



Department for  
Communities and  
Local Government

Miss Victoria Whalley  
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Our Ref: APP/N2739/A/14/2221816  
Your Ref:

9 December 2015

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MR WALKER  
PROPOSED ERECTION OF 1X60M (HUB) HIGH, 87M (TIP) HIGH WIND TURBINE  
PLUS ANCILLARY DEVELOPMENT  
LAND TO THE SOUTHWEST OF LUMBY, NORTH YORKSHIRE LS25 5LD  
(APPLICATION REF: 2013/0722/FUL)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC, who made site visits on 5 May and 10 June 2015 to inform her consideration of your client's appeal against the refusal of Selby District Council ("the Council") to grant planning permission for the erection of 1x60m (hub) high, 87m (tip) high, wind turbine plus ancillary development on land to the southwest of Lumby, North Yorkshire, LS25 5LD.
2. On the 21 October 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves a renewable energy development.

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

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

### **Procedural matters**

4. Reflecting the agreement between the parties, as stated in IR13, the Secretary of State concludes that an Environmental Impact Assessment is not required.

### **Matters arising following the site visits**

5. On 18 June 2015 and following the Inspector's site visits of 5 May and 10 June, the Secretary of State made a Written Ministerial Statement (WMS) on local planning. As stated at IR2, the main parties were given an opportunity to comment on the WMS.
6. On 12 October 2015, the Secretary of State wrote to you and the parties in this appeal about the claim before the Court of Appeal relating to the legal challenge to the Selby District Core Strategy Local Plan – Case No. CO/17241/2013. Given the materiality of certain Core Strategy policies to his decision on the appeal, the Secretary of State's letter of 12 October explained that he would await the judgment before issuing his decision. The Court of Appeal handed down its judgment on 5 November 2015 and dismissed the appeal.

### **Policy and Statutory Considerations**

7. 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 Selby District Local Plan (2005) and the Selby District Core Strategy Local Plan.
8. The Secretary of State has had regard to his WMS of 18 June 2015. The Statement explained that the Secretary of State was setting out new considerations to be applied to proposed wind energy development. Subject to a transitional provision, the Statement explained that the new considerations had immediate effect. Given its relevance to this case, the Secretary of State attaches substantial weight to the Statement as the most recent expression of government planning policy for onshore wind development.
9. The Statement includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this appeal proposal the Secretary of State has considered the representations reported in the Inspector's Report (IR50-58).
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework") and the planning guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State

has also taken into account the WMSs on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government; the WMS on renewable energy published by the Secretary of State for Communities and Local Government in April 2014; and the English Heritage/Historic England guidance entitled "*The setting of Heritage Assets*" as updated in July 2015.

11. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.

### **Main issues**

12. Along with his WMS of 18 June 2015, the Secretary of State agrees with the Inspector that the main issues are those set out at IR59.

### **Effect on the Green Belt**

13. The Secretary of State agrees with the Inspector at IR59 that the proposal would be inappropriate development in the Green Belt, and by definition would be harmful. For the reasons given at IR60 he agrees that the proposed turbine would result in a moderate loss of openness and would conflict with the Green Belt purpose of safeguarding the countryside from encroachment.

### **Effect on landscape and visual amenity**

14. For the reasons given at IR61-64 the Secretary of State agrees with the Inspector that the proposal, albeit sited in a prominent position, would be hidden by buildings or woodland in a number of views. However, in some locations the wind turbine would become a dominating feature and the Secretary of State agrees that in detracting from the landscape character of the area in those views, moderate harm would result overall.
15. In terms of visual impacts, the Secretary of State has considered the Inspector's assessment at IR65-68 and agrees that due to the topography and natural screening there would be some visual relief, but, when seen, the proposed turbine would appear dominating and out of scale with the surrounding countryside. He agrees that there would be some locations with no harm and others with substantial harm (IR65). For the reasons given by the Inspector at IR66-67, the Secretary of State agrees that the impact for people living and working in the area would be medium/moderate adverse and the proposal would cause moderate harm in the Green Belt balance (IR68).

### **Living conditions**

16. For the reasons given by the Inspector at IR69 – 70, the Secretary of State agrees with the Inspector that there would be harm to the living conditions of some residents of the area, particularly those at The Cottage, Lumby and Lumby Hall. While the Secretary of State agrees that no dwelling in the area around the appeal site would become an inherently unattractive or unpleasant place to live, and any harm would be relatively limited, it adds to the harm in the planning balance.

## Human Rights

17. The Secretary of State agrees with the Inspector (IR73) that the scheme would not materially infringe upon the Human Rights of the objector in a disproportionate manner, particularly given noise levels are predicted to accord with those set out in ETSU-R-97 and that conditions could be imposed in respect of noise.

## Heritage Assets

18. The Secretary of State has had special regard to the desirability of preserving the heritage assets in this case. Having given very careful consideration to the Inspector's findings with regard to the effect of the appeal scheme on the setting of heritage assets at IR74-80, and having taken account of the views of English Heritage and its updated guidance on the "*Setting of Heritage Assets*" referred to at paragraph 10 above, the Secretary of State agrees with the Inspector's assessment at IR80 with regard to heritage assets. The Secretary of State gives considerable weight to the harm identified.

19. The Secretary of State agrees with the Inspector (IR82) that the identified harm to heritage assets would be less than substantial for the purposes of paragraph 134 of the Framework. In accordance with paragraph 134 of the Framework, this less than substantial harm should be weighed against the public benefits of the proposal.

## Benefits of the scheme

20. The Secretary of State agrees with the Inspector's findings (IR81) that the scheme has the potential to support employment and assist with the security of supply as well as contributing towards the efforts to reduce climate change and meet national energy objectives, in line with the Framework and other relevant national policies as identified at paragraph 10 above.

## Other matters

21. For the reasons given at IR83-87, the Secretary of State agrees with the Inspector at IR92 that the other matters raised do not materially add to the harms identified.

## **Planning balance and conclusions**

22. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State has concluded that the proposal does not accord with the development plan taken as a whole, in particular owing to the clear conflict with policies ENV1, ENV15 and ENV27 of the Local Plan and policies SP2, SP3, SP17, SP18 and SP19 of the Core Strategy. The Secretary of State has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeal.

23. For the reasons given above and by the Inspector, the Secretary of State concludes that moderate harm would arise in terms of the landscape and moderate harm would arise to living conditions for nearby residents. The Secretary of State has had special regard to the desirability of preserving the

settings of the listed buildings as set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. He gives considerable weight to the harm identified to the listed buildings in this case. Furthermore, he agrees with the Inspector that, for the purposes of paragraph 134 of the Framework, less than substantial harm would arise to the setting of heritage assets, namely Steeton Hall, its Gatehouse and the SAM.

24. The Secretary of State agrees with the Inspector's conclusions that the harm to the Green Belt by inappropriateness and the harm to openness should attract substantial weight. Like the Inspector, he finds that the matters advanced in favour of the production of renewable energy and its contribution to the farming business fall significantly short of what would be required to outweigh the harms identified (IR93).
25. In addition, having applied the transitional provision set out in the June 2015 WMS, the Secretary of State is not satisfied that the planning impacts identified by affected local communities have been addressed. This is demonstrated in particular by the Inspector's conclusions at IR60 on the proposal's impact on the openness of the Green Belt; her conclusions at IR61-68 on the harm to the character and appearance of the landscape, and by her conclusions on the impact on heritage assets at IR74-80 and IR82. As those planning impacts as identified by the affected communities have not been addressed, the proposed scheme would not meet the transitional arrangements set out in the WMS of 18 June 2015; and the Secretary of State gives significant weight to this non-compliance.
26. He concludes, in agreement with the Inspector, that the benefits are not sufficient to clearly outweigh the harm to the Green Belt and other harms, and that as such very special circumstances justifying development in the Green Belt do not exist. He further concludes that as such the proposal would not be in accord with Chapter 9 of the Framework.
27. Having weighed up all relevant considerations, the Secretary of State concludes that the factors which weigh in favour of the proposed development do not outweigh its shortcomings and the conflict identified with the development plan and national policy. He considers that there are no material considerations of sufficient weight which would justify allowing the appeal.

### Conditions

28. The Secretary of State has considered the Inspector's reasons and conclusions on conditions, as set out at IR98-99. He is satisfied that, in the form recommended by the Inspector, they are reasonable and necessary and would meet the tests of the paragraph 206 of the Framework and the guidance. However, he does not consider that they would overcome his reasons for dismissing this appeal.

### **Formal Decision**

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of 1x60m (hub) high, 87m (tip) high,

wind turbine plus ancillary development in accordance with application number 2013/0722/FUL, dated 8 July 2013.

**Right to challenge the decision**

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, this must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

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

Yours faithfully

*Lindsay Speed*

Authorised by the Secretary of State to sign in that behalf

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

by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC

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

Date: 24 August 2015

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Town and Country Planning Act 1990

Appeal by Mr Walker (Walker & Sons (Hauliers) Ltd.)

Selby District Council

Site visits made on 5 May and 10 June 2015

Land to the southwest of Lumby, North Yorkshire LS25 5LD

File Ref: APP/N2739/A/14/2221816

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**File Ref: APP/N2739/A/14/2221816**

**Land to the southwest of Lumby, North Yorkshire LS25 5LD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Walker against the decision of Selby District Council.
- The application Ref: 2013/0722/FUL, dated 8 July 2013, was refused by notice dated 8 May 2014.
- The development proposed is the erection of 1x60m (hub) high, 87m (tip) high wind turbine plus ancillary development.

**Summary of Recommendation: The appeal be dismissed.**

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**Procedural Matters**

1. The Secretary of State has directed that, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, that he shall determine this appeal because it involves renewable energy development.
2. On 18 June 2015 a Written Ministerial Statement was made in respect of on-shore wind turbine development. The main parties have been given the opportunity to comment on this Ministerial Statement which I shall refer to in this Report.
3. It was apparent at the initial site visit that access would be required to the Gatehouse at Steeton Hall which is a publically accessible building managed by English Heritage<sup>1</sup> on behalf of the Secretary of State for Culture Media and Sport as a visitor destination. This took place on 10 June 2015. Additionally, views from within properties at Pollums Farm and Lumby referred to in reason for refusal no.02 took place on this second visit. Those visits were on an 'access required' basis as agreed with the main parties.

**The Site and Surroundings**

4. The appeal site is situated 500m east of the A1(M) motorway and just to the north of the A63 within an agricultural field, on a gently elevated magnesian ridge. The elevation allows for views across the landscape which includes some wooded areas and industrial structures, particularly electricity pylons and power station structures. The appeal site is within a 'locally important landscape area'.
5. The site is situated to the west of the village of Lumby. There are a number of listed buildings within the vicinity, the nearest, and most relevant, to this appeal, being Steeton Hall and Gatehouse. There is also a Scheduled Ancient Monument (SAM) as part of this grouping.
6. The site is located within the Green Belt.

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<sup>1</sup> From 1 April 2015, English Heritage became two separate organisations. Historic England, is the new name for the public body that champions and protects England's historic environment and, The English Heritage Trust, is a new independent charity, retaining the name English Heritage, which will look after the National Heritage Collection. As correspondence relating to this appeal was in the name of English Heritage I shall refer to it on that basis. However, in terms of publications I shall refer to the documents on the basis of how they have been published.

## Planning Policy

### *Core Strategy*

7. The Council identifies six relevant policies from the Selby District Core Strategy Local Plan (the Core Strategy). However the Council also records that the Core Strategy was the subject of a High Court Challenge which has sought either quashing of the entire document or six specific policies, including SP2 and SP3 considered relevant to this case. There has been no update provided in respect of that High Court Challenge.

8. The policies identified are as follows: -

Policy SP1 - Presumption in favour of sustainable development - records that the Council will take a positive approach that reflects the presumption in favour of sustainable development, ensuring that development which accords with the Local Plan<sup>2</sup> will be approved without delay, unless material considerations indicate otherwise. It also explains what will happen if there are no relevant policies or they are out of date.

Policy SP2 - Spatial Development Strategy - is relevant in so far as it explains that development in the countryside will be limited to specific types including well-designed new buildings of an appropriate scale, which would contribute towards and improve the local economy or other special circumstances. This policy also refers to the Green Belt policy SP3.

Policy SP3 - Green Belt - sets out that the Green Belt is defined on the Proposals Map; and that planning permission will not be granted for inappropriate development unless the appellant has demonstrated that very special circumstances exist to justify why planning permission should be granted. It also sets out how alterations will be made to Green Belt boundaries.

Policy SP17- Low-carbon and Renewable Energy - establishes that the Council will seek opportunities for, and to identify, suitable areas for renewable and low carbon energy, and support community-led initiatives. The criteria of the policy require that all new schemes for such energy development must be designed and located to protect the environment and local amenity; be able to demonstrate that the wider environmental, economic and social benefits outweigh any harm caused to the environment and local amenity; and, that impacts on communities are minimised. In terms of the Green Belt it explains many elements of schemes will represent inappropriate development such that applicants will have to demonstrate very special circumstances if projects are to proceed and refers to policy SP3 and the National Planning Policy Framework (the Framework).

Policy SP18 - Protecting and Enhancing the Environment - seeks to safeguard and enhance the historic and natural environment, including landscape character and the setting of areas of acknowledged importance. It also seeks, amongst other things, to conserve historic assets and promote stewardship of wildlife.

Policy SP19 - Design Quality - requires a high standard of design and sets out a number of criteria, including making the best use of land without compromising

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<sup>2</sup> The policy specifically uses the term 'Local Plan' and sets out in a footnote what it consists of; those documents include the Core Strategy

local distinctiveness; positively contributing to an area's identity and heritage in terms of scale, density and layout; and prevent development from contributing to unacceptable levels of light or noise pollution.

#### *Local Plan*

9. The Selby District Local Plan has been partly superseded by the Core Strategy. In other respects it should be afforded weight to reflect the degree of consistency with the Framework.

10. The Council sets out that the relevant policies are: -

ENV1 which requires consideration of various criteria, including: - the effect upon the character of the area and amenity of adjoining occupiers; the relationship to highways; the relationship of the site to its surroundings; any adverse effects on wildlife, archaeological or other features important to the character of the area; and, any other material considerations.

ENV15 explains that within locally important landscape areas, which are defined on the proposals map, priority will be given to conservation and enhancement of the character and quality of the landscape.

ENV25 relates to conservation areas, including development affecting the setting of conservation areas. However, the impact of the scheme upon conservation areas is not raised as a reason for refusal so that this policy is of little relevance.

ENV27 is, in the version submitted with the Council's Questionnaire, entitled Article 4 Directions in Conservation Areas. However, the Council has confirmed it should be entitled "Scheduled Ancient Monuments and Important Archaeological Sites". The policy explains that where scheduled ancient monuments or other nationally important archaeological sites or their settings are affected by proposed development, there will be a presumption in favour of their physical preservation. It goes on to describe what should happen in exceptional circumstances where the need for development is clearly demonstrated. The supporting text expands on protecting the setting of scheduled ancient monuments.

ENV28 relates to archaeological interests and how to protect or record them.

T1 seeks that development is well related to the existing highway network.

T2 sets out that intensification of the use of an existing access will be permitted where there would be no detriment to highway safety and the access can be created to an acceptable standard.

### **The Proposal**

11. The application seeks the erection of a single turbine measuring 60m to its hub and 87m to its blade tip. The wind turbine would have a tubular steel tower and three rotor blades. The appellant indicates that it would be of a white finish designed to be light absorbent. The proposed wind turbine would be limited to an output of 500kW. A meter box of 1m x 1m x 0.7m would be required for the proposed wind turbine. The plans include details of a substation but the officers' report clarifies this would not be required for the development proposed. I have considered the proposal on that basis but given it is shown on the submitted plan

this would need clarifying through the use of a condition attached to any grant of planning permission.

12. Access to the wind turbine site would be via an existing junction head on the A63. That junction appears as a significant access point, albeit currently blocked, as it is a farm access which was upgraded to full highway construction specification when it was used as a compound for the construction work for the A1(M) motorway. The proposed access track to the proposed wind turbine includes provision for a turning head. Highway access is not an issue in this appeal.

### **Other Agreed Facts**

13. On 24 July 2013 it was determined that the development would not be likely to have a significantly adverse effect on the environment and, as such, an Environmental Impact Assessment should not be requested.
14. The planning application was accompanied by the following documentation: a design and access statement, a landscape and visual impact assessment (LVIA), a heritage statement, an amenity statement, an acoustic assessment, a transport assessment, and an ecology statement. Photomontages were also supplied.

### **The Case for Selby District Council**

15. The case for the Council, set out in a number of reports provided as expert advice, expands upon the five reasons for refusal of planning permission. They are summarised below and are set out in the same order as the reasons for refusal.

#### *Green Belt (reason for refusal no 1)*

16. Despite the limited footprint of the proposed turbine its bulk and mass, size and scale would impact on the openness of the Green Belt, a matter to which the Council considers that considerable weight should be attached.

#### *Living Conditions (reasons for refusal nos 2 and 3)*

17. The expert analysis concludes that views from rear facing windows and gardens in Lumby (some 650m from the proposed wind turbine site) would experience substantial adverse visual impacts following the introduction of the wind turbine. The views from principal rooms would change and it is judged that this would result in harm.
18. At Lumby Hall (about 670m distant) views from the house itself would be oblique from upper floor windows. The most noticeable impacts would be on the immediate grounds and garden setting for the Hall. The wind turbine would appear out of scale and as an industrial intrusion into an otherwise tranquil estate and parkland landscape with a consequent substantial adverse effect.
19. Views from Pollums Farm (450m distant), where there are a number of residential properties, are such that the turbine would be clearly visible from the driveway and likely to be visible from some angles and locations within the immediate curtilage of the dwellings and from windows facing the site. Change to the view from the driveway would be high with medium change from the dwellings and curtilage resulting in a visual effect of between substantial and moderate substantial adverse.

20. The Council notes that the appellant's assessment openly admits to not having visited many properties and that there has been no proper modelling. Hence their assessments on site reach different conclusions. The Council's conclusion is that there would be visual harm for residential properties at Pollums Farm, five properties at the western edge of Lumby and Lumby Hall. It would also impact on views from public rights of way. As such, the scheme would be contrary to Local Plan policy ENV1 and Core Strategy Policy SP17.

*Character and Appearance (reason for refusal no 4)*

21. The Council explains that the site is a locally important landscape area as set out in the Local Plan. The proposed wind turbine would be sited on an elevated magnesian limestone ridge such that it would be a particularly prominent addition. Notwithstanding other power related development, because of its built form and size along with the associated blade movement, the turbine would detract from the landscape within which it would be located.

*Heritage Assets (reason for refusal no 5)*

22. The proposed design and form is of a stark, industrial, angular character which combined with its size and scale would impact upon the significance of a number of listed buildings by harming their setting. In particular the Council expresses concern that it would harm the setting of Steeton Hall and Gateway (grade I listed buildings) which date back to C14<sup>th</sup>. The Council has had a separate statement prepared for the Appeal by an independent consultant who also points out that the site of the manor house is also a SAM, scheduled in 1929. This statement takes the view that the Hall and Gatehouse would have been designed to be architecturally impressive rather than being designed to principally be defensive. The Gatehouse with its separate pedestrian and carriageway entrances is not particularly defensive in design. The SAM scheduling notice (updated in 1997) provides additional information regarding the listed buildings within the complex.

*Conclusion for the Council*

23. The Council concludes that the scheme would not improve the economic, social and environmental conditions of the area. For the reasons set out above, it would not comply with the development plan and nor would it comprise sustainable development. No amendments to the scheme, or conditions that could reasonably have been imposed, could have made the scheme acceptable and thus it was refused.

**The Case for Mr Walker (the Appellant)**

24. The proposed wind turbine would be located on land forming part of Laurels Farm. It would help the farm business by providing electricity with any surplus being sold to the national grid. As such, it would contribute to the country's renewable energy targets.

25. The proposal has not resulted in objections from the Council on grounds of shadow flicker, electromagnetic interference, proximity to power lines, interference with airports and aviation issues, ground conditions, archaeological implications, loss of agricultural land, physical installation matters, or in terms of economic and social benefits.

26. In respect of the reasons for refusal the appellant contends that there would be no reason to withhold permission. Each area is discussed in turn below.

#### *Green Belt*

27. The appellant accepts that the proposal represents inappropriate development in the Green Belt as expressed at paragraph 91 of the Framework. However, the appellant considers that the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations that amount to very special circumstances.

#### *Residential Amenity*

28. As set out above, the appellant explains most views towards the proposed wind turbine from neighbouring properties would be at oblique angles from windows and therefore it would have limited impact of residential amenity. Specific impacts are limited to those within 1km these are: Lumby Hall, The Cottage in Lumby, the house at Lumby Garden Centre and 1, 2 and 3, Pollums Farm.

29. The photomontages indicate there would not be unacceptable harm in terms of the unofficial 'Lavender Test'<sup>3</sup> wherein private views become a matter of public interest only at the point where the introduction of a new feature in the view would result in a presence so overbearing, oppressive or overwhelming that it would result in unsatisfactory living conditions such that residential amenity is unacceptably affected. Whilst the wind turbine would be seen on the approach to Lumby Hall, this would be in the context of trees so minimising its impact. The Cottage is screened by vegetation and a wall. The house at Lumby Garden Centre is seen in the context of other structures and the Pollums Farm dwellings are screened by vegetation. Thus, the Committee's decision that the wind turbine would have an 'overbearing, inescapable and all pervasive impact' is unfounded and it is noted that the Committee did not visit the surrounding area to make such an assessment. The appellant also notes that noise has not been raised as a specific amenity issue by the Council and that the assessment undertaken on his behalf confirms that there would be no material harm.

#### *Visual Amenity*

30. The appellant asserts that his LVIA indicates that the scheme would be acceptable in this character area. The proposed turbine would result in a low magnitude of effect on the overall pattern of the landscape, its vegetation, field boundaries, existing activities, land use, communication routes, public rights of way and settlements. It would have a low/medium magnitude of effects in respect of landscape scale, culture and heritage and a negligible effect in terms of topography. Although it would be visible it would not have direct impacts in landscape terms. It would be screened from some viewpoints and seen in the context of other significant power related infrastructure. The key features of the landscape would remain, these being heritage assets, layout and extent of settlements and the elevated topography. The appellant takes the view that the photomontages show that receptors would not be unacceptably affected,

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<sup>3</sup> The 'test' the appellant refers to is an unofficial test used by the Inspector in appeal ref: APP/C3105/A/09/2116152. As the appellant refers to this 'test' so shall I, although I am mindful it is not Policy rather it offers a good 'yardstick'

including when considered from more sensitive sites such as heritage assets. The appellant also takes support for this opinion from the officer's report. The appellant also notes that this would be a temporary 25 year development.

### *Heritage Assets*

31. Both Steeton Hall and its Gatehouse are grade I listed buildings. However, the officer's report suggests no harm would arise to their setting and no formal response was received from English Heritage. The English Heritage guidance (now Historic England's guidance) describes setting can change and that in some instances the contribution made by setting may be negligible to the assets significance.
32. The Gatehouse was built C1360 as a fortified bastion. The age and extensive survival of historic fabric are important to its significance and its clear purpose is indicative of the unstable nature of life in the C14<sup>th</sup>. As a defensive building it has only four lancet windows and the building is therefore inward looking. Entry is from the north on the opposite side to the proposed turbine. Views out would be for the practical purpose of seeing people approaching and not for beautiful views.
33. The Hall has suffered loss of status due to its change of use and ownership and loss of historic fabric. It is now largely C17<sup>th</sup> and C18<sup>th</sup> in fabric. Its setting is linked to the farm land but this importance is reduced as the residential relationship has changed.
34. The setting of the Gatehouse and Hall and the significance of their settings, in the appellant's view, is confined to areas within the immediate landscape from which the listed buildings can be appreciated and which enhance appreciation of the protected assets. In particular the landscape provides a foil for the Gatehouse. The main approach is such that views to the proposed turbine would be restricted by trees and the Gatehouse itself. Topography also lessens the impact.
35. The Hall is in private ownership so there is no access for the general public. The relationship to its surroundings has been functional and will not be undermined by the appeal proposal.
36. Heritage assets should be conserved in a manner appropriate to their significance. Development has been allowed at the Hall, with conversions and new plot boundaries and pathways. Modern farm practices have also changed the historic landscape. Given the distance between the proposed turbine and the heritage assets and the minimal inter-visibility the appellant considers that there would be negligible impact.
37. Paragraph 134 of the Framework advises that where there would be less than substantial harm this should be weighed against the benefits of the proposal. In this case the appellant considers the balance should lie in favour of the scheme. The appellant also notes that the Framework indicates that development which preserves those elements of setting that make a positive contribution to the asset should be treated favourably and, thus, this proposal should gain support.

### **The Green Belt Balance**

38. The other considerations which the appellant identifies are: - that the proposed development would support the continued viability of the existing farm for the

- next generation and provide renewable electricity to meet these demands; that it would give the business the same benefits as other producers who already have the advantages of renewable energy; that it would reduce the overall carbon footprint of the farm through off-setting energy usage; and, that it would promote the use of renewable energy generation in the area and contribute to achieving national and regional renewable energy targets. In addition the scheme would create substantial benefits to the farm in terms of electricity savings which would cross-subsidise and help the business stabilise its energy costs for the next 25 years. The appellant considers these benefits outweigh harm by virtue of inappropriateness and harm to openness. The appellant also points to the fact that the officer's committee report took the same view.
39. The appellant explains that in his view (and that of the Council's officer) any other harms should not be given substantial weight (as set out in paragraph 88 of the Framework, rather they should be afforded weight according to the circumstances of the case).
  40. The other harms identified in the Council's reasons for refusal include 'significant harms' to visual amenity, residential amenity and heritage matters that in the Council's decision outweigh the benefits of the scheme. However, these judgements are all subjective and are contrary to the officer's professional recommendation.
  41. The appellant's LVIA demonstrates that the impacts are acceptable. The impacts on the West Selby Ridge Character Area within the Southern Magnesian Limestone Regional Character Area were considered to be minor/moderate adverse. The presence of substantial man-made features such as pylons, major substations and motorway infrastructure in this part of the landscape combined with the distance to any nationally designated landscape, in the appellant's view, suggests a less sensitive landscape with a capacity for this type of development. The overall effect would recede with distance due to the topography and the level of other detractors. As such, the appellant considers that the harm to the visual amenity and character of this rural area is not significant; rather it is limited and thus has little impact on the Green Belt balance.
  42. In terms of the impacts on residential amenity the majority of views would be constrained to angled views from windows. While the impacts on views from the house at Lumby Garden Centre might be more direct they include views in the context of pylons and infrastructure associated with the A1(M) motorway. The views from Pollums Farm are in a more direct line but are restricted by vegetation and so the proposed wind turbine would not appear oppressive.
  43. Beyond 1km the impacts of the proposed development would not be unacceptable (and the appellant refers to what he cites as the 'Lavender Test' which I have explained at paragraph 29 above) wherein private views become a matter of public interest only at the point where the introduction of a new feature in the view would result in a presence so overbearing, oppressive or overwhelming that it would result in unsatisfactory living conditions such that residential amenity is unacceptably affected). The appellant states that harm of that magnitude does not arise in this appeal and so only limited weight should be attached to this matter in the Green Belt balance.

44. Similarly the appellant considers that, given the distances involved, there would be no harm to heritage assets and so this does not carry significant weight in the Green Belt balance.
45. The appellant also cites a number of appeal decisions<sup>4</sup> which allowed wind turbines in the Green Belt and explains that the production of renewable energy in those cases had outweighed harms.
46. Openness in the Green Belt relates to an absence of built structures. The appellant accepts that the proposed turbine would be likely to have some impact on openness but its slim form and limited footprint would minimise that impact so that harm to openness would be limited.
47. The appellant considers that encroachment into the countryside would also be very limited especially given the presence of other man-made features which, in his view, suggests the level of encroachment proposed would be acceptable.
48. Other harms, in the appellant's view, can only be very limited as no objections were raised on ecological grounds by Natural England, acceptable mitigation would be provided in respect of aviation matters and, noise and shadow flicker, whilst raised by local residents, have been assessed and would not cause harm.
49. Thus, in terms of the Green Belt balance the appellant contends that the substantial harm by reason of inappropriateness, limited harm to openness, limited harm caused by encroachment, limited harm by virtue of harm to visual amenity, low harm to heritage assets and limited other harms are all outweighed by the benefits of the scheme.

## **Written Representations**

### *Application*

50. In terms of the application stage, the consultee responses are set out in the officer report at 1.4 and conditions are recommended by a number of them. Responses are set out below only where matters result in objection rather than conditions being sought or neutral comments being made.
51. South Milford Parish Council objects on grounds of: - harm to the Green Belt and conflict with Green Belt policy; the siting of the proposed development on a ridge within the locally important landscape area; noise concerns; harm to listed buildings and residential properties including flicker; cumulative impact; and, on grounds that renewable energy should not 'trump' localism.
52. Monk Fryston Parish Council objects on grounds of landscape impact and Green Belt harm and that the renewable energy target for this area will be exceeded by other significant developments. As a result, the Parish Council considers that there is less need for the development in this location and so weight attached to the very special circumstances advanced by the appellant in terms of need for renewable energy should be reduced. They also set out that there would be conflict with Green Belt and environmental policies.
53. In response to site notices, press advertisement and neighbour consultation 38 objections were made. Those objections cover a wide variety of issues. These

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<sup>4</sup> APP/W4705/A/09/2118825 and APP/W4705/A/09/2118825 and '101384'

include conflict with a changed approach by Government to onshore wind development, Green Belt harm, lack of very special circumstances and policy conflict, that business benefits /subsidy is not a very special circumstance and that there would be limited renewable energy benefit compared to other local schemes. Objections are also made on grounds of landscape harm and that existing detractors should not be used to justify further harm and that there would be no landscape harm mitigation. Additionally concerns are raised regarding traffic hazard, noise impacts including low frequency concerns and concerns about noise assessments, health concerns, construction noise concerns and concerns for aviation uses. Local residents are also concerned about the potential impact on house prices and lack of community consultation. Objections are also made on grounds of wildlife impacts including in respect of a RSPB site nearby, cumulative impact, heritage impact, biased photomontages and harm to residential amenity.

### *Appeal*

54. In terms of written representations to the appeal, 74 letters of objection were received. The comments made reflect those cited above adding concern about precedent, the scheme would generate more energy than the farmer needs, people are being paid to turn off wind turbines, it would impact on human rights in terms of noise, wind turbine development has been associated with job losses, and re-powering concerns especially if bigger turbine(s) are used.
55. Support for objectors was set out in a letter from Nigel Adams, the local Member of Parliament, and letters from the Parish Councils. Additionally, there were two substantial submissions by individuals and a submission provided by Cunnane Town Planning commissioned by a group of local objectors. These provide more detailed comment on the grounds raised by objectors and the latter document sought that additional viewpoints be considered, which I did, as far as possible, at the first site visit.
56. One letter of support was received expressing the view that the proposed wind turbine would not be noisy or unsightly and would be preferable to other energy sources.
57. In addition English Heritage wrote explaining that they had not been consulted on the proposal, and they had serious concerns about it and about the adequacy of the assessment of significance and, thus, assessment of impacts on that significance. Their concluding judgement is that the proposed development would constitute unjustified harm to the significance of the heritage assets of Steeton Hall and Gatehouse.
58. Robin Hood Airport also wrote objecting to the proposed development on the basis that the appellant would not enter into a legal agreement to facilitate the mitigation necessary. They also seek conditions and acknowledge that the Council had sought to deal with the mitigation by means of a 'Grampian' style condition.

## Inspector's Conclusions

*References in square brackets [] below refer to earlier passages of this Report.*

### *Main Issues*

59. The appeal site is situated in the Green Belt where the appeal proposal represents inappropriate development, a matter with which the main parties do not disagree. As such, the main issues in this appeal are:
- (a) the effect of the proposed development on the openness of the Green Belt;
  - (b) the effect of the proposed development on the character and appearance of the surrounding area, which is also a locally important landscape area, in terms of landscape character and visual impact;
  - (c) the effect of the proposed development on the living conditions of the occupiers of Lumby Hall, The Cottage and other dwellings at the nearest parts of Lumby to the site, and the Pollums Farm properties having particular regard to outlook;
  - (d) the effect on heritage assets, particularly Steeton Hall and Gatehouse, both grade I listed buildings, and the SAM at this location, having regard to the effect on their setting,
  - (e) and having made those assessments whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

### *Openness*

60. The proposed development is for the erection of a single turbine with a 3 bladed rotor, on a mast of some 60 metres, giving an overall tip height of some 87 metres. Although the actual ground area covered would be modest, it being limited to the base of the tubular structure, meter box, and the access track, I am in no doubt that it would have an adverse impact on the openness of the Green Belt given the height of the structure, and diameter of the rotating blades. To my mind the proposed development would result in a moderate loss of openness and would conflict with the Green Belt purpose of safeguarding the countryside from encroachment. [16, 46]

### *Effect on the Landscape*

61. The West Selby Ridge Character Area (WSRCA) is within the Southern Magnesian Limestone Regional Character Area (RCA). The RCA is described as being a ridge formed by underlying limestone, creating a smooth rolling landform, it has farmed land and is generally open, with long views. Habitat reflects that of the limestone geology. The limestone is often used for building and the buildings include large numbers of abbeys, country houses, and estates with designed gardens. It is influenced by the A1 corridor<sup>5</sup>. The WSRCA is of large rolling

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<sup>5</sup> This description is based on the NCA described by the Council's consultant Carl Taylor and reflects what I saw during site inspections

- arable farmland, wooded estates and parkland, and ecology linked to its limestone geology.
62. Within this landscape a tall structure of the type proposed, on the top of a ridge, is likely to be visible over a relatively wide area given the gently undulating landform and modest scale of much of the landscape which is broken up by hedgerows and trees. There will be occasions when the proposed wind turbine would be hidden from view by intervening development or landscape features, particularly trees. The photomontages submitted by the appellant show a number of such instances where buildings or woodland screen the proposed wind turbine from viewpoints (appellant's LVIA viewpoints 1, 2, 3, 6, 7, 8, 10, 11, 14, 15, 18).
63. However, I saw that there are notable locations (which do not feature in the appellant's viewpoints) where the proposed wind turbine would become a dominating feature that would detract from the gently rolling landscape character of the area, particularly viewed from the north, and would conflict with the scale of the woodland groups and hedges.
64. I acknowledge that the landscape also includes established power related developments. These detract from the natural landscape but form part of the current landscape. In this respect those existing developments have a static character and, in terms of the power stations, a solid, grounded, appearance that would not have the same landscape impact as the proposed wind turbine which would be of its own distinct form with moving elements. Given the differences in form of development, its proposed siting on a ridge, which would make it prominent, and the conflict with scale identified, there would be moderate harm to the landscape character of the area.
65. In terms of visual impacts, the topography and natural screening would provide some visual relief. However, this natural screening means that, when seen, the proposed wind turbine would appear dominating and out of scale with the surrounding countryside features. Therefore, there would be locations with no harm and others with substantial harm.
66. I appreciate that in some views the proposed wind turbine would be seen with other large scale man-made structures. However, the power stations are at a distance so that they are not seen as oppressive features in the immediate surroundings of the appeal site. The substation is seen in specific views and is unlikely to have a significant visual relationship with the proposed wind turbine. Thus, the dominant feature in the immediate area of the appeal site is that of the pylons. Those pylons are located so that they would be seen with the proposed wind turbine in some, but not all views. Whilst large they are clearly part of a chain of development. In contrast, the proposed wind turbine would be an isolated and unrelated structure which would be significantly different because of its movement. The juxtaposition of different forms of infrastructure would not always lessen the visual impact; sometimes it would appear so (LVIA viewpoint 5) and sometimes it would render this single turbine discordant in the landscape when seen with pylons giving a cluttered appearance (LVIA viewpoint 4). When seen in isolation it would be seen as out of scale with the rural backdrop of fields and trees (LVIA viewpoints 9, 12, 19 and LPA viewpoints<sup>6</sup> 1, 3, 8).

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<sup>6</sup> LPA viewpoints in the Statement of Carl Taylor

67. In the views further from the site there is a general backdrop of industrial/power related infrastructure. In this context, when seen from a distance, the size and slender form of the proposed wind turbine would not be unduly obtrusive (LVIA viewpoint 13, 17).
68. In terms of visual effect for those living and working in this area, I consider that the impact for those moving about the vicinity would be in the mid-range of harms – medium magnitude/moderate adverse. This would especially be the case for the more rural routes and footpaths to the north, including Westfield Lane and Redhill Lane and in views from the A63. In the Green Belt balance this harm should be considered as moderate. Specific residential receptor harms are considered separately. [21, 30, 40-41, 47]

#### *Living Conditions*

69. During the second site visit I was able to view the appeal site from three properties. At The Cottage, Lumby, I saw that there would be oblique views from within the house towards the proposed wind turbine. Whilst initially one might be aware of the proposed wind turbine, given the orientation, distance and intervening planting the harm would not be so significant as to make the dwelling an unacceptable place to live. That assessment also applies to views from Lumby Hall. However, much greater harm would arise for those accessing the Hall as the wind turbine would become a focal point when arriving at the property. The dominating appearance of the structure would have a harmful effect which would inevitably impact upon the enjoyment of the dwelling. Nonetheless, the effect would not be so unpleasant as to render the property uninhabitable. I was unable to assess the impact on other properties at the edge of Lumby myself because these properties are in private ownership and I had not been invited to view from them. However, I share the view expressed in the Cunnane planning statement that it is likely that the wind turbine would be seen from properties in Red Hill Lane and given the size of the proposed wind turbine and its proximity would have an adverse impact upon the outlook for occupiers when seen. However, without viewing from within the dwellings it is not possible to identify the significance of that impact upon living conditions.
70. I only had access to The Granary at Pollums Farm from where it was apparent that there would be no adverse impacts on views from the dwelling. However, as with Lumby Hall there would be views of the wind turbine when using the driveway, albeit for these properties that impact would predominantly be when leaving them. Other dwellings at Pollums Farm might have some views towards the proposed wind turbine, however, this is difficult to assess without access and it seems any such view would be likely to be limited because of existing tree screening.
71. In terms of this matter, and on the basis of the evidence and access available to me, there would be harm to living conditions but this would be relatively limited. Nonetheless it would add to the harms when considering the Green Belt balance.
72. The fact that the development is sought for 25 years is not a matter to which I attach significant weight in favour of the scheme as, in terms of living conditions, it relates to a significant portion of a person's life. [17-20, 28-29, 42-43]

### *Human Rights*

73. An objector, copying an extract from the appellant's Amenity Report, sets out that Article 1 to the European Convention on Human Rights relates to the peaceful enjoyment of property, Article 2 relates to the right to life and Article 8 to the right for respect for private a family life. However, I concur with the appellant's conclusion that the scheme would not materially infringe upon the Human Rights of the objector in a disproportionate manner, particularly given noise levels are predicted to accord with those set out in ETSU-R-97 and that conditions could be imposed in respect of noise. [54]

### *Heritage Assets*

74. I concur with the Council that the listed buildings which require consideration in this case are those at Steeton Hall, namely the Hall and Gatehouse. These are both grade I listed buildings. The SAM scheduling notice identifies this site as being a magnate's residence<sup>7</sup>. This reinforces its rarity with only some 236 examples having been identified in the country (the majority in the south of England) making it more significant.
75. Steeton Hall dates from the C14<sup>th</sup> and has seen significant alteration and loss of fabric. The alterations and additions of C19<sup>th</sup> are significant and C20<sup>th</sup> alterations have seen it subdivided into a number of dwellings with further conversion of outbuildings.
76. Constructed of magnesian limestone it also has some sandstone dressings. The building runs, in part, to three storeys with detailed chimney and battlement features. The fenestration is varied and irregular; there are lancet windows, larger stone mullioned windows, some in chamfered surrounds. Architectural details include sections of wall with a plinth, hoodmolds, and niches. As such, there is no doubt that the special architectural and historic interest, in part, is derived from its age, materials and architectural detailing. It is likely that the interior also contributes. Given the great age of the building it has had a role in the landscape for hundreds of years as well as an historic role as a place of occupation. This in all likelihood will have included times when it provided a place of refuge. In terms of use, the property is connected to farming. Thus, the rural and relatively isolated, undeveloped, setting for the Hall is significant in terms of its connection to the land and its history as a place of occupation.
77. The Gatehouse is of late C14<sup>th</sup> construction which has seen much less alteration, although there have been works for safety / access purposes. The special architectural and historic interest therefore relates to a more clearly defined period and purpose. The Gatehouse is constructed of magnesian limestone ashlar and rubble, set out on a generally square plan with embattled rubble walling projecting out to either-side. It is of two storeys with carriage and pedestrian archways. It has lancet windows, an octagonal chimney and gargoyles. On the western side a pointed doorway gives way to a spiral staircase, while to the other side of the gateway an external stone staircase provides access to the first floor through an ogee-headed doorway in a chamfered stone surround. The building has a defensive /protective appearance. While the appellant considers that this makes the building inward looking I

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<sup>7</sup> The SAM schedule notice refers to the SAM and listed buildings

disagree with that assessment. Although the building would provide a safe (inward) enclosure, it enables views out over the surrounding land which would have assisted in defensive use, had that been needed, as well as providing pleasant views over the surrounding countryside and particularly that to the south. The SAM scheduling notices makes particular reference to structures considered to be garden terraces, as well as the relationship to the Hall, Gatehouse and grade II listed farm buildings. This suggests that the relationship to the surrounding land was important for purposes other than the most direct form of defence as suggested by the appellant.

78. Currently, with visitor access provided through English Heritage, views can be seen from within the building out through the lancet windows, from the battlements/roof, and from the external staircase. Similar views would have been possible when the building was constructed. The wider setting therefore contributes to the historic significance of the building as it is possible to see its defensive /observing scope and its historic relationship to the surrounding land and approaches towards the site.
79. The road to the north is tree lined which blocks some views from this direction. However, it does not restrict all public views. The appellant's viewpoint shows the Gatehouse as preventing views of the proposed wind turbine. While it may block some views when approaching the Gatehouse from the north (i.e. the historic access to the Hall site) it does not prevent all views as shown on the Council's consultant's viewpoint Fig 10<sup>8</sup>. Furthermore, there would be views from within the Gatehouse, the external staircase and the roof level, towards the proposed wind turbine which would be a clear and dominating feature in the landscape, and one which would be significantly closer and more visually disruptive than the distant industrial developments referred to above. Additionally, there is a direct footpath from Whitecote Lane to the south side of the Gatehouse from which the proposed wind turbine would be clearly seen, altering the perception of relative isolation.
80. I am in no doubt that the siting of the proposed wind turbine would have a harmful effect on the setting of Steeton Hall, the Gatehouse, and SAM by detracting from the heritage asset's open nature which in the near and mid-distance around the Hall and Gatehouse is devoid of tall modern structures. The presence of a modern large scale structure would intrude on the scene, harming the appreciation of the relative isolation of this historic group and detracting from appreciation of its functional purposes. Whilst that harm in itself is considerable, I also note that it would erode the visitor experience for those accessing the Gatehouse for general interest or academic purposes, a concern raised by English Heritage. The harm to this historic grouping includes harm to the setting of the SAM which covers a larger area than the buildings and includes likely garden structures and enclosed water, including a fishpond. [22, 31-37, 44]

#### *Considerations in Favour of the Proposed Development*

81. The appellant explains that the proposed wind turbine would assist in maintaining the farming business by reducing energy costs with surplus power being supplied to the national grid and therefore adding financial support for the next generation over 25 years. Furthermore, the appellant explains that the business needs to be

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<sup>8</sup> Statement prepared by Lindsay Cowle for the Council

on a similar footing as other businesses which have the advantage of a reduced carbon footprint and energy bill so as to remain competitive. Thus, the scheme has the potential to support employment and assist with security of supply as well as contributing towards the efforts to reduce climate change and meet national energy objectives.

### *Heritage Conclusion*

82. Although the harm to these grade I listed buildings would not amount to substantial harm in terms of the Framework at paragraph 134, the public benefits from securing renewable energy and supporting the business would not outweigh the harm identified and, on this matter alone, I would recommend that the appeal should not succeed.

### **Other Matters**

83. I have been mindful of local concerns. On the evidence before me the wind turbine would not produce noise of the level at which it would be considered unacceptable. This does not mean that it would not be audible. However, it would comply with ETSU-R-97 and a condition is recommended to ensure noise levels would be acceptable. I note that higher noise levels are accepted at night on the basis that most people will be within their dwellings which themselves would provide noise attenuation.

84. I am satisfied that Grampian style conditions could be imposed to require necessary mitigation works take place before the wind turbine would be erected to provide for aviation safety. [58]

85. The appellant's Amenity Report acknowledges that there could be shadow flicker impacts at Lumby Hall, the dwellings south of Lumby and at Lumby Garden Centre. However, shadow flicker could be dealt with by condition requiring a mitigation scheme which could require that the turbine is closed down at times when shadow flicker would occur. Whilst health fears are noted there is no substantiated evidence to suggest that the turbine proposed would result in harm to health. Nor is there any substantiated evidence that the wind turbine is likely to lead to driver distraction and road accident. [51]

86. A number of other wind turbine appeal decisions have been brought to my attention. However, each wind turbine scheme has different circumstances including in terms of policy provision, relationships to the landscape, residential properties, heritage assets and benefits accruing. As such, with exception of useful tests, albeit informal, such as the approach set out by Inspector Lavender, little is to be gained by way of comparison, rather it is essential that each case is judged on its own circumstances and merits. [45]

87. Implications for house prices are not a matter for the planning system in dealing with this appeal. [53]

### **Written Ministerial Statement**

88. The parties have had the opportunity to comment on the Written Ministerial Statement as set out above at paragraph 2. However, neither party has done so. There is no evidence to suggest that the scheme has the backing of the local community, rather it seems a significant number of local residents and their representatives are very much against the proposal. This is at odds with the

situation sought by the Written Ministerial Statement which puts local views firmly at the centre of the consideration of planning applications for wind power proposals. Moreover, there is no specific development plan allocation for wind turbine development in this location. As such, the scheme fails in respect of the new Written Ministerial Statement.

### **Green Belt Balance**

89. I have found moderate harm would arise in terms of the landscape, modest harm would arise to living conditions for nearby residents, and the considerable harm would arise to the setting of heritage assets, namely Steeton Hall, its Gatehouse and the SAM.
90. The proposed development would result in a modest loss of openness and to the purposes of including land in the Green Belt. However, openness is the most important attribute of the Green Belt. As such, I attach substantial weight to the harm caused by the loss of openness and to the harm as a result of the scheme representing inappropriate development in the Green Belt.
91. There is significant conflict with new Government advice in the Written Ministerial Statement. There is a failure to address local concerns, some of which I have identified as causing harm, so that the scheme does not have the backing of local residents. Additionally, there is no specific policy basis for wind power development in this location. Allowing the proposal in such circumstances would undermine the Written Ministerial Statement and lead to uncertainty about the application of national planning guidance which further adds to the harms identified.
92. The other matters raised do not materially add to the harms identified rather they are neutral in the balance.
93. The matters advanced in terms of the production of renewable energy and its contribution to the farming business fall significantly short of what would be required to outweigh the harms identified. I therefore find that the matters advanced in favour of the scheme do not amount to the very special circumstances necessary to outweigh harm to the Green Belt.
94. I find that the proposal fails to accord with policies ENV1, ENV15 and ENV27 of the Local Plan and policies SP2, SP3, SP17, SP18 and SP19 of the Core Strategy. It is clear, in considering the duty under s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, that preservation of the setting of a listed building is desirable and that would not happen in this case. This scheme relates to impacts on the setting of buildings with the highest listing grade and which are therefore particularly important heritage assets. The Framework makes clear that the more important the asset the greater the weight that should be given to its conservation and that development within the setting of a listed building can harm significance, as I find to be the case here.
95. Furthermore, at the heart of the Framework is a presumption in favour of sustainable development. For decision-making, this means approving proposals that accord with the development plan without delay, and I find the scheme would not accord with that expectation and nor does it accord with the requirements of the Written Ministerial Statement.
96. Thus, I recommend that the appeal be dismissed.

## **Final Other Matter**

97. I have noted that the proposed wind turbine would be an 800kW model limited to 500kW. Whilst I have found this case not to be finely balanced such that output is not an important factor in the balance, it adds concerns that the proposed turbine may be larger than required exacerbating visual harms unnecessarily. However, this is not a matter which has been raised with the parties given that the Green Belt balance and the heritage planning balance is very much against the scheme.

## **Conditions**

98. In the event that the Secretary of State does not agree with my recommendation, the Council seeks the imposition of a range of conditions. Many of the conditions sought relate to consultee responses and appear reasonable and necessary. The conditions provide for underground cabling, removal of the wind turbine after 25 years or when it ceases to provide electricity with remedial landscape works, in the interests of the character and appearance of the surrounding area. Noise conditions and a shadow flicker mitigation condition are necessary to protect the living conditions of nearby residents. Conditions are required to provide for mitigation of impacts on radar at Linton-on-Ouse and at Doncaster Sheffield Airport. I have reworded these conditions, omitting references to consultees, as it is for Local Planning Authority to determine whether the requirements of a condition have been met. Matters covered by other legislation do not require planning conditions. A condition is required for lighting and infra-red lighting for air safety.

99. A condition requiring compliance with the plans but noting that the permission does not include the substation shown on the submitted plans as referred to in paragraph 11 above is suggested and, for the avoidance of doubt, makes reference to levels and heights. Although the appellant indicates the finish for the proposed turbine this does not form part of the application form details, and nor is it detailed on the drawings, it is therefore necessary to impose a condition in this regard. The suggested conditions are attached as an Appendix to this decision. I have made some alterations for reasons already referred to, and in the interests of clarity and enforceability.

## **Recommendation**

100. I recommend that the appeal be dismissed.

*Zoë HR Hill*

Inspector

## Annex

### Conditions Schedule

01. The development for which permission is hereby granted shall be begun within a period of three years from the date of this permission.

02. The planning permission, hereby granted, is for a temporary period only, to expire 25 years after either the date on which electricity from the development is first connected with the electricity grid, or 12 months after the commencement of the development, whichever is the earliest. The Local Planning Authority shall be advised in writing within one month of the date of the grid connection.

03. All electrical cabling between the wind turbine and the connection point to the grid network or transformer shall be located underground. Any excavated ground shall be reinstated to its former condition within three months of the connection of the wind turbine to the electricity grid.

04. No later than 12 months after the date on which the planning permission hereby granted expires, the wind turbine, ancillary equipment and foundation structures shall be dismantled and removed from the site and the land reinstated to its former condition and quality in accordance with a scheme to be submitted to the Local Planning Authority for written approval prior to the commencement of development.

05. If the wind turbine hereby permitted fails to produce electricity for a continuous period of 12 months it shall be removed from the site within a period of 9 months from the end of the 12 month period and the land restored to its former condition in accordance with the scheme approved in respect of condition 04 above.

06. The development hereby permitted shall take place in accordance with the terms of the submitted application and plans, including Site Layout Plan – DW 13042001, but excluding the provision of the substation shown on those plans and shall be sited in accordance with the Location Plan submitted. The maximum height to hub of shall be 60 metres and the height of the tip of turbine's blade shall be 87metres as measured when combined with the base above existing ground level.

07. No development shall commence until the proposed colour/finish of the turbine hereby permitted has been approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

08. The level of noise emissions resultant from the operation of the wind turbine, as measured below at any dwelling in Lumby, which does not have a financial interest in the wind turbine development, lawfully existing at the date of this permission, shall not exceed;

i. 35 dB(A)L90 10min between 07:00 and 23:00 hours (Day-time) measured at a point on the property boundary nearest to the turbine location, in wind speeds up to 10ms<sup>-1</sup> at 10m height.

ii. 43 dB(A)L90 10min between 23:00 and 7:00 hrs (Night-time) measured at a point on the property boundary nearest to the turbine location, in wind speeds up to 10ms<sup>-1</sup> at 10m height.

09. The level of noise emissions resultant from the operation of the wind turbine, as measured below at any dwelling in Lumby with a financial interest in the wind turbine development, lawfully existing at the date of this permission, shall not exceed;

i. 45 dB (A)L90 10min between 07:00 and 23:00 hrs (Day-time) measured at a point on the property boundary nearest to the turbine location, in wind speeds up to 10ms<sup>-1</sup> at 10m height.

ii. 45 dB(A)L90 10min between 23:00 and 7:00 hrs (Night-time) measured at a point on the property boundary nearest to the turbine location, in wind speeds up to 10ms<sup>-1</sup> at 10m height.

10. The level of noise emissions resultant from the operation of the wind turbine, as measured below at the dwellings known as being at Pollums Farm, which do not have a financial interest in the wind turbine development, lawfully existing at the date of this permission, shall not exceed;

Between 0700 and 2300 noise limits expressed in dB LA90, 10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Wind speed	1	2	3	4	5	6	7	8	9	10	11	12
Noise Limit	35	35	35	35	35	35	35	35	36	37	38	39

Between 2300 and 0700 noise limits expressed in dB LA90, 10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Wind speed	1	2	3	4	5	6	7	8	9	10	11	12
Noise Limit	43	43	43	43	43	43	43	43	43	43	43	43

11. At the reasonable request of, and following a complaint to the Local Planning Authority, the operator of the development shall instruct an independent qualified acoustic specialist to measure, at the operator's expense, the level of noise emissions resultant from the operation of the wind turbine generator in accordance with the methods stipulated in Section 7 of 'The Assessment and Rating of Noise from Wind Farms, ETSU-R-97'. The location of the survey monitoring points shall be agreed with the Local Planning Authority prior to the commencement of measurements. Wind speeds shall be measured on site and referenced to a height of 10m above ground level. Where wind speed is measured at a height other than 10m the wind speed data shall be converted to 10m height, accounting for wind shear by a method whose details shall also be provided to the Local Planning Authority. Where tonal noise emissions are resultant from the operation of the turbine unit they shall be assessed and rated in accordance with ETSU-R-97. In the event of changes to ETSU-97-R assessment, alternative assessment shall be agreed in writing with the Local Planning Authority.

12. No development shall commence until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind turbine upon air safety has been

submitted to and approved in writing by the Local Planning Authority. The Air Traffic Control Radar Mitigation Scheme is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Linton-on-Ouse ("the Radar") and the air traffic control operations of the Ministry of Defence (MoD) which is reliant upon the Radar. The Air Traffic Control Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the operational life of the development provided the Radar remains in operation.

No turbine shall become operational until all those measures required by the approved Air Traffic Control Radar Mitigation Scheme to be implemented prior to the operation of the turbine have been implemented. The development shall thereafter be operated fully in accordance with the approved Air Traffic Control Radar Mitigation Scheme.

13. Before the turbine is erected it shall be fitted with MoD-accredited 25 candela omni-directional aviation lighting and infra-red warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point on the turbine. The turbine shall be erected with this lighting installed and the lighting shall remain operational throughout the duration of this permission.

14. Prior to the construction of the 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 or 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. Operation of the turbine shall take place in accordance with the approved protocol unless the Local Planning Authority gives its prior written consent to any variations.

15. Development shall not commence until a detailed Wind Turbine Mitigation Scheme (for the mitigation of the anticipated impacts of the development on the operation of the Doncaster Sheffield Airport primary surveillance radars and associated air traffic management operations) has been submitted to and approved in writing by the Local Planning Authority.

Note for Condition 15: The Wind Turbine Mitigation Scheme shall demonstrate that the scheme, when operational, will ensure that any radar returns from the Development will not be displayed to air traffic controllers of Doncaster Sheffield Airport and will not otherwise adversely affect the air traffic control at the Doncaster Sheffield Airport.

16. The wind turbine shall not commence operation until the works and other requirements of the approved detailed Wind Turbine Mitigation Scheme required by condition 15 have been constructed, installed, effected, tested and become operational. Any variation to the approved scheme, including its implementation, shall not take place except with the prior written consent of the Local Planning Authority. The approved Scheme shall be in place for the operational life of the development provided the Radar remains in operation.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

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

### **SECTION 3: AWARDS OF COSTS**

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

#### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the 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.