, the condition suggested lacks precision and it appears to me that it would be better to apply one condition to deal with what should happen if the wind turbine fails to generate electricity, and another, to deal with the fact that, as I understand the scheme, it is, like all proposals of this type, promulgated on a temporary basis. It is reasonable to apply a condition to ensure cabling is laid underground.
54. I agree that a noise condition is necessary but that suggested by the Council is inordinately complex. All that is required is a condition setting out the noise limits at any affected dwelling on the basis of the simplified condition set out in ETSU-R-97. There is no need for the condition to set out what should happen in the event that the limit is breached. If it is breached, then the Council can take the necessary action to enforce compliance.
55. Suggestions have been made about the application of a condition to address Amplitude Modulation or Excess Amplitude Modulation with reference to the Den Brook wind farm, and a relatively recent decision by the previous SoS. However, there is no evidence that the wind turbine proposed will, or is likely to, produce either effect. On that basis, such a condition fails the test of necessity.
56. A condition is suggested to secure what is termed a 'Method of Construction Statement'. However, given the nature of the site, all that is required to protect highway safety is a condition to control the management of construction and delivery traffic. A condition to secure details of lighting and fencing is superfluous as none are proposed as part of the scheme.
57. While not suggested by the Council, it appears to me that control needs to be exerted over the coloured finish of the wind turbine proposed through a condition. This is accepted by the appellant and cited as a way in which its impact on the landscape could be reduced.

Inspector's Conclusions

58. In this part of the report, I have used references thus [--] to cross-refer to previous paragraphs in the report.

Main Issue

59. While the reason for recovery is noted, it is very clear that an assessment of the proposal revolves around many other factors too. In simple terms, the main issue to be considered is whether, in the context of the development plan, and the Framework, any benefits of the proposal, are outweighed by any adverse impacts. There is also the approach of the WMS of 18 June 2015 to consider. [4, 7, 22, 23]
60. As a precursor to dealing with that, it is necessary to address the issue of photographs and photomontages. CCCLHPC has criticised the material prepared by the appellant and in turn, the appellant has criticised those produced by CCCLHPC. I have no means of checking either for accuracy but would say that while they serve the purposes of a broad indication, they are no substitute for a site visit. It is on the basis of my comprehensive site visits that I have formed my conclusions. During those visits, the existing wind turbine at Mounticombe Farm, which is of the same height and specification as that at issue in the appeal, acted as a very useful indicator of scale. [34, 45]

Landscape

61. In regional terms, the appeal site is located in NCA²² 149: The Culm, specific characteristics of which include rolling ridges and undulating open pasture with many small, but deep valleys, and wide, sweeping views across a largely remote and sparsely populated landscape; a mosaic of field patterns reflecting historic use; and occasional wind-sculpted hedgerow and farmstead trees with woodland more frequent in the shelter of the valleys. The Mid-Devon Landscape Character Assessment sets out a number of valued features notably traditional management regimes and small field patterns enclosed by hedgerows and banks, isolated farms and farmsteads; and high levels of tranquillity and remoteness.
62. As set out in the appellant's LVIA, the local landscape character is pastoral, typical of the Mid-Devon Farming Belt LCA²³, which consists of gently rolling slopes and a small to medium scale landscape with variable field size with wide, low boundaries, and irregular pattern. The site is in close proximity to, but obviously not part of, other LCAs, notably the Taw and Torridge River System, and the High Culm Ridges.
63. In the light of all that, the appellant assesses the landscape as being of medium sensitivity to change. Given its landform characteristics, and specifically its working, agricultural nature, I concur with that assessment.
64. The imposition of a man-made, moving object, of the nature proposed, on the landscape, is almost bound to have something of a harmful impact. The existing wind turbine at Mounticombe Farm demonstrates as much. The anachronistic nature of the structure would bring the proposal into conflict with CS Policy COR

²² National Character Area

²³ Landscape Character Area

2 and LP Policy DM2. However, the more directly applicable LP Policy DM5 supports proposals that would not have a significantly adverse impact on the character, amenity, and visual quality of the area, including cumulative impacts.

65. I do not consider that the proposal would cause a degree of harm that could reasonably be described as significantly adverse. I reach that conclusion for a number of reasons. First of all, while points have been made about the scale of the wind turbine proposed, at 34.2m to tip, it would not attain anything like the scale, and have nowhere near the impact, of much larger, commercial-scale wind turbines. Like the wind turbine at Mounticombe Farm, it would be perceived as an adjunct to the farming enterprise it would serve. The working, agricultural nature of the receiving landscape would aid that impression and assimilation. All that would reduce the degree to which it would appear as an incongruous element in the landscape.
66. While the wind turbine proposed and that at Mounticombe Farm would be seen together in many views, each would be perceived as serving a separate farm, as a separate entity. As such, there would be no cumulative harm of any great moment. The existing wind turbine at Nutson Farm is too far away to have any material bearing in cumulative terms.
67. Much has been made too of the proposed location of the wind turbine proposed on a hilltop. There can be no doubt that in many views towards it, it would be seen as breaking the skyline. However, far from exacerbating its harmful impact on the landscape, such a location would aid integration. I reach that conclusion because a wind turbine located in an exposed place, designed to maximise wind capture, makes far more functional sense, and is therefore less of an alien feature, than one located in a more sheltered location. Moreover, though not central to my thinking, it does, as the appellant points out, give the opportunity, through a careful choice of coloured finish, to further lessen its prominence.
68. Taking all those points together, I find that the proposal would have something of a harmful impact on the landscape, as a man-made imposition of relatively significant scale. However, given the nature of the receiving landscape, the specific characteristics of the wind turbine proposed, alongside that at Mounticombe Farm, and the site chosen, that harm would be no more than moderate, in a landscape of medium sensitivity to change. **[9,13-16, 19, 25-27, 35-36, 45]**

Heritage Impacts

69. There are lots of designated heritage assets in the area. However, most, notably those in settlements, and part of farm complexes, derive something of their significance from their immediate setting rather than their place in the landscape. The SAM at Stone Barton and the Churches referred to in Chawleigh, Chulmleigh and Cheldon, are different in nature because they have the potential to derive something of their significance from their setting in the wider landscape.
70. Dealing with the SAM first of all, it is designated as 'Castle 175m north of Stone Barton' and is a Saxon or early medieval defensive 'ringwork' castle, one of less than 200 examples known nationally. It is undoubtedly of national importance. First of all, it is important to note that addressing the matter in the reason given for recovery, there would be no adverse impact on the SAM itself. The appeal site is approximately 1km away from the SAM.

71. The setting of a designated heritage asset is defined in the Glossary to the Framework as the surroundings in which a heritage asset is experienced. It was clear from my visit to the SAM that, like the wind turbine at Mounticombe Farm, the wind turbine proposed would be visible from it. As such, it would have an effect on the setting of the SAM.
72. The approach taken by the Council, English Heritage²⁴, CCCLHPC, and to a large extent the appellant²⁵, is to equate visibility of the wind turbine from the SAM with a harmful impact on its setting, and thereby significance. To my mind, that approach fails to have proper regard to the contribution setting makes to significance.
73. Like almost any fortification, the position of the SAM in the landscape tells the observer a lot about the reasons for it being chosen as a redoubt. There are important, commanding views from the SAM to the south-east around to the south-west, along the river valleys, and these help to explain its genesis, and, as a consequence, contribute to its significance. The wind turbine proposed would not feature in these views. Rather, it would be seen in views to the north-east; views that are neither commanding, nor strategically important, and contribute nothing to an understanding of the SAM, or its significance.
74. It might be argued that the anachronistic presence of a modern insertion into the landscape in the form of a wind turbine, visible from the SAM, would devalue the experience of it. However, I would observe that the SAM predates many features of the surrounding landscape, including the adjacent slurry lagoon, and agricultural track, the wind turbine at Mounticombe Farm, the nearby settlements, as they now stand, and the Churches that mark them, and indeed the surrounding fields, and the hedgerows that enclose them. None of these features, which are also anachronistic to varying degrees in the sense that they post-date the SAM, prevent the observer from understanding why the SAM was so located. Neither do they intrude into an appreciation of the contribution setting makes to its significance, or devalue, to any material extent, the twenty first century experience of it. In that context, I fail to see why the presence of the wind turbine proposed, at the separation distance of around 1 km involved, would have a harmful impact.
75. On that overall basis, far from causing substantial harm to the significance of the SAM, as suggested by English Heritage²⁶, a point taken up by the Council and CCCLHPC, and contrary to the appellant's HIA, it is my conclusion that the proposal would have no harmful impact at all on its setting, or its significance. The proposal complies with LP Policy DM27 in this regard, and the Framework.
76. In terms of the three Churches referred to, the Church of St James in Chawleigh, the Church of St Mary Magdalene in Chulmleigh, both Grade I listed buildings, and the Church of St Mary in Cheldon, a Grade II* listed building, the starting point for analysis is the provisions of the Act²⁷. Section 66(1) requires the decision-maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard

²⁴ In their representations on the originating application and the appeal

²⁵ In the HIA

²⁶ In their representation on the originating application

²⁷ The Planning (Listed Buildings and Conservation Areas) Act 1990

to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

77. The suggestion of the English Heritage, the Council, and CCCLHPC, is that the wind turbine proposed would compete with the towers of these Churches for dominance in the landscape and as a result detract from their settings, and their significance. That suggestion is accepted by the appellant's HIA in relation to the Church of St James in Chawleigh, and the Church of St Mary in Cheldon.
78. I visited all three in the course of my site visits and took them in from various viewpoints in the landscape. From what I saw, the Church of St Mary in Cheldon is partly screened by trees, and its tower, which is relatively short, has no particular landmark quality. It is the intimate area around the building, and its relationship with the settlement, that contributes to its significance, rather than its position in the wider landscape. The wind turbine proposed would have no impact on those elements and as such, would cause no harm to the setting, or the significance, of the listed building.
79. The Church of St James in Chawleigh and the Church of St Mary Magdalene in Chulmleigh are rather different in nature, however. The higher towers of both have a landmark quality, clearly marking the position of the settlements they serve in the landscape. That quality is one way in which their settings contribute to their significance. While the wind turbine would be taller than the towers of these Churches, it is important to understand first of all, that it would not be located immediately adjacent to the towers, and so would not be perceived in that comparative way because of the significant separation distance (about 2 km from the Church of St James in Chawleigh, and more than 3 km from the Church of St Mary Magdalene in Chulmleigh), and the effect of perspective. Moreover, it would not be a large, commercial-scale erection. Rather, as I have found in analysing its landscape impact, it would be read as a functional adjunct of the farming enterprise it would be a part of, well-separated from the settlements the Churches serve.
80. While there would be places in the surrounding area where the wind turbine proposed would be seen in the same view as the Church towers, it would be seen as a different element in the landscape, having no spiritual or symbolic connotation, and an obviously different function, well separated from the settlements. It would not undermine the dominant place of the Church towers, or the manner in which they mark the position of settlements, in the landscape. I observed at my site visits that for similar reasons, the wind turbine at Mounticombe Farm has no harmful effect on the setting, or the significance of these Churches.
81. On that overall basis, I am firmly of the view that the proposed wind turbine at issue would have no harmful impact on the setting, or the significance, of the listed buildings referred to. The presumption underpinning section 66(1) of the Act is not engaged and the proposal complies with LP Policy DM27, and the Framework, in this regard. **[18-19, 28-30, 37, 45]**

Living Conditions

82. There are two elements to the case presented by CCCLHPC on this issue. The first relates to visual impact. I visited a number of properties in the general vicinity of the appeal site in the course of my site visits, to inform an assessment.

83. It is very important in that sort of analysis to differentiate between visual impact, and a change in the view. Most of the properties I visited in the course of my site visits, notably those on the edge of Chawleigh, are far too distant at 2 km or so from the site of the proposed wind turbine for there to be any visual effect that could reasonably be described as dominant or overbearing. What would happen in these cases is that part of the view from these properties would change but it is a fundamental tenet of the planning system that there is no inalienable right to a view. The visual presence of the wind turbine, while perhaps unwelcome, would, in objective terms, have no adverse impact on the living conditions of residents of these dwellings.
84. The dwellings at West Dockworthy House and Cheldon House are set at a much lower level to that of the proposed wind turbine, and would be rather closer to it – approximately 550m away. Notwithstanding the significant change in level, at that distance, the visual impact of the wind turbine proposed could not reasonably be described as oppressive or overwhelming. On top of that, the gardens of both properties are very pleasant spaces, blessed with a variety of mature trees and shrubs. These would provide a significant degree of screening. At both properties, it was very apparent that in order to gain a clear view of the wind turbine proposed, one would need to manoeuvre oneself into a part of the garden where that would be possible. Again, it is my conclusion that while the residents concerned might not appreciate being able to see a wind turbine from parts of their dwellings, or their gardens, assessed in an objective way, it would have no harmful impact on their living conditions.
85. I also visited Edgiford Farm in the course of the first site visit. This dwelling is about 650m away from the site of the proposed wind turbine, with habitable rooms orientated towards it, and little in the way of intervening screening. Nevertheless, in my view, the separation distance is sufficient to ensure that the visual impact of the wind turbine, at 34.2m to tip, would not even come close to being dominant, or overwhelming. As such, it would have no materially adverse effect on the living conditions of the residents of Edgiford Farm, in these terms. **[17, 19, 40, 47]**
86. In terms of noise, it is important, first of all, to point out that while some may have misgivings about ETSU-R-97, it remains the basis on which noise from wind turbines must be assessed. The evidence before me is clear that the wind turbine proposed could operate within ETSU-R-97 parameters. I note the points made about the potential difficulties in enforcing a planning condition designed to ensure compliance with ETSU-R-97 because of the existing presence of the wind turbine at Mounticombe Farm. However, it seems to me that, in the event of any complaint about noise, it would be relatively straightforward to arrange for one, or other, to be turned off to facilitate investigation.
87. Concerns have been expressed about Amplitude Modulation and Excess Amplitude Modulation but again, it appears that characteristics of larger, commercial-scale wind turbines are being transcribed to smaller models. The existing wind turbine at Mounticombe Farm has caused no difficulties in this regard and there is no evidence that the wind turbine model proposed has ever produced Amplitude Modulation or Excess Amplitude Modulation. There is no good reason to suspect that the wind turbine proposed would lead to any problems in this regard. **[17, 31, 39, 46, 54-55]**

88. Overall, I am of the view that the proposal would have no harmful impact on the living conditions of local residents through visual impact or noise. As such, it complies with LP Policy DM7 and the Framework, in these terms.

Tourism

89. Concerns have been raised by CCCLHPG about the impact of the proposal on tourism. I am sure that the landscape quality of the area is one of the reasons why it is so attractive to visitors. However, despite the wind turbines that have been erected in recent times, in Devon, something all parties have referred to, there is no empirical evidence that visitor numbers have been depressed by their presence. In that context, I do not believe that it can properly be concluded that the proposal would have an adverse impact on tourism. This matter does not weigh against the proposal, therefore. **[41, 50]**

Benefits

90. CCCLHPG has criticised the way the appellant has calculated the likely output of the wind turbine. However, the actual amount of power it would generate and the carbon dioxide emissions it would save would be variable, and depend on wind conditions. There is nothing cogent to suggest that the wind turbine proposed would not meet all of the energy needs of the farming enterprise, in the manner claimed, and reduce its carbon footprint. Any excess the proposal produces would be fed into the National Grid and contribute to the UK's international commitments on renewable energy.
91. Even if the SoS for Energy and Climate Change was correct to say that in order to meet 2020 targets, there is no need to erect any more wind turbines beyond those already permitted, given the threat that climate change presents, fully accepted in the approach of the Framework, I do not see how overshooting those 2020 targets, through proposals that do not have an unacceptable environmental impact, can reasonably be seen as a drawback.
92. Bearing in mind the approach of the Framework to renewable energy in general, and specifically the point made in paragraph 98 that applicants for energy development should not be required to demonstrate the overall need for renewable or low carbon energy, and recognition therein that even small-scale projects can provide a valuable contribution to cutting greenhouse gas emissions, the renewable energy the wind turbine would generate must attract significant weight in its favour.
93. Added to that, there can be no doubt that the proposal would generate an income stream that would benefit the farming enterprise and allow for greater investment in it. Bearing in mind the commitment in the Framework to securing economic growth to create jobs and prosperity and meet the twin challenges of global competition and of a low carbon future, that consideration must also carry considerable weight on the positive side of the balance. **[20-21, 38, 49]**

Balancing Exercise

94. The proposal would cause no harm to the setting or the significance of the designated heritage assets identified, or to the living conditions of local residents through visual impact, or noise. There is no cogent evidence that it would have a negative impact on tourism. The proposal would, however, have something of a harmful impact on the landscape but in my judgement, the limited harm that

would be caused would be outweighed by the significant benefits the proposal would bring forward in through the generation of energy from a renewable source, and in terms of the economic performance of the rural enterprise.

95. There would be compliance with LP Policies DM27 and DM7 but against that, a failure to comply with CS Policy COR 2 and LP Policy DM2. However, the development plan policies of most central application are CS Policy COR 5 and LP Policy DM5. On my analysis, the proposal would comply with those policies and, as a result, the development plan as a whole. **[32, 42]**
96. In terms of the Framework, it is my conclusion that the impacts of the proposal are, or can be made, acceptable. It must follow from that, and the way that paragraph 93 approaches the question, that the proposal benefits from the presumption in favour of sustainable development, set out in the Framework. Incidentally, that must mean that the proposal complies with LP Policy DM1 too.
97. The WMS of 18 June 2015 warrants attention, of course. For proposals like that at issue in this appeal, where the transitional provisions apply, we are told that local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.
98. I recognise the way in which this has been approached by the SoS elsewhere, but in my view, a conclusion that the impacts of the scheme are, or can be made, acceptable (as required by the Framework), must reasonably mean that the planning impacts identified by local communities have been addressed. Notwithstanding the level of objection to the proposal, that I readily acknowledge, the use of the word 'therefore' in the WMS must mean that in the circumstances I have set out, the proposal can, as a consequence, be deemed to have their backing. On that basis, the WMS does not justify a decision that would run contrary to the development plan, and the Framework. **[22, 33, 43, 48]**

Recommendation

99. I recommend that the appeal be allowed, and planning permission granted, subject to the conditions set out in Annex 1.

Paul Griffiths

INSPECTOR

Annex 1: Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Westaway/WT/DC: Location Plan; Westaway/WT/DC: Site/Block Plan; Westaway/WT/DC: Turbine Elevations; Westaway/WT/DC: Foundation Details; and ESM_3121CD: GRP Enclosure.
- 3) The permission hereby granted shall endure for a period of 25 years from the date when electricity is first exported from the wind turbine to the electricity grid (the 'First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event. No later than 18 months before the permanent cessation of electricity generation at the site, a decommissioning and site restoration scheme, which shall include a timetable, shall be submitted for the written approval of the local planning authority. The decommissioning and site restoration scheme shall be implemented and completed, in accordance with the approved details.
- 4) If the wind turbine hereby permitted ceases to produce electricity for a continuous period of 12 months, then a scheme for the decommissioning and removal of the wind turbine, and the restoration of the site, and a timetable for all that, shall be submitted to the local planning authority for written approval within 6 months of the end of the 12 month period. The scheme shall be completed in accordance with the approved details.
- 5) All cabling serving the wind turbine approved herein shall be laid underground.
- 6) The noise emissions from the wind turbine approved herein shall not exceed LA90, 10 minutes of 35dB(A) at any dwelling lawfully existing at the date of this permission, at wind speeds up to and including 10m/s, at 10m height.
- 7) No development shall take place until a Construction and Delivery Traffic Management Plan (CDTMP) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CDTMP.
- 8) No development shall take place until details of the colour(s) and finish(es) of the wind turbine approved herein have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.



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 for permission 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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: 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 Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.