



Department for  
Communities and  
Local Government

Michelle Smith  
Eversheds LLP  
Bridgewater Place  
Water Lane  
LEEDS  
LS11 5DR

Our Ref: APP/R1010/A/14/2212093

12 March 2015

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY ROSELAND COMMUNITY WINDFARM LLP:  
LAND EAST OF ROTHERHAM ROAD, BOLSOVER, DERBYSHIRE  
APPLICATION REF: 12/00159/FULEA**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul K Jackson BArch (Hons) RIBA, who held a public local inquiry which opened on 4 November 2014 into your client's appeal against the decision of Bolsover District Council (the Council) to refuse planning permission for a windfarm comprising 6 wind turbines, control building, anemometer mast and associated access tracks on a site approximately 2.5km south of Bolsover between the villages of Palterton and Shirebrook, in accordance with application reference 12/00159/FULEA, dated 25 April 2012.
2. On 20 June 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990, because it involves a renewable energy development.

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

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

Julian Pitt  
Planning Casework Division  
Department for Communities and Local Government  
3rd Floor, Fry House  
2 Marsham Street  
London SW1P 4DF

Tel 0303 44 41630  
Email [pcc@communities.gsi.gov.uk](mailto:pcc@communities.gsi.gov.uk)

## **Procedural matters**

4. In coming to his decision, the Secretary of State has taken into account the Environmental Statement (ES) prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended, the Supplementary Environmental Information (SEI) including a visualisations addendum, and the Further Environmental Information (FEI) which supplements and in some cases supersedes the ES and SEI (IR4). The Secretary of State is satisfied that the ES, SEI and FEI comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.

## **Policy considerations**

5. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Bolsover District Local Plan (LP) of February 2000. The Secretary of State agrees with the Inspector that the most relevant LP policies in this case are those set out in IR12-13. For the reasons in IR252, he agrees with the Inspector that the weight to be attached to any non-compliance of the proposed development with LP policies CON 4 and CON 10 is reduced. He considers that this does not obviate the need to assess the proposal against the development plan, but that the National Planning Policy Framework (the Framework) and paragraph 14 in particular carries more weight as a material consideration; and that for decision making this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
6. Other material considerations which the Secretary of State has taken into account besides the include the Framework include the associated planning practice guidance; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; EU Directive 2009/28/EC (The Renewables Directive); The Climate Change Act 2008; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the UK Renewable Energy Strategy; the UK Low Carbon Transition Plan; the UK Renewable Energy Roadmap (the Roadmap) published in 2011 and the update to the Roadmap published in 2013; the Community Energy Strategy (2014); the Community Engagement for Onshore Wind Developments: Best Practice Guidance for England (2014); the Community Benefits from Onshore Wind Developments: Best Practice Guidance for England (2014); and the supplementary planning documents *The Historic Environment* adopted by the Council in March 2006 and the Conservation Area Appraisals and Management Plans for Stony Houghton, Scarcliffe, Aston and Hardstoft Conservation Areas. 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.
7. For the reasons set out in IR14, the Secretary of State agrees with the Inspector that the replacement Local Development Framework in the form of the Bolsover Local Plan Strategy cannot be attributed any weight.

8. 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 scheme or their settings or any features of special architectural or historic interest which they may possess. He has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the LB Act. He notes that the appeal site is not within any conservation area but that the proposed turbines would be visible from the nearest conservation areas in Stony Houghton, Scarcliffe, Palterton and Hardwick and Rowthorne (IR28).

### **Main issues**

9. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR251.

#### The effect on the settings of designated heritage assets

10. The Secretary of State agrees that the Hardwick assemblage is of national importance and Hardwick New Hall is of international importance (IR256). For the reasons in IR255-2643, he agrees with the Inspector that the impact of the proposal on the setting of the Hardwick assemblage would not be one of substantial harm but would be considerably higher than suggested by the appellant (IR264).
11. For the reasons in IR265-267, the Secretary of State agrees with the Inspector that the effect on the setting of Bolsover Castle, and on its heritage significance, would be minor (IR267). For the reasons in IR268-269, he agrees with the Inspector that the turbines would only influence the setting of Sutton Scarsdale Hall to a minor extent and would not be so prominent as to significantly distract attention from the much nearer Bolsover Castle (IR269). For the reasons in IR270-273, he also agrees that the level of harm to the heritage significance of St Leonard's Church through harm to its setting, and the harm to the character and appearance and heritage interest of the Scarcliffe Conservation Area, would fall short of substantial (IR273).
12. For the reasons in IR274-278, the Secretary of State agrees with the Inspector that: the effect on the Stony Houghton Conservation Area would fall short of substantial harm (IR278). For the reasons in IR279-280, the Secretary of State agrees that the harm to the setting and heritage significance of Hall Farmhouse would be appreciably adverse and, although less than substantial in terms of the Framework, would be a material factor to weigh in the balance (IR281). For the reasons in IR282-283, he also agrees that the overall level of harm to the Palterton Conservation Area would be minor/moderate and less than substantial in terms of the Framework (IR283). For the reasons in IR284-286, he agrees that a high level of harm would be incurred to the Hardwick and Rowthorne Conservation Area but that it would not breach the threshold of substantial harm to heritage significance (IR286).
13. The Secretary of State notes, like the Inspector, that most of the other heritage assets within a 5km radius of the appeal site would not be significantly affected (IR287). However, for the reasons in IR287, he agrees that the level of harm to setting and consequently heritage significance of Glapwell Farm would be significantly greater than that indicated by the appellant although it would not breach the threshold of substantial harm in terms of the Framework. For the reasons in IR288, he also agrees that the proposed turbines would erode the experience of the setting of the Astwith and Hardstoft Conservation Areas and that this harm needs to be considered in the final balance.

### *Other considerations*

14. For the reasons in IR290, the Secretary of State agrees with the Inspector that the evidence suggests that walking or riding the paths around Scarcliffe and Stony Houghton would be appreciably less attractive than it is now as a result of the development. As to the visual impact on local occupiers, he agrees that considerations of distance and orientation mean that the visual impact would not be so significant as to conflict with the visual amenity protection aims of the LP or national policy (IR291). Turning to living conditions, he agrees with the Inspector that in no case would turbines be so close or so numerous in the field of view from any dwelling as to significantly overwhelm the occupants or to be overbearing or oppressive to the extent that their dwelling would be an unacceptable place to live, although the effect on the occupiers of Harrison's Nursery bungalow would be near the cusp of acceptability (IR292).
15. For the reasons in IR294-295, the Secretary of State agrees with the Inspector that there would be a moderate/substantial adverse effect on the landscape where it is a key characteristic of a heritage asset but that this does not add any additional weight in the balance to the harm identified to the setting of the heritage asset itself (IR295). For the reasons in IR296, he also agrees that the proposed wind turbines would not, in conjunction with any other planned, constructed or operational wind turbines, have any unacceptable cumulative impact on landscape character or heritage assets.
16. The Secretary of State agrees with the Inspector that noise limits set out in Government guidance would not be breached by the proposal and that, if they were, conditions could be imposed to protect the interests of nearby occupiers. Regarding shadow flicker, he agrees that a condition could be imposed to ensure the turbines were turned off in circumstances when sunlight and orientation and wind speed combine to cause a nuisance (IR297).

### Benefits

17. The Secretary of State agrees with the Inspector's assessment at IR299-300 of the national policy support and renewable energy benefits of the scheme. He agrees that the proposed energy generation of up to 10.8-15 megawatts (depending on the final turbine chosen) would contribute substantially to the supply of renewable electricity in the area; that the project would provide electricity for between 7900 and 9200 homes or about 9% of the population in the Council's area, with an ongoing saving in CO<sub>2</sub> emissions and contribution to combating climate change for the life of the scheme; and that there is also the potential to provide some economic stimulus to the local area (IR300). For the reasons in IR301, he also agrees that some weight should be attached to the community led aspects of the scheme (IR301). However he does not agree that the scheme would be entirely sustainable (IR302) because of the harmful impact on heritage features and paragraph 7 of introduction to the Framework states that the environmental dimension of sustainable development includes contributing to protecting and enhancing the historic environment.

### **Conditions and planning obligation**

18. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed planning conditions (IR241-244). He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework. However, he does not consider that these conditions overcome his reasons for dismissing the appeal.

19. The Secretary of State agrees with the Inspector's reasoning and conclusions on the S106 Planning Obligation in IR245-250. For the reasons set out in those paragraphs, he agrees that the Planning Obligation as a whole attracts only limited weight (IR250).

### **Planning balance and overall conclusion**

20. The Secretary of State has given careful consideration to the Inspector's balancing exercise and consideration of policy matters at IR299-309, and his overall recommendation at IR310. He agrees with the Inspector's assessment of the renewable energy benefits of the scheme and that there is also the potential to provide some economic stimulus to the local area (IR300). He considers that the renewable energy benefits of the scheme attract significant weight in its favour. He also considers that some weight should be attached to the community led aspects of the scheme (IR301). However, he also agrees with the Inspector's assessment of the harm that would be caused to heritage assets, as summarised in IR303 on the basis of the Inspector's detailed conclusions on individual assets, and that the level of harm would in certain cases be greater than that acknowledged by the appellant and in other cases appreciably greater (IR304). He also agrees that whilst the harm would be below that of 'substantial harm' as set out in the Framework, the harm must still be weighed against the public benefits in the planning balance (IR304). He also agrees that there would be appreciable harm to visual amenity for users of public rights of way around Stony Houghton and Scarcliffe and to a lesser extent, Hardwick and Rowthorne Conservation Area (IR304). However, he agrees that there are no situations in this case where the overall level of harm is greater than any of the parts (IR305).
21. In view his duty under s66 of the LB Act, the Secretary of State attaches considerable importance and weight to the desirability of preserving the setting of the various heritage assets that would be affected by the proposed development. Overall, the Secretary of State agrees with the Inspector that the adverse impacts of the proposal on the settings of Stony Houghton Conservation Area, Scarcliffe Conservation Area and the Hardwick and Rowthorne Conservation Area including the settings of listed buildings within them, particularly St Leonards Church, Hall Farmhouse and Hardwick New Hall, brought about by the scheme's relatively close proximity and high level of visibility, constitute a high level of harm to heritage significance which while less than substantial, significantly and demonstrably outweighs the benefits of the proposal (IR309). He also agrees that the harm to a range of other heritage assets, landscape character and visual amenity, adds to that harm; and that the reversibility of the proposal carries little weight in view of the adverse effects of the turbines in this sensitive location which would last for a generation (IR309).
22. The weight that can be attached to LP policies CON 4 and CON 10 is reduced in view of them not being fully consistent with relevant policy on heritage matters in the Framework. Nevertheless the Secretary of State considers that the scheme would conflict with LP policies CON 4 and CON 10 and for this reason with the development plan as a whole. Having had regard to paragraph 98 of the Framework, he considers that the harmful impacts of the scheme are not and cannot be made acceptable. He concludes that the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

**Formal decision**

23. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a windfarm comprising 6 wind turbines, control building, anemometer mast and associated access tracks on a site approximately 2.5km south of Bolsover between the villages of Palterton and Shirebrook, in accordance with application reference 12/00159/FULEA, dated 25 April 2012.

**Right to challenge the decision**

24. 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.

25. A copy of this letter has been sent to Bolsover District Council.

Yours faithfully

**JULIAN PITT**

Authorised by Secretary of State to sign in that behalf

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

**by Paul K Jackson B Arch (Hons) RIBA**

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

**Date: 27 January 2015**

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**Town and Country Planning Act 1990**

**Bolsover District Council**

**Appeal by**

**Roseland Community Windfarm LLP**

Inquiry opened on 4 November 2014

Land east of Rotherham Road, Bolsover, Derbyshire

File Ref: APP/R1010/A/14/2212093

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**File Ref: APP/R1010/A/14/2212093**

**Land east of Rotherham Road, Bolsover, Derbyshire**

- The application was recovered for decision by the Secretary of State by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 20 June 2014.
- The appeal is made by Roseland Community Windfarm LLP against the decision of Bolsover District Council.
- The application Ref 12/00159/FULEA, dated 25 April 2012, was refused by notice dated 19 July 2013.
- The development proposed is a windfarm comprising 6 Nr. wind turbines, control building, anemometer mast and associated access tracks on a site approximately 2.5km south of Bolsover between the villages of Palterton and Shirebrook.

**Summary of Recommendation: That the appeal be dismissed**

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**Preliminary Matters**

1. The Inquiry opened on 4 November 2014 and sat for 6 days. An accompanied site visit was carried out over 2 days on 13 and 14 November 2014. I carried out extensive unaccompanied visits in the surrounding area at other times including publicly accessible locations and viewpoints identified at the Inquiry and in representations, as well as the listed buildings and other heritage assets and public rights of way drawn to my attention.
2. Turbines are referred to in the Report as S1-S6<sup>1</sup>. Before and during the site visits, turbine positions were marked on the ground with coloured flag markers.
3. Prior to the Inquiry, 'Rule 6' status was granted to the National Trust (NT) the owner of the Hardwick Hall group of heritage assets.
4. The planning applications were accompanied by an Environmental Statement (ES) dated March 2012, prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended. Supplementary Environmental Information (SEI) was submitted in May 2013 including a visualisations addendum. Further Environmental Information (FEI) was requested by the Planning Inspectorate pursuant to Regulation 22, containing information on cultural heritage and other matters which supplements and in some cases supersedes the ES and FEI. This was submitted in August 2014. I have taken these documents into account.
5. A signed and dated section 106 (S106) unilateral undertaking<sup>2</sup> (UU) has been submitted by the appellant. The aims of this are the provision of a bond to ensure the decommissioning and dismantling of the turbines; the provision of a historic environment enhancement fund; and the provision of replacement/new tree planting in the churchyard of St Leonard's, Scarcliffe. I consider the S106 later in this Report.

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<sup>1</sup> The westernmost turbine is notated as S1 and that at the far north eastern end of the development is S6, in accordance with the General Scheme Layout, application drawing Fig 4.1.

<sup>2</sup> Inquiry Document (Doc) 44

## The site and its surroundings

6. The following site description is adapted from that contained in the Statement of Common Ground<sup>3</sup> (SOCG). The proposed development is located on agricultural land approximately 2.5 kilometres (km) to the south east of the edge of the town of Bolsover, 1.8 km to the east of the village of Palterton, 1.1 km to the south of Scarcliffe, 1.5 km to the north east of Glapwell, 530 m to the north of the hamlet of Stony Houghton and 910 m to the west of the settlement of Shirebrook. A location plan identifying the appeal site forms part of the application documents at Figures 1.1 and 4.1. The proposed development lies on a plateau of the Magnesian Limestone 'dip slope' ranging between about 170m above ordnance datum (AOD) in the west and 135m AOD in the east. The west facing escarpment forms a prominent ridge between Bolsover and Glapwell when viewed from the west and varies in elevation from 80-180m AOD. The landform to the east of the escarpment consists of gently undulating and areas of flatter land.<sup>4</sup>
7. Roseland Wood and Langwith Wood lie on the northern boundary of the site between it and Scarcliffe. The Archaeological Way bridleway passes through the western part of the site before entering Roseland Wood on its western side and then passing through Langwith Wood. The line of a disused railway in a cutting crosses the land south of Scarcliffe and this is characterised by a linear area of woodland. This area is dominated by medium to large arable fields with smaller fields associated with Scarcliffe Village.
8. The area immediately south of the site is a more open landscape of large arable fields, with some hedged field boundaries and scattered hedgerow trees. The area is traversed by a line of overhead electricity pylons. A linear shelterbelt follows the north-south alignment of sloping land between Stony Houghton and Pleasley Park; however the landscape predominantly has an open elevated character.
9. The single reason for refusal refers to the effect of the proposed development on the setting and significance of the following heritage assets, all set within the landscape of the limestone ridge and within about 5 km of the nearest turbine (though Sutton Scarsdale Hall lies about 6 km away on a ridge to the west on the other side of the Doe Lea valley):
  - The Hardwick group of assets, comprising Hardwick (New) Hall (listed Grade I), Hardwick Old Hall (Grade I), and related listed buildings and grounds (designated as a Registered Park and Garden (RPG) at Grade I);
  - Bolsover Castle (Scheduled Ancient Monument (SAM) and listed at Grade I);
  - Sutton Scarsdale Hall (Grade I);
  - St Leonard's Church, Scarcliffe (Grade II\*);
  - Stony Houghton Conservation Area;
  - Scarcliffe Conservation Area;
  - Palterton Conservation Area;

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<sup>3</sup> Core Document (CD) 8.6 at paragraph 5.7

<sup>4</sup> An informative and useful history of the area is contained in the Bolsover Historic Environment SPD CD 3.1

- Hardwick and Rowthorne Conservation Area;
10. Other heritage assets are referred to by the parties, some within the conservation areas above. These are covered in the Report in the conclusions section.

### **The proposal**

11. The 6 wind turbines would each be 126.5m high with a hub height of 80m. The actual turbine is not specified but would be between 1.8-2.5 megawatt (MW) rated output each, leading to approximately 10.8 -15 MW total capacity. Following measurements taken over 2 years and allowing for the expected capacity factor of between 27-32 %, the development could provide enough electricity for between 7750 and 9050 UK homes, depending on the turbine chosen<sup>5</sup>. A substation would be provided to the west of the development towards the edge of an open field and near to the B6417 Rotherham Road between Pleasley and Clowne.

### **Planning policy**

12. For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the adopted development plan comprises saved policies of the Bolsover District Local Plan (LP)<sup>6</sup> of February 2000. Policies CON 4 and CON 10 are referred to in the reason for refusal and are most relevant. CON 4 concerns development in areas adjacent to, but outside conservation areas (CAs), which the explanatory text says can have a major effect on their character and setting. It says that development adjacent to a CA shall preserve or enhance the special character and setting of the CA; planning permission will not be granted for proposals which would have a detrimental effect on the special character or setting of the CA including views into or out from the CA. Policy CON 10 advises that development which affects the setting of a listed building shall preserve or enhance that setting; proposals which would have a detrimental effect on the setting will not be granted planning permission.
13. Other relevant policies are LP policy ENV 3 which seeks to control development in the countryside, and policy GEN 2 which advises that consideration will be given to the character and sensitivity of the land and uses around a proposed development site in relation to the character and type of development proposed. Planning permission will not be granted for development which creates materially harmful impacts on the local environment, unless these are outweighed by the social or economic benefits to the community offered by the development, or the wider environmental benefits. A comprehensive list of relevant factors to be considered includes visual appearance, noise, the effects on traffic, daylight and sunlight, the effect on natural beauty and nature conservation; and the extent of any damage or despoliation of land or buildings on or near the proposed site which have noted significance in terms of archaeology, architecture or history.
14. A replacement Local Development Framework in the form of the Bolsover Local Plan Strategy (LPS) was published for consultation in mid 2013 with a public Hearing in April 2014. For reasons unconnected with this appeal, the LPS was

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<sup>5</sup> Based on the most recent assessment at Doc 8.

<sup>6</sup> CD 1.1

withdrawn in May 2014 and it is common ground that it cannot be attributed any weight. It is relevant however that emerging policy LP13 is referred to in the reason for refusal; this aims to safeguard and enhance the appearance and character of the landscape.

### *Supplementary Planning Documents*

15. Relevant supplementary planning documents (SPD) include *The Historic Environment* adopted by Bolsover in March 2006<sup>7</sup> and Conservation Area Appraisals and Management Plans<sup>8</sup> (CAAMP) for Stony Houghton, Scarcliffe, Aston and Hardstoft Conservation Areas. The Historic Environment provides useful background information and advice relating to the heritage assets in Bolsover.

### *National policy*

16. As a result of EU Directive 2009/28/EC, the UK is committed to a legally binding target to achieve 15% of all energy generated from renewable resources, including electricity, heat and transport, by 2020. The 2006 Energy Review has an aspiration of 20% of electricity to be from renewable resources by 2020. The Climate Change Act of 2008 sets a target of at least an 80% cut in greenhouse gas emissions by 2050. The overarching strategy to reduce carbon emissions to meet the requirements of the EU Directive and the Climate Change Act is contained in the 2009 UK Renewable Energy Strategy and the UK Low Carbon Transition Plan; the lead scenario is that 30% of electricity is to be derived from renewable resources by 2020, though this is not binding. The UK Renewable Energy Roadmap (the Roadmap) was published in 2011 and focuses on 8 technologies which are considered to offer the greatest potential to deliver the infrastructure to meet the target, including onshore wind energy. An update to the Roadmap was published in November 2013<sup>9</sup> which confirms that to the end of June 2013, there was a total of installed onshore wind capacity of 7.0 Gigawatts (GW). A total of over 19.5GW of onshore wind capacity was in operation, under construction or had entered the formal planning system. The document records that very good progress has been made against the 15% target but that the Government retains strong ambitions for renewables deployment beyond 2020.
17. Not all of the developments anticipated in the Roadmap will be consented and not everything will be built, but the majority of new onshore wind developments will be in Scotland. There is no cap on capacity. The Roadmap advises that onshore wind, as one of the most cost effective and proven renewable energy technologies, has an important part to play in a responsible and balanced UK energy policy. The Government will continue to provide a stable long term investment framework for the sector.
18. The 2013 Update states that the Government recognises that some people have concerns about onshore wind developments and it remains committed to ensuring that projects are built in the right places, with the support of local communities; and that they deliver real local economic benefits. New proposals are still needed to meet the 2020 ambition and longer term decarbonisation.

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<sup>7</sup> CD 3.1

<sup>8</sup> CDs 7.8, 7.9, 7.19 & 7.20

<sup>9</sup> CD 6.11

19. The Framework of 2012 replaced the previous Planning Policy Statements (PPSs) and Planning Policy Guidance Notes, though the PPS5 Planning for the Historic Environment Practice Guide (PPS5PG) remains extant. The Framework says at paragraph 98 that applicants for energy development should not have to demonstrate the overall need for renewable or low carbon energy. Applications should be approved<sup>10</sup> if their impacts are (or can be made) acceptable. The Framework advises that decision makers should follow the approach set out in the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3), read with the Overarching NPS for Energy (EN-1), both dated 2011.
20. The advice needs to be read as a whole. Particularly relevant to this case is section 5.8 of EN-1 which concerns the historic environment. Paragraph 5.8.18 says that when considering applications for development affecting the setting of a designated heritage asset, the IPC (or the decision maker) should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the decision maker should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.
21. Paragraph 5.9.18 advises that all proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites and that a judgement has to be made on whether the visual effects on sensitive receptors, such as local residents and visitors to the area, outweigh the benefits of the project. EN-3 states at paragraph 2.7.6 that appropriate distances should be maintained between wind turbines and sensitive receptors to protect amenity, the two main impact issues being visual amenity and noise. Paragraphs 2.7.48/49 say that commercial wind farms are large structures and that there will always be significant landscape and visual effects for a number of kilometres around a site; the arrangement of turbines should be carefully designed to minimise effects on the landscape and visual amenity whilst meeting technical and operational siting requirements and other constraints.
22. The Framework has a number of core principles at paragraph 17. One of these specifically supports the transition to a low carbon future in a changing climate and encourages the use of renewable resources (for example, by the development of renewable energy). Another core principle says that a good standard of amenity should always be sought for existing and future occupants of buildings and that planning should take account of the different roles and character of different areas.....recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it. Another says that planning should also conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.
23. The Planning Guidance of March 2014 (PPG) advises in the section on renewable and low carbon energy that:
  - the need for renewable or low carbon energy does not automatically override environmental protections;

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<sup>10</sup> Unless material considerations indicate otherwise

- cumulative impacts require particular attention, especially the increasing impact that wind turbines and large scale solar farms can have on landscape and local amenity as the number of turbines and solar arrays in an area increases;
  - local topography is an important factor in assessing whether wind turbines and large scale solar farms could have a damaging effect on landscape and recognise that the impact can be as great in predominately flat landscapes as in hilly or mountainous areas;
  - great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting;
  - proposals in National Parks and Areas of Outstanding Natural Beauty, and in areas close to them where there could be an adverse impact on the protected area, will need careful consideration;
  - protecting local amenity is an important consideration which should be given proper weight in planning decisions
24. The PPG also provides advice on conserving and enhancing the historic environment, saying that heritage assets are an irreplaceable resource and effective conservation delivers wider social, cultural, economic and environmental benefits. In assessing whether 'substantial harm' in the terms of the Framework is likely to occur, it says: *'What matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset. As the Framework makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting. Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.'*
25. Under the section 'How can proposals avoid or minimise harm to the significance of a heritage asset?' the guidance says *'A clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimise harm. Early appraisals, a conservation plan or targeted specialist investigation can help to identify constraints and opportunities arising from the asset at an early stage. Such studies can reveal alternative development options, for example more sensitive designs or different orientations, that will deliver public benefits in a more sustainable and appropriate way'.*

26. The most recent advice in the PPG<sup>11</sup> with regard to how heritage should be taken into account in assessing wind turbine applications is: *'As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.'*
27. In accordance with the statutory duty set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), special regard must be paid to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess. The preservation of setting is to be treated as a desired or sought-after objective, and considerable importance and weight attaches to the desirability of preserving the setting of listed buildings when weighing this factor in the balance.
28. As required by section 72(1) of the LBCA, special attention must also be given, with respect to any buildings or other land in a conservation area, to the desirability of preserving or enhancing the character or appearance of that area. The appeal site is not within any CA but the proposed turbines would be visible from the nearest CAs in Stony Houghton, Scarcliffe, Palterton and Hardwick and Rowthorne. In a wind energy case at Asfordby<sup>12</sup>, the Secretary of State noted that special attention should be paid to the desirability of preserving or enhancing the character of those conservation areas whose settings would be affected by the appeal scheme.

### **The case for Roseland Community Windfarm LLP**

*The main points are:*

29. It is clear that Government expectations are that all future onshore wind farms in this country should include an element of community ownership. The development of this scheme can and should be seen as a "best case example" of a large scale community energy project and if constructed it would make a significant contribution towards the Government's aspirations. Roseland Community Wind Farm LLP was established to develop the proposed development with a view to distributing profits generated by it back into the local communities of Bolsover, Ashfield and Mansfield. The project was instigated by the Local Enterprise Organisation (LEO) and funded through the Local Enterprise Growth Initiative programme. It has emerged to deliver long term funds and additional community funding and benefits to lend support to a variety of much needed projects throughout the local area.
30. The real 'catastrophe' facing Bolsover is the grim reading provided by deprivation indices. If the Government is serious about promoting sustainable development, renewable energy generation and a local community working to better itself; to shape its own future; to decide how its local environment will appear; to

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<sup>11</sup> 6 March 2014

<sup>12</sup> CD 5.8

prioritise what it values as opposed to being told by others what it should value, then it has to fully support initiatives like this.

31. The appellant does not attach weight to either pure economic benefits or the identity and nature of the applicant. The first is a long established principle. Regarding the second, such a submission has never been part of the appellant's case. The *Awel Aman Tawe Cyfngedig v NAW* [2007] ALL ER 69<sup>13</sup> case was decided in a wholly different policy climate in Wales and is nothing to the point.
32. The appellant does attach significant weight to current government planning policy regarding the encouragement of community led renewable energy initiatives. The Council accepts that there is linkage between the proposed development and paragraph 97 of the Framework and has been forced to move from a position in which it was saying that as a matter of principle anything to do with the community led initiative was immaterial to the final decision, to one in which the amount of weight to be attached to policy compliance is a matter for the decision maker. On this basis, this factor must weigh in favour in the balance. Paragraph 97 says that *"To help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources. They should: (4th bullet point) support community-led initiatives for renewable and low carbon energy, including developments outside such areas being taken forward through neighbourhood planning"*. This is clearly concerned with development management decision making in the here and now. Paragraph 97 is expressly concerned with decision making just as much as forward planning.
33. Against the backdrop of the Community Energy Strategy, the PPG goes further than the Framework and states that local authorities may wish to establish policies which give positive weight to renewable and low carbon energy initiatives which have clear evidence of local community involvement and leadership. The Community Ownership Taskforce Report<sup>14</sup> is clear that community led initiatives have got to be seen to be receiving a helping hand in the planning system to incentivise local people. Otherwise, the question would be "why on earth would the community embark on the mammoth process of assembling a team spending hundreds of thousands of pounds which it will have to raise, only to be told that its expenditure of time and money does not count?" To this can be added the fact that it is only likely to be the poorer communities, such as this local post-coalfield community which are in the least obvious positions to waste time and money, which are likely to even entertain such an idea of betterment. Wealthier communities hardly need to bother.

### *Local objection*

34. As with any other case, it is important to disentangle the material planning concerns raised by local objectors from the more general invective aimed at fending off change of any sort. Of course local residents identify the local landscape, townscape and heritage as unique and as valued by them. Just like everywhere else, they are valued and there is nothing unusual or unique in this situation. The key is to ensure that the location and design of the wind farm are

<sup>13</sup> Doc 6

<sup>14</sup> Doc 9



such that any inevitable effects do not give rise to unacceptable impacts. The fact that objections have been made by local people does not compel the decision maker to accept them. Sometimes the general public interest is served by overriding the views of the community. The PPG reminds the decision maker to pay attention to local views but it did not give those views a significance they would not otherwise have had, beyond the fact that they are the views of people who will have to live with the development if it goes ahead. Accordingly, it is clear that it is land use planning concerns which should be accorded due weight. Vocal opposition is limited to a relatively small number of local people.

35. The only substantive issue in this appeal is the potential impact on cultural heritage assets. However, the thrust of the heritage protection guidance in the Framework is about managing appropriate change in the historic environment responsibly, not about avoiding harm altogether. This planning appeal need not be about the interests of community ownership and renewable energy trumping the interest of preserving heritage significance or vice versa. Rather, it is a case in which both the important and statutorily backed objectives of renewable energy generation, for an economically deprived local community, and heritage protection, can both be achieved.
36. It is noteworthy that the reason for refusal did not refer to 'substantial harm' to the significance of any designated heritage asset at all. The professional planning officers expressly distinguished between 'substantial harm' and 'less than substantial' harm in the report to committee so that the terms would be understood by members. It is entirely reasonable to conclude that elected members eschewed any finding of 'substantial harm' and it was only pursuant to delegated powers that a finding of 'substantial harm' first surfaced in the Council's case in its Statement of Case. This point goes directly to the strength of the Council's position. The truth is that both the Council and the NT find 'substantial harm' far too easily.

#### *The development plan*

37. It is accepted by the Council that the adopted development plan is silent on the topic of renewable energy. It simply does not provide an up to date criteria-based policy for the assessment of on shore wind farm proposals. Accordingly, the second limb of the decision making part of paragraph 14 of the Framework is engaged. Footnote 9 requires the decision maker to consider whether there are any policies of restriction in the Framework. A sub-issue is whether all of paragraphs 132, 133 and 134 comprise policies of restriction or whether paragraph 133 does and paragraph 134 does not. In any event, the appellant submits that when tested against such 'gatekeeper' policies, the proposed development would comply and the presumption in favour of sustainable development in paragraph 14 is then re-engaged.
38. What this means is that planning permission should be granted providing that identified harm does not significantly and demonstrably outweigh the benefits of the scheme. This is precisely the approach which was recently endorsed by the Secretary of State<sup>15</sup>. This is not a 'nuance' point; it is about articulating and employing the statutory and policy presumptions in the right way. The additional assistance afforded to developments in cases in which the adopted development

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<sup>15</sup> The Turncole appeal CD 5.9

plan is silent could well make the difference between approval and refusal in any given case.

### *Other Material Considerations*

#### *Ministerial Statements and the Planning Guidance*

39. Taken together and properly understood, recent Ministerial Statements did not constitute a change in Government planning policy in relation to onshore wind development and deployment. Nor did they signal any diminution in the need case for onshore wind. Nor did they direct the decision maker to do anything differently. They gave notice of and looked forward to the PPG. When the PPG arrived, the four bullet points identified within the Ministerial Statements as being matters that need to be carefully considered were carried forward with the addition of two more (1) the need case (2) cumulative matters (3) topography (4) heritage assets (5) national designations and (6) amenity. However, all these points were already addressed in national planning policy and guidance and well known decided case law; and they gain no greater weight from being repeated.
40. When Government policy documents are read together, there is no reasonable room for dispute regarding the seriousness of climate change and its potential effects, the seriousness of the need to cut carbon dioxide emissions or the seriousness of the Coalition Government's intentions regarding deployment of renewable energy generation. The Roadmap Update, written in November 2013 confirms that on-shore wind continues to have an important role to play in UK energy policy and a long term investment programme underpins that commitment. As with the 2012 Update, the document emphasises the economic benefits presented by renewable energy. In summary, the document:
- Emphasises that renewable energy offers the UK a wide range of benefits from an economic growth, energy security and climate change perspective;
  - 4.1% of energy consumption came from renewable sources in 2012 against a target of 15% by 2020;
  - On-shore wind is one of the most cost effective and proven renewable energy technologies and has an important part to play in a responsible and balanced UK energy policy;
  - Renewable energy helps the UK achieve challenging decarbonisation targets and a key benefit of deploying renewable energy technologies is the potential reduction in carbon emissions.
41. It would be erroneous to suggest that somehow the need case for onshore wind has abated on account of good progress to date and that it is necessary that a scheme should do less harm than in circumstances when need was more urgent. NPS EN-1 makes it crystal clear that the need for renewable energy remains urgent. The Secretary of State was explicit in recognising this point in recent decisions<sup>16</sup>. Neither the Council nor the NT takes a performance related case against the proposed development.

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<sup>16</sup> Treading Bank and East Heslerton CDs 5.5 & 5.18

*The principal issue*

42. The appellant has prepared detailed legal submissions on cultural heritage<sup>17</sup> and reliance is placed on them. The following summary points can be made:
43. Neither the Council nor the NT argue that heritage related tourism would suffer as a result of the proposed turbines. With the wind farm in place, there is no credible suggestion that fewer people, whether on a day trip or holiday, would visit the local area in general or the assets in particular. Accordingly, the proposed development would not result in any adverse economic impact on heritage assets.
44. In respect of English Heritage (EH), there appears to have been an immediate assumption at the scoping stage, before any assessment had been carried out, that there would be an objectionable adverse effect. This comment set the negative tone for all subsequent EH responses. Overall, the appellant submits that the EH consultation response to the ES was based on generalisations, unexplained assertions and exaggeration, which shortcomings have been followed through in its written representation. It is telling that EH has not been prepared to play an active part in this inquiry and subject its views to cross-examination.
45. Similarly, the County Development Control Archaeologist expressed strong opposition and found even more widespread “substantial harm” than EH. He has never undertaken a proper planning balance.
46. There are differences between the Council and the appellant resulting from employment of different methodologies and differently calibrated judgments, but there are well defined and clear reasons why the appellant considers the Council’s conclusions to be wrong, but fairly accepts that the latter’s approach lies within the province of reason.
47. In stark contrast, the NT gave manifestly weak evidence which infected the whole of its case. One example which stands out was the articulation of the threshold for substantial harm as being a ‘catastrophic’ effect; based on a single snap shot from Deep Lane, the NT considered that the turbines would have just such a ‘catastrophic’ effect on the overall heritage significance of the Hardwick assemblage. This is patently exaggerated and based upon a misunderstanding of how harm to heritage significance should be judged.
48. The NT’s heritage witness was never in a position in which he could form a balanced overall view of the planning merits; very quickly, he accepted that he had engaged only with harm and not with the benefits of the scheme. No evidence on renewable energy policy or the benefits of a community led initiative has been provided. His attempt to strike the planning balance must be ignored. The appellant’s heritage witness is eminently qualified in this field and is the only expert witness to have provided a detailed and illuminating explanation of his terminology, methodology, understanding of current legal principles and findings of harm. Whilst the language of ‘pentiles’<sup>18</sup> might appear overly mathematical to some, it is a straightforward enough way of stratifying harm within the category

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<sup>17</sup> Doc 2

<sup>18</sup> The division of ‘less than substantial harm’ into 5 equal gradations. See Dr Colcutt’s proof of evidence and appendices

of 'less than substantial harm'. His lower threshold of what constitutes 'material' cultural heritage related planning harm is clearly reasoned and explained. That there are adverse effects on the significance of heritage assets which are not material in the planning sense is readily accepted by the appellant and the NT who both agree that 'negligible' and 'minor' adverse effects do not register. The appellant does not consider 'moderate' adverse impacts to be material harm but of course it would be wholly improper to simply try and 'read across' from one methodology to another. What the appellant considers to be a medium adverse effect is not necessarily the same thing as what the Council or the NT would categorise as a medium adverse effect. It is only using the appellant's terminology and calibration of adverse effects that moderate impacts would not sound as being material harm.

49. The appellant's understanding of 'substantial harm' is entirely right and based on the freestanding and non case specific advice given by Jay J in the Bedford case<sup>19</sup> and more latterly the PPG with its description of a 'high test'. The threshold of 'substantial harm' would be at the same level whatever the grade of designated asset; in other words, substantial harm could be found in the case of a Grade II listed asset in exactly the same way as in the case of a higher grade asset.
50. The appellant readily accepts that some significant cultural heritage effects are likely to arise from the proposed development, as argued in detail in the August 2014 CH FEI and at the Inquiry. The effects can be summarised as follows. The four entries in bold are those assets which are considered to be likely to sustain material planning harm, all at a less than substantial level.

Scarcliffe CA	<b>Major</b> (1st pentile less than substantial harm (LSH))
St. Leonard's Church, Scarcliffe	<b>Major</b> (3rd pentile LSH)
Stony Houghton CA	<b>Major</b> (4th pentile LSH)
Hall Farmhouse, Stony Houghton	Moderate
Glapwell Lane House	Moderate
Sutton Scarsdale Hall	Minor
Bolsover Castle	Minor
St. Johns Church, Hardwick and Rowthorne	Moderate
Palterton CA	Minor/Moderate
Hardwick New Hall	<b>Major</b> (1st pentile LSH)
Hardwick Old Hall	Minor
Hardwick Hall RPG	No more than Moderate
Hardwick and Rowthorne CA	No more than Moderate
Stainsby Mill	Minor

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<sup>19</sup> CD 4.7

Looking at each in detail:

*Scarcliffe Conservation Area*

51. The probable 'back lane' along the current footpath north of the main street of Scarcliffe is disputed. A 'back lane' serving normal village strip lots would not normally run so far away from the main street. The old Manor House, now gone, occupied a large proportion of this land. It would not be normal to have a 'back lane' around a manor house.
52. In the Council's heritage witness's Photograph 2, save for the church tower, there is little of historic interest. Going to the wider view in Photograph 3, the only additional historic element is the ridge of Hall Farmhouse between the recent barns, an asset which he accepted would not be affected. Little of heritage significance for the CA, save for the church tower is engaged in views which are available.
53. In Photograph 1, the current view out of Manor Farm cannot reasonably be described as a designed view. When local coal mining was at its height, the railway used to run into the Bolsover Tunnel in the middle of the view and an orchard and other trees were removed.
54. In relation to Manor Farm, the view to the frontage of the Listed Building as appreciated from the public street is the major aspect of the contribution made by setting to the heritage significance of the building.
55. In views from Rotherham Road, the church tower does not cut the skyline. The County Planning Archaeologist did not find the church to be 'hugely prominent' even though he strongly objects to the Roseland turbines.

*St. Leonard's Church, Scarcliffe*

56. The diseased tree which has been removed from more or less in front of the southwest porch should be replaced. This is what the CA Management Plan recommends at paragraph 10.7 and the appellant has provided money to fund such mitigation<sup>20</sup>.

*Stony Houghton CA*

57. Levels of visibility will be affected during the year by reason of hedge growth; hedges are considerably higher at present than in the photomontages. Visibility, particularly on roads leading in to this CA, are considerably more restricted.
58. The village is the result of a merging of two hamlets originally in two different parishes and has no defined core. The 'aesthetic qualities' identified by the Council do not include the redundant and derelict structures or the 'heritage at risk' elements noted in the CAAMP.
59. The Council made complaint about views from the back of Hall Farm but it is right that in the case of a building which no longer serves its original designed purpose, private views from the rear do not deserve a high degree of protection in cultural heritage policy terms. The farmhouse and original farm buildings have

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<sup>20</sup> See S106 Undertaking

been converted to ordinary residential use and the units severed one from another. None are obviously involved in agriculture any more.

60. Harm to the significance of the CA is accepted to be the highest of any designated heritage asset. However, the Council provided clear reasoning as to why such harm did not constitute 'substantial' harm. The focus of attention has to be on heritage significance and any impact that the turbines would have on it.
61. It is noteworthy that the Stony Houghton CAAMP and the Scarcliffe CAAMP were written at the same time and when the Losk Lane wind farm scheme was being proposed, whilst the Council indicated that the timing was purely co-incidental, the fact that they play so much on related views out over adjoining countryside and they are the only two out of the suite of completed CAAMPs in the District to make any mention of wind turbines leaves the impression of writing to a definite agenda<sup>21</sup>.
62. The appellant's suggested Conservation Area Enhancement Plan would provide substantial financial assistance to improve, enhance and manage this CA by way of compensation in ways which are entirely consistent with national policy, EIA duties and more importantly the locally calibrated CA Appraisal.

*Glappwell Lane House*

63. The Council exaggerates the significance of Glappwell Lane Farm. It is properly characterised as a reasonably well to do 18th century farmhouse with very significant modern alterations. It is not right to count private views from the rear of the farmhouse as material to assessment of effects on heritage significance.

*Sutton Scarsdale Hall*

64. Sutton Scarsdale Hall was a rectangular building with the main frontage to the North. EH provide confused evidence over which way Sutton Scarsdale Hall looked in the consultation response to HS2 and then in consultation response to the proposed development. Designed views from a given asset ought not to shuffle round just to meet the challenge of a different proposed development.
65. On the matter of the potential for interference from the proposed turbines in views from Sutton Scarsdale Hall to Bolsover Castle, the angular separation of over 50 degrees is sufficient to prevent material harm.
66. The recent decisions of an Inspector in the Damsbrook and Barlborough appeals<sup>22</sup> are useful because the decision maker clearly did consider the potential for total 'in combination' cumulative effects with both the Losk Lane and Roseland schemes constructed. The Council has no basis on which to impugn the soundness of the conclusions of that Inspector even though the Council may not like them.

*Bolsover Castle*

67. The proposed turbines would not feature in views from the terrace adjacent the 'Little Castle'.

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<sup>21</sup> This suggestion is strongly refuted by the Council

<sup>22</sup> CDs 5.28 & 5.29

68. There is an almost total absence of documentation setting out the formal use of the roof of the Little Castle. The proposed turbines would not be visible from balconies or wall walks which have recently been opened.

*Hall Farm and Pear Tree Farm, Rowthorne*

69. It was accepted by the Council that these would not be affected.

*Hardwick Assemblage*

70. It is obvious that principal views are to the west. This was the view of the Chairman of the Garden History Society and Chairman of the NT's own Gardens and Parks Advisory Panel.
71. The consultation response of the NT to HS2<sup>23</sup> also concludes that Hardwick has 'principal views' to the west. A statement of significance of the heritage asset is the starting point, is free standing and should not alter depending on the type or location of development proposed off site. The response also recognises that there is a degraded landscape in the area between Hardwick Hall, Sutton Scarsdale Hall and Bolsover Castle.
72. Hardwick Hall was principally designed to show off and be seen from its surrounding landscape. It does not follow that because Hardwick was built to dominate the landscape that views of the landscape from it were important.
73. The Mott MacDonald report<sup>24</sup>, which the NT has sought to marginalise, expressly identifies the overwhelming majority of the exceptionally sensitive landscape to the west. Whilst it may not use up to date ideas of 'setting', there is nothing to suggest that it incorrectly identified and stratified the relative sensitivity of surrounding landscape. The clear purpose of the report was to provide guidance to the NT when responding to nearby development proposals. The wind turbines would lie on land identified as having a 'minimal or no landscape and visual sensitivity' and clearly outside the proposed setting boundary<sup>25</sup>. The appellant does not rely on the accuracy of drawing a line to demarcate a cultural heritage setting on a plan. However, the Mott MacDonald report can still tell the Secretary of State a lot about where it would be relatively better and where it would be relatively more harmful to site wind turbines.
74. The Askew Nelson Parkland Conservation Plan report<sup>26</sup> is also very useful in what it has to say about the history of the estate, the setting for the Halls and gardens and views. The deliberately prominent position of the two Halls on top of the wooded escarpment with views in and out to the west is highlighted. Interestingly, creation of the Country Park is seen as a negative influence, having divided the park landscape resulting in lots of integrity and fluency. The 'wineglass'<sup>27</sup> is also identified as a detracting feature which has served to act as a physical and visual barrier between the Hall and upper park. At ground level and across tracts of the RPG, this visual barrier will have the effect of entirely screening views of the turbines.

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<sup>23</sup> Docs 3 & 4

<sup>24</sup> CD 7.1

<sup>25</sup> CD 7.1 Figs 7 and 8

<sup>26</sup> CD 7.7

<sup>27</sup> The layout of the estate immediately to the east of Hardwick New Hall, dating from the 1920s and named for its plan shape

75. Views down the wineglass do have heritage value as designed views. However, the proposed turbines would not interfere with such views. The turbines would be seen by visitors outside the wineglass looking away from Hardwick New Hall as they arrive on the new and somewhat insensitive road built for tourists. The NT has also planted extra trees immediately north of this access which will grow into a third lime avenue.
76. The collection of photographs from members of the public<sup>28</sup> exhibited in the FEI is a very pertinent demonstration of what visitors consider to be important about Hardwick Hall; a very modern demonstration of those elements of setting with communal value. The turbines would not feature in any of the 800 or so views. Nor would they feature in viewpoints identified in the collection of statements and quotations gathered by the NT. In none of its promotional literature does the NT mention views from the RPG in the direction of the turbines.
77. In short, very little heritage significance lies in the direction towards the proposed turbines. As a result, very little harm to heritage significance would result from the turbines being constructed.
78. Heritage significance is quite distinct from contemporary landscape and visual impact assessment or general visitor amenity.
79. Views to the East towards Lincoln Cathedral are mentioned; the turbines would not feature in such easterly views.
80. There was no elaborate design or master plan for the park and no named designers are associated with the landscape at Hardwick. It was an industrial landscape created to provide for the family and their retainers. The estate was a working estate from the start. Industry, particularly coal mining has always been part of the mix. After Chatsworth became the principal seat of the Devonshires, the Hardwick estate continued to be used as a resource for food, building materials, hunting and shooting. There is a sense of the NT and EH wanting to sanitise the clearly documented history and airbrush out important elements of the past. Over time, major energy related developments such as coal mining at Silverhill has featured in and shaped the landscape.
81. There remain considerable doubts concerning the likelihood of the NT being able to open up safe visits to the roof for members of the public. However, even if such visits can be made, the pertinent point remains that the turbines do not have any material impact on heritage significance. From the South Turret banqueting room, it is likely that the desired view was looking down on the gardens to the south of the New Hall.
82. There is only evidence of the South Turret being used for banqueting and it seems to have gone out of use within a few years of construction. No contents were found in the 1601 Inventory<sup>29</sup> and no later documentary references are found before the 19th century. There were three other banqueting rooms at Hardwick all at ground level and two within the courtyard gardens. The turbines would not impact on any views from these.

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<sup>28</sup> FEI Appendix CH-3

<sup>29</sup> Mrs Edward's Appendix DE17



83. Whilst the South Turret is rectangular and looks dominantly southwards, it is of a design that fits strictly within the pattern of the building as a whole which distinguishes it from examples at places such as Lacock and Longleat which are hexagonal and with almost 360 degree panoramic views.
84. Hardwick Old Hall is not prominent in views from Biggin Lane to the west<sup>30</sup>. The Old Hall is completely dominated by the New Hall at this angle and distance. An observer without any prior knowledge might even take them to be a single building complex. Association aside, there would not actually be a significant effect upon the Old Hall from the proposed development.
85. It is manifestly exaggerated to suggest that the turbines would lead to such a robust assemblage being 'invaded from all directions' by modern infrastructure.
86. No heritage significance would be engaged in views towards the turbines from north of Rowthorne. Whilst there would be adverse effects on the Church of St. John the Baptist, Ault Hucknall, they would not reach the level of material harm in which the planning system should be interested.

*Visual component of residential amenity*

87. Whilst the Council does not argue for any unacceptable impacts on the visual component of residential amenity, local residents do raise the issue and it is necessary to respond. The separation between what is a private interest and what should be protected in the public interest is tolerably clear; it has been the subject of particular focus in wind farm cases since the decision at Enifer Downs in April 2009. It is acknowledged that the approach adopted by that Inspector should not be regarded as a mechanistic 'test' and has no status in terms of being part of statutory documentation or planning policy or guidance; however, it is a logical, transparent and objective approach and was recognised by the High Court as a wholly suitable way of determining a policy compliance threshold.
88. There can be no substitute for site visits to individual properties so that any likely impacts can be judged in the particular and unique circumstances of each. Nevertheless, it is helpful to consider the factors and thresholds of acceptability which have guided decision-makers in other cases:
89. No individual has the right to a particular view but there comes a point when, by virtue of the proximity, size and scale of a given development, a residential property would be rendered so unattractive a place to live that planning permission should be refused. The public interest is engaged because it would not be right in a civil society to force persons to live in a property, which, viewed objectively, the majority of citizens would consider to be unattractive. The test is concerned with an assessment of living conditions as they would pertain with the wind farm built, irrespective of the starting point. At Burnt House Farm<sup>31</sup>, the Secretary of State found it useful to pose the question whether "would the proposal affect the outlook of these residents to such an extent i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?"

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<sup>30</sup> See NT viewpoint E.4

<sup>31</sup> CD5.1

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

#### *Other matters*

93. As discussed above, the appellant submits and relies on a section 106 unilateral undertaking in respect of a decommissioning bond, provision of a Historic Environment Enhancement Fund for Stony Houghton and tree planting at St. Leonard's Church, Scarcliffe. The substantial and focused fund for Stony Houghton would have objectives in keeping with both the audit and remedial shortfalls noted in the Stony Houghton CA Appraisal and Management Plan.

#### *Concluding remarks*

94. This case is about an exemplar community led initiative which could cause harm to heritage assets and what that means for (1) development plan policy compliance (2) the weight which must be properly be attached to harm to listed buildings under section 66(1) of the LBCA and (3) whether the properly weighted adverse effects significantly and demonstrably outweigh the benefits of the scheme.
95. What has really been challenged by the appellant in the evidence is the alleged impact of the turbines on those elements of setting which genuinely do go to overall heritage significance of the various assets. Whilst it is accepted that material harm would result to St. Leonard's Church, Hardwick New Hall, Scarcliffe CA and Stony Houghton CA, any such harm would clearly be less than substantial harm within the meaning of paragraph 134 of the Framework.
96. When the planning balance is undertaken properly, the adopted development plan is found to be 'silent' in terms of renewable energy and the second limb of the decision taking part of paragraph 14 of the Framework is engaged. The 'golden thread' which is the presumption in favour of sustainable development is engaged and bites. The proposed development would give rise to limited conflict

with remaining relevant policies in the adopted development plan but such conflict should be afforded limited weight by reason of their inconsistency with the Framework.

97. Other material considerations, including harm to heritage significance as amplified through the statutory duty in section 66(1) of the LBCA does not indicate that planning permission should otherwise be refused. The appellant submits that as a matter of law, section 72(1) does not apply but the correct amount of weight afforded to CAs by policy has been accorded in any event. There are particularly forceful material considerations that lend support to the case that planning permission should be granted.

*The benefits*

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

- A community led initiative for renewable energy generation in accordance with paragraph 97 of the NPPF.
- The supply of a material amount of renewable energy and contribution to the achievement of the national target of meeting 15% of the United Kingdom's energy demand from renewable resources by 2020. This remains an important material consideration in its own right, even following the recent announcement by the European Union to remove national targets which will not take effect until 2020.
- The contribution that the scheme would make to mitigating climate change.
- Energy security through contributing to a mix of renewable resources in Derbyshire.
- Provision of renewable energy at lowest cost to the consumer.
- Direct and indirect economic benefits which are recognised by the Coalition Government.
- The proposed development is a wholly reversible form of development which will leave the landscape character and visual resource intact.

99. This is precisely why when the planning application was considered by the Council's Planning Committee on 17th July 2013, the professional planning officer of the Council recommended approval. This was the considered view of those professional planning officers who are best placed to know the provisions of their own development plan, policy, the local landscape and the impact of turbines on the local cultural heritage environment.

100. This scheme is about community empowerment; determining how the local environment should look and how it should generate its electricity. It is about community confidence and capacity. It is exactly what the Government claims to be searching for in its search for localism. What happens to the Roseland scheme matters because if, when push comes to shove in the crucible of the planning appeal system, central government rhetoric simply dies back to nothing then other local communities will be very wary indeed and the cause of community led renewable initiatives will be severely set back.

101. The scheme would provide a sustainable form of development, driven by the local community, for the local community and for very sound planning reasons, the Appellant respectfully submits that planning permission should be granted in the form in which it has been sought.

### **The case for Bolsover District Council**

*The main points are:*

102. The legal submissions are also relied upon<sup>32</sup>. These submissions focus on issues of approach rather than attempting to repeat or set out all the evidence.
103. The area in the vicinity of the appeal site contains an unusual and important collection of designated heritage assets. Expert evidence from EH, the NT, the County Council and others has highlighted the value and importance of the historic environment. The presence of so many Grade I and other Grade II\* listed buildings, CAs and Grade I RPGs in a relatively small area – many of which enjoy a strong historical association and/or visual or functional relationship – provides the context for assessment.
104. The key issues relate to impacts on the setting and significance of the various designated heritage assets. All the main parties agreed that the assessment of what constitutes either ‘substantial harm’ or ‘less than substantial harm’ is a matter of judgment. In terms of approach there remain some differences in findings between the heritage experts and consultees. The clear divide was between the appellant and the rest. EH, the Bolsover Council Heritage Conservation Officer, the County’s Development Control Archaeologist and the NT all found that serious and material harm (either less than substantial or substantial) to a range of heritage assets would result if the wind farm was built. By contrast, the appellant’s assessment, found material harm to only 4 assets and concluded that no instances of substantial harm to assets would occur and in several instances considered that no ‘material harm’ at all would occur to the significance of assets which others had considered would be seriously harmed.

### *Methodology*

105. It became clear that the appellant’s heritage witness approached the assessment of harm to the significance of heritage assets in a way that differed markedly from the other experts at the inquiry. In particular, his approach to advising the decision maker as to what would constitute ‘less than substantial harm’ adopted a methodology which excluded not only ‘negligible’ and ‘minor’ adverse effects on significance but also ‘moderate adverse effects’. Moreover, his adopted ‘vocabulary’ for ‘moderate’ adverse effects clearly incorporated ‘important’ adverse effects on heritage significance at, as he put it, ‘a local scale’. But because he chose to place this category below the ‘entrance point’ for ‘material but less than substantial harm’ it allowed him to conclude that such adverse effects on the significance of assets would not constitute ‘material harm’ that a decision maker should consider.

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<sup>32</sup> Doc 1

106. This is at best a very strange approach to adopt. It makes no sense and results in relevant and harmful impacts being ignored in a planning decision making context. It will almost inevitably lead to the under-reporting of harm to a planning decision maker, given that more than minor or negligible and indeed 'important' adverse effects on significance are treated as 'immaterial' and so not worthy of consideration in the planning balance.
107. An example of this approach in action was found in the appellant's assessment of the Grade I listed Church of St John the Baptist at Ault Hucknall. As was evident in cross examination, it was accepted that the historical association with the Hardwick estate as well as the visual 'landmark' status of the Church were aspects of the setting that contributed to heritage significance. Whilst there were some factual differences between the appellant and the Council as to the extent to which turbines would compete with the asset and trees, the appellant accepted that there would be 'significant distraction on medium range approaches from the scale and movement of the' turbines. In his assessment there would be an adverse effect on the setting and significance of the church (a 'moderate' adverse effect) both in visual and historic association terms.
108. However, given the appellant's methodology, this translated into a finding of 'no material' harm. In the appellant's world, the decision maker should not feed that finding of adverse effect on significance into the planning considerations at all.
109. Hall Farm in Stony Houghton provides another important example. The Council detailed in evidence the extent of the harm that would result to the significance and setting of this listed building. Turbines would be sited very closely behind and stretch either side of it degrading the open agricultural landscape setting that informs the significance of this building. The occupant of part of the listed property, Mr Downing, attended the evening session and explained how the works that had been undertaken to his home had been carefully delivered to preserve and highlight the historical integrity and importance of the building and which enabled, indeed emphasised, the current views towards the land around it. The proposed turbines would harm the setting, dominating views and notably changing the rural character of it. The Council assessed the harm to significance to the listed building as being in the upper half of less than substantial harm. The appellant underplayed the harm to significance, applying an unwarranted reductive approach to significance which largely ignored the still evident historical and functional links with the land around. However, it was still acknowledged that the frontage view contributed to heritage significance and that there would in that regard be a 'quickly revealed' distraction from the turbines. As a result, in the appellant's terms, there was a moderate adverse effect on heritage significance. But again this meant, given the adopted methodology, 'no material harm'. In turn this has meant that the appellant has, as with the Church at Ault Hucknall, taken no account of any impact at all in the planning balance in relation to this building. Indeed, the appellant does not invite the decision maker to even consider the impacts on Mr Downing's home because it is said there will be no material harm.
110. That approach was repeated in relation to several other assets including Glapwell Farm, the Hardwick RPG and the Hardwick and Rowthorne CA. It contrasted with the approach taken by the Council who provided a working definition of less than substantial harm which provided a far more sensible policy

based approach - and which should be preferred – not least because it enables the decision maker to weigh such adverse effects in the balance and not ignore them. The appellant conceded in cross examination that the approach taken by the Council's heritage witness to less than substantial harm, was at least not an unreasonable one for an expert to take<sup>33</sup>.

111. In relation to the concept of 'substantial harm' the appellant adopted a methodology which conflated loss and substantial harm and which in terms required 'extreme' effects. That approach pitched the test too high and expressed it too narrowly, especially when considered in the context of up to date policy guidance and case law.
112. Guidance indicates that 'substantial' harm to just one key element of significance - such as setting – could be constituted by a single wind turbine depending on the degree of harm to significance. This might of course be quite different from the total 'loss' of an asset or significance even if the harm was serious. It would not need to be 'extreme', although of course it might sensibly incorporate that. The Council adopts a slightly lower level test, albeit still a suitably high test, with which to assess whether or not there would be substantial harm. It is an approach more in accordance with up to date policy guidance.
113. This difference in methodology was evident in the approach taken by the appellant to two of the designated assets, the Scarcliffe and Stony Houghton CAs. In relation to both, the Council had found substantial harm – as indeed had EH and other consultees. The appellant had not. In relation to Stony Houghton it is crystal clear from the evidence that this CA will be overwhelmed by the appeal development if it is allowed to go ahead. The rural setting of this CA is highly sensitive. It makes a key contribution to the character and significance of the Stony Houghton CA both aesthetically, as an attractive setting and backdrop to views into and out of the village, and to the historical values of the village, as it owes its presence to nearby agricultural land. The village has strong aesthetic and historical values as a well preserved agricultural small community with vernacular dwellings interspersed with more consciously architectural dwellings.
114. Some of the views currently feature large scale electricity pylons and the overhead wires that they support which already cause unwanted harm. Those pylons, unwelcome as they are, are less than half the height of the proposed turbines. Even the anemometer mast, 250m from the edge of the CA, would be taller than the pylons. Three of the turbines would lie with around 500m of the CA boundary, with all six lying within 1.5km. The scale of the development, its overwhelming presence, its transformative effect on views from, of and over the CA and the fundamental change it would have on the agricultural landscape that contributes so much to the character, appearance and significance of the CA would cause substantial harm to its significance.
115. The appellant also accepted that heritage significance would be harmed, using words such as 'extreme and inescapable distraction' to a 'significant part of setting contribution to significance' and referred to the need to turn ones back to avoid the turbines. But, substantial harm was avoided by concluding that the CA was not particularly rare or important and it is suggested that an observers understanding of the special architectural and historical interest of the CA would

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<sup>33</sup> Set out at 4.17-4.20 of Mr Croft's proof of evidence

not be interfered with. That is strange logic indeed. Policy does not require an asset such as a CA to be rare before it can suffer substantial harm. A CA is recognised at a national level by policy and statute as being of importance. The setting of it, if an element of significance and sufficiently harmed by a proposed development can be 'substantially' harmed. Nor is it understood how the appellant can conclude 'extreme' effects on what are self evidently key elements of significance whilst at the same time concluding the understanding of a given observer will not face any 'interference'. This appears to be falling into the same error that the Court of Appeal in Barnwell commented upon when discussing how to approach substantial harm in the context of a reasonable observer.

116. This confusion as to harm was also evident in the appellant's analysis of compensatory measures. Their heritage witness had initially gone on to indicate<sup>34</sup> that his identified harm (at the 4th pentile of less than substantial) could in some way be reduced by 2 pentiles. This was as a result, apparently, of a suggested 'Historic Environment Enhancement Fund' which in the FEI was considered 'necessary'. That approach was utterly flawed. As was accepted in cross examination, whatever might be achieved at some stage in the future by a fund of money, it could not reduce the identified harm to setting. Indeed, the appellant appears to have abandoned the point as being material to reducing harm or indeed to a planning assessment.
117. The Council submits that the approach by the appellant in relation to the proposed S106 has been last minute, somewhat nebulous and regrettable. The initially proposed S106 provided no assurance as to when any money would be paid at all and appeared to envisage the proposal being constructed and indeed operating before any 'enhancement' works were undertaken. In oral evidence, the appellant's witness appeared to reveal further changes were planned involving the Council taking responsibility for implementation (something the Council have made clear would not be acceptable) and indicated that the sums of money would be spread out over 10 or more years. No serious attempt has been made by the appellant to discover what in fact could be achieved or whether it would in any way be beneficial for some of the generalised proposals (e.g vegetation removal) to be undertaken in the context of a wind farm being constructed very close by to the village.
118. In short, the proposals should be given no weight and appear unacceptable in their current form to the Council. The proposed fund does not meet the tests of necessity or relevance or relate to the character or appearance of the area or offer appropriate mitigation. Substantial harm will be caused to the Stony Houghton CA if the proposal goes ahead.
119. The appellant's approach to the Scarcliffe CA was equally without merit. This CA would also suffer the frequent presence of large scale overbearing turbines in views from and over the CA which would fundamentally alter its rural setting and transform its character. This would also result in substantial harm. The appellant considered that the rural setting would remain by virtue of the separation provided by Langwith and Roseland Woods, but it is the potential intrusion of the

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<sup>34</sup> in the 2014 FEI at pps 10 to the introduction section – 'summary' table and at DD.12 & 13

- turbines and their proximity and scale in that context<sup>35</sup> which would substantially harm the integral relationship of the village and the rural setting it enjoys.
120. The approaches to assessment of the Scarcliffe and Stony Houghton CAs the appellant demonstrate vividly that the seriousness of the harm has been consistently underplayed.
121. That was also the case in relation to the Grade II\* Church of St Leonard in Scarcliffe. There, the turbines would overwhelm the prominence of this landmark feature giving rise to substantial harm. The appellant considered the harm would be less than substantial and at the last minute, mooted the idea (during evidence in chief) of planting a tree to compensate/mitigate harm in the churchyard. It does not appear anyone was asked by the appellant if this might be considered an appropriate course to pursue.
122. Allied to the appellant's flawed approach to the assessment of harm were several factual errors – for example the contention that turbines would not be seen from Manor Farm in Scarcliffe when at least 2 turbines would be clearly visible in an identified important view from the CA in front of the listed building. An unusual approach to heritage significance was evident in his assessment of the internationally important Grade I Hardwick New Hall. The Council's and NT's evidence in relation to the New Hall explained the extensive setting of the asset and the significance in heritage terms of both views from and towards the asset.
123. Although the appellant appeared not to entirely discount the heritage significance of views from the roof the evidence in that regard was characterised by some bizarre conclusions. In particular it was considered that, in relation to the views, because 'the general public is not free to appreciate such views... no planning relevant development effect will arise'. That approach was wrong, not only because as a matter of long standing policy the contribution that setting makes to significance does not depend upon their being public access but also because, as the NT made clear, the public have already had tours on the roof and the intention is that it will be opened up for full public access by 2016. His subsequent suggestion that it would not be plausible or safe for the NT to allow the public up on the roof was not based on evidence or common sense. The development would result in less than substantial harm but at the upper end of the Council's scale, far more closely aligned with the other heritage expert responses.
124. In a number of further respects the appellant's approach to heritage assessment was odd. It is not even prepared to countenance the approach to the assessment of heritage harm in the round as set out in the Asfordby decision<sup>36</sup>. The Council by contrast felt this was a useful and appropriate approach to adopt, especially when faced with a range of assets suffering harm. The lack of consideration by the appellant of heritage impact viewed in the round is startling.
125. The appellant's approach to the various and important assets in the Hardwick assemblage was dismissive of what are key elements of significance. It also failed to take into account at all the impacts on principal buildings in the Hardwick CA when assessing the CA – for example the New Hall. That is all the more

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<sup>35</sup> For instance, VP 5 in the 2014 FEI visualisations and the various views from the north

<sup>36</sup> CD 5.8



surprising as it was accepted, in relation to Scarcliffe and the Grade II\* Listed Church in that CA, that the Church should have been assessed in the context of the CA and as an individual asset. Further, the appellant's heritage witness refused to even consider most of the landscape conclusions from the ES and FEI produced for his client (many of which were simply descriptions of views) claiming that he had approached matters afresh from a cultural heritage perspective. The lack of willingness to even address plain language and expertly assessed descriptions of landscape character and views (often considered complementary to heritage evidence at both application and appeal stages as is made clear in the GLVI 3rd edition<sup>37</sup>) was hard to fathom. Overall, the Council's approach and indeed that of the other consultees should be preferred.

126. The evidence before this inquiry demonstrates the density and importance of the assets and the inherent unsuitability of the scale and prominence of the appeal proposal given the impacts it will have on the historic environment so valued by those that live in and who visit the area. The Council considers, in summary, that the impacts of the proposal would be as follows:

Asset	Designation	Degree of Harm
<b>Scarcliffe</b>	Conservation Area	Substantial Harm
<b>St Leonards Church, Scarcliffe</b>	Grade II* Listed Building	Substantial Harm
<b>Manor Farm, Scarcliffe</b>	Grade II Listed Building	Less than Substantial Harm (mid-point)
<b>Stony Houghton</b>	Conservation Area	Substantial Harm
<b>Hall Farm, Stony Houghton</b>	Grade II Listed Building	Less than Substantial Harm (upper half)
<b>Glapwell Farm</b>	Grade II Listed Building	Less than Substantial Harm (mid-point)
<b>Palterton</b>	Conservation Area	Less than Substantial Harm (lower end)

<sup>37</sup> Added to the Core Docs during the Inquiry at CD 2.8

Asset	Designation	Degree of Harm
<b>Sutton Scarsdale Hall</b>	Grade I Listed Building, Scheduled Monument and Conservation Area	Less than Substantial Harm (lower end)
<b>Bolsover Castle</b>	Grade I Listed Building, Scheduled Monument	Less than Substantial Harm (lower end)
<b>Hardwick Ensemble – includes:</b>	---	Less than Substantial Harm (upper end)
<b>Hardwick New Hall</b>	Grade I Listed Building	Less than Substantial Harm (upper end)
<b>Hardwick Old Hall</b>	Grade I Listed Building, Scheduled Monument	Less than Substantial Harm (Lower end)
<b>Hardwick Park</b>	Grade I Registered Park and Garden	Less than Substantial Harm (mid-point)
<b>Hardwick and Rowthorne</b>	Conservation Area	Less than Substantial Harm (upper end)
<b>Church of St John the Baptist, Ault Hucknall</b>	Grade I Listed Building	Less than Substantial Harm (mid-point)

### *Planning Issues and Overall Balance*

127. Stripped back to basics, this appeal is about the balance between a windfarm (ignoring ownership and financial benefits and other immaterial matters relating to the nature of the proposal) and the impact on numerous high grade heritage assets, taking into account all statutory and policy presumptions and other material planning considerations. The starting point remains statutory and is found in S38(6). The relevant development plan policies (in particular CON 4 & CON 10) are, unsurprisingly given that they predate the Framework, not entirely consistent with it. As they do not grapple with concepts of substantial or less

than substantial harm or contain mechanisms to balance benefits they are to that extent out of date.

128. However, they do have aspects of consistency with NPPF core principles in paragraph 17 of the Framework (conserving heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations) and cannot be disregarded in law. It is not disputed that the appeal proposals conflict with both CON 4 & CON 10. The first bullet point in paragraph 14 of the Framework (under decision taking) is not complied with either as it cannot be said that the proposed development complies with the development plan. In addition the clearly engaged, important statutory presumption in S66 of the LBCA and the range of material considerations must be addressed.
129. There is then no presumptive starting point in favour of this proposal. Because of the acknowledged harm to relevant assets (listed buildings) the approach as explained by the Court of Appeal in *Barnwell* and subsequently by Lindblom J in *Forge Field*<sup>38</sup> applies so that there is a strong statutory presumption against permission being granted. Before a balance can be properly struck the decision maker must be conscious of it and demonstrably apply it.
130. There are a number of important points to make in relation to the proper assessment of the planning balance in the context of what may or may not be material considerations. The Council accepts that the contribution of the proposal to renewable energy provision is a factor to which significant weight should be given, but it is right to temper this at least to some extent given the progress that has been made towards relevant national targets. There is currently, even allowing for attrition rates, a “healthy set of deployment pipelines for renewable electricity technologies”. Regional targets have been abolished and are no longer relevant to the attainment of national targets.
131. Government policy remains supportive of renewable energy projects but it has been emphasised that important matters of public interest require policy to be applied in a way that accords them appropriate weight. Projects should be delivered in the right locations. The undoubted need for renewable energy does not dilute the importance of heritage assets and their conservation.

### *Benefits*

132. It is clear that as a matter of law and policy the various financial benefits relied upon by the appellant at the application stage as being material cannot be relied upon as being in any way material to the planning decision making process. The appellant now accepts this and their planning witness gives them no weight in his evidence. The appellant also agreed that no relevance or weight should be given to the ‘community benefit and leadership structure’ element of the proposal. Accordingly, it is agreed that it is not material for a decision maker to take into account those matters either in determining this appeal.
133. It is a matter of law that it is wrong to consider such issues as being material to the planning balance<sup>39</sup>. Moreover, were there to be any relevance to these

<sup>38</sup> CDs 4.8 & 4.11

<sup>39</sup> This is made clear in *Amel Aman Tawe Cyfngedig v The National Assembly for Wales and another* [2007] All ER (D) 69 at paragraphs 38 & 39 especially - in the judgment of Hickinbottom J (Doc 6)

matters they would properly need to be secured in the event of a grant so that there could be some certainty the proposal would only be pursued in the proposed form. But they are not secured in any way. Despite all this, the appellant maintained that 'significant' planning weight should still be given to the 'government intentions' for community energy provision. In that regard paragraph 97 of the Framework and related PPG text were relied upon. This was wrong for a number of reasons:

- The policy context provided by paragraph 97 of the Framework is one of future policy/plan making rather than decision taking as is clear from the language of the paragraph.
- The related PPG reference makes this clear. It indicates merely that in the future councils may wish to adopt policies in relation to community schemes. They may well not. Even if they do it is not clear what provisions or balances any such policies would incorporate. No such policies exist in Bolsover or are even currently planned. But in any event this guidance and policy properly construed does not provide any support for affording weight to the current proposal.
- The Government has in fact made it clear very recently that such community issues should not be afforded weight in the planning decision making process in the context faced by this Inquiry. That has been the position for some time.
- It is wrong for the appellant to suggest that 'Government intentions' in that context should in some way be interpreted to mean this particular scheme is afforded significant or any weight. To adopt such an approach would be to fall into error.
- Indeed, even if the appellant was right that paragraph 97 of the Framework applied to decision taking, the decision taker would have to strip out any consideration of community funding/financial provision as well as the ownership structure/community involvement. That would in truth leave nothing to afford any material weight to.
- To the extent that the appellant has afforded those considerations 'positive' and/or 'significant weight' it is wrong to do so.

134. The Council also consider it highly relevant that so many of those in the local 'community' are in fact opposed to the proposal. The appellant has made great play of the 'community led' nature of the proposal. But it is abundantly clear that the proposal has not garnered the support of the community at large at all. Quite apart from the democratically elected Council rejecting it, the level of opposition evident throughout the community is notable and relevant. The consistent level of attendance during the inquiry by members of the public who spoke passionately about their area demonstrated this vividly.

### *Reversibility*

135. The appellant seeks to place weight on the reversibility of the proposal as a benefit. However, the fact that the proposal is being sought for a temporary period of 25 years is obviously insufficient justification for permission to be granted in this case. In the context of heritage assets and setting, 25 years is a considerable period of time; at least a generation. As the Inspector and Secretary

of State made clear in the recent River Valley case<sup>40</sup> whilst reversibility is a relevant consideration the harm to assets will take place for a generation. The harm is not reduced, it will just take place for less time. Importantly, in the context of heritage assets, the Framework specifically aims to conserve heritage assets for their contribution and so they can be enjoyed by both this and future generations<sup>41</sup>. This is particularly relevant in the context of the very many high grade assets being affected.

### *The Framework*

136. Paragraph 14 of the Framework (second bullet point under decision taking) takes one (by virtue of policies being 'out of date' or silent) to the second indent and footnote 9. That in turn takes the reader to section 12 and principally to paragraphs 131-134. These paragraphs need to be considered in the round and clearly provide a 'restrictive' policy context for proposals which harm heritage assets. In particular, specific provisions are made for cases of substantial and less than substantial harm.

### *Substantial Harm*

137. It is clear that if even one finding of substantial harm is made the appellant has no supportable case. The policy tests clearly engaged by the Framework in section 12 and especially at paragraphs 132 and 133 are simply not met in that scenario. The appellant has not sought to run a case which argued that substantial harm was necessary in the way envisaged by policy in paragraph 133 or that this represented an exceptional or wholly exceptional case. It is simply not in a position to do so, given the evidence.

138. The list of benefits presented in evidence could not on any reasonable view justify the proposal in that context. The Council says there would be substantial harm to several assets. Taking into account the material benefits, there is simply no basis upon which the case can be supported.

### *Less than substantial harm*

139. Even if the decision maker considered the various 'harms' were all less than substantial it is very hard indeed to envisage the proposal being considered properly acceptable. The range of harms would remain extensive and would still face the statutory presumption in S66 and the considerable weight attached to it. In addition the policy context of paragraph 132, especially given the international importance of Hardwick Hall and the number of high grade assets, would in any event require greater weight to be given to their conservation in the required balance.

140. It is of some note that the appellant, who relies on the far more limited findings of harm supplied at the Inquiry (as compared to the ES) as well as affording significant weight to paragraph 97 of the Framework, felt the case was finely balanced.

141. The harm needs to be considered in the round, given the number of assets that would suffer. The sum total of heritage impacts is capable of being greater

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<sup>40</sup> (CD 5.35 )

<sup>41</sup> Core planning principle, paragraph 17, bullet point 10

than the sum of individual impacts. The appellant did not take this approach. The range of 'less than substantial' harms is so wide ranging and extensive that even if weight could be attributed to community aspects of the proposal it would not be sufficient to outweigh the harm. And that is even before the statutory presumption in S66 is taken into account.

142. The appellant suggested that in some way the presumption in paragraph 14 of the Framework is re-engaged if the tests in paragraphs 132, 133 and 134 are satisfied. The debate is somewhat academic. If the tests in paragraphs 133 or 134 are failed (in the sense that harm outweighs the benefits or cannot be justified as necessary/exceptional/wholly exceptional) then the scheme should be refused. The real point is that the proposal could not, in the sense envisaged by the Framework, be classed as being sustainable development.
143. Assuming either the 'less than substantial' or 'substantial' harm tests are of application and are not met by the proposal, it is hard to see how paragraph 98 of the Framework could lead to a conclusion of acceptability. If the opposite were true, there would in reality be no need to return to paragraph 14 as an answer would already have been provided and there is no construction of the Framework which requires a re-engagement of paragraph 14 in such circumstances. The Council submits that such is the harm it will cause to matters of acknowledged importance it does not find support from the Framework on any reasonable interpretation of it.
144. When all that together other with relevant material considerations are considered in the correct statutory context, with considerable and importance and weight being applied by the decision maker against the proposal as required by S66, the case against the appeal being allowed is clear.

## **The case for the National Trust**

*The main points are*

### *Overview*

145. This windfarm proposal does not accord with the development plan. It is admitted that it would harm the settings of designated heritage assets. Statute and national policy accord "considerable importance and weight" to the preservation of such assets unharmed. The assets are – each of them – unique and vital components of the nation's cultural capital. In the case of Hardwick Hall, significance is agreed to be international.
146. Statute gives a clear steer as to the proper decision in this case by means of both the S38(6) presumption in favour of the development plan and the presumptive weighting of S66 of the LBCA. These statutory rudders are clear and helpful and assist in providing context for the examination of the evidence through the lens of national heritage policy which must also be undertaken.
147. The term "substantial", used in the Framework at paragraph 134, is inherently flexible, leaving the decision maker to apply their own judgment to the facts of the case. Presumably this freedom was deliberate. It would, for example, be quite impossible to define in advance harm which was substantial by reference to some yardstick of impact, because each heritage asset is unique and potential

harm from new development can come in so many different forms. Articulating precisely where harm lies on a personal spectrum is not required by national policy or the PPG. EH guidance on setting counsels that whilst complex scoring systems, amongst other techniques, "may assist analysis to some degree, as setting is a matter of qualitative and expert judgment, they cannot provide a systematic answer.....EH recommends that, when submitted as part of.....evidence to a Public Inquiry, technical analyses of this type should be seen primarily as material supporting a clearly expressed and non-technical narrative argument that sets out "what matters and why" in terms of the heritage significance and setting of the assets affected, together with the effects of the development upon them. The heritage values approach outlined in Conservation Principles"<sup>42</sup> provides a useful framework for structuring such a narrative....." As cross-examination of the appellant's heritage witness demonstrated, his thresholds of significance/materiality are decidedly personal to him and his use of terminology, irrespective of the apparent precision of 'pentiles', is very different from the approach of the original ES heritage assessor, the Council's expert witness, the NT heritage witness, the County Council and District Council conservation officers and EH. Whilst the use of such a system might help the reader, it does not remove the subjectivity of the judgments about harm to significance.

148. Nor does the statutory duty to give reasons cast a detailed burden of explanation in terms of 'pentiles' on the Inspector or the Secretary of State. Barnwell<sup>43</sup> gives an object lesson in what is required. The decision maker must engage with the principal points of contention and demonstrate, through clear verbal reasoning, that he has understood the evidence on significance, then considered the impacts of the proposal upon significance, taking all such impacts forward into the balancing process, which balance must, itself, proceed upon the footing of giving "considerable importance and weight" to preservation of any listed buildings or their settings unharmed.
149. It must be remembered that Bedford<sup>44</sup> was decided between the dates of the High Court and Court of Appeal decisions in Barnwell. To the extent that Jay J cast some doubt on the approach of Lang J to the S66 presumption, his judgment must now be read with some caution because Lang J was, in due course, upheld by the Court of Appeal. Nevertheless, since the appellant relied heavily upon a passage in Bedford, it is necessary to consider the case carefully. At paragraph 18 of the Judgment, Jay J said (paraphrasing the Framework) "*Significance may be lost through destruction of the asset, or, in a very extreme case, development within its setting.*" (emphasis added)<sup>45</sup>. The qualification "in a very extreme case" in relation to development within setting was the Judge's comment only; it is not part of the ratio of the case, nor are the words contained within the Framework. The subsequent Court of Appeal judgment in Barnwell makes no such qualification in its consideration of the issues of setting and harm. Moreover, Jay J went on to say: "*It is ... plain ... that paragraphs 131-134 are not purporting to quantify harm or explain what is meant by the adjective*

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<sup>42</sup> CD 7.10

<sup>43</sup> CD 4.8

<sup>44</sup> CD 4.7

<sup>45</sup> This paragraph of the Judgment is confusing because, while it says that it is commenting on the third sentence of Framework at paragraph 133, this must be wrong and presumably it refers to para 132, though it is not a clear fit with the third sentence of that paragraph either.

*'substantial'.*" *"It is ... clear that the epithets 'substantial' and 'serious' are to be read as synonymous."* The Judge then considered what the inspector had said, having made his general comments on interpretation (considered above). He said *"What the inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away."* (emphasis added)

150. He then considered what the implication of such an approach (by the Inspector) would be in the case of "non-physical or indirect harm", namely: *"the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced."*
151. The Judge then considered whether the inspector's formulation had added to the word "substantial" by the use of the words "something approaching demolition or destruction". He said: *"The answer in my judgment is that it may do, but it does not necessarily"* (emphasis added). All would turn, he said, on how the Inspector interpreted and applied the adjectival phrase "something approaching", concluding that he was "not persuaded" that the inspector had erred. Such a conclusion was, of course, sufficient and proper in the context of a S288 appeal, where the challenger faces a high hurdle to demonstrate an error of law in a particular decision letter. The judgment does not constitute a pronouncement to the effect that "something approaching demolition or destruction" is the definitive meaning of "substantial" in the Framework. All will depend on context – on the particular asset(s) and the particular features of the development proposal. In any event, the Government has now provided PPG illustrating the meaning and implications of its policy. That guidance was not available to Inspector or judge in Bedford.
152. Notwithstanding the inherent flexibility in the Framework term "substantial," PPG has now provided interpretative guidance, both generally and also specifically in relation to wind turbines. This guidance was issued shortly after the Court of Appeal judgment in Barnwell. Generally, it tells us, "substantial harm is a high test". In line with the Framework and EH guidance, the PPG stresses that *"it is the degree of harm to the assets significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting..."* (emphasis added). This is helpful confirmation of the role of significance as the parameter against which harm is to be assessed; in EH's phrase – "What matters and why". Then it goes on to give a specific example of the potential for substantial harm in the context of wind turbines: *"As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset".*
153. There are also insights to be drawn from Barnwell in relation to harm, degrees of harm and setting. Whilst that case of course concerned different heritage assets in a different landscape, there are similarities in terms of the issues in play: opponents of the development were contending that the undeveloped setting of the principal asset made a crucial contribution to its significance as a heritage asset; that the principal asset had been designed to be a striking and dominant presence when viewed in its rural setting; and that the principal asset



had been designed so as to afford extensive views in all directions over that rural setting, all of which contentions had been disputed by the developers at the inquiry.

154. The Court held that the Inspector should have “grappled” with or given reasons for rejecting the objectors’ case that the setting of the principal asset was *“of crucial importance to its significance ... because ... designed to have a dominating presence in the surrounding rural landscape and to afford extensive views in all directions over that landscape”*. It went on to hold that the substance and form of his decision making were legally flawed insofar as he gave three reasons to support his finding of less than substantial harm:

- (a) that the turbines would not be so close or fill the field of view to the extent that they would dominate the outlook from the site;
- (b) that the turbines would not intrude on any obviously intended, planned view out of garden or building (which had windows all round its perimeter);
- (c) any reasonable observer would know that the turbine array was a modern addition, separate from the relevant historic landscape or building.

155. Sullivan LJ held that reason (a) did “not engage” with the contention that the principal asset had been designed to be “the dominant feature in the surrounding rural landscape”. The question, he said, was whether the principal asset “would continue to be dominant within its rural setting”. Reasons (b) and (c) were rejected on the basis that “the guidance nowhere suggests that the question whether the harm to the setting of a designated heritage asset is substantial can be answered simply by applying the ‘reasonable observer’ test adopted by the Inspector.

### *Statutory Weightings*

156. Because of clear (and admitted) conflict with policies CON 4 and CON 10 of the LP, S38(6) indicates that permission should be refused unless material considerations indicate otherwise. The appellant points to the fact that balance is not written into the policies, but such balance is implied within S38(6) and addressed in the Framework. It is still for the appellant to justify a decision which is not in accord with these policies of the development plan, which reflect the Government’s commitment to ensuring that the “spirit of place” of the historic environment “thrives, rather than withers”. These policies reflect one of the core planning principles of the Framework.

157. Parliament, in enacting S66(1), intended that the desirability of preserving the settings 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 should be given a considerable importance and weight “when the decision-maker carries out the balancing exercise”<sup>46</sup>. The duty applies equally in relation to proposals where the level of harm is found to be less than substantial; it applies to “all listed buildings”, and with particular force if harm would be caused to the setting of a Grade I listed building. An approach which treated “less than substantial harm” to such an as a “less than substantial objection to the grant of planning permission” therefore erred in law.

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<sup>46</sup> (Barnwell)

158. The legal position, where there is conflict with development plan policies and harm to listed buildings is, therefore, that the appeal should be dismissed unless the appellant can establish material considerations sufficient, in the decision maker's judgment, to outweigh the respective statutory presumptions. With regard to the s.66 exercise, Lindblom J in *Forge Field* made clear that the presumptive weighting is not just another material consideration. Commenting on *Barnwell*, he said "*As the Court of Appeal has made absolutely clear in its recent decision in Barnwell, the duties in s.66 ... do not allow a local planning authority to treat the desirability of preserving the settings of listed buildings ... as mere material considerations to which it can simply attach weight as it sees fit. ... does not mean that ... assessment of likely harm to the setting of a listed building ... is other than a matter for its own planning judgment ... not mean that the weight ... must be the same as the weight it might give to harm which would be substantial. But it is to recognise ... that a finding of harm to the setting of a listed building gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so.*" (emphasis added).
159. It is therefore clear that a pivotal question in the determination of this appeal is: are the material considerations relied upon to rebut the presumptions in favour of preservation sufficiently powerful to outweigh those presumptions? In approaching that pivotal question, it is significant that the appellant's planning witness confirmed:
- (a) that he considered the case to be reasonably finely balanced, even on the basis of the revised heritage assessment; and
  - (b) that the appellants no longer seek to justify a grant of planning permission in the event that substantial harm to designated heritage assets were found.
160. If the heritage evidence on substantial harm of either NT, the Council, the County Council or EH were to be accepted, the appellants' position is that the appeal should be dismissed. Even if (contrary to the evidence of all those parties) no findings of substantial harm were to be made, then the appellants' position would be that this is a case of fine balance, doubtless in the light of the statutory presumptions.

#### *Significance of Hardwick's heritage assets*

161. The NT heritage witness explained that, when approaching the question of harm, one should start with the asset's heritage value, using EH material. Of particularly high significance at Hardwick are historical, aesthetic and communal values. In relation to each of these, he saw the relationship of the Hardwick Halls to their landscape setting and surroundings as integral. Communal values, he considered, are also very high here, evidenced by NT's holding and management of the assets, including the RPG in the national interest, as well as the international draw of the assets. Significance – the national policy yardstick – is the sum of all of these values. He attributed to the two Halls, the RPG and the CA a "very high order of significance". The appellant did not dispute this attribution. When considering the impact on significance, the Framework requires that "great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be". It is agreed that the

Inquiry is concerned – in relation to Hardwick – with assets of the very highest significance – “in the higher ranks of Grade I LBs”.

162. Turning to the particular significance of Hardwick New Hall, once more, there is much common ground. The appellant agreed that, as a “Prodigy House”<sup>47</sup>, the design intentions were to amaze, to inspire awe and wonder and to display wealth. The Hall should be understood as an icon of power, in a society where, in his words, the buildings of the elite were “jostling for power”, engaging in competition for status. Contemporaries would have recognised the assertiveness of Hardwick Hall as an essential feature and William Camden’s 1610 description (about 12 years only after completion of the building) bears this out<sup>48</sup>. Later commentators through the ages have also understood the not-so-subliminal messages of the Hall’s design. The roof is particularly significant by reason of its ‘extra’ height and exuberant and personalised form. It should be understood in the context of a hierarchical society, along with the increasing splendour of the internal rooms on successive floors. The external viewer would have seen, and still sees, the builder’s initials “ES” proudly emblazoned on all four sides – a blatant statement of personal triumph on the part of a remarkable woman who had risen from relatively humble origins. A visitor to the roof would, likewise, have viewed the surrounding scenes through and round her initials.

163. As the appellant’s heritage witness agreed, this assertive statement of power is integral to what Hardwick New Hall is all about – that is, integral to its significance. He was less ready to agree that such an assertion of triumph implies the notion that the builder and her creation would “brook no competition,” though he was happy with the character description “egocentric.” He also agreed that that statutory presumption in S66(1) means that there is a considerable public interest in preserving Hardwick Hall’s triumphant position. It really is self-evident that the significance of such a building – sited high upon a prominent ridge, will be diminished by anything audacious enough to challenge its supremacy in this commanding location. He did, in fact, recognise the principle in his assessment of the view from Biggin Lane, where he found (even on his uniquely insensitive approach to gradations of harm) a “major impact (first pentile of less than substantial harm)” due to the turbines being “uncomfortably close” to the silhouette of Hardwick. He continued that “whilst not interfering with understanding of the asset group, appreciation would be significantly impaired in this view”.

164. The NT witness identified harm as essentially consisting of intrusion into settings, having regard to the numbers, height, stark colour and movement of the turbines. In certain views there would be cumulative effects derived from the combination of turbines, pylons and traffic. The appellant accepted these points in relation to NT viewpoint E.4, appellants’ viewpoint (VP) 31. All six turbines would be visible on the ridge and they would appear to be taller than the Hardwick Halls. The effect would clearly be to challenge the designed dominance of Hardwick New Hall and to a lesser extent, the Old Hall and surrounding

<sup>47</sup> The term “prodigy houses” has been applied to notable English Tudor and Elizabethan houses, usually built with a view to housing Elizabeth I and her entourage

<sup>48</sup> ‘Higher yet in the very East frontier of this country, upon a rough and craggie soile standeth Hardwic, which gave name to a family in which possessed the same: out of which descended Lady Elizabeth, Countess of Shrewsbury, who beganne to build there two goodly houses joining in a manner one to the other, which by reason of their lofty situation shew themselves, a farre off to be seene, and yeeld a very goodly prospect’ *Britannia*, 1610

parkland, both of which are also relegated to a relatively subordinate position in this view.

165. Reasons why the appellant's heritage witness did not ascribe more weight to the significance of this impact were that the viewer would not have to focus on the turbines when looking at the Halls and because he did not regard it as truly representative. Contrary to the opinion of the LVIA assessor in the ES, he did not agree that turbines would become the focus of view, replacing that of Hardwick Hall, or detract from Hardwick Hall as a landmark feature in representative VPs 21 (Hardstoft) and 19 (Silverhill Park). His reason for rejecting the opinions of those assessors was that they were not heritage experts. That was the reason why, in the 2014 FEI, he had advised that the new VP 31 should be assessed by him, rather than the LVIA assessor. The FEI LVIA, however, recognises that *"the designation of the heritage assets reflects the contribution that the particular traits of those assets make to the quality and character of the landscape ... and to the modern experience of receptors at those locations. The LVIA is also concerned with the change in view as experienced in the present day by visitors ..."*.
166. He explained, in answer to a local resident, that he is 'a fussy individual who has to wear blinkers'. This idiosyncrasy perhaps explains, but cannot mask, the internal inconsistency of the appellant's own case. VP 31/NT E.4 should be regarded as representative of other viewpoints where the dominance of Hardwick's unique position on the ridge would be challenged by the creation of a discordant, large, moving form of development, totally at odds with the significance of the "lofty situation"<sup>49</sup>. A major part of the asset's significance is that it should command attention in views to the ridge – to inspire amazement, admiration and awe. He said that "heritage significance would not be engaged" in representative VPs 19, 21 and other views around them, because detailed features would not be visible. Clearly, the detail of Hardwick Hall is magnificent and an important element of its significance, but so is its dominance in its "lofty situation ... afarre off to be seene" and this element of significance certainly is engaged at these distances. He never explained how, given the "uncomfortable closeness" of turbines and Halls at VP 31/NT E.4, the observer could achieve the physical feat of viewing the Halls and RPG here without also having to focus on the turbines.
167. As noted above, the principles enunciated in Barnwell are relevant. As the appellant recognised in the light of that Judgment, effect upon the understanding of the viewer could not be regarded as a proxy for assessing the degree of harm and the contribution that setting makes does not depend on there being an ability to access or experience the setting. This recognition, however, was at odds with the appellant's heritage witness in his approach to assessment in his Module M<sup>50</sup>. That assessment was predicated on three important assumptions: (i) that it is principally the western views out from Hardwick which carry heritage significance, subject to the Elm Walk/Wineglass view eastwards; (ii) that there will not be general public access to the roof during the lifetime of the project so that no effect of planning relevance will arise in relation to views from the roof; and (iii) that the ES ZTV<sup>51</sup> is unreliable.

<sup>49</sup> See Doc 44. William Camden, 'Britannia', 1610

<sup>50</sup> See Cultural Heritage FEI

<sup>51</sup> ES Fig. 6.45

168. Taking these assumptions in reverse order, no alternative ZTV has been produced by anyone. Figure 6.45 is an important part of the ES. The FEI was extremely extensive and reflected the recruitment of the specialist heritage expert to the team, so the opportunity to produce a new one was there if the earlier work really was inaccurate. That was not done and there is no basis for concluding that the ES was misleading in that respect. Of course, such a document takes account of topography and not buildings or trees, but it gives an indication of the potential availability of views of parts of the turbines.
169. The appellant's assumption in relation to public access to the roof of Hardwick Hall was that it would not be feasible. No risk assessment or cost/benefit analysis was produced to support this and, eventually, in answer to the Inspector, it was abandoned, agreeing that NT's plan was not an implausible idea. The NT manager was clear that such access would be achieved by 2016. There was no evidential basis for disputing this. In his written assessment, the appellant's heritage witness played down the view from the roof on the basis of lack of public access, notwithstanding his admission that views from the roof "may carry some heritage significance". By the time that he came to give his oral evidence, he had heard the NT submissions and he played up his "alternative" justification, now saying that there was no heritage significance in wider views. This theory does not stand up. It is surely no accident that the relative positions of the stairs and roof top banqueting house entailed a walk across the "leads". It is known, moreover, that Bess was acquiring lands in all directions. Whilst visitors to the roof would doubtless have watched the hunting, it is inconceivable that they would not also have taken in the wider panoramic views, enjoying the thrill of such a novel experience from the 'extra' height of this particular roof. The appellant had no direct evidence to justify the supposition about limited views. Given the four-sided design of the Hall, including the roof with its monograms equally adorning each face of the parapet, as well as huge fenestration all around, together with the evidence of Bess's land acquisitions and dynastic ambitions, the belated assertions about lack of heritage significance are not credible.
170. Therefore the question of harm comes back to dominance and distraction. The view out would only be affected in one direction, but there would be cumulative impacts with pylons and traffic on Mansfield Road. The moving nature of the turbines must be borne in mind. The landscape around Hardwick Hall has altered over the years, sometimes exploited by Bess and her descendants, sometimes changes coming from external sources. The fact that pylons and roads have been built does not justify further harmful and distracting additions. The appellant's suggestions of connections between mineral exploitation or "traditional" windmills were rightly rejected by the NT. The impacts concerned are totally different and, even if the setting of Hardwick Hall was marred in the past by 19/20th century mining on a large scale, that does not justify permitting harmful intrusions upon its setting now. Knowing what we do about the design intentions and ambitions of the builder, the issue is loss of dominance by the Hall within its setting, rather than whether the turbines would themselves appear dominant. The proportion of the view occupied is therefore less important than distraction effects and here, the mobility of the turbines and cumulative effects are telling. The fact that views in other directions are affected by the M1 and other modern developments to some degree makes the view to the north east more valuable.

171. For modern visitors, the presence of the turbines, viewed from the pinnacle of the Hall, the high point of the visit, would reduce the sense of stepping back in time and with it, significance. This effect would be in addition to experiencing a view of all six turbines on the entrance route and from locations on foot within the parkland<sup>52</sup>. Viewed from Rowthorne Walk, the eye would be particularly drawn because one and a bit turbines would align with the axial view, merging with a pylon to produce a cluttered impression. The movement would naturally exacerbate the effect. As the ZTV indicates, there would be views and glimpses of parts of the development from extensive areas within the Park as well as from those viewpoints which have been specifically studied.
172. The appellant's third assumption was that the principal views out of Hardwick Hall and its park were towards the west, but no contemporaneous documents were produced to support this contention. On the contrary, the evidence suggests that panoramic views in and out were regarded by contemporaries as significant. The prominent location on the ridge, the four sided design with an extraordinary amount of fenestration, the "ES" monogram on all sides of the roof and the owner's programme of land acquisition "all over the place", are factors to set against this principally western point. The appellants' case in this regard was based on three documents produced by the NT in recent years. Two of these, the Mott MacDonald Setting Study and the response to consultation on HS2, were produced in the context of major transport proposals to the west of Hardwick. Whilst it is fair to say that general points of analysis about the existing setting of the assets should logically apply in the abstract, both documents must be read carefully with their particular contexts well in mind. To the extent that there is concentration on views to the west, this is explicable by reference to that context and should not be taken to mean that views in other directions are of no significance. Appendix 3 to the HS2 document, for example, has a general "Profile" Section, which starts with the Camden quotation and includes references to all-round views, making the point, in particular that *'The overall setting of the buildings on a spectacular hilltop site means that less emphasis needed to be placed on creating a designed landscape in the immediate vicinity of the Hall ... The park ... did not need to aspire to beauty, relying on the natural beauty of the topography and making use of long views out beyond the Park'*. This is exactly congruent with the evidence of NT's three witnesses to the inquiry. Similarly, the "Setting and Context" section makes general points about panoramic views and setting. Westerly views from the banqueting house are highlighted in the particular context of the HS2 proposal, but the "leads" are also flagged as a visitor destination. The fact that there is "slight primacy" of views to the west does not make the others unimportant.
173. The appellant consistently downplays the harm to the Hardwick assemblage. In relation to the Old Hall, as the ES (2012) heritage assessor recognised, the elements of prominence which have been noted in relation to the siting of the New Hall also apply. The appellant recognised these factors (prominence and association) but regarded heritage significance as "no more than marginally engaged". This conclusion does not do justice to the loss of dominance in views from the west.

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<sup>52</sup> see NT viewpoints A, B, C and D

174. The appellant's assessment of the RPG was informed by an unproved assumption about the ZTV. Moreover, FEI Module O makes no reference of the view from Rowthorne Walk<sup>53</sup>. It was agreed that this view is pertinent. Moreover, no allowance was made for group value, despite the obvious connections between the Halls and the RPG. Similar points apply in relation to the Hardwick and Rowthorne CA. As well as the connections within the Hardwick Estate itself, the CA extends further and, in particular, the link between St John's Church and the Halls and RPG is clear and strong. In relation to both of these assets, the ES assessor identified impacts which were significant for EIA purposes, unlike the appellant's heritage witness.
175. The appellant's heritage witness disagreed with the approach of the Secretary of State to group harm exemplified in the recent decision at Asfordby. This refusal to recognise the extra harm that can accrue from a number of lesser harms was not, in fact, consistent with his methodology as explained in oral evidence. He said that he had "flagged" a number of harms which he regarded as less than material so that the eventual decision maker could take account of them. Turning specifically to consider the Hardwick Estate and the many designated heritage assets that sit within it, there are particular reasons for adopting in this case the Secretary of State's approach in the other. This is because of the comprehensive management of the Estate by NT, not only for the benefit of its 4 million members, but also on behalf of the public. Common ownership and management is clear on the ground, signalled by the distinctive "Hardwick Blue" livery, by signs assisting and encouraging visitors to expand their Hardwick day out and gain a wider understanding of the 'parent' asset's significance, by similar promotion of other assets in the Guidebook and by the County Council's public footpath signage.
176. The issue of group significance is particularly important in this case because of the purposes and actions of the NT. The appellant's heritage witness said that he found EH's concept of "communal value" in Conservation Principles<sup>54</sup> 'difficult to deal with'. That is not a reason for treating communal value (or, indeed Conservation Principles and its heritage values) as irrelevant. NT's statutory purposes and work are an exemplar of "community heritage value" and many of the local people's statements show that NT is doing its work as trustee well. The totality of the Hardwick Estate, physically, historically, aesthetically and communally, is undoubtedly more than the sum of the parts here.

*Harm – substantial or less than substantial?*

177. Making a planning judgment on this issue must be achieved by assessing conservation values which together make up significance, carefully identifying the particular significance of the affected assets and then considering, in the light of that significance, the ways in which harm would be caused. That process requires all relevant impacts to be counted, no false assumptions to be made. Policy and guidance do not prescribe a "threshold" between different levels of harm, though the PPG is clear in highlighting that even one turbine might cause substantial harm to a relevant setting.

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<sup>53</sup> (NT's VP A)

<sup>54</sup> CD 7.10

178. The NT's heritage witness, in answer to the Inspector, gave it as his opinion that the scale of intrusion would be such as "to matter considerably". The reason for this expert opinion is clear when one considers the evidence of significance – the rationale for the "prodigy house" and its surroundings. He also considered the aspect of public perception/appreciation, which is a matter to which regard must be had in the broadest sense. Stepping back, as it were, he said that an 'ordinary person', seeing the Biggin Lane (NT E/VP 31) viewpoint, would be 'amazed at the amount of intrusion'. The Council's advocate put it like this: 'The lay person seeing this might think – 'What are you doing here to one of our country's internationally important assets?'. The appellant's heritage witness did not really comment, saying that it is simply his job to 'assess'. This was the view of the Halls which, in his 'blinkered' way, he said could be obtained without simultaneously focussing on the turbines.
179. This refusal to engage with reality or to take responsibility for his gradations of harm characterised his evidence and had clearly informed his judgments. Ultimately it is for the Secretary of State to make the judgment required by policy about substantiality of harm and, ultimately, to strike the planning balance in the context of the S38(6) and S66(1) presumptions. The question above is an important one in this respect; it signals a "reality check", much like the "reasonable observer" test signalled a reality check in Barnwell. Summarising his reasons for finding substantial harm (expressed as a 'catastrophic impact') the NT heritage witness said: 'Hardwick Halls have dominated that skyline for generations and here comes an extreme challenge to that dominance. Dominance on the scarp is extensively documented as a major factor. I regard the turbines as a major challenge, an extreme intervention.'

*The planning balance – other material considerations*

180. If the evaluation of harm of the NT and the Council is accepted then the appellants concede that planning permission should be refused. The precise policy mechanism of this is as follows. The Framework paragraph 132 provides that substantial harm to a loss of Grade I and II\* buildings and RPGs should be 'wholly exceptional'. Paragraph 133 requires a demonstration that such substantial harm is necessary in order to achieve substantial public benefits that outweigh the harm. In spite of the weight to be afforded to the generation of renewable energy and the weight that it is suggested should be given to the community initiative aspect of the proposal, these are not apparently seen as "wholly exceptional". Clearly in such circumstances (substantial harm to assets of the highest significance), the S66 presumption and conflict with LP policies must also weigh very heavily.
181. If no substantial harm to any of the designated heritage assets in issue is found, the S66 weighting is still very much in play; there is admitted harm to designated assets of the highest significance and the presumption in favour of their preservation unharmed is very strong. Likewise, Policies CON 4 and CON 10, together with the national policy objective to avoid harm to CAs as well as Listed Buildings.
182. Renewable energy is an important public benefit. The NT adopts the stance of the Council on this aspect. The contribution is valuable, but must be seen in the context of the good progress which is being made in terms of onshore wind provision. Financial and related benefits from the project are conceded by the



appellant not to be material planning considerations. This concession was plainly right as a matter of law but is significant in two further respects. Firstly, because those members of the Roseland Initiative who spoke in favour of the project made it clear that they supported it because of the financial and associated social aspects. The weight to give to these statements must reflect that reasoning, in the light of the clear legal position. Secondly, these considerations apparently influenced the choice of development site, whereas impact on heritage assets apparently did not, according to the ES. Heritage considerations did not feature until the design stage, after site selection. With regard to design, it is convenient to deal here with mitigation. The design which is subject to consideration is the appeal scheme; any reduction in the number of turbines earlier in the process, therefore, cannot count as "mitigation". Without prejudice to the Council's wider points on the materiality of the S106 obligation, that covenant has no impact whatsoever on the harm to the Hardwick assets.

183. This leaves the community initiative element. The appellants' case on this narrowed in the light of the *Awel Aman Tawe* decision, which restates established principle to the effect that the identity of the appellant is not material. If one extracts financial benefits/community income stream and the identity of the appellant from the equation, 'it is very hard to see what remains of materiality in the planning balance'. The Framework and PPG urge local planning authorities (LPAs) to be supportive of such initiatives, the latter making it clear that the Government leaves it up to LPAs to do this via policy formulation if they wish. As the appellant fairly admitted, Bolsover has no such policies, nor are any proposed; moreover, no such policies have yet emerged through the processes of examination and/or testing in the courts. In this case, it is submitted, there is no evidential basis for regarding this consideration as material, contrary to established principles of materiality.

184. In truth this scheme is not "unique". It attracts weight in the planning balance, but not as a scheme which must, uniquely, be sited so as to cause harm (even if described as 'less than substantial') to a wide range of designated heritage assets.

#### *Summary and conclusion*

185. The NT's case is: (1) that substantial harm would accrue to designated heritage assets of the highest significance; (2) such harm would be "led" by the fundamental challenge to the pre-eminence of Hardwick New Hall within its setting, striking at all the conservation values which go to make up its significance. Its design rationale would be seriously undermined in views towards and out of the Hall, harming its historic and architectural significance. The public experience of the Hardwick assemblage of assets would be seriously degraded for a generation, contrary to the Government's commitment to conserving such assets for this and future generations; this is a particularly weighty consideration in this case because of the very high communal value deriving from NT's statutory purposes, custodianship and management of Hardwick Hall and much of the Estate and EH's guardianship of the Old Hall.

186. When considering how to strike the balance, this question is illuminating – what would permission say about how the UK values its heritage? It is clear that valuing heritage featured very little in the decision to promote this scheme. Happily, the law and national policy, properly applied in this case, can ensure

that extraordinary investment which the nation has in its cultural capital in this part of the country can be properly husbanded.

### Interested parties

187. In this section, where speakers made similar points, they have not been repeated in this summary.
188. **Richard Newton** expresses concerns that the electricity infrastructure is incapable of absorbing the power produced and national subsidies encourage wind turbines which are frequently paid to stand idle.
189. Cllr **Sandra Peake** thinks that the community benefits claimed for the development are spurious and would not be as much as the appellant suggests. She suggests that the landowner and manufacturer would benefit more than local communities. The supporters of the project do not live locally. Whatever happens to the turbine scheme, local support organisations will still exist and continue.
190. **Peter Downing** has lived at the Stable Block, Hall Farm, Stony Houghton since 1994. He points out that his house was sensitively converted and retains all the original 6 cart openings facing north, hence preserving the character of the building. S1 and S2 would be visible from all the windows facing north and from the private garden area at the front of the house, without any effective screening. The turbines would appear industrial in what is a rural area close to the edge of the CA. He is also concerned about the potential for noise pollution because the terrain forms a natural amphitheatre; this could impact on health.
191. **Ian Sykes'** personal perspective is that the wind farm development is proposed near Roseland Woods which lies in very close proximity to the small rural villages of Stony Houghton and Scarcliffe. He is strongly against this development due to the significant and irreparable damage it will have on the landscape, heritage and public amenity not just in these protected villages but also to the national treasures of Hardwick Hall and its surrounding assets including Ault Hucknall and its protected church. He moved to Clowne in the early 1970s after growing up for 26 years in Sheffield overlooking the moor land on the edge of the National Park as it drops down towards Sheffield from Fox House; this shaped his interest as a youngster of how highly predominant landscape features with their height, beauty and grandeur shape our view of the world around us and give us a sense of place within it.
192. When he moved to live in Clowne, which lies approximately 4 miles north of the proposed site, he was instantly aware of how the magnesian limestone ridge had a significant place within the landscape with its views to the west and east. The views to the west encompass views to the Peak District National Park and beyond but of equal, but sometimes underestimated importance, far reaching views stretch out towards the east. He believes it was no coincidence that Bess of Hardwick and William Cavendish built their show piece residences at Hardwick Hall and Bolsover Castle here, in the 17th century. During the late 70s and early 80s he became a member and subsequently a committee member of the 'Council for the Protection of Rural England', as at that time this area was still regarded as

a coalfield area and many battles to protect its rural identity were long and hard fought because of how it was viewed in comparison with other areas nearby.

193. For health reasons he had to stand down but he suggests that the magnesian ridge is of major national and arguably international importance as in a very small area it contains Sutton Scarsdale Hall, Hardwick Hall, Bolsover Castle, Barlborough Hall and many others as well as being the site of Creswell Crags only a few miles to the east of the proposed site. The true significance of the Crags heritage value shouldn't be lost. These massive and constantly moving industrial towers and blades will inevitably cause significant harm to the landscape heritage and public amenity by whichever measure one chooses to use. Their height is such that they will dominate the landscape from near and far and degrade the experience of those wishing to appreciate and wonder at their historical significance
194. For approaching 3 years a group of people including Mr Sykes has met weekly in Stanfree in an attempt to protect the specialness of the limestone plateau and the ridgeline from obtrusive developments such as wind turbines. In their attempt to raise the profile of the importance of preserving the magnesian limestone ridge, in the Bolsover district council local planning framework, local district councillors at Bolsover district council were presented with a petition signed by almost 1400 people<sup>55</sup>. This demonstrates the degree of public and local interest in trying to protect its specialness. This landscape feature is a major asset and has much to offer future generations. He is also working to support Derbyshire County Council in its valuable work in promoting public understanding and enjoyment of the area's unique qualities. "The Limestone Journeys" project aims to conserve the Derbyshire magnesian limestone landscape and heritage features<sup>56</sup>.
195. The erection of the turbines will cause major and significant harm to the NT buildings and of equal importance - their setting. He also finds it difficult to believe that the developers can seriously consider building such monstrous structures virtually in the back gardens of a significant number of local people. He suggests that the long term impact which turbines of such magnitude will have on them is immeasurable and to be exposed to such an invasion on their lives, without any choice or control impinges on their human rights.
196. He draws attention to the statements of the Secretary of State '*Some communities have genuine concerns that when it comes to developments such as wind farms and solar farms insufficient weight is being given to local environmental considerations like landscape, heritage and local amenity*' '*The new guidance makes it clear that the need for renewable energy does not automatically override environmental protection and the views of local communities will be listened to*' '*I want to give particular scrutiny to planning appeals involving renewable energy development so that I can consider the extent to which the new practice guidance is meeting the government's intention*' Mr Sykes says these words gave him the confidence to stand up and be heard as member of the community. He says this is the only chance he will ever get for a Government minister to hear his views on this important matter which he hopes

<sup>55</sup> The wording and unsigned copy which accompanied the petition and the visualisation produced to support the petition, was made available for the Inspector's attention. The signed document is at the District Council.

<sup>56</sup> A copy of the project's full aims was made available for the Inspector

will add some weight in guiding the final decision in favour of protecting the lives and well being of the local people who are so vehemently against this proposal.

197. **Robert Swift** lives approximately 5 miles north-west of the proposed wind farm. Inkersall is mainly on an east facing hill, with views of the limestone ridge extending from just south of Palterton, to north of Barlborough. His family have been members of either the NT or EH for the last 6 years. Their journeys to work, school, to take the kids to after school clubs, to see family, and to visit Bolsover Castle all involve driving, walking or cycling in the direction of the limestone ridge. They can already see the turbines at Junction 32 of the M1, the tops of the Loscar wind turbines and will have good views of the Barlborough and Damsbrook wind turbines that the Planning Inspectorate approved on appeal<sup>57</sup>. The Roseland wind farm will be visible in line with Palterton. One development that appears to have been overlooked at this inquiry, is the so called 'Arkwright' turbine, which is situated between Duckmanton and Poolsbrook (not in Arkwright), and is less than 1 mile from their home. Construction of this is in progress and by the end of the week it will probably be up, there to stay for the next 25 years. It has conveniently filled a gap in our view of the ridge. In his view there is undoubtedly a cumulative effect.
198. The views of Bolsover Castle were the most significant to Mr Swift as a child looking through his bedroom window, and remain so now. The wind farm will be around 100m taller than the castle, bright white and spinning. The M1/M18 wind farm is 10 miles from his house, and sometimes is not obvious, if it is in the shadow of a cloud for instance. But when the sun shines on it, it stands out. The Roseland wind farm will be half the distance, and thus appear twice the size (the turbines are very similar in height).
199. The DECC "Call for evidence" has been mentioned, and Mr Swift would like to stress that out of 1111 responses, 970 were on the 'against' side. This, according to a witness today, lead to the initiative for more community driven wind farms. He would like the Secretary of State to consider the number of responses to this national survey in context with the petition that others will or have mentioned this evening. People at the Inquiry have been told that the purpose of the community wind farms is not just to compensate victims of these developments, but to empower local communities. Mr Swift suggests that the best way to do that would be to listen to the people and allow their elected representatives to make decisions on their behalf. He believes that this area will become known for the number of wind turbines, like Scunthorpe/Goole and the M180 corridor has, and other parts of the country such as Scotland, Cumbria and Northumberland. It should be renowned for its heritage attributes, like Bolsover Castle, Hardwick Hall, Sutton Scarsdale Hall and other notable monuments.
200. The potential for 'infrasound' is of great concern to **Steve Ponting**, a resident of Clowne. Low frequency noises, below the range of the human ear, can travel a very long way and because of the sensitivity of the inner ear, wind turbines should not be situated near people's houses or schools.
201. **Allison Rigby** is a resident of Palterton who has lived in Chesterfield all her life and in this particular area for almost 5 years. She and her husband enjoy living close to Hardwick Hall and are fortunate enough to be able to walk to both

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<sup>57</sup> See CD 5.28

Bolsover Castle and Sutton. On her return journey home on the M1 she always feels proud when approaching Hardwick Hall, that such a magnificent building in an unspoilt setting is part of the community. This area is not affluent, so to be in such close proximity to three buildings of NT and EH significance is a privilege and one that makes the community proud. Hardwick Hall is also a very popular tourist attraction and customers travel nationally and internationally to appreciate this historic site and setting. The fact that wind turbines could blight the fantastic views is both damaging to the setting and will impact on tourism in the area. The height and number of turbines in a small rural community in such close proximity to three historic sites will be totally out of keeping with the setting.

202. The Localism Act is committed to ensuring that local communities have a much greater say in shaping the places where they live and have some control over planning decisions, and that includes renewable energy developments. If the Government truly is allowing people to have a say and a part in the decision making process then surely the opinions of the public and local community should be listened to. The community did not ask for this. They are not in the right location and not supported by communities who are proud of where we live. If it is deemed that wind farms bring benefits to communities they need to be in the right place and with sensible siting.

203. **Mr & Mrs Wildgoose** live at Glapwell Lane Farm which is a Grade II listed building, on Grade 2 limestone agricultural land. The farm has been owned and worked by our Wildgoose family for more than sixty years. Three generations have worked continuously to make a success of the business. The farm is not just their family home, but their place of work and they are on site for 24 hours a day, therefore the immediate surroundings are of significant importance to them and they strongly object to this development for the following reasons.

- The nearest turbine would be a mere 1400 metres from the farmhouse.
- There are already long established pylons crossing the fields near the farm, but the proposed turbines will be two and a half times higher than those pylons and they will be moving and creating noise. They will also be white and highly visible.
- From the farmyard and from all the windows of the house, apart from those on the west elevation, this development will dominate the view. This is particularly true of the day to day living area, where the windows are used not just to admire the view, but to supervise the working area of the farm.
- Since the farmyard is constantly busy with farm and other machinery, the turbines could be a hazardous visual distraction. This would especially apply when the turbines were in motion. It would also impact on the family when working on the agricultural land around the farm.
- Because of the restrictions imposed on this listed building, all necessary building works on the farm have had to comply with regulations and remain within the existing footprint, in order to retain the integrity of this historic site, whilst at the same time meeting current health and safety requirements. Because the outbuildings could not be relocated, this means that when the wind is in the east (i.e. from the direction of the proposed turbines), all wind is funnelled between them and sound is amplified.

- The local area has many historic and notable buildings, which attract tourists. On several occasions, especially in the summer months, walkers and coaches full of such tourists stop at the gate while the guides explain the historical significance of our home. Wind turbines would detract not just from the rural setting of the farm, but from the approach to it.
204. **Derek Chappell** was until recently Chair of Scarcliffe Parish Council and is still a parish councillor. He read passages from Hansard<sup>58</sup> which state the view of the current Government relating to wind farms, the thrust of which is that local voices have to be heard in the process and that local people need to have a say in the process. Scarcliffe Parish Council objected unanimously to this planning application and the vast majority of local people object (as demonstrated by the turnout at this appeal throughout this enquiry) to the erection of the enormous wind turbines.
205. **Lorna Wallace** is Chief Executive of Community Voluntary Partners (CVP). CVP is the umbrella organisation for the community and voluntary sector in Bolsover District and was registered as a Charity in 2007. CVP was formerly known as Involve and was the Community Empowerment Network for Bolsover District from 2001 to 2007. In 2009, CVP was asked to become a partner in the development of the Roseland Community Windfarm - a unique and innovative venture which will deliver significant community benefits to local communities across Bolsover district. CVP is currently one of the Board members of the Roseland Community Interest Company and has been working to strengthen and secure community leadership and control of the wind farm and to maximise the community and social benefits for Bolsover. If planning consent is granted, CVP will be gift aided and will manage the re-investment of 60% of the profits from the Roseland Community Windfarm.
206. The real 'catastrophe' facing Bolsover is not these, or indeed any, turbines. But that Bolsover is ranked 58 out of 354 local authorities in the Indices of Deprivation 2010 and that 27% of Bolsover's neighbourhoods are among the poorest 20% in Britain. Whilst significant progress had been made in tackling many of the issues facing disadvantaged people in the district the impact of welfare benefit reform, economic recession, low pay and reductions in public sector services at a time of increasing demand is at best stalling and at worst reversing these gains. Bolsover district continues to experience significantly higher levels of deprivation and child poverty than both Derbyshire and English National averages -approximately 3,200 children in Bolsover live in poverty.
207. She says that the nature and extent of the challenge facing Bolsover's communities is not lost on them — they are acutely aware of the impact of poverty and deprivation on individuals and their communities. CVP's extensive engagement activities have identified a range of shared priorities which form the basis of the Roseland community investment priorities:
- Firstly, building strong and sustainable communities through a community grants pot providing funding for neighbourhood based community led activity;
  - Secondly, raising aspirations and creating opportunities for young people;

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<sup>58</sup> Fully set out at Doc 32

- Thirdly, tackling poverty and social exclusion;
- Fourthly, long term investment in order to create a sustainable funding stream during the lifetime of the windfarm and beyond.

208. Investment priorities will change and develop to take account of changing needs and requirements across the district throughout the lifetime of the Roseland community windfarm. CVP will continue to work and engage with communities throughout the district in order to ensure that the Roseland community investment continues to meet local needs and to be accountable to local people. In order to manage and minimise the associated costs and resource implications of ensuring effective community leadership and direction of community investment priorities the Roseland community investment programme will be managed and will be accountability to the community through the pre-existing structures for community engagement, strategic planning and priority setting.

- The Community Sector Forum will continue to identify community investment priorities and manage the community grants investment;
- Talent Match Young Advisors and young people engaged through the Community Organiser programme will identify investment priorities for the raising aspirations and creating opportunities community investment;
- The Anti-Poverty Forum and Health & Social Care Forum will identify investment priorities for the tackling poverty and social exclusion community investment.

209. Whilst there remains a 'culture of dependency' there is also a growing community awareness of the need for communities to take action themselves to address their issues and a determination to bring about change and to influence policy and strategic decision making. However, many of Bolsover's communities continue to struggle through lack of resources, capacity and confidence — the impact of poverty and deprivation and generations of exclusion should not be underestimated in the erosion of community cohesion, confidence and capacity.

210. Roseland Community Windfarm is potentially the largest community led, community benefit wind farm in England and as such, can claim to have national significance as an exemplar of what can be achieved by communities in terms of both green, clean and sustainable energy production, in generating significant sums of investment to be used to address community needs and priorities and in building community confidence and capacity. This is entirely in line with the Government's localism agenda and with government policy and guidance as set out in the DECC Community Energy Strategy Report (January 2014).

211. **Paul Davies** is volunteer Chairman of the Local Enterprise Organisation (LEO) and a holder of the Queen's Award for Enterprise Promotion. He says that the Roseland project will have a huge positive impact on the aspirations, the personal development opportunities and the well-being of people of all ages across Bolsover District. In 2006 Bolsover, along with two of its neighbouring districts, was awarded funding from the Office of the Deputy Prime Minister as part of the Local Enterprise Growth Initiative. That funding was awarded to the LEO project as recognition of the need within these districts to address high levels of unemployment, lack of opportunity for young people and the need to encourage

economic growth through small enterprise. In the period from 2007 to early 2013 when the extended programme ended, the project delivered the following results:

- Supported 3,881 businesses
- Helped create 495 new businesses
- Helped safeguard 1,408 existing jobs
- Helped 546 people into work
- Worked with 8,000 students to improve their enterprise skills, and to boost their confidence and aspirations through our enterprise challenges
- Created 9 incubation centres for small businesses and, importantly, the people who were touched by that programme benefitted from the help they received in ways which boosted their confidence, provided them with a sense of empowerment and gave them control of their own lives and their own economic situation.

212. The programme worked with people who had never appreciated that they could take personal responsibility for their family's well-being by setting up and running their own businesses. It worked with people who had been made redundant and who, if they were getting on in years, felt that they may never get the opportunity to work again. It helped people with long term illnesses, or caring responsibilities which would exclude them from more traditional forms of employment, by helping them to create their own micro-enterprises. And it worked with school students providing them with enterprise skills which would improve their prospects, and involved them in projects which caused a shift in the attitudes and ambitions of many of those students, notably among those regarded as low achievers.

213. But that work is not complete. Bolsover still suffers from high unemployment, low educational attainment and areas of extreme poverty. Since the original funding for the LEO programme dried up that project has been on hold. This is a huge lost opportunity for local people, young and old. The LEO will restart its programme helping young people to develop their skills and raise their own aspirations; working towards a change in culture where people know that they have the power and the ability to create their own earning opportunities and to reduce dependence on state benefits.

214. Austerity measures have cut back on the means to support and develop our communities. Through this initiative the LEO will be empowered to develop and deliver support programmes that will help large numbers of Bolsover people over a 25 year period. It will have the ability to work in partnership with local authorities, health authorities and other local organisations to leverage in other local, regional and national funds to maximise the impact and benefit that will be realised through this project. With support from the Roseland project, the LEO will help to improve the lives of people in our communities, consistently, reliably for the next 25 years.

215. **Mike Ricketts** is a resident of Scarcliffe and has lived in the area since the early 70s throughout the period when coal mining related industry was a prominent feature of the landscape. He points out the ways in which Roseland



Woods are used for relaxation by many people in the area including the scouts who have a camping area in Birch Hill Plantation. This would be affected by the appearance and noise of the proposed turbines. He draws attention to the appearance of the limestone ridge as travellers leave the M1 at J29, with Bolsover Castle and Hardwick Hall taking prominence. The turbines would distract from these beautiful historic buildings and affect tourist numbers, therefore affecting employment and community revenue. He thinks it very unlikely that the local community will buy in to the scheme. The fact that the landscape was once scarred with spoil heaps is no reason to think that turbines would somehow be acceptable.

216. **Samantha Price** is a resident of Glapwell and is concerned regarding the height of both the turbines and the land they are situated on<sup>59</sup>. Glapwell is at 179 m above sea level, Scarcliffe is at 143 m, Stony Houghton 165 m and Shirebrook at 97 m. The proposed turbines will be visible for many miles around. The turbines will dwarf the electricity pylons in the fields near to the site. She points out that the Loscar Wind Farm at Harthill is visible from the rear of her property, looking north; and the Lindhurst wind farm is visible from the front. The proposed turbines will be more visible than either of these schemes due to their location.
217. **Melvyn Matthews** is a resident of Palterton. He agrees with many of the people who have spoken against this wind farm development, who have seen homes and communities blighted in the past by the ravages of industry. He says coal mines and chemical works with their spoil heaps and pollution and electricity pylons devastated the landscape. Yet these were accepted since these industries brought employment and prosperity to the region. The wages and salaries earned were spent in the local shops and businesses and as such communities benefitted and thrived. With the eventual demise of these industries there was a need to diversify, to create new employment opportunities for the redundant and unemployed. New industries replaced the old, tourism expanded and gradually the area opened up more to visitors. The NT, EH and the local Council worked tirelessly to promote the area in an effort to erase the scars of the industrial past by raising the profile of Hardwick Hall, Bolsover Castle, Creswell Crags and Clumber Park.
218. For the visitors, it is these historic buildings which draws them to the area, but for local families the prospect of walking along country paths and bridleways, meandering through Roseland Wood or Scarcliffe Wood, offers just as much pleasure all the year round. If the Roseland wind farm is allowed, the visitors may come once, but many will not return when they are confronted by these huge structures which will be visible from most of these historic sites. Unfortunately however, the people who live in the villages, in close proximity to Roseland, will not have that choice and as such will have to endure the situation, with all its consequences, for the duration of the wind turbines' life. So who will benefit? In the past, large numbers of people were employed in the coal and chemical industries, but how many will be employed for these wind turbines? The people who promote these wind farms also make many claims about how much money will be given to local communities, but there are no definitive figures or percentages. This is because the benefits are dependent upon the amount of electricity generated. Yet the developers will always have the Government

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<sup>59</sup> See detailed statement at Doc 36

incentive payment, irrespective to how much electricity is produced, or in the case of wind turbines, electricity which is not produced. He says that no other industries are paid more not to produce anything than to produce something.

219. Local people recognise that change is inevitable and will embrace change, provided it is for the better and will benefit the whole community. The need for a combination of sustainable energy in conjunction with gas, oil and nuclear power is accepted. However, Roseland wind farm and others do not provide sufficient controlled capacity primarily because they are all dependent upon the vagaries of the winds and nature. These turbines are inefficient and the sole beneficiaries are the developers, whilst the communities where the wind farms are situated will have their lives blighted by their presence.
220. **June Ricketts** says this scheme is not about a community sharing, but a small amount of people benefitting at the expense of the community. There are many other ways in which funds can be raised without the need for noisy, ugly turbines such as the Parish Councils, the Derbyshire Environmental Trust and the National Lottery. There is no certainty that the turbines will make profits. The CVP and LEO already benefit from various substantial grants from the local Councils and other sources<sup>60</sup>. Local people are not in favour of this development and want to maintain the beauty of the limestone ridge.
221. **Jane Lester** is a long term resident of the area and points out that despite having benefitted from the industry that was once common, the regeneration that has taken place has vastly improved the environment. Countryside parks and walks have been created on the old colliery sites. Caravan sites and camping bring tourists and income. The countryside is good for local families. The turbines will ruin the character of the area and negate the improvements that have taken place. With very few exceptions, local consultation did not produce positive support from the local community and it should not be called a 'community' wind farm. In general, supporters do not live in the area.
222. **Cameron Stott** is 12 years old and a young person who cares about the future of the local area. In school he was taught about renewable energy. A group project involved researching different types of renewable energy and draw some conclusions to report findings to the rest of the class. His group was asked to look at wind power, both on and off shore. They came to the conclusion that because there are so many factors which can affect the turbines they were not an efficient way of producing energy. The economics of the turbines suggest that whoever is developing the wind farms is receiving large amounts of money through subsidies the Government is paying. Even as recently as yesterday the national press said that in this year alone wind farms have been paid £43 million to stand idle. The payments are funded through householders electricity bills to the suppliers because the National Grid was unable to use their electricity. This does not seem right to him.
223. Since he was 6 weeks old he has been taken by his grandparents to walk and play in Scarcliffe and Roseland woods. One of my favourite trips with school has been to Hardwick Hall. Since then his parents have joined the NT to use and enjoy the history, 5 beautiful walks and views all around the Hall. Bolsover Castle is very near and that is another good place to visit. He is very upset that

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<sup>60</sup> Copies of financial statements attached to Mrs Rickett's statement at Doc 39

someone wants to put 6 turbines in and around Scarcliffe and Roseland woods, which would spoil the beautiful countryside and the lovely views from Scarcliffe church and from and around Hardwick Hall. In 25 years time, the average life of a wind farm, he will be 37 years old. If he has a family he would love to share with them all of the experiences he has had in these places without the site of turbines.

224. **Marion Sabido** and her husband are residents of Scarcliffe. She points out that she sleeps with her bedroom windows open at night and is very concerned that turbine noise and flicker will affect her living conditions. She is also concerned about the potential harm to wildlife interests, particularly birds
225. **Alan Steward** lives in Scarcliffe and says that the links between the church and the surrounding woods have great significance because of Lady Constantia, the 1175 effigy of which lies within the church<sup>61</sup>. Lady Constantia's story is set out in a booklet<sup>62</sup>. She was an illegitimate daughter of Henry 1 and of high rank though one of 20 bastard children. Local legend has it that the lady, with her child, was lost in the nearby woods at dusk and was guided to safety by the sound of Scarcliffe's curfew bell. In gratitude she gifted five acres of land to the village, the rent from which was to be set aside for providing the parish with bell ropes so that the curfew bell could be rung forever. The land set aside was called 'Bell Rope Land'. It is still the tradition in the village to ring the curfew bell for three weeks either side of Christmas. He maintains that the church should retain uninterrupted views of the woods for historical reasons.
226. **Alison Rodger** presented a summary of Dr Nina Pierpont's keynote international address on the effects of wind turbine noise on health<sup>63</sup>. She feels that the construction of a windfarm development so close to a populated area will have a catastrophic effect on the health of the community. There will be audible sound that will emanate from the turbines - many describe the blade noise as an incessant 'thrum'. Low-frequency sound directly stimulates responses of both the cochlea (the hearing organ) and otolith (the organs of balance and motion detection). The response of the cochlea to turbine noise can be a trigger for tinnitus. There is a young boy in her village with cochlea implants who is afraid that his already very limited hearing may be affected if this application is passed.
227. The effects on the otolith are equally serious and are known to generate a wide range of debilitating symptoms, including dizziness and nausea - a feeling akin to seasickness, even without the movement - and difficulties with visually-based problem-solving. In Pierpont's wind turbine study, 7 out of 10 school-age children did worse in school during exposure to turbines, including unexpected problems in reading, maths, concentration, and test performance. Scientific experiments show that constant background noise (white noise) leads to increased stress. Sustained elevated stress levels have many deleterious health effects; including mental health problems like depression. Stress also has effects on the cardiovascular system and increases problems with insomnia.
228. She is also a member of the NT. When the threat of a windfarm by Roseland first arose, she helped to conduct a survey asking for local opinion. The feeling

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<sup>61</sup> Though the CAAMP for Scarcliffe suggests this is uncertain

<sup>62</sup> Doc 43

<sup>63</sup> Attached to Doc 38

was almost unanimous. The community certainly does not feel this windfarm will bring the 'substantial benefits' claimed by Roseland LLP.

229. **Jayson Whitaker**, a local employer, says that in fact the reality is specialist companies will be bought in to build and erect turbines for the wind farm, and specialist companies will be contracted for the maintenance and any subsequent breakdowns. After paying Chatsworth Estates rent for the turbines being on their land, and paying back the loans/funding to the relevant councils, paying the LEO and CVP costs, he seriously doubts there will be any income left to spend on the local community. His perspective is one of genuine growth and employment for our local community through founding and expanding a local business supplying specialised high voltage electrical cable and installations. His employees live in local villages and further afield. Turnover is increasing and the business will be employing 90-100 people. That is a real contribution to the local economy of all the places mentioned provided by real local enterprise, not some made up figures based on theoretical 30% production of power maybe giving funds back to the community "after running costs and expenses". He suggests Roseland LLP do not know what income they would generate.
230. **Darren Webber** is Chair of Scarcliffe Parish Council and expresses the concern that it is very difficult to understand what the return would be for local people. There are no guarantees, and the available money could be divided up many times.
231. **Nicholas Gray-Cowley** is a Chartered Surveyor. He says that the 1947 Planning Acts were introduced to control development and its effect upon people and the environment. He says this proposal to erect the wind turbines will have an effect upon his family's life, every single day, and all those who will look directly onto the turbines. He lives on Back Lane, Palterton, and will see clearly all the turbines from his kitchen, living room, and two of his bedrooms. In the morning as the sun rises, it will shine through the rotating blades, directly into the main rooms of the house and the rear garden. This will be really disruptive. It is not a price he wants to pay for the benefit of 'The Community'. He is part of that community.
232. His point is that the community has had its turn at providing energy and just returned everything back to normal, when along comes this proposal for the erection of turbines masquerading as a 'community' project. Using that word 'community' makes it sound appealing and tries to justify the massive impact the turbines will have. But what it is all about is jobs, not jobs for 'the community' but for those submitting the appeal, and it will provide substantial income for the Duke of Devonshire on whose land the turbines will be placed. And those submitting the application and the Duke do not live here. The estimated lifespan of the turbines of 25 years is not, for him, temporary.
233. He says that people have to satisfy a lot of rigorous different planning requirements when building in a CA yet these 125m tall turbines are not apparently a problem. Money for projects is available from other sources. He is involved in a scheme to provide a new sports hall and 'community' facility within the District, and funding will be sought without the help of this application. Those who oppose the proposal live here- and if there are any speakers speaking in support of the appeal, they should have their comments listened to with caution unless they live within close proximity and sight of the turbines.

234. He suggests that the community leaders are surely the elected representatives who people vote for and clearly had the courage of their convictions to turn down the application. The 'community' is the people here, and the elected representatives. He questions whether the benefits remain within the area where the wind turbines are or goes to Mansfield District Council or Ashfield. Local people have no money, unlike the appellants, to fight the appeal, and unlike the appellants do not have all day to prepare an argument. In conclusion, he says this is about jobs and it is about money, but not for the local 'community'; it's for those behind the appeal.
235. **Dr Joan Dixon** is a former employment advisor for Derbyshire County Council. She objects to the detrimental effect on economic development, particularly the tourist economy. The area has underdeveloped assets with vast potential. The Peak District is at bursting point and the local area has untapped resources such as The Archaeological Way and Creswell Crags that have huge potential. The turbines would have a negative impact on the Vale of Scarsdale and would have few economic benefits.
236. **Guy Freeland** is a resident of Palterton. He says that, in addition to the immediate displeasure and discomfort these turbines will bring to the affected communities, they also threaten the economic well-being of the district as a whole. Bolsover District suffered severe economic recession with the closure, in the 1980s, of its dominant source of employment - the coal mines and associated industries. Once thriving areas sank into the lowest decile of the index of deprivation. Since then, with help from the Council, the district has struggled to slowly restore substance and vibrancy to its economy.
237. The local places of beauty and historic interest attract tourists from all over Britain, and indeed the world. In recent years the Council has sought to develop and strengthen, by local investment, the value that can be added to the economy through this tourism. Last year this was estimated at over £100 million, and to be supporting 1500 jobs in the area. Anything that diminishes the attractiveness of our places of beauty and interest, will surely also diminish the valuable contribution tourism is making to the recovery of the still fragile local economy. The members of the Planning Committee asked many questions for clarification, and then debated the issues amongst themselves. Having done so, these democratically elected representatives of our communities, mindful of their responsibilities to serve the best interests of their constituents, voted honestly, fairly, and decisively against the application. This carefully considered vote - 4 in favour, 11 against - was surely evidence enough that erecting this wind-farm would be a serious dis-service to the present and future well being and prosperity of these poor communities.

### Written representations

238. Written representations and petitions are submitted both for and against the proposal. The points made generally fall in line with those made by others at the Inquiry. The following points reflect concerns raised that are not already summarised above or are of particular interest.
239. Many local residents resist the proposal because of its impact on an area well known for its woods and rural beauty largely unaffected by previous mining

activity. Some enjoy the area for equine related recreation and are worried about the potential harmful impact on horses, especially on Balkham Lane. There is concern that property prices will fall. A consistent response is that there would be detrimental effects on heritage assets in particular local CAs, Hardwick Hall and Bolsover Castle. The occupiers of **Harrison's Nursery** in Common Lane, Shirebrook have no real objections to the turbines but point out that the proposed entrance to the access track is in a dangerous blind location. The effect on bats is raised by a number of local occupiers. A number of local residents from Scarcliffe and Shirebrook support the proposal and point out that they are not unappealing to the eye and would improve the life chances of children in the area.

240. Support for the scheme also comes from people who point out that almost £20m would be raised for enterprise support projects and local community groups over its lifetime. They say that the Community Energy Trust is a very well organised group.

### Conditions

241. The wording of the suggested conditions is generally that agreed at the Inquiry and is covered here without prejudice to my consideration of the issues. I report only on conditions that attracted controversy and drew comments at the Inquiry, or because they require explanation or important rewording. All other conditions are necessary and should be imposed for the reasons stated. I have considered the suggested conditions in the light of planning guidance and Appendix A to Circular 11/95 *The Use of Conditions in Planning Permission*. They have been adapted in accordance with the recommendations therein where appropriate, to ensure the wording is precise, necessary, relevant and enforceable.
242. **Condition 4** specifies a continuous period of 6 months before a turbine that has ceased to export electricity to the grid must be investigated and repaired and removed. That period is long enough for the operator to be aware of the problem and for the public benefit to be withheld.
243. **Condition 10** is retained as requested by the Council because the proposed site for the substation lies in an area of agricultural land with very few nearby buildings, where a utilitarian building with grilles and other energy related features would appear out of place.
244. **Condition 26** (noise) includes a requirement to put in place a scheme to mitigate any breach of the noise limits set out in tables 1 and 2. In view of the relatively isolated locations of the turbine sites no specific controls are proposed on noise emitted during construction or decommissioning over and above those available through environmental health legislation.

### The S106 Obligation

*In this and subsequent sections, numbers in brackets [] refer to the main paragraphs in this Report that are of relevance*

245. The Framework sets out at paragraphs 203 and 204 national policy on planning obligations which are governed by S106 of the Act and regulation 122 of the Community Infrastructure Levy Regulations 2010 (CILR). It advises that

decision makers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

246. The signed and dated undertaking<sup>64</sup> aims to secure a) a decommissioning bond agreement with the Council, b) to create a Stony Houghton Conservation Area Payment (SHCAP) in the sum of £200 000 and c) to make a payment of £10 000 to the Council for the purpose of replanting and/or replacing trees within the grounds of St Leonards Church, Scarcliffe.

247. Assuming that agreement can be reached with the Council, the provision of a decommissioning bond provides assurance that at the end of the 25 year operational period, the turbines would be removed from the site including the upper parts of the foundations in accordance with suggested condition 3. It is uncertain whether, at the end of 25 years, the then owner/operator of the site would have the resources to remove the turbines, notwithstanding the requirements of condition 3. It is not unreasonable to consider that the Council would willingly agree to such a bond being created. I consider that this provision is not absolutely necessary to make the development acceptable in planning terms but would satisfy the other 2 requirements of the Act.

248. £50 000 of the SHCAP or 'Historic Environment Enhancement Fund', would be paid to the Council prior to the First Export date and a further £15 000 annually for the next 10 years. It is intended to offset or compensate for the harm that it is acknowledged would occur to the 'fabric' of the Stony Houghton CA<sup>65</sup>, potentially, in the appellant's view, reducing the degree of harm. The intention is that the Council would use the money to promote the repair, maintenance, enhancement and interpretation of the CA. However there is uncertainty over the administration of the scheme, which would involve the Council in expense; the purposes for which it would be used and how any decisions would be made involving local residents and private landowners; and the end result of the expenditure, which in all likelihood would be likely to improve the heritage interest of the CA, increasing its sensitivity to the turbine development. There is no direct linkage with the development itself and it is uncertain that the works could be fairly and reasonably related in scale and kind. There would be no lessening in the degree of harm. The appellant says that the money should be allocated in keeping with both the audit and remedial shortfalls noted in the Stony Houghton CAAMP, but these are extensive. There are other means of providing moneys for repair. There is no certainty that the SHCAP, whilst helpful, would achieve a great deal. It has come about late in the process because of the finding by the appellant's own consultant witness that the degree of harm caused would be greater here than at any other location. Moreover, there is no policy

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<sup>64</sup> Doc 45

<sup>65</sup> See 2014 FEI para DD.11 &c

basis for considering compensatory measures in the case of harm to a heritage asset. This aspect of the S106 attracts little weight.

249. The potential need for new trees at St Leonards Church came into focus because of the recent removal of an unhealthy tree opposite the main entrance porch, part of a row which would perform a role in screening turbines south of the village. There are other mature trees in the churchyard performing a similar role that will almost certainly need maintenance and/or replacement<sup>66</sup>. However the screening effect would be considerably less in winter in any case. There would be costs associated with the administration of the funds by the Council, and the commitment is vague. The benefit of any money intended to enhance the setting of a heritage asset is not discounted, but it is unclear that the trees in question have always existed or that the money would be spent in a way that would be fairly and reasonably related in scale and kind. It is not suggested by the appellant that the works are necessary to make the development acceptable in planning terms, nor has it been shown how they would be directly related to the development.

250. I conclude that the S106 as a whole attracts only limited weight. [93,116-8]

### **Inspector's conclusions**

251. Following from the reasons for refusal, the main considerations upon which the decision on this application should be based are as follows:

- The effect of the proposed development on the settings of designated heritage assets; and
- Whether the environmental and economic benefits of the scheme would be sufficient to outweigh any harm that might be caused.

### *Policy matters*

252. The LP is silent on renewable energy. Policies CON 4 and CON 10 firmly state that development which would have a detrimental effect on listed buildings or areas adjoining CAs will not be permitted; there is no suggestion that there should be an element of balance in considering development which affects these heritage assets and in this regard, the LP is inconsistent with section 12 of the Framework. Paragraph 215 of the Framework says that when development plan policies are of considerable age, due weight should be given to them according to their degree of consistency with the Framework. Whilst it is a core planning principle of the Framework to conserve heritage assets, that should also be in a manner appropriate to their significance. As such, the weight to be attached to non-compliance with CON 4 and CON 10 is reduced.

253. It follows that paragraph 14 of the Framework comes into play and this says that where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. Footnote 9 includes designated heritage assets in the list of specific policies that restrict development.

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<sup>66</sup> See Doc 16, letter from the Church Warden



## Heritage assets

254. Heritage assets within 5km of the appeal site are shown on Figures 12.4-12.10 of the ES<sup>67</sup>. I deal firstly with those assets referred to in the reason for refusal. Where appropriate I include listed buildings and other heritage assets where they are affected individually or as part of the heritage interest of CAs.

### *The Hardwick assemblage*

255. The Hardwick group of assets comprises Hardwick (New) Hall (listed Grade I), Hardwick Old Hall (Grade I), and related buildings (including stable yard buildings at Grade II and II\*) and grounds (designated as a RPG at Grade I). It lies within the large Hardwick and Rowthorne Conservation Area which includes the RPG and also encompasses the Grange, an associated house once used as a school; the main entrance gatehouse on the approach from Glapwell (both Grade II); and St John the Baptist Church at Ault Hucknall (Grade I). The SPD says *'The CA encompasses not only two great houses and their historic park and garden, but also a variety of other important and contemporary buildings and structures, areas of historic woodland, formal gardens, ponds and the estate quarry. Individually each of these aspects of the historic environment is of significance, but this is magnified by the associations between the different elements and their aesthetic and functional interrelationships. In particular the RPG is not merely a backdrop to Hardwick Hall – that extends well beyond to encompass the wider agricultural estate and further afield. Neither is it simply the approach to the Hall – that commences with the long distance views of the Hall on its escarpment as seen from several kilometres away. Rather, beyond its own undoubted aesthetic qualities, its strength lies in being integral to life at Hardwick. The garden has produced vegetables and fruit for centuries, as well as providing a place for relaxation and contemplation for many generations. The parkland has been used as a deer reserve and for the grazing of cattle since the sixteenth century and its man-made features, such as the Row Ponds, Great Pond, Miller's Pond, ice house, rare Victorian "duck decoy" and the buildings of the Estate and Stable Yards emphasise the functional nature of the estate, serving and supporting the Hall, as well as linking it with the surrounding landscape and communities. Unlike many historic parks, Hardwick's was never completely re-designed by a landscape 'improver' such as Humphrey Repton or Lancelot 'Capability' Brown. Instead the changes, utilitarian and aesthetic, wrought by each generation survive in a rare layered parkland landscape which boasts features dating from the 16th to the 20th centuries.'*

256. It is not seriously questioned that the Hardwick assemblage of assets is of national importance and Hardwick New Hall with its original contents in particular, as one of the most impressive houses built in the Tudor period, is of international importance<sup>68</sup>. The heritage significance of the group derives from its association with Bess of Hardwick, Countess of Shrewsbury, who lived in the 16<sup>th</sup> century Old Hall and commissioned Robert Smythson to build the New Hall on an adjacent site from 1591-97 as a showcase following her elevation to be the second most powerful woman in England after Queen Elizabeth 1<sup>69</sup>. Its most notable features include the unusual extent of glass which provides natural light

<sup>67</sup> Note that the Grade II\* St Leonard's Church at Scarcliffe is wrongly located in Palterton on Fig 12.6

<sup>68</sup> For full details see NT Guidebook Doc 44, ES Section 12 and the Cultural Heritage FEI modules

<sup>69</sup> ES para 12.4.39

to a level never before experienced in a Tudor building and which is a prominent feature of the fenestration, seen even from a distance; the original interior furnishings and decoration, which include 16<sup>th</sup> and 17<sup>th</sup> century needlework and tapestries; the second floor High Great Chamber, reputed to be the most beautiful room in Europe<sup>70</sup>; the 50m Long Gallery running the entire length of the house at the second floor; the 6 roof turrets each containing rooms accessible from a roof walkway; and the carved stone balustrades which are carved with her initials (ES) such that they are seen from all directions silhouetted against the sky.

257. The house was built to be seen, on the highest point of the limestone ridge<sup>71</sup>, from where the high land to the west (now the Peak District), Bolsover Castle to the north and Lincoln cathedral to the east could be seen (the latter on a clear day). The original glass windows may not have been easy to see through, but the roof afforded views in all directions including the extensive estate lands and it was constructed with access in mind, the main stair rising easily through the building directly to a door in the northern turret. All the roof turret accommodation or 'banqueting rooms'<sup>72</sup> had to be accessed by this means. The elevated location is the most important aspect of the setting of New Hall, as an expression of power and influence, but the surrounding parkland landscape also helps to advertise its presence and its development through the 17-19<sup>th</sup> centuries, culminating in the planting of the 'wineglass', which was designed to further this objective. [79]

258. The turbines would be 4.6km to the north east. They would be visible from the upper levels of the Hall, though visibility from the most important rooms would be significantly reduced due to the small glass panes and the interior blinds which protect the interior. The turbines would be a prominent and distracting moving feature seen over trees from the roof, especially in sunlight, but the roof is not currently open to visitors on a regular basis<sup>73</sup>. The NT plans to allow access for small groups when safety concerns are resolved and the existing timber walkway is repaired. The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting, but if and when access to the roof is made available, the turbines and towers would be noticeable to the north east on passing through the roof access door. There are extensive and attractive views available in all other directions, all remarkably free of modern development; and a great deal of interest on the roof itself and in the grounds, including a view into the Old Hall. The view to the west is particularly far reaching and attractive due to the more varied landform but there is nothing in the room arrangement or at roof level to suggest that this aspect was of any greater significance than any other. The noise of the M1 running along the Doe Lea valley intrudes into the rooftop experience, but this is largely out of sight from the walkway and is dependant on weather conditions. Pylons are conspicuous where they cross the appeal site, but these are of a lattice form and do not revolve. [73,123,169]

<sup>70</sup> ES para 12.4.37

<sup>71</sup> See Mott MacDonald Report for the NT *The Setting of Hardwick- Landscape Evaluation* CD 7.1

<sup>72</sup> See NT guidebook Doc 44 p4

<sup>73</sup> See visualisations at NT C.4 and FEI VP 17 Fig 6.35

259. Over the centuries, the surrounding landscape has been subject to change including mining activity, which took place on land belonging to the estate. Pleasley Colliery, now reconfigured and planted and designated as a country park, is prominent about 3.5km to the east. Industrial activity has declined dramatically, so the view from the rooftop is now more similar to that at the time the Hall was built. Whilst conspicuous seen from roof level, the turbines would not interfere with important vistas towards any other heritage assets such as the Old Hall or seriously obstruct the ability to understand the historical or architectural significance of the New Hall or the assemblage as a whole. They would not be easily seen from the roof level southern banqueting room, which was reputed to be used by Bess for private meetings. However, they would diminish to an extent the heritage significance of the broad rural setting of Hardwick New Hall and intrude into the understanding of the purpose and use of the roof area by the original occupants. [80-83,170,172,192]
260. There would be visibility from parts of the surrounding estate, particularly areas to the east and north of the main group of buildings, depending on vegetation. Most visitors will arrive by car, and the NT has introduced a new car park accessed by a road along the line of the 'wineglass'. It allows visitors to appreciate the extent of the grounds and to see the symmetrical eastern elevation of the New Hall before parking and approaching the buildings through the former stable area. This would never have been the route originally used by the occupants or visitors to the houses because the wineglass did not exist. There would be a view of the turbines from the initial part of the drive<sup>74</sup> at the end of a vista over trees on the horizon. Turbines would be closer and more consistently visible from part of the 'Oak Walk'<sup>75</sup> to the east of the Hall and here they would conspicuously detract from a rural landscape that is largely unaffected by development, distracting from a circular walk that provides a broad view of the Hardwick estate including Lady Spencer's Wood<sup>76</sup> and beginning and ending at the Hall. Turbines would also be visible over trees at the end of the main approach on leaving the estate<sup>77</sup> on the northern approach. As such, for visitors, they would intrude upon and compromise, to a degree, the experience and understanding of the history of the Hall and its former occupants. [74,75,171]
261. Turning to views toward the Hardwick group rather than from it, the New Hall is by far the highest building in the area generally. It is visible from the edge of Roseland Wood over and between houses in Glapwell. Its height and visibility is an intrinsic part of its historic and architectural significance. It is particularly striking seen from the west at the top of the limestone ridge, from the M1 and high ground to the west and south, rising above the surrounding trees and RPG, with its precursor, the Old Hall, nestling beneath it, in the same local stone. Witnesses refer in representations to the light at sunset which, reflected from the huge windows, further adds to its prominence and interest seen from and across the Doe Lea valley, something I observed. In these views, the turbines would be visible at the same time as the Hall, sometimes distinctly separate but from some

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<sup>74</sup> See NT B.2 and FEI VP 14 Fig 6.32

<sup>75</sup> Leaflet at NT Appendices DE10 and DE12

<sup>76</sup> Lady Spencer was the mother of Georgiana Cavendish (wife of the 5th Duke of Devonshire). She created this walk in the late 1700s while staying with her granddaughter at Hardwick.

<sup>77</sup> See NT A.2, A.4 with FEI VP12 Fig 6.30

positions, immediately to the north and behind it<sup>78</sup>. The blade tips would be higher than the Hall and would be a moving, distracting element, breaking the skyline. Whilst the M1 also interferes in some views to Hardwick Hall from the west, it passes along the bottom of the valley and does not compete with the Hall's elevated position.

262. The appellant suggests that once seen, the observer would be able to discount the visual impact of the turbines and appreciate the asset in its commanding location. However the revolving nature of the wind turbines combined with their height would contrast with and challenge the Hall, competing for dominance over the surrounding land. The scheme would seriously diminish the experience of the setting of the Hall seen from a number of locations along the ridge between Lane End and Williamthorpe, including Biggin Lane, the village of Hardstoft and other roads and public rights of way. From other directions the dominance of Hardwick would be less affected, though from the former spoil heap at Silverhill, the competing character of the turbines would be very apparent<sup>79</sup>. [163]
263. 'Crowding' in the Biggin Lane view was acknowledged by the appellant at the Inquiry. Combining this with the other impacts on the setting of Hardwick New Hall, the appellant accepts a 'major' effect on significance, calibrated at the first of 5 equal 'pentiles' within the overall range of 'less than substantial harm'<sup>80</sup> in the terms of the Framework<sup>81</sup>. The NT finds 'substantial harm' and the Council 'less than substantial harm' but at the 'upper end' of a broader scale<sup>82</sup>. 'Less than substantial harm' and 'substantial harm' are not defined in the Framework, but the PPG and recent court cases have provided helpful guidance. There is no advice that suggests there is a scale within 'less than substantial harm' or where any threshold lies, but if considerable importance and weight is to be given to a finding of harm, then an attempt to calibrate the range of 'less than substantial harm' can be helpful. The PPG advises that an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. The heritage significance of the Hardwick group including the RPG (of which the New Hall is the strongest element) derives from very strong architectural, artistic and historical interest and a degree of communal interest, due to its ownership by the NT. All these aspects, but particularly its architectural form and historical domination of its setting, are essential in understanding the influence and intention of its creator, Bess of Hardwick. [27,84,147,155,161-166,173,178-9,185]
264. The turbines would therefore affect a key element and the impact would be serious seen from a broad sweep of western high ground; and from a few other locations where turbines would less conspicuously challenge the dominance of the Hall, such as Silverhill. The impact of turbines in other views to and from the Hardwick assemblage would be intermittent and whilst constituting a degree of harm, would not seriously compromise the overall experience of its setting that visitors commonly enjoy, or affect their appreciation of the many assets at Hardwick. A finding of 'substantial harm' is a high test, but as the PPG

<sup>78</sup> See NT D.2, D.4, E.2 and E.4 with FEI VP31, May 2013 visualisations addendum VP27, BDC Mr Croft's photo 13 and NT Mrs Edwards photos 1, 2 and 3

<sup>79</sup> See FEI VP19

<sup>80</sup> See notes on calibration at pp5-27 of FEI Appendix CH-1 and chart on p 27

<sup>81</sup> See table in Mr Collcutt's proof at p39 (note that this is not the same as the summary table in the FEI at p10)

<sup>82</sup> See table in Mr Croft's proof at p68 and calibration notes at p14

acknowledges, it is possible that a single wind turbine could affect a setting so significantly that its heritage significance is substantially harmed. The impact on the setting of the Hardwick assemblage in this case does not pass that threshold, but would be considerably higher than suggested by the appellant.

### *Bolsover Castle*

265. Bolsover Castle originates from the 12<sup>th</sup> century and is listed at Grade I. It is a SAM. Its grounds are included in the Register of Parks and Gardens at Grade I. The castle itself is recognised as an outstanding example of 17<sup>th</sup> century architecture. There is a family connection to the Cavendish (Bess of Hardwick's) family, being sold to her son Charles in 1608. It was rebuilt by him to designs by the same architect, Robert Smythson, to cater for elegant living rather than defence.

266. The heritage significance of the castle derives from its architectural and historical interest as a defensive and later residence dominating the limestone escarpment and visible for many kilometres around. Hardwick Hall is not easily seen from the castle now due to vegetation and the appeal site is also largely hidden by trees except from the roof, which is not open to the public. In any event the castle predominantly faces west and south west and for visitors, the proposed turbines would have only a marginal impact on its setting, which also includes former mining and industrial land in the Doe Lea valley and much residential development as well as the M1<sup>83</sup>. Visitors to the castle would generally be unaware of the turbines and they would not seriously detract from its setting or heritage significance.

267. Looking at the castle from the west, from the opposite side of the valley at Sutton Scarsdale Hall<sup>84</sup>, the castle would be too far removed from the turbines for its setting to be significantly harmed. Though the turbines would be conspicuous moving objects above the scarp, they would not prevent appreciation of the castle's setting, which unlike Hardwick, is considerably changed by modern development. From Long Duckmanton further to the north<sup>85</sup>, the turbines would be nearer to the line of sight of the castle but would be more obscured by the contours. Overall the effect on the setting of this asset, and on heritage significance, would be minor.[67,68]

### *Sutton Scarsdale Hall*

268. This early 18<sup>th</sup> century building was once one of the great houses of northern England, on a par with Chatsworth for scale and quality. After many years of neglect it was stripped of its furniture and fittings and much of its fabric in 1919, and is now a shell. Nevertheless it remains a dominant and noticeable feature of the western side of the Doe Lea valley, conspicuous to travellers on the M1. It is a SAM and is listed at Grade I. Whilst gardens once were a feature of the house, these have largely disappeared leaving only a ha-ha and remnants on the north eastern side. There are views across the valley towards Bolsover Castle at about 2.5km and the village of Palterton on the summit of the ridge but any views there may once have been towards Hardwick are now obscured by nearby mature trees.

<sup>83</sup> See FEI VP13

<sup>84</sup> See FEI VP18

<sup>85</sup> See FEI VP22

269. The house was designed to be seen on high ground. The turbines would be visible over Palterton on the ridge to the east<sup>86</sup> across the valley and at a distance of about 5 - 6.6km. They would conspicuously break the skyline but there are many other modern features in this view including pylons. They would occupy quite a narrow angle on a separate landform and would be some distance back from the crest. As such they would only influence the setting of Sutton Scarsdale Hall to a minor extent. They would not be so prominent as to significantly distract attention from the much nearer Bolsover Castle. However the setting of Palterton on the ridge would be affected, which I consider below. [64-66]

#### *St Leonard's Church and Scarcliffe Conservation Area*

270. This Grade II\* listed village church dates from the 12<sup>th</sup>, 13<sup>th</sup> and 16<sup>th</sup> centuries, the tower being rebuilt in the 19<sup>th</sup> century. The visualisations indicate that all 6 turbines would be visible in a wide spread to the south and south east from the raised approach to the main entrance on the southern side. They would occupy a wide angle of view at a distance of around 1.3km to the nearest turbine, S6<sup>87</sup>. There are some 20<sup>th</sup> century buildings in the view from the church entrance but the predominant experience of the setting of the church is of a traditional rural village surrounded by open countryside. Roseland Wood is visible in gaps between dwellings and the turbines would be immediately behind the wood rising above the roofs. The broad spread of moving wind generators would be prominent in the village setting in the south, and more particularly, would be the most noticeable feature in a view from the church porch that has not significantly changed for several centuries. This would be the point at which people would emerge from worship, funerals, weddings and other events. The heritage significance of the church derives from its architectural, historical, archaeological and artistic interest, over which is an additional layer of communal value as the spiritual centre of the village. The adjacent school, recreation ground and graveyard adds to the importance of the building for the community. Their visibility would be greater in winter. [121]

271. The church is not only experienced by users of the building but is also important because it defines the centre of the village and the CA. Seen from surrounding fields, roads and footpaths and higher ground at the west end of the village, the church tower, which is fairly squat, would be overwhelmed as a landmark feature at the centre. The CAAMP for Scarcliffe<sup>88</sup> says that '*the relationship between the built environment and wider landscape is obvious and there remains an important farming tradition in the village. Despite the changes to the layout and form of the settlement the survival of a number of buildings which formed the core of the farming community in the 18<sup>th</sup> and 19<sup>th</sup> centuries, alongside the parish church, is central to the character of the conservation area*'. There are two working farms in the centre of the village which do much to relate the settlement to the surrounding land. The CAAMP goes on to identify key elements including '*picturesque rural setting on the magnesian limestone plateau*' and '*undulating agricultural landscape dotted with woodland*'.

<sup>86</sup> See FEI VP18

<sup>87</sup> See May 2013 VP4 Fig 6.22a-c (with tree now removed, no leaves) and FEI VP4 Fig 6.22a-c

<sup>88</sup> CD 7.20

272. Under 'key elements', the CAAMP says that *'As a rural village where farming has played a fundamental role in the origins and development of the settlement, the relationship between the built environment and the wider landscape in which it sits is integral to the character of Scarcliffe. This connection is strengthened by views into and from the conservation area'....The nature of the local topography and position of Scarcliffe nestled in the undulating rural landscape is conducive to some intermittent mid and long distance views of the settlement, particularly when approaching along the B6417 from the north, along footpaths across open farmland to the south and from the north east on the elevated approach along Fox Hill from the A632. Views of the crenellated stone tower of the parish church and the mix of stone and red brick buildings clustered together with roofs comprising slate and pantile add considerably to the character and appearance of Scarcliffe'.... Some good panoramic views of Scarcliffe can be obtained from the public footpath (FP26) which runs across fields to the north of the settlement on land at a slightly higher elevation...' The CAAMP goes on to point out the detracting influence of modern agricultural buildings (which are just outside the CA) in views of the village from the north, but these are intrinsic to the farming links between the village and the surrounding land, and do not detract from the character of the CA or challenge the church tower, despite its low height.*
273. VP30 Figure 6.48c indicates the spread of turbines behind the village seen from the north<sup>89</sup>. The appellant considers 'less than substantial harm' to the significance of the church at the 3<sup>rd</sup> pentile of the suggested 5 sub-divisions, equivalent to the mid range; and 'less than substantial harm' to the CA, at the first pentile. The Council consider the harm to both to be 'substantial harm'. I consider that the degree of harm has been underestimated by the appellant. Although parts of the lower turbines would be hidden, their proximity to each other, and their layout broadside to the village, would make them highly visible and difficult to avoid seeing from the church and every part of the CA except where they would be hidden by buildings on Main Street. The harm to the character and appearance and heritage interest of the CA would fall short of 'substantial harm' because of this factor. The harm to the setting and thence heritage significance of St Leonards would be very noticeable, but the key characteristics relating to farming and the central role of the church would remain to be appreciated from within the village. Because of the surrounding trees (notwithstanding the recent removal of one that was unsafe; it is likely to be replaced) and the distance of over 1km to the nearest turbine, the level of harm to the heritage significance of the church through harm to its setting also falls short of 'substantial'. [55,56,119]

#### *Stony Houghton Conservation Area*

274. Stony Houghton is a hamlet about half a kilometre south and south west of S1, S2 and S3. According to the CAAMP<sup>90</sup> *'the conservation area encompasses an area of 10 hectares (ha) comprising a range of residential and farm buildings along with areas of open land between. The local topography adds considerable variety and interest to the views into and within the conservation area. The settlement is surrounded by agricultural land on all sides'*. It includes all the buildings in the settlement except some outlying modern farm buildings. It goes

<sup>89</sup> See also Mr Croft's photo 2

<sup>90</sup> CD 7.19

on: *'The settlement comprises several discrete building clusters situated predominantly around a number of farm holdings – this arrangement reflects the pattern of historical development of the agricultural community during the 18th and 19th centuries. In turn, this relates to the much earlier patterns of manorial ownership and land division. Between the groups of buildings there is a substantial proportion of open agricultural land, other undeveloped land and large private gardens. This degree of openness reinforces the rural feel of the settlement.'* And at 5.1: *'The significance of the landscape component means it has a crucial role in setting the overall context for the buildings of the conservation area.'*

275. Its key characteristics include Hall Farmhouse listed at Grade II and the associated outbuildings within its curtilage<sup>91</sup>, other unlisted buildings considered to be of merit because of their local architectural and/or historic interest; the open spaces that separate the buildings; and views which are identified as important to the character and appearance of the CA. These are: intermittent views across the open rolling landscape from local footpaths and lanes towards the CA; views within the CA, principally from Rotherham Road, Elm Tree Farm, Water Lane, and Keeper's Corner; and views from the CA, principally of the surrounding agricultural landscape.
276. The CAAMP draws attention to some modern agricultural buildings, as a negative factor, not all of which are being maintained. The presence of high-voltage electricity pylons crossing the landscape to the north has an adverse impact on the visual appearance of the CA. The pylons are particularly noticeable when looking towards the village from the surrounding higher land at Lusk Corner, but they are also visible from many locations within the CA.
277. The 3 closest turbines would occupy much of the view out of the CA to the north and north east adding to the existing detrimental impact of the existing pylons, which are closer. The 3 remaining turbines would form a group further to the east with less visual prominence. The general effect seen from the centre of the CA is indicated on VP 28 Figure 6.46<sup>92</sup>. The anemometer mast would add to a particular concentration of physical infrastructure in line with S3 that would become visible on passing through the centre of the CA from Rotherham Road to Water Lane. Because of the relative distances, the pylon would appear to be a similar height to the turbine. The turbines would revolve well above the buildings and form a conspicuous distraction that would be impossible to avoid. Hedges do not do a great deal to mitigate for turbines of this size at the distances involved. They would seriously diminish the setting and the heritage significance of the CA, which derives from its architectural and historical interest and its rural surroundings; and would detract from the setting of Hall Farmhouse. The overwhelming scale of the proposal would be apparent on approaches to the CA from most directions. They would form a conspicuous feature on the road from Shirebrook and would be prominent on raised ground behind Stony Houghton on approaching from the west<sup>93</sup> and south. [57, 59]
278. The appellant ascribes 'less than substantial harm' to the effect on heritage significance of the CA, at the 4<sup>th</sup> pentile or penultimate level of seriousness before

<sup>91</sup> Now sympathetically converted into dwellings

<sup>92</sup> Note that S1 is further to the west and outside this image

<sup>93</sup> See FEI VP2 Fig 6.20



broaching the 'substantial' threshold. This is the most serious impact on heritage interests of all that are identified by the appellant in relation to the scheme. I consider this underestimates the level of harm. The development would overwhelm a key characteristic that is fundamental to the heritage value identified, that is the intervisibility between the traditional settlement and the surrounding farmland. The effect would fall into the category of 'major' harm, one level above that found in the original ES, but in my view falling short of the level of 'substantial harm' that might apply if the asset was unique or of national importance; or if turbines were to affect a greater proportion of the compass. [60, 113-115]

279. Only 'moderate' harm is ascribed by the appellant to the effect on the significance of the listed Hall Farmhouse, partly because it is considered that the setting is reduced because of a) change of use and b) fragmentation. This approach is open to question, because the change of use was permitted to allow a heritage asset to remain in place and as confirmed at the site visit, its conversion has been sensitively done with appropriate materials (otherwise, it must be presumed, it would have been demolished or be at risk) and clearly retains its architectural and historic interest as a former farmstead that is important to the settlement. [109]

280. The appellant agrees that the harm to the farmhouse is non-negligible<sup>94</sup>, but considers moderate harm to be insignificant in planning terms (in other words, not material harm that should weigh in the planning balance). In this respect it is acknowledged that the EIA process<sup>95</sup> seeks to identify significant environmental effects and in EIA language, only moderate/substantial and substantial impacts are considered significant. The ES avoids the use of a matrix in assessing magnitude and effect, preferring professional judgement. The appellant finds a broad concordance between EIA terminology and the Framework<sup>96</sup> which places moderate harm at a level below 'less than substantial'. However, moderate effects can be considered important at a local scale<sup>97</sup> and may have higher cumulative impacts. More importantly, it is for the decision maker to decide what the key issues are and apply judgement appropriately. The impact on the surrounding farmland of the turbines must affect the setting of Hall Farmhouse, the magnitude and significance of effect depending on the nature, direction, distance and size of the proposal. Having regard to the visualisations and following the site visit, it is not a reasonable proposition to suggest that the impact on this asset could be less than 'less than substantial' or might be unimportant in the planning balance. [48,105-6,109,147,149]

281. Accordingly I find that the significant harm to the setting and the heritage significance of Hall Farmhouse would be appreciably adverse, 'less than substantial' in terms of the Framework but a material factor in the balance.

### *Palterton Conservation Area*

282. There is no CAAMP for the village of Palterton, which sits on the edge of the limestone escarpment with extensive views across the Doe Lea valley from Main Street which includes the late 18<sup>th</sup> century Grade II listed Palterton Hall and Lilac

<sup>94</sup> See table at p39 of Dr Colcutt's proof

<sup>95</sup> See ES Paragraph 12.2.17-33

<sup>96</sup> See FEI Appendix CH-1 paras 69-77

<sup>97</sup> See FEI Appendix CH-1 table extract from DCLG 2006 *EIA A Guide to Good Practice*

Farmhouse. The CA includes properties along Main Street including a working farm at the centre of the village but excluding recent modern development. The heritage significance of the CA derives mostly from the medieval layout of the manorial community and the agricultural activities that took place there. The turbines would not be easily visible from Main Street where it traverses the escarpment and only intermittent views of the development would be available from the more built up Back Lane, with a more obvious presence looking along Main Street where it turns eastwards. Whilst the turbines would be a constant and obvious presence to local occupiers and visitors, they would not occupy a very great angle of the view to the east which already includes a number of pylons in a relatively open landscape. The countryside setting of the village would not be overwhelmed or dominated. At a distance of about 1.8km, they would not impose upon the key characteristics or the character or the appearance of the CA to any great extent.

283. Seen from the opposite side of the Doe Lea valley to the west, Palterton village has a prominent position on the top of the ridge<sup>98</sup>. Palterton Hall and Lilac Farmhouse are visible as part of a conspicuous row of buildings. The turbines would be an obvious distracting element directly behind the settlement in views from this general direction, which would appear out of keeping in the ridge top setting of the village<sup>99</sup>. However this view can only be appreciated from some distance, is incidental and does not contribute a great deal to the heritage significance of the village. The overall level of harm to the CA would be minor/moderate and 'less than substantial' in terms of the Framework. [201,217-219]

#### *Hardwick and Rowthorne Conservation Area*

284. This large CA comprises 498 hectares (ha) including the Hardwick group, the hamlet of Ault Hucknall with the Grade I listed St John the Baptist Church and the farming settlement of Rowthorne. At its closest, it would be about 2.2km from the nearest turbine. There is no CAAMP for this CA. The majority of its area lies to the north of Hardwick and includes the main approach to Hardwick Hall. It also forms a 'buffer' between Hardwick and the former mining village of Glapwell on the busy A617. As well as the Hardwick assemblage, there is a number of other listed assets within the CA<sup>100</sup>. The effect on Hardwick is discussed above.
285. There would be considerable visibility of the turbines from northern areas of the CA around Rowthorne and Ault Hucknall, modified by buildings and more frequently by trees. Turbines would be particularly noticeable on higher land where blades would appear above trees, but this would not seriously compromise understanding of the heritage significance of the CA. However, in some views, turbines would be seen in the same context as St John the Baptist Church and would compete with the church<sup>101</sup> in a largely unspoilt rural setting that cannot have changed at all significantly for very many years. The church is the parish church of Hardwick and would have been regularly visited by the occupants of the Hall(s). Understanding and appreciating this historical link in a largely unspoilt

<sup>98</sup> Seen most clearly in VP18 Fig 6.36 from Sutton Scarsdale Hall

<sup>99</sup> Illustrated on Fig 6.36b. Though turbines blend well with the sky in this visualisation, this would not always be the case

<sup>100</sup> Listed at paragraph 5.150 of Mr Croft's proof

<sup>101</sup> VP11 Fig 6.29b indicates turbine visibility on the bridleway from Hardwick and The Grange to Ault Hucknall Church. See also Mr Croft's photos 10 & 11

setting would be seriously compromised by the incursion above and behind the trees in conjunction with the church tower, in a way far more intrusive than the existing electricity pylons. [174]

286. The appellant acknowledges this adverse effect as a significant visual distraction but finds a level of harm of 'moderate' or of no planning significance. The Council finds a higher level of 'less than substantial harm' at the mid point of its scale. The unusual tranquillity, relative lack of modern intrusion and unchanged rural surroundings suggest a higher level of harm than the appellant suggests, the more so because the area is popular with visitors and walkers using the Phoenix Greenways, Rowthorne Trail and Hardwick Circular Walks<sup>102</sup>. The level of harm to setting must to some extent be in proportion to the potential degree of change, particularly when the wider area outside this CA as a whole has generally suffered great change, as witnesses testify. Also relevant is the stark visibility of the tower of St John the Baptist Church in some views against the sky and its more dramatic location on the edge of the escarpment (unlike St Leonards at Scarcliffe). However, the turbines would fade from view behind vegetation on approaching the building. A high level of harm would be incurred, but it would not breach the threshold of 'substantial harm' to heritage significance. [107-8,225,227]

#### *Other heritage assets*

287. There are many other heritage assets within a 5km radius than those referred to in the reasons for refusal including listed buildings and CAs, but for reasons of location or shielding by landform or vegetation, most of these would not be significantly affected by the proposal and I do not demur from the assessments of the appellant's witness in the summary of non-negligible effects<sup>103</sup> in respect of Stainsby Mill and the likely development effects set out in the modules for the other assets listed in the schedule agreed with the main parties<sup>104</sup>. The exception is Glapwell Farm, a Grade II mid 18<sup>th</sup> century stone farmhouse about 1.3km west of the appeal site. The farm is set in open ground with wide ranging views over surrounding farmland. The view to the east includes a prominent line of 50m pylons and the turbines would add very substantially to their visual impact<sup>105</sup> because of their much greater height and combined effect in a group of rotating objects within a relatively short distance. The house is attractive seen from Glapwell Lane, and whilst extended and accompanied by a large expanse of utilitarian farm buildings to the rear, is still in its original use. The setting of the listed building would be substantially altered for the occupants who would experience the impact every day going about their day to day activities and for users of a popular public footpath to the west of the building which links Glapwell and Palterton along the edge of the escarpment. The level of harm to setting and consequently heritage significance would be significantly greater than the simple 'moderate' (that is, not falling within the category of 'less than substantial' at all) indicated by the appellant, but would not breach the threshold of 'substantial harm' in terms of the Framework. [63,203,213]

<sup>102</sup> Mrs Edward's appendices DE9-DE11

<sup>103</sup> In FEI Cultural Heritage volume at p10

<sup>104</sup> In FEI Cultural Heritage volume at p2

<sup>105</sup> VP6 is from Glapwell Lane south of the farm

288. Outside a 5km radius, CAs at Astwith and Hardstoft lie on high ground to the west of the magnesian limestone ridge about 6-6.5km from the appeal site and were originally part of the lands managed by the Hardwick estate<sup>106</sup>. Astwith lies within the parish of Ault Hucknall. From both CAs, the Hardwick Halls are prominent on the opposite ridge (New Hall silhouetted) and the proposed turbines would be visible<sup>107</sup> from public areas and from surrounding agricultural countryside, which is historically associated with Hardwick. The ES correctly identifies key views to Hardwick from both CAs<sup>108</sup>. The land between Hardstoft and Hardwick is mostly part of the existing Hardwick estate and the RPG covers the slope on the opposite side of the valley. Whilst the turbines would not be as distracting in the view as they would be seen from Biggin Lane, they would nevertheless be conspicuous and would erode the experience of the setting of these CAs. This harm needs to be added into the final balance.

289. No other heritage assets have been brought to my attention that would suffer any more than a minor level of harm to their settings or special interest due to the appeal scheme.

#### *Other considerations*

290. The effect on visual amenity is a concern of many local residents, though not a serious concern of the Council<sup>109</sup>. There is a dense network of popular public rights of way and footpaths to the south of Scarcliffe in and around Roseland and Langwith Woods<sup>110</sup>, all of which would be affected to varying degrees by a broad spread of turbines looming over the trees and sometimes at close quarters. Several of these combine to form the 'Archaeological Way' between Pleasley Pit Country Park and a proposed World Heritage Site at Creswell Crags. This route would pass in a long loop around the west side of the turbine group between S1 and S2 and close to S3. Turbines would be a dominant feature for several kilometres of its 17km route. The development would also be prominent seen from many other footpaths within 5 km of the site including those around Hardwick and Rowthorne referred to above. Whilst many people would be deterred from passing close to turbines, there are others find them attractive and a destination in their own right. However, the most frequent users of the footpath and bridleway network are local occupiers, most of whom would want to experience the woods for their tranquillity and isolation in this former industrial area. The evidence suggests that walking or riding the paths around Scarcliffe and Stony Houghton would be appreciably less attractive than it is now. [216,218]

291. Many local occupiers would be able to see the turbines as prominent features from their dwellings and gardens in surrounding villages such as Shirebrook, Scarcliffe, Stony Houghton, Palterton, Glapwell and to a lesser extent from Hillstown and the edge of Bolsover<sup>111</sup>. At some dwellings, the turbines would be prominent seen from a main living area. For some, particularly in Shirebrook, Scarcliffe and Stony Houghton, the valued view of fields they currently enjoy would change to one of fields with wind turbines. However, whilst a material

<sup>106</sup> CDs 7.8 & 7.9. Not shown on ES Fig 12.9

<sup>107</sup> VP21

<sup>108</sup> Fig 6.5

<sup>109</sup> See SOCG para 14.1

<sup>110</sup> Shown on ES Fig 6.5

<sup>111</sup> See a resident's impression of a typical view from a residential area in Shirebrook at Doc 24

consideration, there is no right to a view. Whilst these concerns are recognised, and the impact on some local occupiers at Stony Houghton, for instance, would be very noticeable, considerations of distance and orientation mean that the visual impact would not be so significant as to conflict with the visual amenity protection aims of LP or national policy. [190,191]

292. Turning to living conditions, in no case would turbines be so close or so numerous in the field of view from any dwelling as to significantly overwhelm the occupants or to be overbearing or oppressive to the extent that their dwelling would be an unacceptable place to live<sup>112</sup>. Having said that, the rear garden at Pumping Station House (with some screening) and rear windows would be 511m from S5 and only slightly further from S3 and S4 in different directions; and Roseland Farm would be 430m from S5. It is important to note that the financial involvement of the occupiers of these properties that is referred to in the ES and confirmed at the Inquiry means that there is a higher threshold of acceptability when it comes to visual dominance and noise. Pumping Station House is also already affected by the noise from pumps associated with the nearby underground reservoir. The west facing rear garden of the Harrison's Nursery bungalow on the corner of Common Lane and the B6407 in Shirebrook would be dominated by S5 at a distance of 841m on rising ground with other turbines arranged behind and on either side, with very little screening. This would be a considerable change for the occupiers, who also have a living area at the rear, and is near the cusp of acceptability. [87-92]
293. The heritage implications for those who live in a listed property or a CA who also have a view of the proposed turbines is a material consideration. Frequently, those who choose to live in a heritage asset such as a CA or a listed building do so because they appreciate the particular qualities of their surroundings and the materials and workmanship of a previous age. If the development not only has a serious impact on the setting of their house but also imposes on the day to day visual amenity of the occupants because of orientation, spread or distance, going about their daily lives, there is every reason to suppose that they would find the effect on significance reinforced and amplified. This would apply to the occupiers of Hill Farm, The Old Stables, Meadow View and Elm Tree Farm (in the rear garden) in Stony Houghton. This is a material factor, but the impact has not been counted separately from heritage impact generally and no additional weight attaches to this consideration. [200]
294. The reasons for refusal refer specifically to landscape considerations, inasmuch as the heritage assets considered to be harmed are said to be set within the limestone ridge. The SOCG says that the Council does not object on landscape grounds, but landscape concerns are frequently expressed by local residents. The relevant local Landscape Character Type (LCT) is 6d *Limestone Farmlands* which includes the appeal site and extends as far as the edge of the ridge<sup>113</sup>. Summarising from the ES, the area is considered to have a medium sensitivity to wind energy development: *'Key characteristics are vulnerable but with some ability to accommodate development in limited situations without significant character change; wind energy development relates to some aspects of landscape character'*. The ES draws attention to the large scale field pattern and

<sup>112</sup> Having regard to the considerations set out in the Enifer Downs decision, CD 5.2. A plan of residential properties is at ES Fig 6.6 (text at 6.6.16) with a schedule at Doc 46

<sup>113</sup> Shown on FEI Fig 6.4

intensive agricultural use, the influence of infrastructure and pylons and urbanising effect of road lighting and modern development, contrasting with highly sensitive components such as the limestone ridge and historic landmarks, the strong rural character of the Doe Lea valley, traditional villages and the Hardwick Hall RPG, CAs, church spires and woodland which act as potential scale indicators. In other words, the ES says the landscape can accommodate wind energy development without substantial effect on landscape character if appropriately sited and where the development is of appropriate scale to minimise impact on sensitive receptors.

295. Whilst the turbines would be set back about 1.5 km from the highly sensitive ridge, they would be relatively close to 2 CAs; 2 church towers listed at Grade I and Grade II\*; areas of woodland; and 2 traditional villages. All the heritage assets in that list are inextricably bound with the surrounding landscape because of their long standing association with farming and because of the history of ownership by Bess of Hardwick and her family. The proximity of the woodland and the villages would enable the observer to appreciate the scale and height of the turbines and would diminish the human scale of nearby dwellings and farms. In addition, the turbines would lie within a wide area dominated historically by Hardwick Hall, a pre-eminence which in some views, especially across the sensitive Doe Lea valley, would be conspicuously challenged. National policy says that an element of harm to landscape is inevitable where wind energy development is concerned. The ES identifies a medium/substantial landscape effect for 3 settlements within 1 km of the development<sup>114</sup> (presumably Scarcliffe, Stony Houghton and Shirebrook) and a moderate impact for settlements up to 2 km. Importantly, the chosen site includes two conservation areas which as a result of the scheme, would be within a wind farm landscape. I conclude that there would be a moderate/substantial adverse effect on the landscape where it is a key characteristic of a heritage asset, but this does not add any additional weight in the balance to the harm identified to the setting of the heritage asset itself. [191-4,215,217]
296. With regard to potential cumulative effects, ZTVs are provided in the FEI<sup>115</sup>. These do not take account of any buildings or vegetation. In practice, there are several places from which other wind energy schemes can be seen as well as the appeal proposal including Sutton Scarsdale Hall, the roof of Hardwick Hall, Silverdale Country Park, Pleasley Park and Bolsover Castle. There are no large scale wind turbines within 10km, those at Lindhurst and Stonish to the south east being the most prominent, given good visibility. The nearest turbine at Shirebrook Academy is only 1.5km away and 45m high, but is partially screened by trees. Those referred to at Damsbrook, Barlborough and Arkwright are insufficiently tall or are screened and would not add to any impression that turbines would dominate the area. The proposed wind turbines would not, in conjunction with any other planned, constructed or operational wind turbines, have any unacceptable cumulative impact on landscape character or heritage assets. [197]
297. Third parties express concerns about other aspects of turbine development including noise, shadow flicker and the potential for adverse health effects.

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<sup>114</sup> ES pp 98-99.

<sup>115</sup> Figs 6.10 – 6.18b with sites shown on Fig 6.9

Background noise measurements have been taken and the ES indicates that at nearby residential receptors, noise limits set out in the Government's guidance (ETSU)<sup>116</sup> would not be breached and if they were, conditions can be imposed to protect the interests of nearby occupiers. Similarly, the circumstances in which shadow flicker may occur can be predicted and a condition imposed to ensure a turbine(s) are turned off in circumstances when sunlight and orientation and wind speed combine to cause a nuisance. With regard to health, I have taken account of the evidence presented on the effects of turbine noise on health from individuals, with particular reference to low frequency sound. People living predominantly within 1km of turbines would be likely to notice turbine noise from time to time. Those currently living in an exceptionally quiet area such as Stony Houghton are likely to notice turbine noise more readily. It is likely that some of these residents will have moved to the area because it is peaceful. However, there is no conclusive evidence that is sufficiently robust to demonstrate a positive causal effect between turbine noise and adverse health effects where ETSU has been used to assess and control noise from wind energy development in the UK. Whilst anxiety about health itself can be a material consideration, there is no evidence available to suggest that such a fear has had any harmful effect on anyone living in the vicinity of an existing turbine in the UK. [200,226]

298. I have had regard to all the other matters raised including the Government's approach to renewable energy subsidies, the likely wind energy capacity on the site and the principle of using wind as a resource, but the Government has set out in policy the manner in which it intends to address the need to mitigate for climate change and reduce CO<sub>2</sub> emissions. The likely energy generation capacity of this site is a factor for the developer's consideration. These are not matters to which I can ascribe any significant weight.

*Whether the environmental and economic benefits of the scheme would be sufficient to outweigh any harm that might be caused*

299. There is no dispute from the main parties that there is strong support at all levels of policy for large scale renewable energy development. Onshore wind is a key technology in the development of the renewable energy sector. Supporting the transition to a low carbon future in a changing climate is one of the core planning principles of the Framework. Whilst the current pipeline has the potential to fulfil the Government's ambition for onshore wind, there is no certainty and at the present time there is no lessening in the drive to increase onshore wind capacity. There are no technology specific targets, only illustrative 'central ranges' which do not limit the Government's ambition.
300. The Framework says that it is the responsibility of all communities to contribute to energy generation from renewable sources. The Written Ministerial Statement from the Secretary of State for Energy & Climate Change in June 2013 says that the Government is determined that the UK will retain its reputation as one of the best places to invest in wind energy and renewables more generally. The general thrust of the Statement is the further encouragement of onshore wind to provide certainty for developers and as an important sector that is driving economic growth. There is a need for new renewable energy including onshore wind projects in order to reach the level necessary for energy security

<sup>116</sup> ETSU-R-97, "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) and subsequent Good Practice guide

and renewable energy goals. In principle, new renewable energy proposals are to be welcomed. The proposed energy generation of the Roseland scheme of up to 10.8-15 megawatts (depending on the final turbine chosen) would contribute substantially to the supply of renewable electricity in the area. The project would provide enough electricity for between 7900 and 9200 UK homes or about 9% of the Bolsover DC population, with an ongoing saving in CO<sub>2</sub> emissions and contribution to combating climate change<sup>117</sup> for the life of the scheme. Added to that is the potential to provide some economic stimulus to the local area through jobs in construction and maintenance over the project's lifetime. [39,40]

301. The appellant acknowledges that the benefits that the development would deliver for community projects are not a planning consideration, but seeks to place significant weight on the community led aspects. Paragraph 97 of the Framework advises that community led initiatives for renewable energy should be supported. The Community Energy Strategy<sup>118</sup> sets out the Government's vision that every community that wants to take an energy project forward should be able to do so. The Community Engagement for Onshore Wind Developments: Best Practice Guidance for England and the Community Benefits from Onshore Wind Developments: Best Practice Guidance for England<sup>119</sup> of October 2014 further advise that onshore wind can make a real difference to local communities. There is no doubt that the scheme represents an opportunity for the local community to access resources and funding to directly enhance the local economy, society and environment, in an area where there is a high level of deprivation. The proposal in this case follows the best practice principles. Whilst appreciating the doubts of many local residents as to where the benefits will eventually materialise and the role of the delivery partner (anticipated to be a commercial wind development company), it is difficult to imagine a better way in which local communities could take such a scheme forward. The PPG says that local planning authorities may wish to establish policies which give positive weight to renewable and low carbon energy initiatives which have clear evidence of local community involvement and leadership. There are no such policies in place in Bolsover. Having regard to the need to have regard to the views of the local community, as expressed at the Inquiry, there is not a conspicuous level of support. Nevertheless, in the light of the most recent Government guidance, some weight must attach to the community led aspects. [100,132-3,142,180-183,189,205-214,220]
302. Moreover, the development would be sustainable, according to the definition of sustainability in the introduction to the Framework and at paragraph 93. Some, limited weight also attaches to the S106 obligation. However, in the process of making decisions, the impacts must be acceptable, or capable of being made acceptable.
303. Against those positive factors, the development would harm, to varying degrees, the significance of the following heritage assets :

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<sup>117</sup> See Doc 8, Report on Energy Potential

<sup>118</sup> CD 6.15

<sup>119</sup> CD 6.17 & 6.19. Also Doc 9, Shared Ownership Taskforce Report to DECC



<b>Heritage Asset</b>	<b>Magnitude of impact and assessment of level of harm in terms of the Framework</b>
Scarcliffe CA	Major, less than substantial harm
St. Leonard's Church, Scarcliffe	Major, less than substantial harm
Stony Houghton CA	Major, less than substantial harm
Hall Farmhouse, Stony Houghton	Major, less than substantial harm
Glappwell Lane House	Moderate/major, less than substantial harm
Sutton Scarsdale Hall	Minor
Bolsover Castle	Minor
St. Johns Church, Hardwick and Rowthorne	Moderate/major, less than substantial harm
Palterton CA	Minor/Moderate
Hardwick New Hall	Major, less than substantial harm
Hardwick Old Hall	Minor/moderate
Hardwick Hall RPG	Moderate, less than substantial harm
Hardwick and Rowthorne CA	Moderate, less than substantial harm
Stainsby Mill	Minor
Astwith CA	Minor/moderate
Hardstoft CA	Minor/moderate

304. In the cases of Scarcliffe CA, St Leonards Church, Stony Houghton CA, Hall Farmhouse, Glappwell Lane House, St. Johns Church, Hardwick New Hall, Hardwick Hall RPG, Hardwick and Rowthorne CA, Astwith CA and Hardstoft CA, I find that the level of harm would be greater than the level already acknowledged by the appellant. In the cases of Hardwick New Hall, Stony Houghton CA and Hardwick and Rowthorne CA including the church of St John the Baptist, I find that the level of harm would be appreciably greater. Whilst falling lower than the threshold of 'substantial harm' as set out in the Framework, the harm must still be weighed against the public benefits in the planning balance. There would also be an appreciable harm to visual amenity for users of public rights of way around Stony Houghton and Scarcliffe and to a lesser extent, Hardwick and Rowthorne CA.

305. Objectors refer to the potential for the sum of harms to individual heritage assets to be more than the sum of their parts, a matter considered by the Secretary of State in the Asfordby case<sup>120</sup>. However the particular circumstances that applied there are not known to me. In this instance, the individual conservation areas are visually separated and their settings would not be experienced more than one at a time. Where heritage assets are combined, where a listed building lies within a conservation area, such as at Hardwick or Hall Farm in Stony Houghton, the effect on the setting of the listed building, which has its own individual characteristics, may be calibrated as more or less than the effect on the setting of the conservation area as a whole, but there are no situations in this case where the overall level of harm is greater than any of the parts.
306. To summarise the policy position on the balancing exercise, the Framework defines the setting of a heritage asset as the surroundings in which it is experienced. The 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. EH guidance<sup>121</sup> indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset. The Framework says that the significance of an asset is defined as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.
307. Heritage significance can be harmed through development within setting. Substantial harm to the significance of a Grade II listed building should be exceptional. Substantial harm to the significance of designated heritage assets of the highest significance (including SAMs, Grade I and II\* listed buildings) should be wholly exceptional. Paragraph 133 of the Framework says that if development would cause substantial harm to significance, then planning permission should not be granted unless it can be demonstrated that an exception is warranted; an exception would be justified if the substantial harm is necessary to achieve substantial public benefits that would outweigh the harm. If the development would cause less than substantial harm, this harm should be weighed against the public benefits of the proposal.
308. Considerable importance and weight attaches to the identified harm to the significance of listed buildings by way of harm to their settings, as set out above. Such harm indicates that there is a strong statutory presumption in S66 of the LBCA against permission being granted. Special attention should be paid to the desirability of preserving or enhancing the character of those conservation areas whose settings would be affected by the appeal scheme.
309. The adverse impacts of the proposal on the settings of Stony Houghton CA, Scarcliffe CA and the Hardwick and Rowthorne CA including the settings of listed buildings within them, particularly St Leonards Church, Hall Farmhouse and

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<sup>120</sup> Asfordby, CD 5.8

<sup>121</sup> CD 7.4

Hardwick New Hall, brought about by the scheme's relatively close proximity and high level of visibility, constitute a high level of harm to heritage significance in this case which whilst 'less than substantial', significantly and demonstrably outweighs the benefits of the proposal. The harm to a range of other heritage assets, landscape character and visual amenity, adds to that harm. The reversibility of the proposal carries little weight in view of the adverse effects of the turbines in this sensitive location which would last for a generation. The development would conflict with the relevant parts of LP policies CON 4, CON 10, ENV 3 and GEN 2; national planning policy and policy guidance. [135,139,157-8]

### **Formal recommendation**

310. I recommend that the appeal should not be allowed to succeed. Should the Secretary of State disagree, then I recommend that the conditions set out in Annex 2 to this Report should be attached to any permission.

*Paul Jackson*

INSPECTOR

## **Annex 1 APPEARANCES**

### **FOR BOLSOVER DISTRICT COUNCIL:**

Tom Cosgrove	Of Counsel, instructed by Sarah Sternberg, Solicitor to the Council
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He called	
Andrew Croft BA MA	Atkins Ltd
Steve Arnold MA(Cantab) MA	Planning Consultant
MRTPI MRICS	

### **FOR ROSELAND COMMUNITY WINDFARM LLP:**

David Hardy	Barrister and Solicitor, instructed by Eversheds Solicitors
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He called	
Dr Simon Colcutt MA	Oxford Archaeological Associates Ltd
(Hons) DEA DPhil FSA	
David Bell BSc (Hons) Dip UD	Jones Lang LaSalle
MRTPI MIHT	

### **FOR THE NATIONAL TRUST:**

Morag Ellis	Queen's Counsel, instructed by Tom Brennan of The National Trust
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She called	
Edmund Booth BA DipUD	The Conservation Studio
MRTPI IHBC FSA	
Ingrid Samuel	Historic Environment Director, National Trust
Denise Edwards	General Manager, Hardwick Hall, Stainsby Mill & Eyam Hall and Craft Centre

### **INTERESTED PERSONS:**

Jayson Whitaker	Resident of Palterton
Alison Rodgers	Local resident
Dr Joan Dixon	
Darren Webber	Chair, Scarcliffe Parish Council
Alan Steward	Resident of Scarcliffe
Marion Sabido	Resident of Scarcliffe
Guy Freeland	Resident of Palterton
Richard Newton	
Nick Cowley	
Sandra Peake	District Councillor
Jane Lester	
Cameron Stott	
Peter Downing	Resident of Stony Houghton
Ian Sykes	
Rob Swift	
Steve Ponting	Resident of Clowne

Alison Rigby	Resident of Palterton
John Culpin	
Derek Chappell	Scarcliffe Parish Council
Lorna Wallace	Chief Executive, Community Voluntary Partners
Paul Davies	Chair, Local Enterprise Organisation
Mike Ricketts	
Samantha Price	
Melvyn Matthews	
June Ricketts	Resident of Scarcliffe

## DOCUMENTS

- 1 Legal submissions from the Council
- 2 Legal submissions from the appellant
- 3 Pages 34 and 43 from NT response to High Speed Rail consultation on route from the West Midlands to Manchester, Leeds and beyond, supplied by the appellant
- 4 Pages 40, 41, 42 and 43 from NT response to High Speed Rail consultation on route from the West Midlands to Manchester, Leeds and beyond, supplied by the NT
- 5 Page 3, (executive summary) from NT response to High Speed Rail consultation on route from the West Midlands to Manchester, Leeds and beyond, supplied by the NT
- 6 *Awel Aman Tawe Cyfngedig v The National Assembly for Wales and Another* [2007] All ER (D) 69 Oct, supplied by the NT
- 7 Written Statement from English Heritage, complete
- 8 Report on Energy Potential, submitted by the appellant
- 9 Shared Ownership Taskforce: Report to DECC, October 2014, submitted by the appellant
- 10 Letter from Caroline Butler
- 11 Letter from Rachel Critchell
- 12 Letter from Mr & Mrs J Wright
- 13 Letters from Mr & Mrs C Sabido and Mrs Sabido
- 14 Letter from Eric Elliot
- 15 Letter from the Marshall family
- 16 Copy of letter from Tony Marriott (St Leonard's Church Warden) to Cllr Ricketts enclosing letter from Anderson Tree Care concerning the felled lime tree at Scarcliffe Church, supplied by June Ricketts
- 17 Statement of Guy Freeland
- 18 Letter from Mr Andrews
- 19 Statement of Jayson Whitaker
- 20 Letter from Paul Siddall
- 21 Letter from Roy Vernon Coupe
- 22 Letter from Kaye Harper-Barnes
- 23 Letter and statement on behalf of Mr & Mrs Wildgoose
- 24 Photomontage provided by Mr & Mrs J & A Butler of Shirebrook
- 25 Statement of Allison Rigby
- 26 Statement and enclosures of Robert Swift
- 27 Statement and enclosures of Ian Sykes
- 28 Statement of Cameron Stott
- 29 Statement of Jane Lester
- 30 Statement of Nicholas Gray-Cowley

- 31 Letters from Derek & Elaine Chappell
- 32 Statement of Derek Chappell
- 33 Statement and Notes of Lorna Wallace
- 34 Statement of Paul Davies
- 35 Statement of M E Ricketts
- 36 Statement of Samantha Price
- 37 Statement of Melvyn Matthews
- 38 Statement and enclosures of Alison Rodger
- 39 Statement, letter and enclosures from June Ricketts
- 40 Copy of email comments from Simon Carter
- 41 Letter from Rev P Lidgett and Mrs H Lidgett
- 42 Copy of email comments from Nancy Benn
- 43 'The Legendary Lady of Constantia of Scarcliffe' booklet, submitted by Alan Steward
- 44 Hardwick Hall Guide Book, including floor plans of Hardwick Hall, supplied by the National Trust
- 45 Signed and dated S106 Undertaking
- 46 Table of distances to residential properties
- 47 Statement of Peter Downing
- 48 Bundle of late responses to notification of the appeal, from Juliet Holling, Mick Layton, Cllr Sandra Peake, Susan Hardwick, John Andrews, Graeme Challands and Antony Buckingham.
- 49 Table of agreed distances to replace those in the SOCG

## Annex 2

Schedule of suggested conditions

<b>Conditions – Roseland Wood Wind Farm</b>		
Condition No.		
<b>Time Limit</b>		
1.	The development hereby permitted shall be commenced before the expiration of 3 years from the date of this permission. Written confirmation of the commencement of development shall be provided to the Local Planning Authority no later than 14 days after the event.	
<i>Reason: This condition is imposed to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended)</i>		
<b>Removal of development</b>		
2.	This permission shall expire, and the development hereby permitted shall be removed in accordance with condition 3 below after a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be given to the Local Planning Authority no later than 21 days after the event.	
<i>Reason: This condition is imposed in recognition of the expected lifespan of the wind farm and in the interests of safety and amenity once the plant is redundant</i>		

**Decommissioning**

3.	<p>Not later than 12 months prior to the end of this permission, a decommissioning and site restoration scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall make provision for the removal of the wind turbines and transformers, the turbine foundations to a depth of at least 1 metre below the ground, the substation and anemometer mast, compound areas, buildings and hard standings and shall also provide for the removal of access tracks and underground cabling as required. The scheme shall also include the management and timing of any works and a traffic management plan to address potential traffic impact issues during the decommissioning period, identification of access routes, location of material lay down areas, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and details of site restoration measures. The approved scheme shall be fully implemented in accordance with the timescale set out in the Scheme which must be within 12 months of the end of this permission.</p>	
<p><i>Reason: To ensure the development is decommissioned and the site restored at the expiry of the permission.</i></p>		
4.	<p>If any wind turbine hereby permitted ceases to export electricity to the grid for a continuous period of 6 months then, the operator shall:</p> <p>a) notify the local planning authority within one month of the expiry of that 6 month period,</p> <p>b) if so instructed by the local planning authority, submit to the local planning authority for its written approval within 2 months of that instruction a detailed scheme for the repair or removal of that turbine. The scheme shall include a relevant programme of remedial works where repairs to the relevant turbine are required. Where removal is necessary the scheme shall include a programme for the removal of the relevant turbine and its associated ancillary equipment including cabling but excluding the turbine bases more than 1m below ground level and how the disturbed areas will be restored; and</p> <p>c) implement the approved scheme no later than 6 months from its approval unless a longer period is agreed in writing with the local planning authority.</p>	
<p><i>Reason: In the interests of visual amenity and to ensure that the wind turbines</i></p>		

*produce electricity whilst in situ and that they are removed from the land if they cease to function.*

### **Turbine Location and Micrositing**

5.	<p>The wind turbines and meteorological mast hereby permitted shall be erected at the following grid co-ordinates</p> <table border="1"> <thead> <tr> <th>Turbine</th><th>Easting</th><th>Northing</th></tr> </thead> <tbody> <tr> <td>1</td><td>449250</td><td>367230</td></tr> <tr> <td>2</td><td>449640</td><td>367105</td></tr> <tr> <td>3</td><td>449995</td><td>366935</td></tr> <tr> <td>4</td><td>450080</td><td>367390</td></tr> <tr> <td>5</td><td>450530</td><td>367400</td></tr> <tr> <td>6</td><td>450455</td><td>367810</td></tr> </tbody> </table> <p>Anemometer Mast – 449585, 366905</p> <p>A plan showing the position of the turbines and tracks established on the site shall be submitted to the Local Planning Authority within one month of the First Export Date.</p>	Turbine	Easting	Northing	1	449250	367230	2	449640	367105	3	449995	366935	4	450080	367390	5	450530	367400	6	450455	367810	
Turbine	Easting	Northing																					
1	449250	367230																					
2	449640	367105																					
3	449995	366935																					
4	450080	367390																					
5	450530	367400																					
6	450455	367810																					

*Reason: To ensure the correct position of the turbines and access tracks.*

### **Appearance**

6.	<p>No turbine shall be erected until, details of the colour and finish of the towers, nacelles and blades and any external transformer units are submitted to and approved in writing by the Local Planning Authority. No name, sign, or logo other than those required to meet statutory health and safety requirements shall be displayed on any external surfaces of the wind turbines or any external transformer units. The approved colour and finish of the wind turbines and any external transformer units shall not be changed without the prior consent in writing of the Local Planning Authority. The development shall be carried out in accordance with the approved details.</p>	
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*Reason: In the interests of the character and appearance of the area.*

7.	<p>The blades of all wind turbine generators shall rotate in the same direction. The overall height of the wind turbines shall not exceed 126.5m to the tip of the blades when the turbine blade is in the vertical position as measured from natural ground conditions immediately adjacent to the turbine base. The hub height of any wind turbine shall be no higher than 80m as measured from natural ground conditions immediately adjacent to the turbine base</p>	
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<i>Reason: In the interests of the character and appearance of the area</i>		
8.	Prior to the erection of the permanent anemometer mast details of its colour and finish shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. No name, sign, or logo other than those required to meet statutory health and safety requirements shall be displayed on any external surfaces of the anemometer mast.	
<i>Reason: In the interests of the character and appearance of the area</i>		
9.	The overall height of the permanent anemometer mast shall not exceed 80m as measured from natural ground conditions.	
<i>Reason: In the interests of the character and appearance of the area</i>		
10.	The construction of the electricity substation shall not commence until details of the design and the external appearance, to include samples of the external materials to be used which shall be natural stone appropriate for the area and natural slate roof tiles and details of any associated compound or parking area, including landscaping together with details of surface and foul water drainage from the substation building have been submitted to and approved in writing by the Local Planning Authority. The development of the substation building and any associated compound or parking area shall be carried out in accordance with the approved details.	
<i>Reason: In the interest of visual amenity.</i>		
11.	All electrical cabling between (1) the individual turbines and (2) the turbines and the on site electricity substation and (3) the onsite electricity substation and the boundary of the application site shall be installed underground only.	
<i>Reason: In order to ensure a satisfactory appearance in the landscape.</i>		
<b>Construction Method Statement</b>		
12.	<p>No development shall commence until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall be carried out in accordance with the approved CMS subject to any variations approved in writing by the Local Planning Authority. The CMS shall include details of the following matters:</p> <p>(a) The construction and surface treatment of all hard surfaces and tracks to include their decommissioning and subsequent reinstatement of the land;</p> <p>(b) The proposed storage of materials and disposal of surplus materials;</p>	

	<p>(c) Dust management;</p> <p>(d) Siting and details of wheel washing facilities;</p> <p>(e) The temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;</p> <p>(f) Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles;</p> <p>(g) The construction of the site access, the erection of any access gates and the creation and maintenance of associated visibility splays;</p> <p>(h) Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to or from the site to prevent spillage or deposit of any materials on the highway;</p> <p>(i) Pollution control measures in respect of:</p> <ul style="list-style-type: none"> <li>• Water courses and ground water;</li> <li>• Bunding of fuel storage areas;</li> <li>• Surface water drainage;</li> <li>• Foul sewerage; and</li> <li>• Discharge of foul drainage.</li> <li>• Details and a timetable for post construction restoration or reinstatement of the temporary working areas and the construction compound.</li> </ul> <p>(j) Details of emergency procedures and pollution response plans;</p> <p>(k) Working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities which shall be adopted as set out in British Standard 5228 Part 1: 2009;</p> <p>(l) Temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting; and</p> <p>(m) The phasing of construction works.</p>	
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*Reason: To ensure a satisfactory level of environmental protection and to minimise disturbance to local residents during the construction process.*

#### **Hours of Construction**

13.	All construction works shall only take place between the hours of 0800 to 1800 hours Monday to Friday inclusive and 0800 to 1300 hours on Saturdays with no such work on a Sunday or Public Holiday. Works at the site outside these hours shall be limited to emergency works and dust suppression unless previously agreed in writing by the Local Planning Authority. In the case of emergency the Local Planning Authority must be notified by telephone, or in writing as soon as reasonably practicable following the emergency first being identified.	
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*Reason: In the interests of amenity to restrict noise impact and the protection of the local environment.*

#### **Delivery of materials**

14.	The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles and towers, shall be restricted to the hours of 0800 to 1800 on Monday to Friday inclusive, 0800 to 1300 on Saturdays with no such deliveries on a Sunday or Public Holiday unless in the event of an emergency on the site or if previously approved in writing by the Local Planning Authority having been given a minimum of 2 working days' notice of the proposed delivery.	
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*Reason: In the interests of minimising disturbance to local residents during the construction process.*

#### **Construction Traffic Management Plan**

15.	<p>No development shall commence until a Construction Traffic Management Plan ("CTMP") has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall include:</p> <ul style="list-style-type: none"> <li>(a) the routing of abnormal loads (including turbine blades, nacelles and tower components) and construction traffic;</li> <li>(b) scheduling and timing of movements,</li> <li>(c) the management of junctions to and crossings of the public highway and any public rights of way;</li> <li>(d) timing and details of escorts for abnormal loads (which shall include the transport of turbine</li> </ul>	
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	<p>blades, nacelles and towers),</p> <p>(e) temporary warning signs,</p> <p>(f) temporary removal and replacement of highway infrastructure/street furniture,</p> <p>(g) reinstatement of any signs, verges or other items displaced by construction traffic; and</p> <p>(h) site access and banksman/escort details.</p> <p>No vehicles transporting abnormal loads shall access the site until any identified works to accommodate abnormal loads along the delivery route have been carried out and measures put in place to maintain any such works for the period abnormal loads are scheduled to be delivered to the site.</p> <p>The approved CTMP including any agreed repair, improvements or works to accommodate construction traffic where required along the route, shall be carried out as approved in writing by the Local Planning Authority.</p>	
<i>Reason: In the interests of highway safety.</i>		
16.	Prior to the commencement of development the wind farm developer/operator shall notify the Local Planning Authority of a nominated representative to act as a point of contact for local residents and liaison with the Local Planning Authority in relation to any complaints made about noise and any other matters arising during construction, operation and decommissioning of the wind farm.	
<i>Reason: In the interests of the amenity of local residents to ensure any problems are dealt with expediently.</i>		
<b>Archaeology</b>		
17.	Prior to the commencement of development a written scheme of archaeological investigation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.	
<i>Reason: To secure the provision of archaeological investigation and the subsequent recording of any remains.</i>		
<b>Shadow Flicker</b>		
18.	Prior to the erection of the first wind turbine, a written scheme shall be submitted to and approved in writing by the Local Planning Authority setting out	

	a protocol for the assessment of shadow flicker in the event of any complaint to the Local Planning Authority from the owner or occupier of a dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Any identified remedial measures shall be implemented as approved within three months of the complaint being made. Operation of the wind turbines shall take place in accordance with the approved scheme unless the Local Planning Authority gives its prior written consent to any variations.	
<i>Reason: In the interests of amenity for nearby residents.</i>		
<b>Television Interference</b>		
19.	No turbine shall export electricity to the grid until a scheme providing for a baseline survey and the investigation and alleviation of any interference to television reception caused by the operation of the turbines has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the developer by the Local Planning Authority within 12 months of the First Export Date. Where impairment is determined by the qualified television engineer to be attributable to the wind farm, mitigation works shall be carried out within three months of the complaint being made in accordance with the scheme which has been approved in writing by the Local Planning Authority.	
<i>Reason: In the interests of amenity for nearby residents.</i>		
<b>Ecology</b>		
20.	No development shall commence until an Ecological Mitigation Strategy (EMS) in accordance with the recommendations of the Environmental Statement and its addendum has been submitted to and approved in writing by the Local Planning Authority. The EMS shall be implemented as approved in accordance with a programme to be agreed in writing with the Local Planning Authority.	
<i>Reason: To mitigate the impacts of the development and in the interests of nature</i>		

<i>conservation.</i>		
21.	<p>No development shall commence until a Habitat Management and Enhancement Plan (HMEP), including a timetable for its implementation and proposals for subsequent management and maintenance, has been submitted to and approved in writing by the Local Planning Authority. The HMEP shall:</p> <p style="padding-left: 40px;">a) contain measures to reduce the risk of damage to retained habitats and aid their recovery;</p> <p style="padding-left: 40px;">b) make provision for approximately 180m of new native hedgerow planting and enhancement of the existing hedgerow network on land within the applicants control.</p> <p style="padding-left: 40px;">The HMEP shall be implemented as approved.</p>	
<i>Reason: In the interests of nature conservation and enhancement</i>		
22.	<p>A specification for a badger survey to be carried out shall be submitted to the Local Planning Authority for its written approval. The survey shall be undertaken by a suitably qualified ecologist in the last suitable season prior to the commencement of site preparation and construction work. No development shall commence until the survey results and a programme of any mitigation works required has been submitted to and approved in writing by the Local Planning Authority. The approved programme of mitigation works shall be implemented in full in accordance with the agreed programme.</p>	
<i>Reason: To ensure the protection of badgers.</i>		
<b>Aviation</b>		
22.	<p>There shall be no permanent illumination on the site other than a passive infra-red operated external door light for the substation building door to allow safe access; temporary lighting required during the construction period or during maintenance; emergency lighting; and aviation related lighting.</p>	
<i>Reason: In the interests of visual amenity.</i>		
23.	<p>Prior to the commencement of development full details relating to the installation of MoD-accredited 25 candela omni-directional infrared lighting, to be fitted at the highest practicable point on each turbine, shall be submitted to and approved in writing by the Local Planning Authority. The installation of the aviation lighting shall be implemented as approved prior to the First Export Date.</p>	

*Reason: In the interests of air safety.*

24.	No turbine shall be erected until the developer has provided written confirmation to the Local Planning Authority that it has informed NATS En-route plc, the Ministry of Defence and East Midlands Airport of the proposed date for erection of the turbines, the anticipated date of completion of construction of the turbines, the height above ground of the highest structure in the development, the maximum height of construction equipment and the position of each wind turbine in latitude and longitude.	
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*Reason: In the interests of aviation safeguarding*

**In accordance with the drawings**

25.	The development hereby permitted shall be carried out in accordance with the following approved plans: Fig 4.1 general Scheme layout, Fig 4.4 Indicative Permanent Anemometry mast, Fig 4.6 Indicative Electrical Control Building, Fig 4.9 Grid Connection Route.	
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*Reason: For the avoidance of doubt and in the interests of proper planning*

**Noise**

26.	<p>The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:</p> <p>(A) Prior to the First Export Date, the wind farm operator shall submit to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.</p> <p>(B) Within 21 days from receipt of a written request of the Local Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the Local Planning Authority to assess</p>	
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	<p>the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the Local Planning Authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the Local Planning Authority in the format set out in Guidance Note 1(e).</p> <p>(C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the Local Planning Authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.</p>	
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	<p>(D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the Local Planning Authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the Local Planning Authority.</p> <p>(E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the following:</p> <ul style="list-style-type: none"> <li>(i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.</li> <li>(ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.</li> </ul> <p>The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the Local Planning Authority under paragraph (B), and such others as the independent consultant considers necessary to fully</p>	
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	<p>assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the Local Planning Authority and the attached Guidance Notes.</p> <p>(F) The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority made under paragraph (B) of this condition unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.</p> <p>(G) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the Local Planning Authority.</p> <p>(H) Once the Local Planning Authority has received the noise assessment required by this condition, including all noise measurements and any audio</p>	
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	<p>recordings, where the Local Planning Authority is satisfied of an established breach of the noise limits set out in the attached tables 1 &amp; 2, upon notification by the Local Planning Authority in writing to the wind farm operator of the said breach, the wind farm operator shall within 21 days propose a scheme for the approval of the Local Planning Authority. The scheme shall be designed to mitigate the breach and to prevent its future recurrence. This scheme shall specify the timescales for implementation. The scheme shall be implemented as reasonably approved by the Local Planning Authority and according to the timescales within it. The scheme as implemented shall be retained thereafter unless otherwise agreed with the Local Planning Authority.</p> <p>(I) The wind farm operator shall continuously log wind speed, wind direction at the permanent meteorological mast erected in accordance with this consent and shall continuously log power production and nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine and the permanent meteorological mast shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the Local Planning Authority on its request within 14 days of receipt in writing of such a request.</p> <p><b>Note:</b> For the purposes of this condition, a "dwelling" is a building within Use Class C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this consent.</p>	
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Table 1: Between 07:00 and 23:00 hours (Noise Level in dB L<sub>A90, 10-min</sub>)

Location (easting,	Standardised 10 m height Wind Speed (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12

northing grid co-ordinates)												
L <sub>A90</sub> Decibel Levels												
1. Roseland Farm (450920,367584)	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.7	49.6	50.6
2. Southernmost property on Mansfield Road near Meadowspot Farm (448972,368207)	40.0	40.0	40.0	40.0	40.0	40.0	40.0	41.3	43.2	43.2	43.2	43.2
3. Rose Tree Farm, Houghton Bassett (449330,366489)	40.0	40.0	40.0	40.0	41.2	42.7	44.0	45.0	46.1	47.2	48.3	49.5
4. 39 Park Avenue Glapwell (448176,366489)	40.0	40.0	40.0	40.0	40.0	40.0	40.0	41.3	43.2	43.2	43.2	43.2
5. Lanes Farm, Glapwell Lane (448011,366970)	40.0	40.0	40.0	40.0	40.0	40.0	40.0	41.3	43.2	43.2	43.2	43.2
6. 4 Wood Lane, Scarcliffe (449620,368639)	40.0	40.0	40.0	40.0	40.0	40.0	40.3	41.8	43.5	45.4	47.1	47.1
7. Gildwells Farm, Upper Langwith (451126,369197)	42.1	42.1	42.1	42.1	42.6	43.2	44.0	44.8	45.7	46.8	48.0	49.3
8. Harrisons Nursery and Garden Centre, 1 Common Lane, Shirebrook (451352,367269)	40.0	40.0	40.0	40.0	40.0	40.0	40.1	42.0	44.2	46.7	49.3	50.4
9. House adjacent to the pumping station, Main Street, Shirebrook (450645,366908)	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.7	49.3	50.4
10. Nearest House on Hawthorne Avenue, Shirebrook (451505,367686)	40.0	40.0	40.0	40.0	40.0	40.0	40.1	42.0	44.2	46.7	49.3	50.4
11. House at the southern end of Station Road, Scarcliffe (450016,368460)	40.0	40.0	40.0	40.0	40.0	40.0	40.3	41.8	43.5	45.4	47.1	47.1

Table 2: Between 23:00 and 07:00 hours (Noise Level in dB L<sub>A90</sub>, 10-min)

Location (easting, g grid co-ordinates)	Standardised 10 m height Wind Speed (m/s)											
	1	2	3	4	5	6	7	8	9	10	11	12
L <sub>A90</sub> Decibel Levels												
1. Roseland Farm (450920,367584)	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0

2.	Southernmost property on Mansfield Road near Meadowspot Farm (448972,368207)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
3.	Rose Tree Farm, Houghton Bassett (449330,366489)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
4.	39 Park Avenue Glapwell (448176,366489)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
5.	Lanes Farm, Glapwell Lane (448011,366970)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
6.	4 Wood Lane, Scarcliffe (449620,368639)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
7.	Gildwells Farm, Upper Langwith (451126,369197)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	45.0	47.4	50.1
8.	Harrisons Nursery and Garden Centre, 1 Common Lane, Shirebrook (451352,367269)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
9.	House adjacent to the pumping station, Main Street, Shirebrook (450645,366908)	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0
10.	Nearest House on Hawthorne Avenue, Shirebrook (451505,367686)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
11.	House at the southern end of Station Road, Scarcliffe (450016,368460)	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0

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

Guidance Notes for Noise Condition

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

#### Note 1

- (a) Values of the  $L_{A90,10\text{-minute}}$  noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.
- (b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The  $L_{A90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the wind

farm operator shall continuously log arithmetic mean wind speed in metres per second (m/s) and arithmetic mean wind direction in degrees from north at hub height in each successive 10-minute period at the permanent meteorological mast erected in accordance with the planning permission on the site. Each 10 minute arithmetic average mean wind speed data as measured on the mast at turbine hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which is correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). The wind farm operator shall continuously log arithmetic mean nacelle anemometer wind speed, arithmetic mean nacelle orientation, arithmetic mean wind direction as measured at the nacelle and arithmetic mean power generated during each successive 10-minute period for each wind turbine on the wind farm. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary.

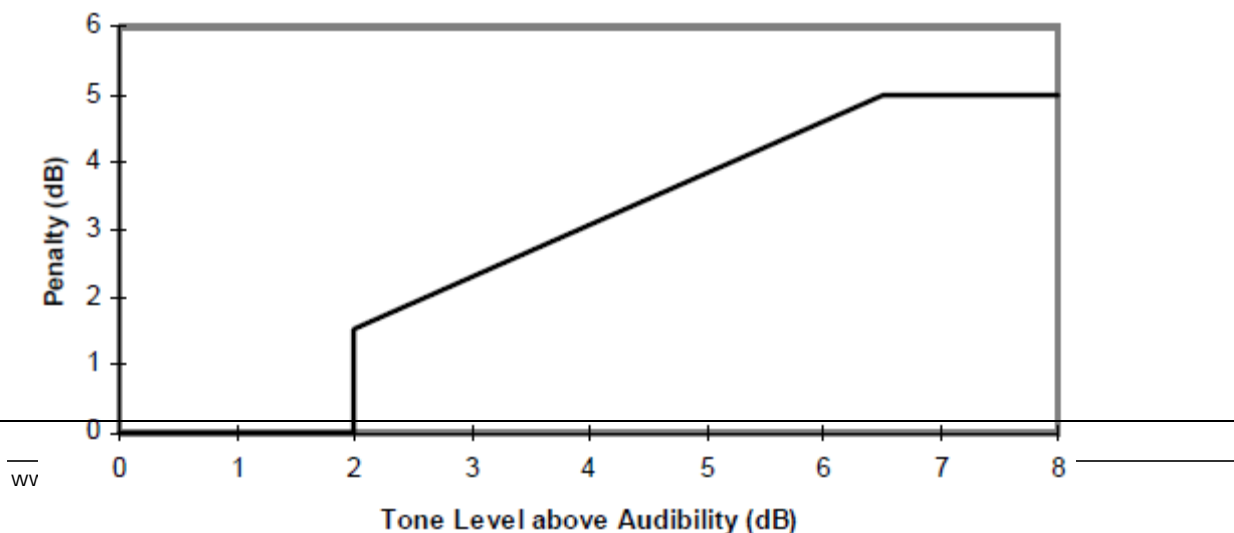
- (e) Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the Local Planning Authority prior to the commencement of measurements.

#### Note 2

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

## Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which  $L_{A90,10\text{-minute}}$  data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.
- (c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.
- (d) The average tone level above audibility shall be calculated for each integer wind speed limit. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) A least squares "best fit" linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line 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 Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.





## Note 4

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.
- (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 Note 2.
- (c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- (d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
  - i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise ( $L_3$ ) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
  - ii. 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:
 
$$L_1 = 10 \log \left[ 10^{L_2/10} - 10^{L_3/10} \right]$$
  - iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise  $L_1$  at that integer wind speed.
  - iv. 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 (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.

## Annex 3

### Documents List

#### 1 Adopted Development Plan Documents

RCWF / BDC	1.1	Saved policies of the Bolsover District Local Plan (2000) (Extracts)
BDC	1.2	Derby and Derbyshire Minerals Local Plan (2000) (Extracts)

#### 2 National Guidance

RCWF	2.1	DCLG: National Planning Policy Framework (March 2012)
RCWF	2.2	DCLG: National Planning Practice Guidance (Web-based – March 2014)
RCWF	2.3	DECC: Overarching National Policy Statement for Energy EN-1 (Designated Version, 19 July 2011)
RCWF	2.4	DECC: National Policy Statement for Renewable Energy Infrastructure EN-3 (Designated Version, 19 July 2011)
RCWF	2.5	DCLG: Written Statement to Parliament, Local Planning and Onshore Wind, The Rt Hon Eric Pickles MP (6 June 2013)
RCWF	2.6	DECC: Written Statement to Parliament, The Rt Hon Edward Davey MP (6 June 2013)
RCWF / BDC	2.7	DCLG: Written Statement to Parliament, Local Planning and Onshore Wind, The Rt Hon Eric Pickles MP (April 2014)
RCWF	2.8	Guidelines for Landscape and Visual Impact Assessment, 3 <sup>rd</sup> edition

#### 3 Other Local Planning Authority Documents, Regional Renewable Energy Documents and Documents regarding Regional Spatial Strategies

BDC	3.1	The Historic Environment Supplementary Planning Document (2006) (Extracts)
RCWF / BDC	3.2	The Bolsover Local Plan Strategy: Proposed Submission Version (2013) (Extracts)
RCWF / BDC	3.3	AECOM: Reviewing Renewable Energy and Energy Efficiency Targets for the East Midlands (June 2009)
RCWF / BDC	3.4	RELCS Report: The Renewable Energy and Low Carbon Study for Bolsover Council Development Framework (April 2009)
RCWF	3.5	Low Carbon Energy Opportunities and Heat Mapping for Local Planning Areas Across the East Midlands – Final Report (2011)

#### 4 High Court and Court of Appeal Decisions

RCWF	4.1	R (Hulme) v Secretary of State for Communities and Local Government [2010] EWHC 2386 (Admin)
RCWF	4.2	Michael William Hulme v Secretary of State for Communities and Local Government and RES Developments Limited [2011] EWCA Civ 638
RCWF	4.3	R (Lee) v Secretary of State for Communities and Local Government, Maldon District Council, Npower Renewables [2011] EWHC 807 (Admin)
RCWF	4.4	(1) Derbyshire Dales District Council (2) Peak District National Park v (1) Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin)
RCWF	4.5	(1) South Northamptonshire Council (2) Deidre Veronica Ward v (1) Secretary of State for Communities and Local Government (2) Broadview
RCWF	4.6	Colman v Secretary of State for Communities and Local Government and others [2013] EWHC 1138 (Admin)
RCWF	4.7	Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Ltd [2012] EWHC 4344 (Admin)
RCWF / BDC	4.8	Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and others [2014] EWCA Civ 137
BDC	4.9	North Norfolk District Council v (1) Secretary of State for Communities and Local Government (2) David Mack [2014] EWHC 279 (Admin).
BDC	4.10	Lark Energy Ltd v (1) Secretary of State for Communities and Local Government (2) Waveney District Council [2014] EWHC 2006 (Admin)
BDC	4.11	The Queen (on the application of The Forge Field Society, Martin Barraud, Robert Rees) v Sevenoaks District Council v West Kent Housing Association [2014] EWHC 1895 (Admin)
RCWF	4.12	Historic Buildings & Monuments Commission for England (English Heritage) and Westminster City Council and William Ashton v the Secretary of State for Communities & Local Government and London Borough of Lambeth Council and Greater London Authority and Coin Street Community Builders [2009] EWHC 2287 (Admin)
RCWF	4.13	Trillium (Prime) Property GP Limited v London Borough of Tower Hamlets [2011] EWHC 146 (Admin)
RCWF	4.14	Sea & Land Power & Energy Ltd v Secretary of State for Communities & Local Government [2012] EWHC 1419 (QB)
RCWF	4.15	Garner v Elmbridge Borough Council and Gladedale Group Ltd and Network Rail Infrastructure [2011] EWCA Civ 891
RCWF	4.16	Kids Co v Secretary of State for the Environment (July 26, 2002, unreported) [cited by MYNORS, C. 2006 Listed Buildings, Conservation Areas and

BDC	4.17	Monuments 4th.Ed., Thomson (Sweet & Maxwell); at 501]. The Queen on the Application of Community Power Ltd v The National Assembly for Wales, Neath Talbot County Borough Council [2004] EWHC 2186 (Admin)
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## 5 Various Planning Appeal and Application Decisions

RCWF	5.1	Burnthouse Farm (APP/D0515/A/10/2123739)
RCWF	5.2	Enifer Downs (APP/X2220/A/08/2071880)
RCWF	5.3	Carland Cross (APP/D0840/A/09/2103026)
RCWF	5.4	Church Farm, Southoe (Common Barn) (APP/H0520/A/12/2188648)
RCWF	5.5	Treading (APP/D0515/A/12/2181777 and PP/A2525/A/12/2184954)
RCWF	5.6	Ellough Airfield (APP/T3535/A/13/2193543)
RCWF	5.7	Nunwood (APP/Y0435/A/10/2140401 and APP/K0235/A/11/2149434 and APP/H2835/A/11/2149437)
RCWF / BDC	5.8	Asfordby (APP/Y2430/A/13/2191290)
RCWF	5.9	Turncole (APP/X1545/A/12/2174982 and APP/X1545/A/12/179484 and APP/X1545/A/12/2179225)
RCWF	5.10	Dunsland Cross (APP/W11545/A/13/2194484)
RCWF	5.11	Poplar Farm (Black Ditch) (APP/V3310/A/12/2186162)
RCWF	5.12	Den Brook (APP/Q1153/A/06/2017162)
RCWF	5.13	Carsington Pastures (APP/P1045/A/07/2054080)
RCWF	5.14	Sober Hill (APP/E2001/A/09/2101421)
RCWF	5.15	Gayton-le-Marsh (APP/D5841/A/12/2176754)
BDC	5.16	Lane Head Farm (APP/G0908/A/13/2191503)
BDC	5.17	Burton Agnes (APP/E2001/A/13/2190363)
BDC	5.18	East Heslerton (APP/Y2736/A/13/2201109)
BDC	5.19	Pilrow, Sedgemoor (APP/V3310/A/13/2197449)
BDC	5.20	Louth Canal, Tetney (APP/D2510/A/13/2200887)
BDC	5.21	Bicton (APP/H0520/A/11/2146394)
BDC	5.22	East Moneylaws (APP/P2395/A/13/2193153)
RCWF	5.23	Frodsham Canal Deposit Grounds, Cheshire (Cheshire West & Chester ( DPI/A0655/11/13)

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RCWF	5.24	Chiplow and Jacks Lane ( APP/V2635/A/11/2154590 and APP/V2635/A/11/2158966)
RCWF	5.25	Mitton Road ( APP/T2350/A/12/2188887)
RCWF	5.26	College Lane ( APP/D3830/V/14/2211499)
RCWF	5.27	Razor's Farm (APP/H1705/A/13/2205929)
RCWF	5.28	Damsbrook Farm (APP/R1010/A/13/2198747)
RCWF	5.29	Forrest's Plantation (APP/R1010/A/13/2203975)
RCWF	5.30	Waiting for the Sun Farm (APP/K0235/A/12/2187276)
BDC	5.31	Weddicar (APP/Z0923/A/13/2191361)
BDC	5.32	Kirkharle (APP/P2935/A/10/2136112)
BDC	5.33	Palmers Hollow (APP/Y2430/A/09/2108595)
BDC	5.34	Land between Bishops Itchington, Gaydon and Knightcote (APP/J3720/A/13/2193579)

## 6 Planning, Renewable Energy and Climate Change Documents

RCWF	6.1	DECC: The UK Renewable Energy Strategy (2009)
RCWF	6.2	DECC: The UK Low Carbon Transition Plan White Paper (July 2009) (Executive Summary)
RCWF	6.3	DECC: UK Renewable Energy Roadmap (July 2011)
RCWF	6.4	DECC: Onshore Wind, Direct and Wider Economic Impacts (May 2012)
RCWF	6.5	DECC: UK Renewable Energy Roadmap Update (December 2012)
RCWF	6.6	Annual Energy Statement (2013)
RCWF	6.7	National Infrastructure Plan (2013)
RCWF	6.8	DECC: Energy Trends (June 2013)
RCWF	6.9	DECC: Onshore Wind Call for Evidence: Government Response to Part A (Community Engagement and benefits) and Part B (Costs) (June 2013)
RCWF	6.10	DECC: Digest of UK Energy Statistics (DUKES July 2014)
RCWF	6.11	DECC: UK Renewable Energy Roadmap Update (November 2013)
RCWF	6.12	European Commission, Press Release '2030 climate and energy goals for a competitive, secure and low-carbon EU economy', (22 January 2014)
RCWF	6.13	Communication from the Commission to the European Parliament, the Council, the

RCWF	6.14	European Economic and Social Committee and the Committee of Regions: A Policy Framework for Climate and Energy in the period from 2020 to 2030, COM (2014)15 Final, 22.0114, European Commission
BDC	6.15	DECC: UK Government response to the EC 2030 White Paper on Climate Change, Statement by Secretary of State Davey (22 January 2014)
BDC	6.16	DECC Community Energy Strategy Full Report (27 January 2014)
BDC/RCWF	6.17	Consultation on support for community energy projects under the Feed-in Tariff scheme: Part A: Introduction and estimates of deployment, DECC, May 2014.
BDC/RCWF	6.18	Community Benefits from onshore wind developments: Best practice guide for England : DECC October 2014
RCWF	6.19	Shared Ownership Taskforce: Report to DECC: Draft report for consultation 23 June 2014
		Community engagement for onshore wind developments: Best practice guidance for England: DECC October 2014

## 7 Cultural Heritage Documents

RCWF / BDC	7.1	The Setting of Hardwick Hall – Landscape Evaluation (“the Mott MacDonald Report”) (January 2005)
RCWF / BDC	7.2	Wind Energy and the Historic Environment (English Heritage) (2005)
RCWF	7.3	Climate Change and the Historic Environment (English Heritage) (2008)
RCWF / BDC	7.4	The Setting of Heritage Assets (English Heritage) (2011)
BDC	7.5	PPS 5 Practice Guide – Planning and the Historic Environment (2010)
NT	7.6	Hardwick Hall – National Trust Guidebook
NT	7.7	Askew Nelson Ltd – Hardwick Hall Parkland Conservation Plan and Appendices – May 2013
NT	7.8	Bolsover District Council Conservation Area Appraisal and Management Plan for Astwith (October 2010)
NT	7.9	Bolsover District Council Conservation Area Appraisal and Management Plan for Hardstoft (February 2010)
NT	7.10	Conservation Principles: Policies and Guidance for the sustainable management of the historic environment (English Heritage) (2008)
NT	7.11	Understanding Place: Conservation area designation appraisal and management (English Heritage) (2011)
NT	7.12	Seeing History in the View (English Heritage) (2011)

NT	7.13	Roseland Community Wind Farm – Visualisations (LUC) (September 2014) [Bound Separately]
NT	7.14	Roseland Community Wind Farm – Visualisation Methodology (LUC) (September 2014) [Bound Separately]
RCWF	7.15	Planning (Listed Building & Conservation Area) Act 1990
RCWF	7.16	OAA (2010) Alternative Wind Farm Sites Bolsover District, Derbyshire: Initial Cultural Heritage Analysis
RCWF	7.17	Northern Ireland Department of the Environment (April 2014). <i>Assessing Enabling Development: Best Practice Guidance to Planning Policy Statement 23 'Enabling Development for the Conservation of Significant Places'</i>
RCWF	7.18	English Heritage 2012 Revision. <i>Enabling Development and the Conservation of Significant Places</i> .
RCWF/BDC	7.19	Bolsover District Council Conservation Area Appraisal and Management Plan for Stony Houghton (November 2009)
BDC	7.20	Bolsover District Council Conservation Area Appraisal and Management Plan for Scarcliffe (October 2010)

## 8 Planning Application and Appeal Documents

RCWF	8.1	Planning Application and Supporting Documents (provided in the Appeal Bundle)
RCWF	8.2	Officer Report to the Planning Committee
RCWF	8.3	Decision Notice
RCWF	8.4	Appellant Statement of Case
RCWF	8.5	Council Statement of Case
RCWF	8.6	Statement of Common Ground – General
RCWF	8.7	Statement of Common Ground – Cultural Heritage
NT	8.8	Rule 6 Party Statement of Case
RCWF	8.9	Consultation Response from County Development Control Archaeologist (060111)
RCWF	8.10	Consultation Response from County Development Control Archaeologist (150612)
RCWF	8.11	Consultation Response from County Development Control Archaeologist (240613)
RCWF	8.12	Consultation Response from District Conservation Manager (100413)
RCWF	8.13	Consultation Response from District Conservation Manager (030713)
RCWF	8.14	Consultation Response from English Heritage (n.d., pre-100614)
RCWF	8.15	Consultation Response from English Heritage (180914)
RCWF	8.16	Consultation Response from the National



RCWF	8.17	Trust (140313) Consultation Response from the National Trust (110713)
RCWF	8.18	Consultation Response from English Heritage (240712)
RCWF	8.19	Consultation Response from English Heritage (250613)
RCWF	8.20	Roseland Community Investment Plan – Update 2014
RCWF	8.21	Roseland Community Energy Trust Community Interest Company Ltd - Community Consultation Report & Proposal for Community Funding
RCWF	8.22	Community Investment Plan update (August 2012)
RCWF	8.23	Roseland Community Energy Trust Community Interest Company Ltd - Community Investment Programme way forward
RCWF	8.24	Fighting Poverty Forum - VCS Anti Poverty Strategy Priorities 2014-15
RCWF	8.25	Bolsover Health and Social Care Forum - Health and Social Care Priorities 2014-15
RCWF	8.26	Roseland Community Energy Trust Community Interest Company Ltd Consultation Report Map
RCWF	8.27	FEI 2014



## 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.