



Department for  
Communities and  
Local Government

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Our Ref: APP/Q3305/A/14/2227407

25 January 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MR JOHN PENNY OF AGGREGATE INDUSTRIES UK LIMITED  
LAND ADJACENT TO TORR WORKS, SOMERSET  
APPLICATION REF: 2013/1244**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Neil Pope BA (Hons) MRTPI, who held a public local inquiry between 2-4 and 8-11 September 2015 into your client's appeal against the refusal of Mendip District Council ("the Council") to grant planning permission for the erection of four wind turbines with a maximum blade tip height of up to 80 metres, together with a substation, associated crane pads, an improved access junction onto the A361, four turbine transformer kiosks, connecting internal and upgraded access tracks, a electricity connection to Torr Works Quarry, two temporary anemometer masts for a period of up to 12 months, a temporary construction compound and other ancillary infrastructure, in accordance with application ref 2013/1244, dated 24 May 2013.
2. On 4 November 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990. The reason for this direction is that the appeal involves a renewable energy development.

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

3. The Inspector recommended that a split decision be issued, with the appeal allowed and planning permission granted insofar as it relates to the proposed temporary anemometer masts, but dismissed and planning permission refused insofar as it relates to the proposed wind turbines and associated development. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is

enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural matters**

4. The proposal comprises development that requires Environmental Impact Assessment (EIA) under the provisions of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended). The Secretary of State has taken into account the Environmental Statement (ES), the Addendum to the ES and all other related documents (IR2-3 & 5-6). The Secretary of State is satisfied that the ES and the additional information listed at IR2-3 and IR5-6 comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.
5. The Secretary of State agrees with the Inspector that an Appropriate Assessment under the Habitats Regulations is not required for the reason given at IR242.
6. The Secretary of State agrees with the Inspector's reasons and conclusions at IR243 regarding the proposed temporary anemometer masts. He agrees that there is nothing of substance to demonstrate that planning permission should be withheld for the masts. He notes that the appellant and the Council agreed on this matter (IR8).

### **Policy Considerations**

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Mendip District Local Plan Part 1: Strategy and Policies 2006-2029 (LP) and the Somerset Minerals Plan Development Plan Document up to 2030 (SMDPD). The LP supersedes the 'saved' policies of the Mendip District Local Plan that applied when the Council determined the application. The Secretary of State agrees with the Inspector that the most relevant policies to this appeal are those listed at IR245 and also notes policy SD1 of the SMDPD which relates to mineral applications (IR246). The Secretary of State has also had regard to the 'Landscape Assessment of Mendip District' (LAMD) and 'Assessment of Special Landscape Features' (ASLF) (IR24-25), and agrees with the Inspector that this evidence can be given moderate weight for the reasons given at IR247.
8. The Secretary of State has had regard to his Written Ministerial Statement (WMS) on Local Planning 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.

10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 ("the Framework") and the planning practice guidance published in March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3), and the Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also considered 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. He concurs with the Inspector that these WMSs are important material considerations (IR249). The Secretary of State, in addition to these, has had regard to the various provisions relating to renewable energy, including those referred to at IR28 and agrees with the Inspector that the suite of energy policies are important material considerations and can be given substantial weight (IR248).
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 buildings or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. He has also taken into account the English Heritage/Historic England guidance entitled "The setting of Heritage Assets" as updated in July 2015.

### **Main issues**

12. The Secretary of State agrees with the Inspector that the main issues are those set out at IR244. An important consideration within this is the WMS of 18 June 2015.

### **Benefits**

13. The Secretary of State agrees with the Inspector at IR251 that the proposal would help meet national targets to reduce greenhouse gas emissions and increase the supply of renewable energy, which would assist in mitigating climate change and increase energy security. He agrees that it would also provide direct and indirect economic benefits. Like the Inspector, the Secretary of State attaches considerable weight to these public benefits in the overall planning balance (IR251).
14. The Secretary of State notes the economic importance of Torr Works (IR250) and agrees with the Inspector that it would benefit from the development in that it is likely to increase the efficiency of the quarry, increase its profits and also reduce any future risk in interruption to its energy supply (IR252-253). The Secretary of State attaches considerable weight to these benefits.

## **Settings of Designated Heritage Assets**

15. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR254-276 regarding the heritage assets.
16. The Secretary of State agrees for the reasons given at IR257-263 that the proposed wind turbines would harm the significance of Cloford Manor, its stables, coach house and the Church of St Mary. The Secretary of State concurs with the Inspector, the main parties and Heritage England (HE) for the reasons given at IR257-263 that the proposal would not breach the very high threshold of substantial harm set out in paragraph 133 of the Framework, but agrees with the Inspector that the harm to the significance of Cloford Manor is at the top end of 'less than substantial harm', and that a lower level of 'less than substantial' harm would be caused to the significance of the stables, coach house and the Church of St Mary. He notes the Inspector's view (IR264) that while HE recommended refusal, it does not appear to have undertaken the necessary planning balance, and that limited weight should therefore be given to its recommendation. Like the Inspector, he attaches considerable weight to the harm to the significance of Cloford Manor that has been identified by HE (IR264).
17. For the reasons given at IR265-267 the Secretary of State concurs with the Inspector and the main parties that the harm to the significance of the Chantry would amount to less than substantial harm (IR268) but agrees that for the reasons given that it would be towards the top end of 'less than substantial' harm. For the reasons given at IR269 the Secretary of State agrees with the Inspector that the proposal would not harm the significance of the Church of the Holy Trinity.
18. With regard to Broadgrove House, the Secretary of State agrees with the Inspector that the turbines would detract from an appreciation of the architectural and historic interest of this asset (IR271). He concurs with the Inspector and the main parties that the resulting harm would be less than substantial (IR272).
19. The Secretary of State agrees with the Inspector for the reasons given at IR273-4 that the proposal would not harm the significance of Cranmore Tower. He also agrees that there would be no material impact upon the significance of the other designated heritage assets that have been identified by the main parties for consideration (IR275).
20. In view of Section 66(1) of the LBCA Act 1990, the Secretary of State attaches considerable weight to the harm the proposal would cause to the significance of these designated heritage assets and agrees with the Inspector that this harm should be weighed against the public benefits of the proposal (IR276). The Secretary of State is also in agreement with the Inspector that the proposed wind turbines would conflict with the provisions of LP policy DP3 (IR312).

## **Character and Appearance**

21. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR277-289. He agrees that the proposal, alone and in combination with other wind energy schemes, would not result in any harmful cumulative landscape or visual impacts upon any nationally designated landscape (IR281 & 288). The

Secretary of State agrees that the extent of the harm to the setting and attributes of Asham Wood would not be so great as to significantly degrade the overall quality of the local landscape and therefore concurs that there would be no conflict with LP policy DP4 (IR284). He agrees that the proposed turbines alone and in combination with the existing turbines would result in some harm to the character and appearance of the area (IR289). EN-3 recognises that there will always be significant landscape and visual effects for a number of kilometres around a windfarm. Like the Inspector, the Secretary of State therefore attributes moderate weight to the landscape and visual harm in the planning balance (IR289).

### **Birds and Bats**

22. For the reasons given by the Inspector at IR291-292, the Secretary of State is satisfied with the adequacy of the submitted ecological information and does not consider that further evidence is necessary. The Secretary of State agrees with the Inspector's assessment of the impact upon bats and birds at IR295-299. He concurs with the Inspector and Natural England that attaching a planning condition ensuring a detailed programme of monitoring of any bat fatalities and mitigation in the event of higher than expected fatalities occurring, would ensure there was no significant risk to bats (IR296). Like the Inspector, the Secretary of State concludes that the proposal would accord with the provisions of LP policies DP5 and DP6 (IR299).

### **Outlook for Neighbouring Residents**

23. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR300-303. He agrees that whilst the development would adversely affect the outlook for neighbouring residents at Broadgrove House and Quarry Lodge, on balance, they would not become significantly less attractive places in which to live or stay (IR301-302). He agrees that the adverse effect carries limited weight against an approval and that there would be no conflict with LP policy DP7 (IR301-302).

### **Other matters**

24. The Secretary of State is in agreement with the Inspector's assessment regarding noise, pollution, health and human rights (IR304-305). He also concurs with the Inspector at IR306 that each case must be determined on its own merits.

### **Conditions**

25. The Secretary of State has considered the Inspector's assessment on the proposed planning conditions at IR307-310. He is satisfied that conditions proposed by the Inspector and set out at Schedules A and B of the IR meet the tests of Paragraph 206 of the Framework. However, for the reasons set out in this decision letter, he does not consider that these conditions overcome his reasons for dismissing the proposed wind turbines and associated development.

### **Overall balance and conclusion**

26. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State concludes, like the Inspector, that the conflict with LP policy DP3 would be at odds with the environmental dimension to sustainable

development (IR315). As the achievement of sustainable development is central to the LP and the Framework, the proposed wind turbines would not therefore accord with the development plan when read as a whole. The Secretary of State has gone on to consider whether there any other material considerations that indicate that the appeal proposal should be determined other than in accordance with the development plan.

27. The Secretary of state considers that the proposed development would help meet national targets to reduce greenhouse gas emissions and increase the supply of renewable energy. This would assist in mitigating climate change and increase energy security. It would also provide economic benefits. The Secretary of state attaches considerable weight to these benefits. He also considers the benefits that the proposal will generate for the quarry merit considerable weight.
28. However, weighing against these benefits is the totality of the harm to the setting of grade II and grade II\* listed designated heritage assets. Like the Inspector, 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 LBCA Act (IR312). He attributes considerable weight to this harm. There is also the harm to the character and appearance of the area which carries moderate weight and the adverse effects upon the outlook of some neighbouring residents to which he attaches limited weight.
29. In addition the Secretary of State agrees with the Inspector that the application of the transitional provisions within the WMS of 18 June 2015 adds further weight against the proposal (IR313). As the Inspector has highlighted, the proposal has attracted considerable opposition from many members of the affected local communities and cannot reasonably be said to have their backing (IR313). As the Secretary of State has found a number of harms arising from the proposal he concludes that the planning impacts identified by the affected communities have not been addressed, the proposed scheme would not meet the requirements of the transitional arrangements set out in the WMS; and the Secretary of State gives significant weight to this non-compliance.
30. Overall, the Secretary of State concludes that the balance is against granting planning permission for the wind turbines. He considers that the harm is not outweighed by the benefits of the proposal and the material considerations in this case do not justify determining the appeal other than in accordance with the development plan.

### **Formal Decision**

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby issues a split decision; dismisses the appeal and refuses planning permission for the erection of four wind turbines with a maximum blade tip height of up to 80 metres, together with a substation, associated crane pads, an improved access junction onto the A361, four turbine transformer kiosks, connecting internal and upgraded access tracks, a electricity connection to Torr Works Quarry, a temporary construction compound and other ancillary infrastructure and; allows the appeal and grants planning permission for two temporary anemometer masts for a period of up to 12 months, in accordance

with application ref 2013/1244, dated 24 May 2013, subject to conditions set out at Annex A of this letter.

32. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
33. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
34. This letter serves as the Secretary of State's statement under regulation 24(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

#### **Right to challenge the decision**

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

Yours faithfully

*Philip Barber*

**PHIL BARBER**

Authorised by the Secretary of State to sign in that behalf

## **ANNEX A**

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this decision.
2. The development shall be undertaken in accordance with the details shown on the following drawings: 1:50,000 scale site location plan (TORR01); 1:5,000 scale application boundary plan (TORR02); 1:5,000 scale proposed layout plan (temporary masts only) (TORR03); 1:500 and 1:100 scale typical details for the temporary met masts (TORR09).
3. No development shall commence until a scheme detailing the fitting of bird deflectors to the guy-wires has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for fitting the bird deflectors and the scheme shall be carried out in accordance with the approved details. The bird deflectors shall be retained on the guy-wires thereafter.
4. No later than one year after the masts have been erected, the masts shall be removed from the site and the land reinstated. The Local Planning Authority shall be notified in writing within seven days of the masts being erected.



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

by Neil Pope BA (Hons) MRTPI

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

Date: 15 October 2015

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TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

MENDIP DISTRICT COUNCIL

APPEAL BY MR JOHN PENNY OF AGGREGATE INDUSTRIES UK  
LIMITED

Inquiry held on 2-4 and 8-11 September 2015  
Site visits undertaken on 1, 7, 10 and 15 September 2015

Land adjacent to Torr Works, Somerset.

File Ref: APP/Q3305/A/14/2227407

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**File Ref: APP/Q3305/A/14/2227407**

**Land adjacent to Torr Works, Somerset.**

- 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 John Penny of Aggregate Industries UK Limited against the decision of Mendip District Council (MDC).
- The application Ref. 2013/1244, dated 24 May 2013, was refused by notice dated 16 April 2014.
- The development proposed is the erection of four wind turbines with a maximum blade tip height of up to 80 metres, together with a substation, associated crane pads, an improved access junction onto the A361, four turbine transformer kiosks, connecting internal and upgraded access tracks, a electricity connection to Torr Works Quarry, two temporary anemometer masts for a period of up to 12 months, a temporary construction compound and other ancillary infrastructure.

**Summary of Recommendation: that a split decision be issued, with the appeal allowed insofar as it relates to the proposed temporary anemometer masts but dismissed insofar as it relates to the proposed wind turbines.**

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**Preliminary Matters**

1. On 4 November 2014, the Secretary of State (SoS) issued a Direction recovering the appeal for his own determination. The reason for the Direction was because the appeal involves a renewable energy development.
2. The proposal comprises development that requires Environmental Impact Assessment (EIA) under the provisions of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011. An Environmental Statement (ES) dated May 2013 was submitted in support of the planning application. In December 2013 an Addendum to the ES was submitted. This amends Chapter 8 (ecology and ornithology) and supersedes Chapter 13 (cultural heritage) of the ES dated May 2013.
3. On 31 December 2014, the SoS informed the appellant that a revised Non-Technical Summary (NTS) to incorporate the additional information within the ES Addendum was required under Regulation 22 of the 2011 Regulations. A revised NTS was subsequently submitted on 21 January 2014, along with confirmation regarding the necessary notifications and advertisement in the local press.
4. The Torr Wind Action Group (TWAG) was a Rule 6 party to the appeal.
5. MDC and the appellant clarified that the highway drawings listed in the decision notice of 16 April 2014, form part of the ES rather than the planning application. Only those drawings with the prefix TORR form part of the planning application.
6. At the Inquiry a revised Appendix A7.1A to the ES was submitted (*Document 18*) as an amendment to Mr Truscott's proof of evidence (PoE).
7. The Statement of Common Ground (SoCG) sets out matters of agreement between the appellant and MDC. Page 19 of the SoCG lists those matters which are not in dispute. In essence, the appellant and MDC disagree as to whether or not the public benefits of the proposals would outweigh the less than substantial harm to the settings of various designated heritage assets.
8. At the Inquiry the appellant and MDC agreed that permission should not be withheld for the proposed temporary anemometer masts.

9. Within the appellant's Statement of Case it was stated that a Unilateral Undertaking would be offered to guarantee that electricity generated by the proposed wind farm would supply the quarry. At the Inquiry the appellant informed me that any such Undertaking would be unnecessary.
10. My accompanied visits included Quarry Lodge, Broadgrove House and Torr Works.
11. Shortly after the close of the Inquiry MDC drew attention to the decision of the SoS, dated 14 September 2015, dismissing an appeal and refusing planning permission for the erection of a ten or eight turbine wind farm (maximum height of 126.5m to blade tip) on a site in Lincolnshire (Ref. APP/N2535/A/14/2217829). (*Document 37*) The main parties were given an opportunity of making representations regarding that decision. (*Documents 38, 39 and 40*)

### **The Site and Surroundings**

12. The appeal site comprises 2.99 ha of grade 3 agricultural land. This gently sloping land varies in height between 175m AOD and 161m AOD. It is divided into irregular sized fields with boundaries of mature hedgerows interspersed with single and small groups of trees.
13. Asham Wood lies to the north and west of the site. This area of ancient semi-natural woodland occupies two deep valleys and the intervening plateau. It is a Site of Special Scientific Interest (SSSI) and is part of the Mendip Woodlands Special Area of Conservation (SAC). The Mells Valley SAC is 4.5km to the west.
14. To the east of the site there are fields in agricultural use. The southern boundary is formed by the A361 (a County Freight Route) and a field used occasionally for motocross racing events. Steart's Lane, a private track, bisects the site.
15. The surrounding area is pock-marked by quarry workings. This includes the appellant's operational limestone workings at Torr Quarry to the west, as well as other active and disused quarry sites, including Asham Quarry, Whatley Quarry and Westdown Quarry. The appeal site comprises non-operational quarry land. (*Document 20 is an aerial photograph showing the location of the proposed wind turbines in relation to various quarries / mineral planning permissions.*) Woodland and landscape mounding assists in screening much of the quarry workings.
16. The group of buildings at Leighton, which include Quarry Lodge, is approximately 0.8km to the south west of the site and the small settlement of Cloford is about 1.5km to the south east. Broadgrove House, which is roughly mid-way between Leighton and Cloford, would be about 0.9km from the nearest turbine.
17. The wind turbine at Weston Town Farm (60.5m tip height) is approximately 1.3km to the south west of the site and the wind turbine at Landmark Farm (66.5m tip height) is about 2.5km to the south east. (*Photographs of these wind turbines appear in Viewpoints A, L, V and W to Appendix 1 of Mr Billingsley's PoE.*) The wider surroundings also include some telecommunication masts and Cranmore Tower. The latter is about 3.1km north west of the site.
18. The Chantry, including its 18<sup>th</sup> century landscaped registered park and gardens (RPG), lies to the north east of the appeal site. (The nearest turbine would be about 1.9km south east of the house and closer to the edge of the RPG.)

19. The Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty (AONB) is approximately 6km to the south east. The Mendip Hills AONB and the Cotswolds AONB are about 13km north west and north of the site.
20. The countryside that surrounds the appeal site is bisected by numerous public rights of way. These include the footpath between Cloford and Leighton (ref. FR 17/3), as well as sections of longer distance paths such as the East Mendip Way and the Macmillan Way.

### **Planning Policy and Other Documents**

21. The development plan includes the Mendip District Local Plan Part 1: Strategy and Policies 2006-2029 (LP) (*Core Document [CD] 3.1*) and the Somerset Minerals Plan Development Plan Document up to 2030 (SMDPD) (*CD 1.3*). The LP supersedes the 'saved' policies of the Mendip District Local Plan (*CD 1.2*) that applied when MDC determined the application.
22. Paragraph 1.49 of the SoCG that has been agreed by the appellant and MDC lists relevant LP policies. These comprise DP3 (heritage conservation), DP4 (Mendip's landscapes – Asham Wood is identified as a Special Landscape Feature (SLF)), DP5 (biodiversity and ecological networks), DP6 (bat protection), DP7 (design and amenity), DP8 (environmental protection) and DP9 (transport). TWAG has also drawn attention to LP policy DP1 (local identity and distinctiveness).
23. The SMDPD, amongst other things, recognises that the minerals industry is of considerable economic importance to Somerset and that the county is the largest producer of crushed-rock aggregate in the south of England. Torr Works is one of nine rail-linked quarries in England and is of national importance. Policy SD1 sets out a presumption in favour of sustainable development when considering mineral development proposals.
24. Part of the evidence base to the LP includes the 'Landscape Assessment of Mendip District' (LAMD) which was published in 1997 (*CD 9.13*). This provides a broad characterisation of the district based on distinct physical, natural and cultural influences. It identifies / defines Landscape Character Areas (LCA).
25. The evidence base to the LP also includes an 'Assessment of Special Landscape Features' (ASLF) which was published in 2012. (*Extracts in Appendix 2 to Mr Billingsley's PoE.*) Table 1 includes Asham Wood and contains a description and the following reason for its designation as a SLF: "*Prominent woodland block which is distinctive in the landscape, particularly when viewed from the north and east.*"
26. The National Planning Policy Framework (the Framework) states, amongst other things, that the purpose of the planning system is to contribute to the achievement of sustainable development. At its heart there is a presumption in favour of sustainable development. The core planning principles include encouraging the use of renewable resources and conserving heritage assets in a manner appropriate to their significance. Great weight should be given to the asset's conservation. In determining planning applications for wind energy development Footnote 17 states that planning authorities should follow the approach set out in the National Policy Statement for Renewable Energy Infrastructure [EN-3] (read with the relevant sections of the Overarching National Policy Statement for Energy Infrastructure [EN-1]).

27. The Government's Planning Practice Guidance (PPG) includes advice relating to renewable energy developments. Amongst other things, it refers to the Written Ministerial Statement (WMS) of 18 June 2015<sup>1</sup>. Other relevant WMS include those issued by: the Department of Energy and Climate Change and the Department for Communities and Local Government on 6 June 2013; the SoS for Communities and Local Government on 9 April 2014 and; the SoS for Energy and Climate Change on 18 June 2015. (*CDs 2.7, 2.4, 2.6 and 2.8*)
28. In addition to the above, attention has been drawn to the provisions of various Acts<sup>2</sup>, Directives<sup>3</sup>, Strategies<sup>4</sup> and Statements<sup>5</sup> relating to renewable energy. Amongst other things, these set out and identify progress towards achieving the legally binding target of reducing UK emissions by at least 34% by 2020 and 80% by 2050, as well as achieving the UK's obligation of 15% of energy consumption from renewable energy resources by 2020. (*These and other relevant 'energy documents' are listed in various places, including paragraph 3.7 of the appellant's Closing Submissions – Document 36*).

### Planning History

29. In August 2012, Somerset County Council (SCC), as Mineral Planning Authority, granted planning permission for the deepening of Torr Works Quarry by 112m to 3m AOD and an extension of time by 10 years until 2040 (Ref. 2010/0984). Condition 30 required the submission of a Carbon Footprint Reduction Strategy (CFRS) and the implementation of an approved CFRS. (*Copies of the permission and approved CFRS can be found in CDs 12.1 and 12.4.*)
30. In 2013, MDC granted planning permission for the wind turbine at Weston Town Farm Wanstrow (Ref. 2012/3028) and the wind turbine at Landmark Farm Wanstrow (Ref. 2013/0206). (*Document 29*) Both turbines are now operational.

### The Proposals

31. The four wind turbines (T1-T4) would have a maximum height to blade tip of up to 80m (hub height approximately 51m) and rotor diameters of up to 58m (*drawing ref. TORR05*). T1 and T4 would be on the northern side of Steart's Lane and T2 and T3 would be on the southern side of the lane (*Drawing ref. TORR03*).
32. The wind turbines would have a load factor of about 26% and a total installed capacity of 3.6 MW. On behalf of the appellant, it has been calculated that the development would generate approximately 8,105 MWh per annum. This would be the equivalent electricity supply to about 1,900 homes and would displace up to approximately 3,500 tonnes of CO<sub>2</sub> emissions per year from conventional forms of electricity generation. (*Document 21 sets out the figures in the event of the wind turbines operating at cut-in speeds of 5m/s and 6.5m/s.*)
33. The turbines would have steel reinforced concrete foundations to a depth of about 3m below ground level (*Drawing ref. TORR06*). Crane pads would be

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<sup>1</sup> Statement made by the SoS for Communities and Local Government 'Local Planning'.

<sup>2</sup> The Climate Change Act 2008, Planning Act 2008, Energy Act 2008, Energy Act 2013.

<sup>3</sup> Renewable Energy Directive 2009/28/EC.

<sup>4</sup> Including the UK Renewable Energy Strategy (2009) and the UK Renewable Energy Roadmap and its updates.

<sup>5</sup> Department of Energy & Climate Change Annual Energy Statement (2013).

- provided at the base of each turbine to facilitate installation. A temporary construction compound would be provided near the base of T4. This would accommodate a site office and welfare facilities during the construction phase, as well as parking spaces for staff, visitors and construction traffic.
34. At the base of each turbine there would be an external transformer container / kiosk. These would each measure 6m x 3m x 3m (high). A sub-station building measuring approximately 6m x 6m x 3m (high) would be provided to the south east of T4 (*Drawing ref. TORR07*).
  35. The junction access from Steart's Lane onto the A361 would be improved to accommodate turbine delivery vehicles. This would include trimming / removing some vegetation to provide necessary visibility 215m x 9m splays. A section of Steart's Lane would be upgraded to accommodate construction vehicles and new internal tracks would be provided to each turbine. The overall length of upgraded access track would be about 270m and the overall length of new access tracks would be approximately 1,100m. (*Drawing refs. TORR03 and TORR04.*)
  36. Details of the types, numbers and routing of construction traffic are included within Chapter 12 of the ES.
  37. The temporary anemometer masts would be about 50m high. These would have guy-wires extending up to 35m from the masts. (*Drawing Ref. TORR09*). The reference wind mast would be sited to the south west of T3 and the wind turbine mast would be in the same position as T3. (*Drawing Ref. TORR03.*)
  38. The turbines would be connected to the new electricity sub-station by underground cables. A separate underground cable would be provided from the new sub-station to the existing sub-station at Torr Works Quarry (*Drawing ref. TORR03*). The turbines would be operational for a period up to 25 years.

### **Matters Agreed by the appellant, MDC and TWAG**

39. 21 listed buildings should be considered under the duty set out under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. (*Document 32*)
40. An Appropriate Assessment under the Habitats Regulations<sup>6</sup> is not necessary.
41. The development plan is 'silent' in respect of schemes for renewable energy.
42. The proposals would not result in substantial harm to the setting of any designated heritage asset. The proposed wind turbines would result in less than substantial harm to the settings of the following designated heritage assets: Cloford Manor – listed as Manor House (listed as Manor Farmhouse - grade II\*); the Church of St. Mary at Cloford (grade II\*); The Chantry (grade II\*); stables and coach house at Cloford Manor – listed as stables and coach house at Manor Farmhouse (grade II) and; Broadgrove House (listed as Broadgrove Farmhouse - grade II). (*Copies of the relevant listing descriptions appear at various places, including Appendix 1 to Ms Stephen's PoE.*)
43. The proposed wind turbines would be within LCA 18 – 'Rolling Farmland with Frequent Arable', as defined within the LAMD and immediately adjacent to LCA

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<sup>6</sup> The Conservation of Habitats and Species Regulations 2010 (as amended).

20 'Steep-Sided Variable Valleys with Fast-Flowing Streams'. (*Document 19 shows the location of the turbines in relation to these and some other LCAs.*)

44. When assessing cumulative impact with other wind turbines, the only other turbines to consider are those at Weston Town Farm and Landmark Farm.
45. The proposals would not result in any significant impact upon the setting of the Cranborne Chase and West Wiltshire Downs AONB.

### **The Case for the Appellant**

46. In summary, the proposed development would provide a number of important benefits such as: helping the appellant develop a business case for investment in the local, regional and nationally important Torr Quarry; contributing towards the achievement of national renewable energy targets; assisting in mitigating climate change; and increasing the security of supply. The modest degree of harm arising from the development should be weighed against these benefits. The proposal represents an acceptable solution to a pressing need to decarbonise energy generation for working Torr Quarry.

### **Aggregate Industries UK Limited**

47. In 2014, the appellant operated 44 quarries, producing 26.2 million tonnes of aggregates, 5.3 million tonnes of asphalt and 2.2 million cubic metres of ready-mixed concrete. It provides about 21% of the UK's demand for crushed rock, 22% of asphalt and 11% of ready-mixed concrete. It is the second largest producer of aggregates in the UK, the second largest producer of asphalt and the 4<sup>th</sup> largest producer of ready-mixed concrete. The company prides itself on its sustainability credentials and is committed to reducing its carbon emissions by 20% on 2013 levels in absolute terms by 2016. A refocused energy programme is being implemented through energy efficiency and renewable energy projects.
48. The appellant is part of a global organisation. Its financial performance is measured against UK competitors and the parent company's operating portfolio. It competes for capital investment against all operating companies within the parent company. Reducing costs is key to attracting investment. The appellant is heavily exposed to the price of oil and the price of electricity. It is investing in a range of renewable energy schemes and procures its Grid electricity requirements via a green energy tariff. This demonstrates the appellant's commitment to responsible sourcing and carbon footprint reduction.
49. Energy security is an issue. The UK's electricity supply is under severe pressure. If electricity supplies are to be interrupted it is likely that industry would be the first to be asked to reduce or possibly stop consumption in favour of domestic supplies. The appellant considers it prudent to plan for such eventualities and have capability to generate electricity on-site from renewable sources.
50. Output at Torr Works is expected to exceed 5,000,000 tonnes in 2015. This is a 24/7 operation and the quarry is one of two rail connected quarries in the East Mendips serving markets across the south of England. The operation is large scale and involves considerable electricity usage and gas oil (diesel). It is of local, regional and national significance and is a strategically important quarry. There are 80 full-time employees with further indirect employment in transportation and supply of goods and services. (*The witness for the appellant*



*company informed me that if the appeal failed there would be no immediate risk to jobs at Torr Works or the company's regional office at Frome.)*

51. Of the forms of renewable energy described in the approved CFRS, electricity generated by wind would best match the demand profile of Torr Works. During peak demand the quarry would be using all electricity generated by the wind turbines plus additional power drawn from the Grid. During lesser demand when the turbines generate more electricity than required the quarry would export surplus power to the Grid. The energy generated by the turbines would contribute up to 40% of the quarry's energy requirements and around 5.5% of the appellant's national electrical usage.
52. As the quarry is developed more electricity would be required and fixed plant and machinery would need replacing. Before the end of 2017 the electrically driven conveyors would need to be replaced. The business case for investment needs to include an analysis of alternative options, the most obvious being diesel powered quarry dump trucks. Having an on-site source of renewable energy at a certain cost would greatly assist in the cost / benefit analysis in favour of electrically driven conveyors. The electricity generated by the wind turbines would bring more certainty to the cost base. This would partially insulate the appellant from the volatile electricity market and assist its business case for future investment. *(The witness for the appellant company informed me that reducing costs was linked to profitability of the business and this was a private interest.)*

#### Policy and Legal Context

53. The Framework continues to provide clear support for renewable energy proposals and the Department of Communities and Local Government has indicated that no changes to the wording are expected. EN-1 and EN-3 are also unaltered. The proposal is directly in accordance with paragraph 93 of the Framework and derives support from paragraph 97.
54. Unlike paragraph 133 of the Framework, paragraph 134 is not a policy of restriction. It simply requires a balance to be struck. The presumption in favour of sustainable development applies straight away. If paragraph 134 is a policy of restriction then the less than substantial harm to heritage assets needs to be weighed against the wider public benefits as a gateway policy test<sup>7</sup> before re-engaging the presumption in favour of sustainable development. Even if the harms articulated by TWAG are put into the balance this would not reverse the presumption weighted materially in favour of the grant of planning permission.
55. Energy policy remains clear. There continues to be no reasonable room for dispute regarding the seriousness of (1) climate change and its potential effects and (2) the need to cut CO<sub>2</sub> emissions. The Government is reliant on the pipeline of renewable energy schemes coming forward to meet the 2020 target. The appeal proposal is one of these acceptable schemes.
56. The various WMSs do not constitute a change in Government policy in relation to onshore wind energy development and their deployment. The PPG does not imply a recalibration of the threshold of acceptable change. More weight must be

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<sup>7</sup> I understand this to mean a route through the last bullet point of paragraph 14 of the Framework.

placed upon the actual wording of the PPG itself rather than what a Minister said about it. Even then, it is not the purpose of the PPG to introduce new policy. There is a clear legal difference between policy and guidance. It is subservient to the development plan and the Framework.

57. Within the recent decision in West Berkshire District Council and Reading Borough Council v SoS for Communities and Local Government [2015] EWHC 2222 (Admin) the High Court set clear restrictions on what a WMS can and cannot do in relation to development plan policy. Whilst, in this instance, the development plan is silent in respect of schemes for renewable energy, this judgement is still a relevant and important consideration. The SoS cannot lawfully turn an immaterial consideration in law into one which is material. It is well established law that public approval is not, in and of itself, a material consideration.
58. The views of third parties will always be a material consideration so long as they are relevant to land use planning issues. The amount of weight to attach to them is a matter for the decision-maker. There is no separate and freestanding requirement to provide evidence of community backing. What the SoS was not doing in dismissing the recent appeal in Lincolnshire was ascribing any additional element of weight to the fact that it was local people identifying harm or that they continue to be dissatisfied. The identity of the person alleging harm is irrelevant in land use planning terms. If the SoS was purporting to attribute an additional amount of harm to local opposition in and of itself, then he was making an error of law. (*Document 40*)

#### Settings of Heritage Assets

59. Paragraph 134 of the Framework requires less than substantial harm to be weighed against the public benefits. Setting and significance are defined in the glossary of the Framework. The PPG provides advice in assessing harm. EN-3 gives weight to the time-limited nature of wind farm development. Account should be taken of the length of time permission is sought when considering indirect effects on the historic environment. Historic England (HE) guidance<sup>8</sup> provides clarity on the assessment of the setting of heritage assets. This encourages a stepped approach. It also advises that consideration should be given to reversibility. The thrust of heritage protection is about managing change in the historic environment responsibly, not avoiding harm altogether.
60. The Court of Appeal in Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, The Secretary of State for Communities and Local Government [2014] EWCA Civ 137 has made plain that the statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 [P(LBCA)A] is separate to the planning policy position. Considerable weight must be given to the harm to a heritage asset creating a strong presumption against the grant of planning permission. However, there is a sliding scale. As set out in a case in Cambridgeshire<sup>9</sup>, the harm to setting needs to be accorded considerable weight but moderated according to the amount of harm in each case. (*Document 2*)

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<sup>8</sup> The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning: 3 (2015) (CD8.7)

<sup>9</sup> APP/H0520/A/13/2197548 (IR para 519).

61. Photomontages provide information on the level of visibility not the level of impact on heritage significance. It is important to take into account all of the attributes of a heritage asset and come to a conclusion on the level of harm to those attributes, rather than focus on a single impact on setting or a single impact on one viewpoint. Setting is only an element by which pre-existing heritage values can be experienced.
62. Cloford Manor and its stables and coach house have high historical and architectural interest due to their age and surviving fabric. The principal elevation of Cloford Manor faces east and is approached from that direction. This building does not have specific artistic interest but has aesthetic value, together with its outbuildings. Two separate 2 storey wings have historical and archaeological interest.
63. Cloford Manor has been considerably restored over the last 15 years and many agricultural buildings, which had a serious effect on its setting, have been removed. The surroundings are spacious and its outbuildings contribute to an understanding of the function of the house and to the experience of the way in which the buildings were used in the past. The Manor and the stables and coach house have overlapping settings and are experienced as a group.
64. From the east Cloford Manor is a prominent structure when looking down the hill in the vicinity of the church. The ability to see the Manor and its outbuildings as a group contributes to an experience of the building. Visibility decreases when moving east before increasing at the 19<sup>th</sup> century listed bridge and closer to the buildings. These views include elements that have a neutral role, or detract from the setting of the building, such as the large agricultural shed to the north and an electricity sub-station. During the winter months extensions at Grove House<sup>10</sup> are highly visible in views towards Cloford Manor from the north-east. (*The appellant's cultural heritage expert informed me that the appeal site contributed to the heritage interest of Cloford Manor as it forms part of the rural back-drop when experiencing its architectural and historic interest but did not have any functional link to this asset.*)
65. As expected for a farmhouse in a working agricultural landscape, an experience of the heritage interest of Cloford Manor and its outbuildings is strongest at close proximity. The courtyard directly in front of the Manor enables a proper examination of the fabric of the buildings and their substantial nature. Views within the grounds of these listed buildings, looking towards them, are of most importance. From here, the wider surroundings are masked by the buildings and there are views westwards towards the village and church. This allows an appreciation of the historical connection between church and house. This visual and historical link is also evident in views from the north. Views from Cloford Manor east are of less importance as they do not reveal heritage significance but provide a neutral back-drop.
66. The wind turbines would be 1.3km north west of Cloford Manor and would be visible in views of this asset from multiple directions. The most notable effect would be in views from the east towards the principal elevation. The turbines would also be visible from the Manor when looking out from its garden and the rear of the property. The greatest effect on significance would arise from the

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<sup>10</sup> This property lies to the south west of Cloford Manor.

impact on views towards Cloford Manor, not from it or its immediate grounds looking away from the building. Views from the building contribute less to an appreciation of this asset than those towards it where the architectural interest of the Manor is most evident.

67. The effect on the significance of the stables and coach house would be less. This building is less prominent in views affected by the visibility of the turbines. It also relies to a large degree on its association with the Manor and its function rather than on views towards and from it.
68. The group value of Cloford Manor and its outbuildings would be preserved, as would the fabric of the buildings and the grounds that make up the curtilage, including remnants of the walled garden. The turbines would be at a sufficient distance that they would not be visible above the buildings when standing in the complex and where the experience of the heritage values is strongest. The proposal would not have a significant impact on any key views.
69. The relationship between Cloford Manor and the Church of St. Mary would also largely be preserved. There would be no change in views from the Manor to the Church and there would be no severing of the visibility between these two assets. The only change would be in a wide view from the churchyard in the direction of the Manor. This presence of turbines on the ridge in the centre of this view would not result in a significant level of harm to the experience of Cloford Manor or its relationship with the Church. *(The appellant's cultural heritage expert informed me that visual relationship between the Church and Cloford Manor contributes to the significance of these assets but it was not a designed view.)*
70. The turbines, by virtue of their height, movement and position in relation to Cloford Manor would detract from an experience of the heritage values of Cloford Manor. This effect would be within the realms of the lower to middle end of the scale of less than substantial harm. HE also found that the proposal would result in less than substantial harm to the setting of this asset. Whilst HE has advised that permission should be refused, it has done so without full knowledge of all other matters which need to be considered as part of the planning balance. HE's recommendation should therefore carry very little weight. *(The appellant's cultural heritage witness informed me that when undertaking the planning balance, limited to moderate weight should be given to the harm to the setting of Cloford Manor.)*
71. The potential cumulative effects of the proposed development and the existing wind turbines at Weston Town Farm and Landmark Farm was not an issue raised by HE. The Weston Town Farm turbine is separated from Cloford Manor to a significant degree. It is not visible in the same orientation as the Manor. The Landmark Farm turbine is confined to views of the Manor complex from the north on the footpath leading past the large agricultural shed to the north of the Manor. This turbine is viewed as part of the back-drop to the complex but due to the topography of the area appears almost alongside the buildings rather than as a distant back-drop. *(The appellant's cultural heritage expert informed me that the Landmark Farm turbine had a very low effect on the setting of Cloford Manor.)*
72. With the appeal scheme, the Landmark Farm turbine would result in a minor cumulative impact on the setting of Cloford Manor. This would not intrude into the key heritage significance of Cloford Manor and there would be no overbearing or highly detracting elements in the view. This cumulative effect would not raise

considerably the effect within the less than substantial harm to the setting of this listed building. It would not result in any significant effect.

73. St. Mary's Church at Cloford is situated on high ground with views over the surrounding countryside and a relationship with Cloford Manor. Modern houses down the slope interfere with the view between the Church and the Manor. The Church has high historical, architectural, archaeological and artistic interest as a building which forms the focal point of the village. Its architectural and historic interest is derived from its building fabric (internal and external). The historic interest also includes its associations with individuals.
74. Views towards the Church are of key importance to its attributes of heritage significance, especially architectural interest. These views also allow an experience of the Church in its largely rural surroundings and contribute to understanding its historical interest. Views out from this asset contribute less to its significance as the viewer is not experiencing the fabric and architectural form of the building. The historical and visual link between the Church and Cloford Manor has been altered by modern houses in the foreground. This is not a viewpoint of high sensitivity. Views from the north of the Church and Cloford Manor contribute to the setting of both buildings, enabling them to be seen together in their settlement.
75. The proposed wind turbines would be visible in views from the churchyard when looking away from the Church. This would result in a minor impact on the experience of the Church with its setting and significance largely preserved. The development would not interfere with views from Cloford Manor towards the Church and the turbines would not be highly visible in views from the south in front of the Church. The prominence of the Church would not be undermined and its heritage interest would be unaffected. The level of harm would be negligible. *(The appellant's cultural heritage expert informed me that when undertaking the planning balance limited weight should be given to the harm to the setting of this asset.)*
76. The Chantry house and RPG are of high heritage value. The heritage significance of these assets is enhanced by the group of listed structures within the RPG and those outside but associated with it such as the Church of Holy Trinity. Over time HE's responses in respect of this group reduced in scope. HE offered no guidance on the level of harm, the nature of the impact or the scope of the impact. This suggests that it has limited issue regarding the effect on this group of assets. *(The appellant's cultural heritage expert accepted that Anthony Powell's connection to the Chantry added to its heritage significance. This comprised an associative historical interest rather than an artistic interest. It did not contribute to the reasons why this building was listed.)*
77. There would be a clear lack of visibility of the turbines from the majority of the RPG. The photomontages in the ES demonstrate that large swathes of the RPG would be unaffected. Views of the blades and blade tips above the treeline in the upper levels of the RPG would result in a very low level of effect on significance.
78. The wind turbines would be visible from the upper floors of the Chantry and would result in a minor effect. However, they would be apparent in one direction and from a limited number of rooms. In alleging substantial harm Somerset Gardens Trust have equated visibility with harm. The setting of the house, its group value with both the Church and the RPG and the multitude of views

between the buildings and their park and garden setting would be unchanged. Due to the lack of visual effect on the setting of the Church of Holy Trinity the proposal would have no impact on the significance of this asset. Views from the Church are across the RPG rather than towards the house or the appeal site.

79. The proposed wind turbines would be visible in views of Broadgrove House from the public footpath to the south east. Seeing the turbines in the back-drop of views of this house would, to a minor degree, affect the setting of this listed building. However, this would not detract from the fact that the heritage significance (its architectural and historic interest) would be preserved and remain unaffected when standing in the grounds of the house. On approach to the building from the east the turbines would not be visible, nor would they be visible behind the building when viewing from the west or north. Views out toward the south east would also remain unaffected. The effect would result in harm to a small part of the overall experience of this asset and would be limited in relation to its overall significance. *(The appellant's cultural heritage expert informed me that when undertaking the planning balance limited weight should be given to the harm to the setting of this asset.)*
80. Cranmore Tower is a 19<sup>th</sup> century, 45m high folly / prospect tower by T H Wyatt. It is about 3.1km west of the appeal site and was built for John Moore Paget of Cranmore Hall (now All Hallows School). This asset is surrounded by woodland which includes two telecommunication masts. From the viewing platform on the tower there are views of extensive quarry workings which sit between the tower and the appeal site. The proposed wind turbines would sit within an arc of view that is already heavily influenced by modern features. Its sensitivity to change is low. In contrast, views towards Cranmore School are of higher sensitivity due to the historical and functional connection between the Hall and this folly.
81. The proposed turbines would not sever the historical and visual connection between the tower and Cranmore Hall. The heritage significance of the tower would be preserved. There would be an element of distraction caused by the movement of the turbine blades in views of the tower. This would be incidental to its main focus of significance and would have only a minor effect. *(The appellant's cultural heritage expert informed me that this minor effect would equate to negligible harm and the "limited amount of harm" in paragraph 6.7 of her PoE should be struck out.)*
82. The appellant has always accepted that some cultural heritage effects would be likely to arise from the proposed development. The disagreement relates to the degree of harm that would be caused. The multiple effects of a development should be looked at in the round. The approach of the SoS in a previous appeal<sup>11</sup> to 'adding' up harm and coming out with a greater level of harm has no basis in policy or guidance. If that were the case it would be almost impossible to build a wind turbine in England. When considerable importance and weight is applied to effects upon the settings of designated heritage assets, only a small level of harm should be placed in the planning balance. The presumption in favour of preservation is not challenged. *(The appellant's cultural heritage expert informed me that where there are several instances of less than substantial harm this*

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<sup>11</sup> APP/Y2430/A/13/2191290 (CD 7.25)

*would be capable of amounting to considerable harm in the overall planning balance but would not fall into the realms of paragraph 133 of the Framework.)*

## Character and Appearance

83. The ES included a detailed landscape character and visual impact assessment (LVIA) with photomontages to aid assessment. The viewpoints for the photomontages were agreed at scoping stage. *(These are in Chapter 7 of the ES, Appendix A7.1 of the ES and the A3-sized LVIA Visuals. As noted above, Document 18 is revised Appendix A7.1A to the ES.)* Within LCA 18 the sensitivity to change is medium to low and within LCA 20 the sensitivity to change is medium. *(Document 18)*
84. Neither MDC nor Natural England (NE) objected to the landscape and visual impacts of the proposal. Whilst the Cranborne Chase and West Wiltshire Downs AONB Board raised concerns these have been considerably overplayed. The wind turbines would be distant and minor elements in the overall panorama from the AONB. Neither MDC nor TWAG contend any harm to the AONB. *(The appellant's landscape witness informed me that the proposed wind turbines would also be seen in the context of other man-made features in the wider landscape such as telecommunication masts, other wind turbines and busy roads.)*
85. The LVIA gave full consideration to potential impacts. It identified: no significant effects on designated landscapes; some localised significant landscape impacts upon two LCAs<sup>12</sup>; significant effects on some visual receptors (or groups)<sup>13</sup>; and significant effects arising from cumulative landscape<sup>14</sup> and visual impact (four cumulative LCAs and two cumulative route receptors<sup>15</sup>). Intervening distance and local topography combined with foreground screening effects of woodland, mature hedgerow trees and housing would reduce the simultaneous or successive experience of more than one wind farm from the LCAs. This would limit potential cumulative landscape impacts. There would be generally limited significant influence on the character of the wider landscape beyond the vicinity of the proposed wind turbines. The overall effect would not be significant in EIA terms.
86. The increased sensitivity to the landscape afforded by TWAG, due to the Asham Wood SLF and the Chantry RPG, is not accepted by the appellant. There would be no direct impacts on either the woodland or the RPG. In views of Asham Wood the proposed wind turbines would occupy a small part of the overall panorama. They would not affect the integrity, prominence or distinctiveness of the woodland block. Its landscape connectivity with adjacent woodland would also be unaffected. In landscape terms, the proposal would not compromise any criteria or key attributes that resulted in Asham Wood being identified as SLF. There would be no conflict with LP policy DP4. *(The appellant's landscape witness informed me that whilst Asham Wood had local value it did not form part of a valued landscape to which paragraph 109 of the Framework applied.)*

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<sup>12</sup> Locally moderate-substantial adverse on LCA18 and slight to moderate adverse and locally moderate on LCA20.

<sup>13</sup> Paragraphs 7.110-7.114 of the ES are an assessment of the potential significant effects on 5 of the 20 viewpoints that were agreed as part of the Scoping Report.

<sup>14</sup> Moderate-substantial adverse on LCA18 and moderate adverse on LCA20.

<sup>15</sup> The A361 between Shepton Mallet and Frome and the A359 from Bruton to the A361.

87. All of the significant visual effects would be within approximately 2.5km of the proposed wind turbines. The effects would vary between moderate adverse (at the edge of Nunney village to the east of the site) and moderate/substantial adverse (the A361 at Leighton and the edge of the village of Chantry). Beyond 2.5km distance, topography and intervening vegetation would filter or screen views. *(The appellant's landscape witness informed me that: there would be likely to be a significant impact from FR 17/3 to the south of Broadgrove House; and due to frequent screening the proposal would not spoil the enjoyment of any long distance path.)*

## Outlook

88. The distinction between a private interest and what should be protected in the public interest is clear. A logical, transparent and objective approach should be adopted. There is also no substitute for site visits in assessing the likely impacts. Elsewhere<sup>16</sup> the SoS has considered factors and thresholds of acceptability. There must be a degree of harm over and above an identified substantial adverse effect on a private interest to take the case into the category of refusal in the public interest. A proposal would need to be so unpleasant, overwhelming and oppressive that it rendered a property an unattractive place to live.
89. The sensitivity of Quarry Lodge to change is reduced by its proximity to the busy A361. The sensitivity of the receptor is medium. Residents would experience a high magnitude of change and a moderate-substantial adverse impact. The maximum horizontal field of view occupied by the proposed wind turbines would be 20.3 degrees. Open, albeit oblique, views of the turbines would exist. The base height of the turbines would be about the same height as the receptor and would be on the skyline. However, the turbines would occupy a relatively small field of view as a proportion of the overall view. Whilst they would be very noticeable the turbines would not dominate in the view. There could be a slight degree of visual disharmony associated with overlapping blades between two of the turbines. Taken in the round, the impact upon this receptor would not render the property an unattractive place in which to live. *(The appellant's landscape witness informed me that the movement of the turbines would draw the eye and would be a big feature in the view.)*
90. Broadgrove House would also be about 0.8km from the nearest turbine. The main view from this house is to the south east across a shallow valley towards Cloford. There would be potential rear views from the upper storey and garden though part filtered / screened by mid-ground and foreground trees and local topography. The sensitivity of this receptor is also medium. Residents would experience a medium magnitude of change and a moderate adverse impact.
91. At no dwelling would the turbines be visually overbearing, overwhelming or oppressive such that they would be rendered unattractive places in which to live. The impact would not cross the public interest line.

## Equine Interests

92. A very high percentage of operational wind farms are in rural locations in which horse riding can and does take place. There is no reliable empirical evidence to

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<sup>16</sup> APP/D0515/A/10/2123739 and APP/D0515/A/10/2131195 (CD 7.2)



demonstrate that commercial wind turbines are unsafe for horses and riders. The Scottish BHS Advice Note is positive in tone, recognising that horse riding and wind turbines can happily and safely co-exist. (*Document 25*)

93. As the A361 is such a fast and dangerous road the residents of Quarry Lodge never cross the road with their horses. All of the resident's riding routes are to the south and away from the turbines, often in lanes enclosed by vegetation. The turbines would be separated from the manege at distances in excess of the separation distances from the manege set out in the main BHS Advice Note. (*Document 26*)
94. Turbines start very slowly and gradually pick up speed. They are unlikely to frighten all but the most highly strung horses. If there was a tangible and unacceptable risk of horses being frightened by turbines, with likelihood of injury to them, their riders and third parties, it would have been addressed in the PPG by now.
95. Spaldington Common is an example of where an Inspector concluded that five larger turbines would not have an unacceptable effect on a specialist training and livery facility, including a manege. There is no reason to reach a different conclusion here. (*Document 27*)

#### Impact upon Birds and Bats

96. The appeal site is utilised by at least 11 species of bat<sup>17</sup>. The vast majority of bat activity occurs at the hedgerow and woodland edge locations as opposed to field locations. Although several bat species were recorded within the proposed turbine locations these were low in number compared to surrounding habitats. MDC, NE and SCC's Ecologist - a renowned bat expert who has published articles in relation to the effects of wind turbines on bats, did not object on ecology grounds.
97. The planning application was informed by ecological studies undertaken between 2010 and 2013. The Addendum to the ES includes additional assessments in relation to bats and was submitted in response to concerns that were initially made by NE and SCC. Having considered this further information, the explanation for discrepancies in the data and the proposed mitigation strategy<sup>18</sup>, NE and SCC were content with the proposals. This strategy provides an effective and pragmatic approach for maintaining the Favourable Conservation Status of bat species. It would reduce the risk of adverse impacts on bats to acceptable levels and ensure compliance with the Habitats Regulations. Additional information regarding the robustness of the bat surveys was provided to TWAG.
98. The bat survey undertaken in 2011 was included within the ES and was used to inform the baseline. It is broadly compliant with the Bat Conservation Trust's guidelines<sup>19</sup> and was used extensively by the statutory consultees to assess the effects of the appeal scheme. The surveys undertaken in 2012 and 2013 are

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<sup>17</sup> This include the high risk species of Noctule, Long-eared bats and Nathusius' pipistrelle.

<sup>18</sup> The Heads of Terms for the post-construction bat monitoring and mitigation are contained in Appendix A8.18 to the Addendum ES.

<sup>19</sup> Bat Surveys – Good Practice Guidelines 2<sup>nd</sup> Edition: Surveying for onshore wind farms (2011).

broadly compliant with other best practice guidance<sup>20</sup>. The total dataset from all three years of survey provides a baseline that demonstrates a consistent pattern of bat activity across the site that has been recognised by NE and SCC. *(The appellant's ecological consultant informed me that the ES could have been clearer in explaining the use of the 2011 survey data.)*

99. The minor deviations from recommended guidance in the survey methods undertaken in 2012 and 2013 do not affect the robustness of the overall dataset. A reliable ecological baseline has been used to assess the likely significant effect on bats<sup>21</sup>. A greater survey effort would not alter the overall conclusions or amend the mitigation proposed to prevent or reduce effects on bats or alter the conclusion that the site is high risk for bats. *(The appellant's ecological consultant informed me that he now considered the site to be medium risk to bats.)*

100. Bird surveys were undertaken between November 2010 and October 2011. These were used to provide a baseline dataset for use within the ES. This survey work included a breeding bird survey, an autumn bird survey, winter walkover surveys, vantage point surveys and species-specific surveys for raptors including peregrine falcon. The survey effort is broadly in line with the best practice guidance available at that time<sup>22</sup>. They were undertaken in a considered and professional manner, with due regard to appropriate best practice survey methodology. They provide a reliable baseline dataset on which to base EIA.

101. The collision risk to birds was modelled in accordance with best practice<sup>23</sup>. Whilst the ES did not include the methodological description of how this model had been applied to the data this has now been provided. It reveals that the collision risk modelling was undertaken in a reliable manner and the model outputs provide accurate assessments of the mortality of each target species. This data is robust and for the majority of target species recorded there would be a minimal risk of collision. Peregrine falcon is the only species where there may be a potential risk. Initially this was a concern raised by SCC's Ecologist. However, subsequent survey work established that no peregrines were nesting. The agreed Heads of Terms would allow monitoring of this species during the first two years post construction.

102. The baseline information provided in the ES and the Addendum in respect of ornithology is sufficiently accurate, robust and representative to inform the decision-making process. There would be no significant effects on ornithological receptors.

103. Surveys are not intended to find all there is to find at a site but rather to provide a sufficient level of baseline information upon which to undertake an impact assessment which meets the requirements of the EIA Regulations and

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<sup>20</sup> Hundt, L. 2012. Bat Surveys: Good Practice Guidelines, 2<sup>nd</sup> edition Bat Conservation Trust.

<sup>21</sup> Paragraphs 8.207-8.216 of the Addendum ES are the predicted effects on bats during the operation of the proposed wind turbines.

<sup>22</sup> NE Technical Information Note TIN069. Assessing the effects of onshore wind farms on birds. 1<sup>st</sup> Edition, 2010 and Scottish Natural Heritage. Survey methods for use in assessing the impacts of onshore wind farms on bird communities. 2010.

<sup>23</sup> Scottish Natural Heritage. Wind farms and birds: Calculating a theoretical collision risk assuming no avoiding action. 2000

provide a robust basis for determination by the decision taker. Moreover, guidance on how surveys should be undertaken are not rules or laws. TWAG has rigidly applied the guidelines and best practice. The Rule 6 party has not allowed for professional judgements, knowledge and experience in undertaking the survey work. Good survey practice recognises the limitations to surveys and / or justifications from best practice methodology.

104. The enhancement of on-site habitats is not considered appropriate. This could lead to increased invertebrate diversity and abundance and increase the quality of bat foraging habitat. In turn, this could result in a greater number of foraging bats around the turbine locations and an increased collision risk. With the exception of localised hedgerow gapping up, which would be undertaken as part of the mitigation for loss of dormouse habitat, there would be no on-site habitat enhancement. The appellant, as part of its on-going mineral operations, is undertaking significant habitat creation on its quarry land away from the proposed turbines.
105. There would be no significant adverse effects on the Favourable Conservation Status of any affected local bird and bat populations. The proposed mitigation would ensure that the development complied with the ecological provisions of the Framework and the development plan.

#### Benefits

106. The benefits that would flow from the proposed development include: helping the appellant develop a business case for investment in the local, regional and nationally important Torr Quarry; greatly assisting the cost / benefit analysis in favour of electrically driven conveyors at Torr Quarry, as opposed to carbon producing diesel powered trucks; bringing more certainty to the cost base at Torr Works; providing renewable energy at source and reducing transmission costs; on site power generation replacing that which would otherwise be procured via the Grid, thereby leaving that power available to other users; exporting surplus energy to the Grid, increasing the pool of renewable energy available to other consumers; contributing towards the achievement of national renewable energy targets; assisting in mitigating climate change; increasing the security of supply and; direct and indirect economic benefits; a reversible form of development that would leave the landscape character and visual resource intact. The material amount of renewable energy and ensuing CO<sub>2</sub> savings would benefit the appellant as an industrial consumer of electricity and be in the public interest.

#### Other Matters

107. The ES has assessed the likely noise impacts from operational noise in accordance with ETSU-R-97. The derived noise criteria applicable to both day time and night time periods would be achieved at all residential dwellings in the vicinity of the proposed development at all wind speeds.

#### Planning Balance / Conclusion

108. When the considerable benefits of the scheme are weighed with the limited harm the proposed development demonstrably operates within acceptable environmental limits for the purposes of paragraph 98 of the Framework. LP policy DP3 is satisfied as paragraph 134 of the Framework is satisfied. The full force of paragraph 14 of the Framework is engaged and the presumption in

favour of sustainable development bites. The ultimate planning balance is pre-loaded in favour of the scheme by reason of the adopted development plan failing to make any provision for renewable energy generation.

109. Each and every planning impact identified by affected local communities has been addressed in a way in which the lawful grant of planning permission would have their backing. The appellant has produced evidence to show that planning permission should be granted for this refined, self-contained and sustainable development. There is a compelling case in favour of granting planning permission.

### **The Case for MDC as the Local Planning Authority**

110. In summary, the proposed development would result in less than substantial harm to the settings of seven listed buildings<sup>24</sup>. A calibrated approach was required in assessing the level of less than substantial harm. Whilst there is no policy support for such an approach this is an accepted way of making an assessment. In this instance, the harm<sup>25</sup> to designated heritage assets would not be outweighed by the public benefits of the proposal. Moreover, the concerns of the local community have not been addressed. Having regard to the WMS of 18 June 2015, as well as the recent decision of the SoS in respect of a wind energy scheme in Lincolnshire (*Document 37*), the appeal should be dismissed.

#### **Settings of Heritage Assets**

111. Cloford Manor sits in an isolated position at the bottom of a landscape bowl / valley. The formality of its principal east facing elevation is an imposing feature within the landscape. It was clearly designed to be seen to impress. This listed building acts as a focal point and terminus of vistas when approached from the east along. It is framed by a largely unspoilt natural and rural back-drop. As the ground levels out in the approach the back-drop changes to the horizon and skyline. The front elevation is framed by the coach house and stables.
112. There is clear and intentional inter-visibility between Cloford Manor and the Church of St. Mary which sits on higher ground within Cloford. A large, wide-span agricultural building which sits in the foreground when approaching Cloford Manor remains in the periphery of views from the village. A small number of telecommunication masts in the far distance also have a minimal impact upon the setting of Cloford Manor.
113. The turbines would be about 1km from Cloford Manor. They would be located to the right of this listed building in approaching views from the east. There would also be views of the turbines from the private rear garden. Whilst there are no designed views from the house towards the appeal site, views enjoyed from the house for centuries would be adversely affected. This heritage asset and the turbines would also be seen together from the higher ground in Cloford, as well as from nearby public footpaths.

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<sup>24</sup> Cloford Manor, the stables and coach house at Cloford Manor, St. Mary's Church at Cloford, Broadgrove House, The Chantry, Church of the Holy Trinity at Chantry and Cranmore Tower.

<sup>25</sup> MDC's cultural heritage expert informed me that for all 7 assets the proposal would harm their historic interest and, in the case of the Chantry, a potential artistic interest as well given its literary associations.

114. From a number of receptors the development would bring about a strong change in the setting of Cloford Manor and the experience of this heritage asset. The turbines would be a prominent feature in the landscape as a modern and moving visual intrusion. They would be clearly seen in the back-drop to the house. This would result in an unfortunate and noticeable change to the setting of this listed building. The turbines would be a conspicuous feature in an otherwise unspoilt landscape. Due to the contribution the setting makes to the significance of Cloford Manor, the impact would be harmful. The magnitude of change and significance of impact would be major. The level of harm would be towards the top end of less than substantial.
115. HE has an important role in cultural heritage matters. It concluded that the impact upon the significance of Cloford Manor would be moderate / large and recommended refusal. It also advised that the temporary nature of the development would not notably affect the balancing judgement and little weight should be given to the reversibility of the proposals. 25 years would represent more than a generation. The views of this statutory consultee on this matter reflect the findings of the SoS elsewhere (*CD 7.20*) and should be given significant weight. Reversibility is a neutral consideration.
116. The stables and coach house at Cloford Manor are of lesser significance than the manor. Nevertheless, they were an important feature of this group of buildings. They comprise a cohesive and traditional group in a largely unspoilt rural setting. In medium to longer distance views they function as a planned group. There are emerging views of this group and its setting when approached from the higher ground through Cloford and from public footpaths.
117. The proposed wind turbines would be a prominent feature in the landscape. They would comprise a modern and moving visual intrusion in the back-drop of the stables and coach house. This would result in an unfortunate and noticeable change to the setting of this asset. Due to the contribution this setting makes to the significance of this listed building the proposal would impact upon the significance of the asset. The turbines would be a conspicuous feature in an otherwise unspoilt landscape. The magnitude of change would be medium and the significance of impact would be moderate.
118. The setting of the Church of St. Mary is contributed by its position on higher ground offering far reaching views from within the churchyard to the surrounding undulating countryside. At close quarters the surrounding buildings and hamlet of Cloford also contribute to its setting. There is identifiable inter-visibility with Cloford Manor particularly when standing within the churchyard. This is a designed and common feature in English estates where the relationship and proximity between domestic centre and place of worship is key.
119. Whilst the development would have no impact on views from the house towards the Church it would impact on the key view from the church towards Cloford Manor. The turbines would be a conspicuous and distracting feature of this view. Whilst the view would terminate on the main façade of Cloford Manor it should be experienced in the setting and rural back-drop. Unlike the large agricultural shed and some modern dwellings that also appear in this view the turbines would be a modern and moving feature that would have a detrimental effect upon the significance of the Church. The magnitude of change would be medium and the significance of impact would be moderate.

120. Broadgrove House sits in the bottom of a landscape bowl and is a prominent feature in views from the south east. It lies within an isolated but largely unspoilt rural agricultural area with trees and rising ground to the rear framing a seamless wider landscape setting. This makes a substantial contribution to the setting of this listed building. Most people who experience this asset would be those using footpath FR 17/3 to the south east.
121. The impact of the proposal on the setting of this heritage asset would be limited to a small number of views. Views from the house would not change and views from its immediate confines are unlikely to alter significantly. However, views from FR 17/3 would substantially alter. Whilst a change in view does not automatically involve a change in significance, the presence of the turbines on higher ground approximately 750m away would be a new and distracting element on the horizon.
122. From some sections of FR 17/3 the turbines would be visible for their entire height and would appear to sit on top of the house. They would be a dominant and alien feature that would adversely affect the setting of Broadgrove House to a significant degree. The magnitude of change and significance of impact would be major. Although the level of harm would be slightly lower than compared to Cloford Manor it would still be towards the top end of less than substantial.
123. The Chantry is a neoclassical villa in a parkland setting. A full height semi-circular bow to the rear centre bay window is designed to take advantage of the expansive countryside views to the south. The RPG provides a landscaped setting to this listed house and from the south facing slope of the park alongside the house there are views into the valley below and the wider landscape setting. Views from some upper floor windows in the house were specifically designed and located to take advantage of the wider landscaper vistas. The expansive southerly views of the countryside and the surrounding designed landscape make a significant contribution to the setting of the Chantry.
124. The novelist Anthony Powell who was famous for his 12 volume opus entitled 'A Dance to the Music of Time', published between 1951-1975, lived in the Chantry. Anecdotal evidence, acquired through a conversation with his son, indicates that the surrounding landscape was used as an inspiration for some of his father's work. The final novel in the series, 'Hearing Secret Harmonies' includes references to a quarry development and an Inquiry held into such a proposed development. The timing of this last volume coincides with a programme of expansion and deepening of many of the East Mendip quarries.
125. The proposed development would not change views towards the Chantry. The turbines would however appear in views from the rear of the house towards the horizon. They would comprise a new and distracting element in views enjoyed from south facing rooms. The proposal would negatively affect the building's setting and detrimentally impact upon its significance. The magnitude of change would be medium and the significance of impact would be moderate.
126. The Church of the Holy Trinity was constructed in 1846 to a design of George Gilbert Scott and commissioned by James Fussell, owner of the Chantry. It was originally included in the designed parkland to the north west of the Chantry but is not included within the RPG. It occupies raised ground overlooking the parkland and wider landscape to the south.

127. The Chantry was bequeathed to the Rev James G C Fussell as the first incumbent of the new parish church. The Rev Fussell founded an experimental school at the Chantry which was intended to educate girls who wished to become governesses and teachers. One of the pupils, Helen Mathers, described the Chantry and the Rev Fussell in her best-selling novel 'Comin' thro' the Rye' (1875).
128. The proposed wind turbines would be visible from the area outside the southern porch of the Church. This presents the principal entrance to the nave and the historic link between the Chantry and the Church. Whilst views of the turbines would be more limited than from the Chantry, they would be a new and distracting element on the horizon in views when exiting the Church. They would negatively affect the setting and have a detrimental impact upon its significance. The magnitude of change and significance of impact would be minor. *(In cross examination MDC's cultural heritage witness conceded that trees would obstruct views towards the proposed wind turbines from the southern porch.)*
129. Cranmore Tower occupies a prominent position on a high point of the East Mendip range and includes viewing platforms. This listed building is a local landmark and provides panoramic views of the surrounding countryside.
130. The setting of Cranmore Tower is extensive and has been somewhat compromised by two neighbouring telecommunication masts. These compete with the tower and compromise its prominence and significance. However, the tower remains prominent as a much more solid structure. Viewers at Cranmore Tower would be high sensitivity receptors.
131. The proposed wind turbines would highly visible from Cranmore Tower. the Magnitude of change would be reduced by the telecommunication masts, quarry operations and the existing wind turbines at Weston Town Farm and Landmark Farm. Nevertheless, the proposal would represent a further unwelcome intrusion into the landscape. In total six wind turbines would be visible in views from the tower. This would become a dominant feature of views of the wider landscape that were intended to be enjoyed from this tower. The Inspector who determined a previous appeal<sup>26</sup> for a single wind turbine further away from the tower found that the visual impact would have a major adverse effect on views. These views are intrinsically related to the significance of this heritage asset.
132. The proposal would also have an adverse impact on views towards the Cranmore Tower. This would change its setting and harm its significance. The magnitude of change would be medium and the significance of impact would be moderate.
133. In addition with the wind turbines at Weston Town Farm and Landmark Farm the proposal would also have a cumulative adverse effect upon the settings of Cloford Manor and its coach house and stables, as well as Cranmore Tower. *(Document 29 includes the reasons for approving these existing wind turbines. It acknowledges less than substantial harm to the settings of designated heritage assets.)*

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<sup>26</sup> APP/Q3305/W/14/2222024. (CD 7.19)

134. The duty imposed under section 66(1) of the P(LBCA)A is central to the determination of this appeal. The less than substantial harm to seven listed buildings weighs heavily against the grant of permission. The body of expert opinion before the Inquiry was of the view that the impacts on the significance of the affected heritage assets would be higher in almost every case than contended on behalf of the appellant. The SoS is entitled to place weight on this.

#### Benefits

135. The generic benefits of a wind farm development in terms of the provision of clean energy are almost a given. Energy security and certainty of supply do not follow from the grant of planning permission as the appellant would still be entirely reliant on the National Grid. Moreover, the most recent pronouncements by the Government regarding national targets is that it is appropriate to curtail further deployment of onshore energy. (*CDs 2.8, 2.9 and 2.10*)
136. Other contended benefits are almost non-existent. Benefits to quarry operations would not be a purely public benefit as the principal beneficiaries would be the private interests which run the quarry. A similar point was made by an Inspector when dismissing an appeal for a wind turbine at the Bath & West Showground. (*Appendix 4 to Mr Foster's PoE*)
137. There is no medium term risk to viability of the Torr Works quarry if permission is refused and the outlook is rosy. There is no risk to the jobs of the people directly employed at the quarry or the appellant's regional office. Quarry operations would continue and there would be no negative impact on the local economy. The viability argument is a red herring.
138. The proposal would create only 20 jobs during the construction phase and these would only last for 6 months. After that only 1 FTE job would be created.
139. The appellant does not have to do anything further with regards the CFRS. Condition 30 of the minerals permission has been discharged. There are no on-going planning consequences that flow from the renewable energy section of the CFRS. Compliance with the CFRS is not a public benefit and should be discounted.
140. The appellant has not put forward a section 106 agreement to ensure direct provision of energy to Torr Works and has expressed the view that a planning condition securing the same objective would be unnecessary. There are doubts as to whether the potential condition would be enforceable. The appellant's lack of commitment to ensuring renewable energy generated from the wind farm is used for the benefit of Torr Works calls into question the voracity of this contended benefit and the rationale for the scheme as a whole.

#### Planning Balance / Conclusion

141. The Judgement in the Barnwell Manor case held that the desirability of preserving the settings of listed buildings should be given considerable importance and weight when weighing this factor in the balance with other material considerations. The public benefits of the appeal scheme do not outweigh the less than substantial harm to the settings of the above heritage assets. The proposal would be contrary to LP policy DP3.



142. Elsewhere, the SoS has found that renewable energy was sustainable by definition (*CD 7.20*). However, that is not the same as constituting sustainable development under the Framework. Policies dealing with heritage assets are an example of restrictive policies to which Footnote 9 of the Framework applies. The evidence of MDC's planning witness and the appellant's planning witness is that paragraph 134 of the Framework is a restrictive policy, with the effect that paragraph 14 of the Framework is not engaged. In this instance, the presumption in favour of sustainable development does not apply.
143. The appellant's reliance on policy SD1 of the SMDPD has no direct bearing on the appeal. This policy only applies in relation to applications for mineral development. Moreover, there is no direct policy support for the proposals elsewhere in the SMDPD.
144. The impacts of the proposed development identified by local communities have not been addressed by the appellant. As a result, the proposals do not have their backing. This is a material consideration that weighs strongly against the grant of planning permission. This was an important consideration in the recent decision of the SoS to dismiss an appeal for a wind energy scheme in Lincolnshire<sup>27</sup>. The principles set out in the High Court decision in respect of the West Berkshire decision do not change the position. Until there is a successful challenge to the WMS on wind energy development the new guidance remains extant and should be applied by decision-makers.

### **The Case for Torr Wind Action Group (Rule 6 party)**

145. In summary, the proposed development would harm the settings of six listed buildings<sup>28</sup> and the setting of The Chantry RPG. (*Figure 1, page 6 of Mr Lewis's PoE shows the siting of the wind turbines relative to various heritage assets.*) It would have an adverse and cumulative impact upon the character and appearance of the landscape, harm the outlook for the occupiers of Quarry Lodge and Broadgrove House and adversely affect equine interests. In addition, the impacts upon birds and bats have not been properly assessed. The ensuing harm outweighs the limited benefits of the appeal scheme and the proposals do not have the support of the local community.
146. Whilst noting the High Court decision in the West Berks case, the circumstances of that case are very different to this appeal and the application of the WMS of 18 June 2015. There has been no challenge to this WMS or changes to the PPG. The WMS is a relevant material consideration that should be given weight.

### **Settings of Heritage Assets**

147. There is no dispute that heritage assets would be harmed, some significantly. In the context of the Framework the level of harm would be less than substantial. Nevertheless, these assets are all of high value except for Broadgrove Farmhouse, which is of moderate value.

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<sup>27</sup> APP/N2535/A/14/2217829.

<sup>28</sup> Cloford Manor, the stables and coach house at Cloford Manor, St. Mary's Church at Cloford, Broadgrove House, The Chantry and the Church of the Holy Trinity at Chantry.

148. The sensitively restored Cloford Manor, together with its stables and outbuildings, would be the most adversely affected assets. The agricultural settings of these listed buildings are relatively free of modern intrusions and contribute to their historical and architectural significance. This forms the principal focus in key views from the south-east and east, including Cloford village and the public footpath that runs south from the village. An existing agricultural shed is apparent in these views but is a low-level feature that does not break the skyline.
149. The industrial nature and movement of the proposed turbines would appear on the skyline behind Cloford Manor. As shown in the photomontages produced by TWAG (VVM2 in the Nicholas Pearson Associates Panoramas) the turbines would draw the eye away from Cloford Manor and would become the focal point within its setting. These new moving structures in the back-drop of Cloford Manor building would be highly intrusive on a ridge of land and would detract from an experience of this group of assets in their rural setting. It would harm the architectural interest of Cloford Manor.
150. The turbines would also intrude into views of Cloford Manor when seen from the churchyard. They would be large, alien, anachronistic modern features and would have a major impact on the setting and significance of Cloford Manor. It would result in a high level of less than substantial harm to the significance of Cloford Manor. HE, having used the DMRB, identified a moderate / large significance of effect. The appellant has under-estimated the effect on this asset.
151. The setting of Cloford Manor is already adversely impacted upon by the existing wind turbines at Weston Town Farm and Landmark Farm. These turbines detract from the rural scene and the architectural setting to Cloford Manor. In combination with these existing turbines, the proposal would result in cumulative harm to the setting of Cloford Manor and its outbuildings.
152. There is an important visual and contextual relationship between Cloford Manor and St. Mary's Church. The Church also has an attractive setting that is largely intact and has a tranquil quality. The skyline is important to an architectural appreciation of this heritage asset.
153. The wind turbines would be a distraction in views when experiencing the Church and its wider surroundings. They would also be seen from the churchyard. These large, prominent, new modern features in the historic setting of this asset would adversely affect the significance of the Church. There would be a major / moderate significance of effect. The proposal would cause an intermediate degree of less than substantial harm to the significance of this asset.
154. Chantry house and the RPG were designed and built as a single concept. The Chantry's purpose is to provide pleasure from its naturalistic gardens and their wider setting. Architecturally the house is a fine example of a little altered medium-sized country house set in designed grounds. Historically the house has significance as a result of its known origins and patronage by James Fussell. It also has important literary associations. The bay windows at first floor level in the house were deliberately designed to allow the occupants to have extensive views across the intentionally naturalistic gardens and wider landscape of woods and trees beyond, including Asham Wood.

155. The photomontage prepared on behalf of TWAG (VVM4 in the Nicholas Pearson Associates Panoramas) showing the impact of the proposed wind turbines from Chantry was not available when MDC and HE considered the application. This demonstrates a major / moderate magnitude of adverse effect on the Chantry and its RPG. The designed or intended views of an unspoilt, natural landscape of woods and trees from within the house and the upper parts of the gardens would become one of industrial machines projecting well above the tree line. Attention would be drawn to the turbines and their unnatural movement.
156. Holy Trinity Church should be considered as part of the group of buildings at Chantry, comprising the house and the RPG. It was designed and built to be part of those assets. The Church has a close visual and historic relationship with the surrounding countryside. The disposition of the RPG in relation to the house and church and other elements of the landscape have changed little since the early 19<sup>th</sup> century. The proposed wind turbines would intrude into the fine view over the Chantry parkland towards the surrounding countryside from the south side of the churchyard. Views would be possible through the trees towards the proposed development in springtime. It would result in a major / moderate adverse effect on this group.
157. The proposal would cause an intermediate degree of less than substantial harm to the composite heritage asset at Chantry. If the Church was considered on its own, the wind turbines would result in a minor degree of less than substantial harm to this asset.
158. Broadgrove House is significant as a surviving example of a stone-built 17<sup>th</sup> century vernacular rural building. It stands in an isolated position in the countryside with a back-drop of rising land and small fields and hedges. These fields were closely associated with the building when it operated as a farm. The surrounding countryside has changed little since the fields were enclosed. This rural setting makes an important contribution to the character and significance of this asset.
159. When viewing the principal façade of Broadgrove House from the footpath (FR 17/3) the proposed wind turbines would be directly behind this listed building (VVM3 in the Nicholas Pearson Associates Panoramas). The turbines would be large, alien, anachronistic modern features in the unspoiled historic setting of this heritage asset. The movement of the turbine blades and their elevated position would emphasise their presence. This would result in a high level of less than substantial harm to the setting of Broadgrove House.
160. In accordance with section 66(1) of the P(LBCA)A and the decision in Barnwell Manor, considerable weight has to be given to the harm to the settings of the above heritage assets. The cumulative harm to these assets also needs to be taken into account. When this harm is considered the limited public benefits do not outweigh the less than substantial harm. The appeal should therefore be dismissed.

#### Character and Appearance

161. The area contains a number of large quarries, including Torr Works. From most vantage points these are surprisingly well contained within the landscape. The A361 is a relatively busy main road that runs very close to the appeal site.

Most other roads are minor lanes. The existing wind turbine at Weston Town Farm is prominent when seen from the A361.

162. The proposed wind turbines would have a significant impact on LCAs 18 and 20. There would also be cumulative harm to LCAs 12<sup>29</sup> and 17<sup>30</sup>. Within at least 2.5 km of the site there would be significant adverse impacts on the character and appearance of the landscape. This concerns those who live and work in the area.
163. The proposals would be within 100m of Asham Wood. This SLF is an important component of the local landscape. It provides a locally high value to the scenic quality of this part of LCA 18 and gives the local area a medium to locally high sensitivity to change. The ASLF should be given considerable weight and the appeal site forms part of a valued landscape to which paragraph 109 of the Framework applies. Asham Wood is also protected under LP policy DP4. The existing wind turbines at Weston Town Farm and Landmark Farm now result in this character area being of high sensitivity to change.
164. The proposed wind turbines would be a major feature within LCA 18 and would result in a high magnitude of change over LCA 18. They would be prominent on the skyline above Asham Wood adversely affecting this local landmark, its scenic beauty and the sense of place and identity created by this SLF. The prominence of Asham Wood from various directions, including from the north and east, would be notably diminished by the considerably higher and animated turbines. The proposal would conflict with the provisions of LP policy DP4.
165. LCT 20 also has a high sensitivity to change from the proposed wind turbines. The proposal would break the wooded skyline and create a substantial adverse impact into a tranquil and hitherto intact view. The appreciation of the more open valley towards Nunney, including views to Cloford Church and Cloford Manor within this valley setting would result in localised substantial effects.
166. There would be significant visual impacts on the users of public roads and paths. In particular, there would be significant adverse impacts upon users of the footpaths to the south of Cloford village and footpath FR17/3. This would be contrary to LP policy DP1. There would also be a cumulative adverse effect from seeing the existing turbines at Weston Town Farm and / or Landmark Farm in the same view as the appeal scheme or in sequential views. This would be especially evident from the valley around Cloford, including from rising ground near Postlebury Wood, and the A361 corridor. The proposed turbines would become by far the most dominant elements of the cumulative impact upon LCA 20. The turbines would also erode the quality of views from Cranmore Tower.

#### Outlook

167. The ES accepts that the wind turbines would have significant adverse effects on 14 residential receptor sites. The impact upon the residents of Quarry Lodge and Broadgrove House would be at a greater intensity than predicted in the ES.
168. Quarry Lodge is the closest residential property to the proposed wind turbines. The sensitivity of this receptor is high rather than medium as described in the ES.

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<sup>29</sup> Gently Undulating, Mainly Pasture Slopes.

<sup>30</sup> Plateau and Ridge with Parliamentary Enclosures.

There are open views of the appeal site from the main living room in this dwelling and its adjacent decked area / garden. (Photograph M in Mr Billingsley's PoE and VVM5 in the Nicholas Pearson Associates Panoramas.)

169. The nearest wind turbine would be approximately 770m from Quarry Lodge. Whilst the turbines would be located at an oblique angle to the living room they would exert a very strong influence on views from the property. The turbines would be fully lit from the afternoon and evening sun and the blades would generally be orientated towards the viewer as they face the prevailing south-west winds. Unlike the neighbouring quarry, the turbines would not be screened. Traffic moving along the A361 is also moderated by roadside hedgerows. The close grouping and proximity of the turbines would comprise an unpleasant and overwhelming effect from the main living room and amenity spaces. This would be compounded by views from the rest of the property to the north and east. The proposal would render this property an unattractive place to live.
170. There are views from the main living room on the ground floor of Broadgrove House towards the appeal site, as well as views from some first floor bedrooms and the garden area to the north of the house. The closest turbine to the façade of the house would be approximately 893m. The turbines would be a prominent feature from the house particularly in the winter months. However, there are a number of other aspects, including those from primary rooms, which do not face towards the appeal site. This includes an open aspect over fields to the south. The appeal scheme would result in this dwelling becoming a significantly less attractive place to live and stay. It could have an adverse effect on the bed and breakfast business operated from the property. The proposal would not cross the higher threshold of becoming an unattractive place to live.
171. The adverse effects upon neighbouring residents would be contrary to LP policy DP7.

#### Equine Interests

172. Noise and movement from the proposed wind turbines would disturb thoroughbred horses being schooled / trained for dressage at Quarry Lodge. The occupier of this property competes at a national level in the sport and a manege was sited to minimise traffic / noise disturbance from the A361. The turbines would be in full view of the manege and would have an adverse effect on the occupier's ability to successfully compete in this sporting activity. Horses are already alarmed by the existing turbine at Weston Town Farm.

#### Impacts upon Birds and Bats

173. The ES does not provide an adequate assessment of the likely impact upon birds and bats. In order to know whether or not mitigation measures would be effective it is crucial to understand how populations of potentially affected species are likely to be impacted by a development. The mitigation proposed and accepted by SCC's Ecologist and NE is putting the cart before the horse. *(TWAG's ecological expert informed me that the proposed bat mitigation strategy would address most of his concerns regarding the impact upon bats.)*
174. The appeal site is within an area that is considered to be high risk to bats. In several sections of the ES it is made clear that the only data used for the purposes of analysing the species, numbers and movements of bats across the

site was that gathered in 2012 and 2013. The inclusion of the 2011 data in Appendix A8.17 of the revised ES chapter does not mean it was used in any analysis. This states that the analysis of bat activity used to assess the bat activity on site and the potential impacts of the scheme is based on the more recent 2012 and 2013 bat surveys and not the 2011 data.

175. The 2012 data supplemented by the 2013 data does not begin to comply with the Bat Conservation Trust's guidelines no matter how much professional judgment is applied. There is no data for April, May or June and only partial data for July, August, September and October. Even in the months when data was gathered in only July 2012 were the required 2 transects per month. These did not follow the woodland edges of the appeal site or Steart's Lane where bats were known or likely to be or go through the turbine locations. The transects and automated static recorder surveys started less than 30 mins before sunset and/or ended less than 2 hours after sunset.
176. The bat surveys were not undertaken to the required standard to know what impact the proposals would have on bats on the appeal site. Without a proper understanding of the numbers and flight patterns of bats across the site the SoS cannot know what the likely significant effects are. It is not an answer to say that the proposed mitigation would avoid any significant effects. That mitigation is predicated on counting bat corpses over a 2 year period after permission has been granted and the turbines have been in operation and only reacting if the mortality rate is considered to be too high. That provides little consolation to the bats that may be sacrificed by the appellant's attempt to make good its understanding of the use of the appeal site by bats once permission is granted.
177. The inadequacies in the data collection regarding birds are even more apparent. For peregrine falcon, less than half the number of vantage point observation hours was undertaken. TIN069 recommends a minimum of 72 hours per vantage point per season should be undertaken for raptors. However, the appellant's Collision Risk Calculation tables records that for the Winter 2011 observation the count was for 36 hours only, for the Spring-Summer 2011 the count was only 36 hours and the Autumn 2011 observation was for 12 hours.
178. Moreover, the vantage point locations and the manner in which the observations were undertaken were inadequate. Contrary to NE's guidance, one of the vantage points was within the appeal site and the other was at the highest point in the local area. This may have led to disturbance of the very birds to be recorded. The areas surveyed from the vantage points were over 1 km and visibility was compromised by topography and vegetation. The surveys were for longer than the 2 hours intended to avoid recording errors being made by fatigue and a lack of concentration.
179. The failure to undertake the surveys in accordance with recognised standards may have resulted in underlying data errors which then affected the reliability of the collision risk modelling used to assess the impact on birds. TIN069 states that the quality of the underlying data is critical to achieving reliable model outputs and a significant limitation of collision models relates to data collection.
180. The collision risk for peregrines of 0.16 per annum identified in the ES is derived from aggregating the risk for each survey season calculated in the Collision Risk Calculation tables provided by the appellant. They were not included in the ES or made available to SCC or NE during the consultation stage.

Had they been, it would have been apparent that there was a significant shortfall in the number of vantage point count hours and that there was a significant risk that the collision risk calculations were compromised by the lack of count data not just in relation to peregrines but for other species too e.g. red kite and golden plover. *(TWAG's ecological expert informed me that peregrines were at low risk of collision with wind turbines.)*

181. These count errors and the deviations from methodological standards relating to the vantage points themselves mean that no real reliance can be put on the Collision Risk tables notwithstanding that they provide the only basis for the ES conclusion that the proposals would not have any significant effect on birds.
182. As a consequence, the ES does not meet the requirements of the EIA Regulations and planning permission cannot lawfully be granted. The situation cannot be retrieved by attaching a condition requiring birds to be monitored on the appeal site. A condition to this effect would be unlawful. If the deficiencies in the bird data are so great as to invalidate the assessments arrived at in the ES, the proper course is to refuse planning permission and to dismiss the appeal.

#### Benefits

183. Condition 30 on the permission for deepening Torr Works does not support or justify the appeal scheme. A CFRS was subsequently approved by SCC. This requires certain site based energy efficiency measures to be undertaken. These would assist the appellant in reducing its carbon footprint and could be enforced by SCC if they are not implemented.
184. In contrast, the renewable energy generation element of the CFRS is at best informative and aspirational. There is no commitment to any of these elements and SCC could not require the implementation of the appeal scheme even if planning permission was granted. So far as renewable energy is concerned, the CFRS is a dead letter. There is no mechanism for reviewing the CFRS if the appellant walked away from considering renewable sources for its power.
185. The appellant's Statement of Case (*CD11.9*) asserted that it was imperative for Torr Works to secure a reduction in the fixed costs of its quarrying operations which would arise from an increase in energy consumption (said then to be 20%) associated with the deepening of the quarry and in order to secure the long-term future of the quarry. However, the appellant accepts that if the appeal was dismissed no-one at the quarry or head-office in Frome would lose their job and the quarry would continue to operate as it does now (including being deepened) for the foreseeable future. The imperative for the proposal relied on by the appellant in its Statement of Case simply doesn't exist. More importantly, the supposed public benefits to the local economy through securing the quarry's future (to which MDC attached weight at application stage) cannot be relied on to justify the proposals or be put in the balance against the harm to heritage assets.
186. It is not disputed that being able to reduce its costs may assist the appellant in putting a business case together for further investment into Torr Works and that this may help it to improve its green credentials. It is, however, disputed that the proposals would help protect the appellant against electricity price volatility. Uncertainty of the wind and inability to store any power the turbines generate cannot be predicted or controlled in any meaningful way to match the hugely variable energy demands of the quarry operations. The quarry's energy

demands fluctuate widely within the day / night and from day to day and there is no certainty of the wind blowing when energy is most needed. With a capacity factor of circa. 25% and no control over the wind, the proposal is just as likely to be generating power when it is least needed as when it is most needed.

187. There is no evidence to support the very different figures that have been put forward by the appellant as to how much of the power generated by the proposals would actually be used by the quarry. What is clear is that whenever the turbines are not generating power or the quarry's energy demand is greater than the turbines can generate, power would need to be drawn from the Grid. As the appellant has little or no idea when it would have to do so this creates real uncertainty when trying to forward plan. Conversely, if the proposal generates power when the supply exceeds demand from the quarry the appellant would export it to the Grid because it has value. If the appellant really wants to reduce its electricity costs, but without having any adverse impacts on the local area, it could re-negotiate its electricity supply contract. The price the appellant currently pays for its electricity is very substantially above the market price.
188. Even if the SoS was satisfied that the proposal would meet some of the quarry's energy needs and provide the appellant with cost certainty, that and the other benefits arising from being able to provide direct electricity to the quarry, no matter how big or small, is entirely private to the appellant. They cannot be relied on by the appellant or be given any weight by the SoS when considering whether the less than substantial harm to heritage assets is outweighed the public benefits which paragraph 134 of the Framework requires.
189. The indirect public benefits relied on by the Appellant from the proposal, such as the generation of power at the location it is used and replacing power with the power that the appellant would draw from the Grid for others to use, do not exist unless there is a legal mechanism in place to ensure that some or all of the power from the turbines is actually used for the operation of Torr Works. The recognition of this, and to stop the scheme from being simply another wind farm, was initially recognised by the appellant. However, there is no power purchase agreement in place whereby the appellant would buy back the renewable energy generated or any section 106 obligation.
190. New local employment would be very limited during construction phase and only 1FTE is predicted during the operational phase. The financial benefits would be modest. It is unsurprising that MDC did not attach much weight to these benefits. They should be given little weight by the SoS. The wider indirect economic benefits would be modest and are generic to any wind farm development. These should not to be given more than little weight.
191. As with any wind farm or other renewable energy development there would be benefits in terms of CO<sub>2</sub> savings and helping to meet national and international obligations. However, these must be viewed in the context of the recent ministerial statements that the UK has made very significant progress in meeting its 2020 targets. The appellant has not presented any alternative figures to those given by the SoS to Parliament. Less weight should now be given to these generic benefits in light of the Government's formal position.



## Conclusion

192. Whilst renewable energy may be inherently sustainable that does not mean that all renewable energy development is sustainable. If that was the case there would never be any need to weigh the adverse impacts of such development against the benefits. A balancing exercise has to be undertaken in relation to renewable energy developments. *(TWAG did not offer a witness to answer any questions in respect of the planning balance.)*
193. The restrictive nature of the policy in paragraph 134 of the Framework results in a disapplication of the presumption in favour of granting planning permission where the development plan is silent. Even if the SoS is persuaded that the harm to heritage assets is outweighed by the public benefits of the scheme the appeal should be dismissed because the benefits are clearly and demonstrably outweighed by the additional adverse impacts. The proposal is not sustainable development and permission should be withheld.

### **The Case for Cllr Townsend (Document 5)**

194. In summary, the proposal would result in significant visual impacts from the busy A361. Local footpaths would be afflicted, including the East Mendip Way. The wider panorama would suffer such as from the Old Frome-Wells Road, the views from the top of Cranmore Tower and from two neighbouring AONBs. The appeal for a 77m high wind turbine at Chantry was dismissed because of the impact from Cranmore Tower. *(A copy of this decision can be found in CD 7.19)*
195. The Planning Minister has stressed that AONBs and the like enjoy the highest level of protection. There is a danger that the area will become a dumping ground for renewables. There are existing turbines at Wanstrow and Leighton, another turbine is at pre-application stage near Doultong and there are solar arrays at Halecombe, Marston and Nunney Catch.
196. The SoS at DECC has stated that onshore wind targets have been met and the SoS at DCLG has set out transitional arrangements whereby local people now have the final say in respect of onshore wind applications. The local community has expressed its opinion and there is no material reason to change that decision.

### **The Case for Cllr Skidmore**

197. In summary, the wind turbines would be visible over a wide area. They have poor performance levels and would have a night-time impact with red lights on top. There is no local support for the proposals which are an expensive form of electricity generation and are unreliable. The area was becoming a dumping ground for wind turbines. In combination with other turbines there would be a cumulative impact upon horse riders. Money had been spent on local public rights of way and the proposals would affect the use of these routes.

### **The Case for Cllr J Cole**

198. In summary, whilst supporting the principle of local electricity generation, there was concern over the cumulative impact of the appeal scheme and existing wind turbines and a solar farm. The Parish Council had supported these other wind turbines and the solar farm. Enough electricity was now being produced locally. The wind turbine in Wanstrow produces all the power necessary in the

parish. The parish was now a net exporter of electricity to the grid. Enough is enough.

**The Case for Mrs F Britten** (*Document 23*)

199. In summary, the proposal would have a visual, detrimental effect and severe impact on the environment and ecology of the area. It would be in close proximity to a treasured piece of heritage - Asham Wood SSSI and SAC. The area is of national importance for archaeology with exciting finds in recent years.
200. There are plans for a nuclear power station in Somerset. This should be sufficient for the county's energy contribution. Solar energy and hydro-electricity might be possible in the quarry. This would provide a cleaner more acceptable energy for everyone.
201. The destruction of wildlife and ecology can never be replaced or put at risk. The timing and location of the environmental monitoring is questionable. The turbines would generate noise, cause glare and ground and air vibration. They would also disturb dust in the quarry. A rare lichen has already been lost from Asham Wood. The planet needs to be protected for future generations.

**The Case for Mr J K Brown (Action Against Turbines on Mendip – AATOM)**  
(*Document 15*)

202. In summary, if the appeal was allowed the quarry would be unable to disconnect from the National Grid. The output from the turbines would be very intermittent. The proposal would not create any meaningful self-sufficiency in association with activities in the quarry. The proposal would result in intermittent output from the wind turbines for a subsidised income.
203. In cross-examination it was explained that electricity for the Grid should come from nuclear power at Hinckley Point, gas and possibly fracking. The cost of electricity from Hinckley Point would be similar to the costs of electricity generation from the appeal scheme. Electricity from onshore wind was cheaper than solar power, tidal power and offshore wind.

**The Case for Mr G Robinson** (*Document 6*)

204. In summary, the number of people and public opinion against these proposals has been witnessed by MDC. The Council listened to the arguments and in their wisdom and local knowledge refused planning permission.
205. The biggest amenity of rural life is the countryside itself. The natural vistas, birds of prey, bats and wildlife. This must be protected for future generations. Commercial development should be undertaken in more appropriate areas.
206. Paying for the removal of the turbines after 25 years needs to be considered.

**The Case for Mr K McCloud**

207. In summary, wind energy schemes in Germany and Denmark provide benefits to local communities and are supported by many local residents. The Parish Council receives income from the existing wind turbines in Wanstrow and uses this to support community services. This is in contrast to the appeal scheme where there would be no community benefit. These large turbines would have a

cumulative impact upon the valley and would affect the local landscape. There is much local opposition. The scheme would comprise overdevelopment.

**The Case for Cllr R Pelham** (*Document 7*)

208. In summary, Wanstrow Parish Council objects to the proposals. A significant proportion of the Parish's 400 residents objected. The application was unanimously rejected by all Councillors who could vote.

209. The Parish Council supported the turbines at Weston Town Farm and Landmark Farm, as well as a 16 ha solar farm at Holwell. The Parish has made a substantial contribution to industrialised renewable energy. This is more than enough. The cumulative effect of further such developments would be totally unacceptable to Parishioners.

210. Cloford Manor is an important building in the Parish. It has been extensively restored. There is concern over the impact the proposal would have on the setting of this building especially when viewed from St. Mary's Church at Cloford. The interaction of these two buildings is of great significance. Whilst the turbine at Landmark Farm has an adverse effect on the appearance of the area it does not have a serious effect on the setting of Cloford Manor.

**The Case for Cllr Van Dyk** (*Document 9*)

211. In summary, the Torr Works is a great asset to the area. It provides employment and social and monetary benefits to a rural community. It has supported the community in social projects and many people in the Ward benefit greatly from its existence.

212. I conducted a rigorous campaign to get elected and knocked on 99% of the properties in the Ward. I am very familiar with the issues raised by residents, including wind turbines. There is overwhelming concern over the visual impact of the appeal scheme. Local people are worried that the Mendips natural beauty would be blighted by renewable energy developments and, in particular, wind turbines. I share that view. Whilst local people are supportive of the Torr Works they believe the appeal scheme is a bridge too far.

**The Case for Mr J Bennett** (*Document 13*)

213. In summary, Chantry is surrounded by working and disused quarries. Operations and activities in these quarries give rise to unintended and undesirable consequences for parishioners. These include blasting tremor damage and nuisance from motorcycles in disused quarries. Such effects were not predicted.

214. The proposed development would inflict further undesirable consequences on parishioners. It would disrupt uninterrupted southerly views of wooded hillsides and desecrate visual amenity for at least the next 25 years. Chantry Parish Council, which represents 120 Chantry residents, unanimously recommended refusal of the application. It did not receive one letter of support for the proposals. The proposal does not have the backing of the affected local community. The appeal should be dismissed.

### **The Case for Mr D Warburton MP** (*Document 14*)

215. In summary, wind turbines are one of the biggest issues locally. There is widespread concern, shared by the Government, of the intrusion into the extraordinary landscape of Somerset. Note should be taken of the WMS of Greg Clark, SoS and the recent amendments to the PPG. Local onshore wind energy must not be imposed on communities without public support. Local residents must have the final say. In the spirit of Government guidance and policy, local people's voices should be heard loudly.
216. The WMS provided a higher threshold when considering new planning applications. The benefits of the appeal scheme also needed to be weighed in the balance. These were outweighed by the concerns of local residents.

### **The Case for Mr P Foster (AATOM)** (*Document 28*)

217. In summary, there is an imbalance in the reliance on professional, human judgements without a corresponding concern for the human implications for aggrieved people who would have to live with the Inquiry's outcome. We seem to spend more time on the impacts on the landscape, heritage assets, ecology and planning law than the impact on human beings. It seems people are not in any way a protected species but rather a planning inconvenience. People have Human Rights but there has been little acknowledgement so far.
218. The evidence base for the Inquiry is narrow. AATOM collects evidence on a global base about the impact of wind technology on human beings. The World Health Organisation recommends that living within 2km of wind turbines carries serious health risks. They impact on blood pressure, hearing, sleep, concentration and cumulative stress. They also create divisions and disharmony within communities. We have evidence of the impact of flicker in people's living rooms, noise level variations and negative effects on people's health. Think about the impact upon people living in the area. (*In cross-examination I was informed that no evidence of these effects had been put before the Inquiry.*)
219. The elephant in the room is the knowledge that without public subsidies and generous tariffs fewer turbines would be built. Think human and support nature. AATOM was opposed to all wind turbines.

### **Written Representations**

220. Nine representations were received at appeal stage. (*Attached to the red folder on the file.*) These include representations from HE. (*See also Document 12 and letters dated 12/8/13, 24/10/13 and 29/1/14 flagged in the Appeal Questionnaire.*) In summary, HE advised that the proposal would result in less than substantial harm to the setting of Cloford Manor and recommended that planning permission be withheld.
221. Other representations made at appeal stage include objections from Wanstrow Parish Council, Mells Parish Council, AATOM and David Warburton. (At that time Mr Warburton was the Prospective MP for Somerton and Frome.) Representations were also made during the course of the Inquiry by Mr J Powell of the Chantry. This includes reference to some of the works of the author Anthony Powell who lived at the Chantry. (*Document 33*)

222. Many representations were received by MDC at application stage. The planning officer's report to committee (*Document 10*) states that there were 3 letters of support and 160 objections. A further 75 objections were received following the submission of the ES Addendum. The main areas of concern were discussed at the Inquiry and have been summarised above. In the interests of concision, these are not repeated within this section of the report. A summary also exists in paragraphs 2.151 and 2.152 on pages 21-24 of the officer's report.
223. Paragraphs 2.1-2.148 on pages 3-21 of the officer's report summarise the various consultation responses that were received. These include the objections from Wanstrow Parish Council, Nunney Parish Council and Whatley Parish Council, as well as the support from some others, including Frome Town Council.
224. Paragraphs 2.32-2.42 of the officer's report to committee summarises the representations made by NE. (*Copies of NE's comments are also flagged in the Appeal Questionnaire.*) Paragraphs 2.121-2.132 summarise the responses of the Cranborne Chase and West Wiltshire Downs AONB officer.
225. Paragraphs 2.43-2.67 of the officer's report to committee summarise the representations made by SCC's Ecologist. (*The detailed comments contained in a series of e-mails between the Ecologist and MDC can be found as the first set of documents in the green coloured divider in the Appeal Questionnaire or in Appendix 1 of Dr. Huckle's PoE. Amongst other things, SCC's Ecologist advised that the proposal would not pose a risk to horseshoe bats in the Mells Valley SAC and drew attention to the decision in Eaton v Natural England and RWE Npower Renewables Ltd [2012] EWHC (Admin) 2401.*) Paragraph 2.68 of the officer's report summarises the response from Somerset Wildlife Trust.
226. The representations made by Somerset Gardens Trust are summarised in paragraphs 2.88-2.97 of the officer's report to committee.

### **Suggested Planning Conditions**

227. Those conditions that had been agreed by the appellant and MDC (*Document 8*), the suggested revisions put forward by TWAG (*Document 30*), a condition<sup>31</sup> linking potential electricity supply to use at Torr Quarry (*Document 31*) and a possible landscape planting condition were all discussed at the Inquiry.
228. The appellant and MDC agreed that TWAG's suggestion for public consultation in respect of various detailed matters that were to be treated by way of planning conditions would be unnecessary and would place onerous requirements on the appellant and MDC. The appellant argued that varying the agreed conditions in this way would be imprecise, unreasonable and unlawful.
229. The appellant argued that it was standard to allow a nine month period for repair works to wind turbines and such period of time reflected the procurement process. However, if it was felt necessary by the SoS, the appellant would be willing to accept a six month period instead.
230. The appellant and MDC agreed that wording various conditions so that they read "*No development shall be commenced until*", was the lawful way of requiring the submission of further details.

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<sup>31</sup> This was devised by the appellant at my request.

231. The appellant argued that the agreed suggested hours of construction work / delivery times were reasonable and would allow works to be completed over a shorter period of time. I was informed that with the exception of Saturday morning, plant / machinery at Torr Quarry could begin operating before the suggested hours of construction / deliveries.
232. MDC argued that a condition stipulating that there should be no application for overhead poles or pylons would be unlawful. On behalf of the appellant, it was pointed out that the application specified all cabling was to be placed underground and overhead cables would be a safety hazard for the quarry.
233. MDC preferred the ecology conditions that had been agreed with the appellant as these closely followed the recommendations of SCC's Ecologist. The appellant argued that TWAG's suggested variations would be unnecessary and unlawful. If the SoS felt he had insufficient information permission could not be granted.
234. All main parties agreed that conditions regarding aviation safety should reflect the wording suggested by the Ministry of Defence. *(The Defence Infrastructure Organisation's representations, on behalf of the Ministry of Defence, dated 11/12/14 are included in the red folder attached to the file.)*
235. The appellant argued that a condition allowing for some flexibility in the micro-siting of the turbines was standard and would allow for any uncertainties once ground conditions were fully understood.
236. MDC and the appellant were content that the agreed noise condition included the appropriate notes and safeguards for monitoring noise from the turbines.
237. With regards to other conditions, the appellant and MDC agreed that details relating to hydrogeology could be specified as part of the Construction Method Statement (CMS). It was also agreed that as surface water drainage details had been specified as a separate condition this could be deleted from suggested condition 5 (d). There was also agreement that any requirement for a soil management plan could form part of the CMS. It was also agreed that dormice mitigation could be specified as part of suggested condition 5 (k).
238. The main parties agreed that if the SoS considered some landscape planting would be necessary elsewhere on land within the appellant's ownership this could be addressed by way of a separate condition.
239. The appellant argued that a condition linking potential electricity supply to use at Torr Quarry was unnecessary as all of the electricity would comprise a benefit irrespective of who was the end user. If the SoS considered it necessary to require the appellant to use some of the electricity generated in its operations at Torr Works Quarry the condition would fulfil this objective. A section 106 undertaking to this effect would be inappropriate.
240. On behalf of TWAG, it was argued that as the appellant had referred to the development benefiting Torr Works there should be a mechanism linking electricity generation to the quarry operations. However, the condition did not go far enough. If the electricity generated from the turbines was only exported to the National Grid the turbines should be removed. MDC expressed concerns regarding the ability to enforce the condition.

## **Inspector's Conclusions**

The numbers in brackets [] below refer to preceding paragraphs in this report.

### **Preliminary Matters**

241. Policy ER2, referred to in MDC's decision notice, no longer forms part of the development plan. It should not be given any weight in determining the appeal. [21, 22]
242. There is no cogent evidence to indicate that the proposed development would undermine the conservation objectives of any European protected site. An Appropriate Assessment under the Habitats Regulations is not therefore required. [40, 225]
243. There is nothing of substance to demonstrate that planning permission should be withheld for the proposed temporary anemometer masts. These elements are 'severable' from the remainder of the proposals and would enable further information to be obtained regarding meteorological conditions. This element of the appeal should therefore succeed and temporary planning permission should be granted subject to those conditions set out in Schedule A below. [7]

### **Main Issue**

244. The main issue is whether the benefits of the scheme, including the production of electricity from a renewable source to supply Torr Works Quarry, outweighs any harmful impacts, having particular regard to the effects upon: the settings of various designated heritage assets; the character and appearance of the area; birds and bats and; the outlook for the occupiers of Quarry Lodge and Broadgrove House.

### **Planning Policy and Other Documents**

245. The development plan is silent in respect of schemes for renewable energy. MDC, the Local Highway Authority and TWAG have not objected on transport / highway grounds. It is also difficult to comprehend a situation where wind turbines would contribute to local identity and distinctiveness. In the circumstances, the most relevant LP policies to the determination of this appeal are DP3, DP4, DP5, DP6 and DP7. [7, 22, 41, 57, 166]
246. Policy SD1 of the SMDPD relates to mineral applications. It is not determinative to the outcome of this appeal. However, this Plan highlights the importance of the minerals industry, including Torr Works. [21, 23, 143]
247. Whilst not forming part of the development plan, the LAMD and ASLF have been subject to the examination process and can be given moderate weight. [24, 25]
248. The suite of energy policies are important material considerations and can be given substantial weight. [28, 55]
249. The WMSs are also important material considerations. Within the SoS's decision dated 14 September 2015, the WMS of 18 June 2015 is referred to as the most recent expression of government planning policy for onshore wind development and was given substantial weight. [11, 56-58, 144, 146]

## Benefits

250. Torr Works is of local, regional and national significance and is a strategically important quarry. Whilst no jobs are at immediate risk many people are dependent upon the quarry for a source of income. It is an economic asset of considerable importance. [23, 46, 47, 50, 137, 211]
251. The proposed development would help meet national targets and ambitions for reducing greenhouse gas emissions and increasing the supply of renewable energy. It would also assist in mitigating climate change and increasing the security of supply. In addition, the development would provide direct and indirect economic benefits. These are important public benefits that should be given considerable weight in the overall planning balance. [32, 46, 49, 106, 135, 138, 190, 191, 196, 200, 203]
252. Electricity generated from the proposed wind turbines would reduce the operating costs at Torr Works and assist the appellant in developing a business case for investment in the quarry. Surplus electricity would be exported to the National Grid and would provide the appellant with an additional source of revenue. These matters would be likely to increase the efficiency of the quarry operation and the Company's profits. On the face of it, these are matters of private interest / benefit. [48, 51, 52, 106, 136, 137, 139, 185, 186, 187, 188]
253. However, a public benefit would be derived from an investment decision that enabled new fixed quarry plant and machinery to utilise sources of renewable energy. The use of alternative diesel powered machinery that would be more dependent on fossil-fuels would almost certainly increase CO<sub>2</sub> emissions. In addition, a public benefit would arise as a consequence of this important quarry operation reducing its exposure to any future risk in interruption to energy supply. These benefits should also be given considerable weight in the overall planning balance. Irrespective of arguments regarding condition 30 on the minerals permission and the ability to enforce the CFRS, the appellant should be commended for its efforts to reduce its carbon footprint and utilise existing supplies of green energy, as well considering various options for renewable energy generation on non-operational land. [47, 48, 50, 51, 52, 106, 135, 139, 183, 184, 189, 202, 207, 209]

## Settings of Designated Heritage Assets

254. As set out in paragraph 132 of the Framework, when considering the impact of a proposed development on the significance of designated heritage assets great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. [26]
255. The appeal site forms part of the rural surroundings in which numerous designated heritage assets are experienced. Seeing the proposed development in views to and / or from these assets would not in itself amount to a harmful impact upon their heritage interest / significance. Whilst significance can be derived from setting, there must be cogent evidence that the proposal would adversely affect the heritage interest of the relevant assets. [39]
256. The heritage interest of Cloford Manor, the stables and coach house at Cloford Manor, St. Mary's Church at Cloford, Broadgrove House, the Chantry, Church of the Holy Trinity at Chantry and Cranmore Tower is derived primarily from their



inherent architectural qualities and historic fabric. The significance of the RPG is derived primarily from the historic layout of its picturesque pleasure grounds, garden, park and associations with the Chantry. The settings of all these assets, which include the appeal site, have changed to varying degrees over time. [62, 64, 73, 80, 126, 127, 154, 158]

257. The appeal site forms part of the rural back-drop to **Cloford Manor and its stables and coach house**. The Manor has been sensitively restored by the current owners with its setting enhanced and, in all likelihood, its heritage interest better revealed from the public domain following the removal of a number of 20<sup>th</sup> century agricultural buildings alongside. This is a high value heritage asset. The architectural qualities of Cloford Manor and its associated outbuildings can best be admired from the private courtyard immediately in front / alongside the buildings. However, public views from the footpath to the south of St. Mary's Church afford an appreciation of the architectural interest of Cloford Manor in its historic rural surrounds / context, especially its principal east facing elevation which draws the eye of the viewer. From part of the churchyard, the view towards the Manor, with its rural back-drop, is also of heritage interest. This allows an appreciation of the historical associations / relationship between the Church, Cloford Manor (as the main house within the valley) and the surrounding agricultural landscape. [62, 63, 64, 65, 111, 116, 148, 210]
258. The setting of Cloford Manor already includes two existing wind turbines. A combination of distance, topography and landform means that the turbine at Weston Town Farm does not materially affect the significance of the Manor. In contrast, the Landmark Farm turbine sits above this listed building when viewed from the footpath to the north of the Manor. This turbine detracts from an appreciation of the architectural qualities of this listed building and erodes the largely unspoilt rural back-drop and historic landscape setting / context of this designated heritage asset. [17, 30, 71, 151, 210]
259. Notwithstanding the wide span modern agricultural building to the north of Cloford Manor, the coursed and squared Ham Hill stone and ashlar walls of this grade II\* listed building with its dressed quoins, stone mullion windows and tiled roof forms the main focus of view with the stables and coach house alongside. The largely unspoilt rural back-drop also assists in understanding / experiencing the historical importance of this group of buildings in the valley within which it sits. The appeal site makes a positive contribution to the setting and heritage interest of Cloford Manor, its stables and coach house. [64, 65, 111, 113, 148]
260. The change in view from the footpath to the south of the Church would comprise the most noticeable and severe impact upon the setting and significance of Cloford Manor, its stables and coach house. When viewed from this public right of way the proposed wind turbines, by virtue of their height, engineered form and movement of the turbine blades, would markedly intrude into the setting of Cloford Manor, as well as the setting of the stables and coach house. Unlike the existing anemometer and telecommunication masts, electricity poles and Holwell Sub-station, which have a limited impact upon the settings of these listed buildings, the proposed wind turbines would bring about a strong change in setting. They would draw the eye away from the Manor and displace this important heritage asset as the main focus of view. The turbines would distract from the public appreciation of the architectural qualities of a building which is of more than special interest and which has been carefully restored,

including attention to its immediate setting. The height and form of the turbines would also erode the historic landscape setting / context of the group of buildings at Cloford Manor and diminish an experience of the historical importance of this group within this part of the Mendip countryside. [66, 67, 70, 112-115, 149, 150]

261. This harm to the setting of Cloford Manor would, to a limited extent, be compounded by the cumulative impact with the Landmark Farm wind turbine. If permitted, a sizeable part of the rural back-drop to the Manor would, in future, include prominent wind energy developments. The height and form of these turbines and the movement of their blades would further distract and erode the public's appreciation of the architectural qualities of the Manor and its historic landscape setting / context. [71, 72, 151, 210]
262. From the private courtyard immediately in front of / alongside the group of buildings at Cloford Manor an appreciation of the architectural and historic interest of these assets would be unaffected. There would also be no intrusion into views of this group from FR 17/3 to the west. Some views of the turbines would occur from inside Cloford Manor and from part of the garden. However, these would be looking away from these assets and would not have any significant effect upon their heritage interest. [20, 61, 65, 66, 68, 74, 113, 116, 117, 149]
263. In views of Cloford Manor from the churchyard of the **Church of St. Mary**, the direct relationship between the Manor and the Church would be maintained. The height and movement of the proposed turbine blades would cause some limited disruption to the rural back-drop / setting and a minor adverse effect upon the heritage (historic) interest of this particular view and its significance to Cloford Manor and the Church. There would be no change in view towards the Church from the Manor. [69, 75, 119, 153, 210]
264. I concur with the main parties and HE that the proposal would not breach the very high threshold of substantial harm set out in paragraph 133 of the Framework. Whilst HE recommended refusal, it does not appear to have undertaken the necessary planning balance. Limited weight should therefore be given to HE's recommendation. Nevertheless, I attach considerable weight to the harm to the significance of Cloford Manor that has been identified by the Government's statutory advisor on the historic environment. If it is necessary or appropriate to ascribe a level of harm within the less than substantial threshold<sup>32</sup> (there is no such policy requirement and HE did not make any such distinction) I concur with MDC and TWAG that this would be towards the top end of less than substantial harm to the significance of Cloford Manor and a lower level of less than substantial harm to the significance of the stables and coach house and Church. This weighs against an approval. [42, 70, 114, 115, 117, 150, 220]
265. In addition to its inherent architectural and historic qualities **the Chantry** has literary associations, including those of Anthony Powell the critically-acclaimed post-War writer. This country house is set in designed grounds and was built at the head of a steeply sloping site to afford commanding views across the countryside to the south. The appeal site and Asham Wood form part of the naturalistic landscape setting to this grade II\* listed 19<sup>th</sup> century house / villa

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<sup>32</sup> To which paragraph 134 of the Framework applies.

- and the grade II\* RPG. Asham Wood can be seen from some south facing rooms in the house, including the bay window in the first floor living room, as well as from part of the parkland and the pleasure ground walk immediately to the south and south east of the principal elevation of the villa. This neoclassical house and its RPG are high value heritage assets. [18, 76, 123, 124, 127, 154, 221]
266. The appeal site and Asham Wood are integral to the naturalistic landscape setting to the Chantry and its **RPG**. They form part of the surrounding countryside that was intended to be appreciated from the first floor windows in the Chantry and enjoyed from the upper parts of its grounds. The appeal site adds to the historic heritage interest of these designated heritage assets. This includes literary associations where some of the works of Anthony Powell are likely to have been influenced by the landscape setting of the Chantry and possibly, but to a lesser extent, Helen Mathers. [77, 123, 124, 127, 154, 221]
267. Unlike the Weston Town wind turbine, which is largely screened from the Chantry by woodland, the upper parts of the proposed wind turbines would rise considerably above Asham Wood. These four new turbines would be clearly visible from some upper floor rooms in the Chantry and from part of the parkland and pleasure ground walk. They would intrude into views of the naturalistic landscape setting of the house and RPG and the movement of the turbine blades would be a strong distracting element in an otherwise tranquil rural scene. The proposed turbines would detract from an appreciation of the historic landscape setting / context of the Chantry and its RPG, including intended views from the house and part of its grounds. [78, 125, 155, 220, 221]
268. I concur with the main parties that given the overall heritage interest of the Chantry and its RPG, the proposal would, in the context of the Framework, result in less than substantial harm. If it is necessary to ascribe a level of harm within this category, the proposed wind turbines would be towards the top end of less than substantial harm to the significance of these grade II\* designated heritage assets. [42, 78, 125, 155, 157]
269. The proposal, due to intervening tree screening and the orientation of the appeal site relative to the **Church of the Holy Trinity**, would not detract from the heritage interest of this grade I listed building. Glimpses of the proposed wind turbines during the winter months from part of the churchyard would not impinge on views towards the Chantry and the RPG or diminish the experience of this church. The significance of the Church would be unharmed. [78, 128, 156, 157]
270. The appeal site forms part of the rural back-drop / countryside setting to **Broadgrove House**. The surrounding fields to this 17<sup>th</sup> century vernacular building, including the appeal site, were closely associated with this dwelling when it operated as a farmhouse. From FR 17/3 to the south of this grade II listed building, the site forms part of the surroundings in which this asset is experienced. It contributes to an experience of the heritage interest of this rural building allowing the observer to appreciate its architectural qualities and historic links / context with the surrounding landscape. The site makes a positive contribution to the significance of this asset. [79, 120, 158]
271. When standing within the grounds of Broadgrove House and looking towards this building the heritage interest of this asset would be preserved and would remain unaffected. Furthermore, the proposal would not harm the significance of

this designated heritage asset in views out of this building. However, from FR 17/3 to the south, the proposed wind turbines would loom above Broadgrove House and would markedly intrude into the countryside setting of this former farmhouse. The height and form of the turbines, along with the movement of the turbine blades, including the 'blade clash' of T3 and T4, would comprise a very intrusive and distracting addition within the setting of this listed building. The turbines would detract from an appreciation of the architectural and historic interest of this asset. [79, 121, 122, 159]

272. I concur with the main parties that given the overall heritage interest of Broadgrove House, the proposal would, in the context of the Framework, result in less than substantial harm. If it is necessary to ascribe a level of harm within this category, the proposed wind turbines would result in a moderate level of less than substantial harm to the significance of this designated heritage asset. [42, 79, 122, 159]

273. The appeal site forms part of the surroundings in which the 19<sup>th</sup> century **Cranmore Tower** is experienced. The significance of this asset is derived primarily from its historic functional links as a folly to Cranmore Hall. Due to the woodland surrounding the tower an appreciation of its architectural qualities is largely limited to the area around the base of the building and from inside the tower. From the viewing platform on this local landmark there are wide panoramas across the surrounding landscape. The numerous elements that make up the local landscape can be seen. This includes Asham Wood, various quarries and asphalt works, existing wind turbines, settlements, farmsteads and two telecommunication masts in the foreground. These masts have diminished the tower's prominence within the landscape. The appeal site comprises a minor component of the views from Cranmore Tower and makes a neutral contribution to the heritage interest of this grade II listed building. [80, 129, 130]

274. The proposed wind turbines would be visible in views from the south east towards Cranmore Tower. However, they would be separated from the tower by a considerable distance and the tips of the turbine blades would be well below the top of the tower. The proposed development would neither erode the functional relationship between this listed building and Cranmore Hall nor displace the tower as the most prominent local landmark. There would also be no disruption to an experience of the architectural qualities of the tower. In views from Cranmore Tower the turbines would be readily visible. They would form an additional component of the wide panoramas without harming the heritage interest of this listed building. There would be no harm to the significance of this asset. [81, 131, 132, 133]

275. I have also considered the effect of the proposal upon the settings of the other designated heritage assets that have been identified by the main parties for consideration in this appeal. In so doing, I have had regard to the duty under section 66(1) of the P(LBCA)A. The combination of distance from the appeal site, intervening topography and landform would result in the proposals having no material impact upon the significance of these other assets. [39, 42]

276. There is cogent evidence to demonstrate that the proposed wind turbines would result in less than substantial harm to the significance of six designated heritage assets. The decision in the Barnwell Manor case is clear with regard to section 66(1) of the P(LBCA)A in requiring considerable weight to be given to

harm in the balance, creating a strong presumption against the grant of planning permission. National and local planning policies require that this harm should be weighed against the public benefits of the proposal. [42, 60, 70, 72, 77, 78, 79, 82, 114, 115, 117, 119, 122, 125, 141, 147, 149, 150, 151, 153, 155, 159, 160]

### Character and Appearance

277. Notwithstanding the presence of numerous quarries and several main roads, the appeal site lies within an area of pleasant open countryside that is characterised by gently undulating landform with some ridges and wooded valleys. The site is adjacent to Asham Wood SLF. Whilst all landscapes have some value, these woods and their setting, which includes views from the north and east, are valued by the local community and are afforded a degree of protection within the development plan. This part of the countryside is of medium sensitivity to wind energy development of the size / scale proposed. [12-15, 22, 25, 86, 161, 163, 199, 205, 213, 221-223]
278. The proposed development would have a small 'footprint'. It would not alter the pattern of fields or result in the significant loss of any important landscape fabric. Nevertheless, within about 1km of the site the height of the proposed wind turbines, their engineered form and the movement of the turbine blades would have little in common with the undulating landform and the woodland qualities of the surrounding countryside. This would bring about a high magnitude of change to the character of the local landscape. Whilst the nearby quarry bunding / landscape works and the A361 are existing engineered elements within the landscape, the proposed wind turbines would be much taller and would introduce movement above Asham Wood. These tall new structures would be a dominant man-made addition to this rural area and would have a substantial adverse effect upon the character of the local area. [12, 31, 33, 34, 35, 37, 38, 84-87, 162-164, 222, 223]
279. Between about 1km to 2.5km from the site the proposed wind turbines would result in a medium magnitude of change to the character of the area. At these distances the topography of the landscape and the increase in distance from the site would diminish the scale and influence of the appeal scheme. Whilst this change would be at odds with the existing character of the local landscape, the wider landform and topography would reduce the impact upon the character of the countryside. The proposal would be a prominent addition to the landscape and would have a moderate adverse effect. [85, 162]
280. At about 2.5km – 5km from the site the proposed wind turbines would remain a noticeable feature of the landscape and would continue to detract from its rural character. However, the magnitude of change would be low. At these distances many other tall man-made / engineered features would be evident, including towers, masts, other wind turbines and overhead power lines. Beyond 5km the development would be unlikely to have anything other than a negligible effect upon the character of the landscape. [85, 165]
281. The proposed wind turbines would be visible from many sections of public roads and rights of way. However, that is not to say that the development would be harmful when seen from the public realm. From many locations, including the East Mendip Way and the Macmillan Way, there would be brief, glimpsed or filtered views and beyond about 5km topography (including buildings and vegetation), landform and the degree of separation from the site would result in

- no significant harmful visual impacts. There is no cogent evidence to demonstrate any harm to the special qualities of the Cranborne Chase and West Wiltshire Downs AONB or harm to the setting of any other designated landscape. [19, 20, 45, 83, 84, 195, 221, 224]
282. The most significant visual impacts from the public domain would be experienced in and around Cloford, the footpaths around Cloford Common, at the village of Chantry and from the A361. With the exception of the A361, from these public places the proposed development would be seen by high sensitivity receptors. [83, 87, 164, 166]
283. From sections of FR 17/3, the minor road through Cloford and the footpath to the south of St. Mary's Church the proposed wind turbines would occupy higher ground. By virtue of their height, form and rotating motion of the blades, the turbines would appear as a prominent and discordant addition to a pleasing and generally tranquil rural scene. There would be a high magnitude of change resulting in a substantial adverse visual impact. [20, 83, 162, 166, 212]
284. From the footpaths around Cloford Common and the village of Chantry, the proposed turbines would project above the skyline of Asham Wood. Their height, engineered form and the distracting motion of the turbine blades would detract from these largely unspoilt rural scenes and diminish the contribution that this distinctive woodland block makes to the scenic qualities of these views. There would be a medium magnitude of change and moderate adverse visual impacts. This weighs against granting planning permission. Nevertheless, Asham Wood would continue to make a valuable contribution to the scenic qualities of the area, including in views from the north and east. The extent of the harm to the setting and attributes of this SLF would not be so great as to significantly degrade the overall quality of the local landscape. I concur with the appellant and MDC that there would be no conflict with LP policy DP4. [83, 163, 164, 166, 194, 199]
285. In the main, those using the A361 are likely to be travelling at a high speed and making their way to a destination rather than pausing to spend time viewing the surrounding countryside. The proposed wind turbines would be visible from the section of this busy main road between Leighton and Holwell and would be viewed by medium (tourists) or low (e.g. freight / business users) sensitivity receptors. The close proximity of the proposed wind turbines would result in a high magnitude of change. However, receptors would, in the main, be focusing on the road and would only experience the turbines for a brief period and, in all likelihood, for a very short part of their overall journey which is likely to include a variety of different developments. The height, form and movement of the turbine blades would detract from the countryside qualities of the area and result in a limited adverse visual impact. [83, 161, 162]
286. The proposed development would be seen by high sensitivity receptors on the viewing platform at Cranmore Tower. These four new wind turbines would be prominent in views and for most people they would be likely to detract from their experience / enjoyment of the landscape. However, the nearest wind turbine would be a considerable distance from the tower and would be at a lower level. Moreover, these views include two telecommunication masts in the foreground, major / active quarry workings and the existing wind turbines at Weston Town Farm and Landmark Farm. The experience is already that of a working

landscape. The proposed turbines would be a similar height and distance from Cranmore Tower as the turbine which was dismissed on appeal in January 2015. However, having viewed the appeal site from Cranmore Tower, the extent of separation between the proposed Torr Works turbines and the viewing platform and the existence of other very conspicuous man-made features would result in a limited adverse impact upon views from this folly. [85, 166, 194]

287. From some locations the proposed wind turbines would be seen together with the existing wind turbines at Weston Town Farm and Landmark Farm. This includes sections of the A361 and A359. From these parts of the public domain the proposal would increase the appearance of wind energy developments within the landscape. The cumulative impact of these six turbines would become a locally dominant element within the landscape. This adverse impact also weighs against granting planning permission. However, there is no landscape capacity study in respect of wind energy developments within this part of the countryside. The proposal could not reasonably be described as creating a 'windfarm landscape' and it would not change the overall perception of the landscape. There would be no pronounced simultaneous or sequential cumulative impacts. Any future applications would also need to be determined on their own merits. The proposed development would not set a precedent that MDC would be bound to accept elsewhere. [17, 44, 85, 166, 195, 197, 198, 205, 207, 209, 212, 214, 221-222]
288. Due to distance, landform, topography and foreground screening, the proposal would not, in combination with other wind energy schemes, result in any harmful cumulative landscape or visual impacts upon any nationally designated landscape. [7, 44, 83, 85]
289. I have found that the proposed wind turbines, alone and in combination with two existing turbines, would result in some harm to the character and appearance of the area. However, this is unsurprising as most, if not all, wind energy schemes result in some adverse landscape and visual impacts. EN-3 recognises that modern onshore wind turbines are large structures and there will always be significant landscape and visual effects for a number of kilometres around a site. Neither MDC nor NE objected on landscape grounds. The landscape / visual harm carries moderate weight in the planning balance. [7, 26, 84]

#### Birds and Bats

290. It is unsurprising, given: the deviations from best practice guidance in undertaking the bat and bird surveys; the discrepancies in some of the data; and the omission within the ES of the methodological explanation for the bird collision risk modelling, that concerns were raised by some of those who were consulted and notified in respect of the appeal scheme. There is also a lack of clarity in the ES over the use of the 2011 dataset regarding bats. [98, 99, 173-182]
291. However, all surveys are open to criticism of one form or another. Having considered all the information dispassionately, including the 2011 dataset, a renowned local bat expert, acting on behalf of MDC, was satisfied as to the adequacy of the submitted ecological information. The Government's advisors on ecological matters were also content. I see no reason to disagree with SCC's Ecologist or NE. The ES provides sufficient information to allow a properly

- informed assessment of the potential impact upon birds and bats. [97-103, 224, 225]
292. The circumstances of the appeal decisions relied upon by TWAG are materially different to the situation here where survey work has been undertaken and the results provided as part of the application / appeal processes. I have taken the contents of the ES, including the Addendum, into account. However, if the SoS was to agree with TWAG on this matter and consider that further ecological information / evidence was necessary, it would be open to him to seek this under the provisions of Regulation 22 of the 2011 EIA Regulations.
293. The appeal site is within an area that is utilised by numerous species of bat. Whilst, in the main, these bats use the edges of the surrounding fields / woodland for foraging and commuting some species fly across the appeal site. There is a greater weight of evidence to indicate that the site would be of high risk to bats. This includes some species which are known to be at high risk of collision with wind turbines. [96, 99, 174, 222, 224, 225]
294. The detailed bat survey work that was undertaken to inform the ES included manual bat detector surveys, vantage point surveys, transect surveys and roosts surveys. These surveys were undertaken in 2011, 2012 and 2013. Some of this survey work was undertaken in response to concerns initially raised by NE and SSC's Ecologist. [97, 222, 224, 225]
295. The ES reveals that species of bat that are of high risk of collision with wind turbines would be at slight risk if the development was permitted. For species of bat that are of high ecological value there would be a negligible risk. Low risk species of bats would not be at significant risk. Whilst the operation of the proposed wind turbines would be likely to result in some bat fatalities no wind farm is likely to be risk-free and absolute protection cannot be guaranteed. The evidence indicates that the Favourable Conservation Status of bats would be maintained. [97, 98, 225]
296. I concur with SCC's Ecologist, NE, MDC and the appellant that a planning condition should be attached to a permission to ensure a detailed programme of monitoring of any bat fatalities and mitigation in the event of higher than expected fatalities occurring. The Heads of Terms for such a condition has been discussed and agreed with SCC's Ecologist. A condition to this effect would ensure there was no significant risk to bats. TWAG's ecological expert was content that such a condition would address most of his concerns. [97, 173, 224, 233]
297. The survey and modelling work undertaken on behalf of the appellant in respect of birds informed the ES and, following the receipt of further information, was accepted by SCC's Ecologist. This work is based upon recognised guidance but, as allowed for, it does not rigidly follow such guidance. The operation of the wind farm would result in a slight risk of collision to some species, such as Lesser Black-backed Gull, but this would be a risk to a small proportion of the total UK population. The likely risk to other birds, including raptors, would not be significant. [100-102, 177-182, 225]
298. Following initial concerns raised by SCC's Ecologist in respect of peregrine falcon, further survey work was undertaken. This revealed that this species of bird was no longer nesting nearby. The appellant's estimated collision risk for



peregrine falcon is low and TWAG's ecological expert accepted that this species was at low risk of collision with wind turbines. Whilst there can be no certainty that the appeal scheme would not pose any risk of fatalities to this species of bird those with responsibility for advising MDC on nature conservation interests are content with the proposals. There is no cogent evidence to justify taking a contrary stance. [101, 178-182, 225]

299. The proposed development would accord with the provisions of LP policies DP5 and DP6. [22, 105, 173]

#### Outlook for Neighbouring Residents

300. The proposed wind turbines would change the outlook for the occupiers of some neighbouring residential properties and their guests/ visitors. However, seeing the development would not by itself comprise a harmful impact. Decisions of the SoS and Inspectors elsewhere have established benchmarks for determining the acceptability of wind energy schemes on the outlook of neighbouring residents. The occupiers of Broadgrove House and Quarry Lodge are high sensitivity receptors. [88, 89, 90, 167, 168]
301. The wind turbines would be visible from parts of the rear (north west) facing garden of Broadgrove House, as well as from some of the north west facing rooms. They would appear on the horizon and would be prominent in views from this property. The development would adversely affect the outlook for those living and staying in this property. However, the turbines would occupy a small part of the overall view from the rear garden and the north west facing rooms. There would also be unaltered views across the surrounding countryside from other windows in the main rooms. The proposed turbines would not be so close as to result in any serious loss of outlook or significant loss of amenity for those living and staying in this property. Broadgrove House would not become a significantly less attractive place in which to live or stay. Whilst the adverse effect upon the outlook for residents / visitors weighs against an approval it carries limited weight in the planning balance. [16, 90, 170]
302. The proposed wind turbines would also be seen from Quarry Lodge. They would be readily visible from the main living accommodation and the outside decking area / garden. Whilst they would form part of a wide view of the countryside and would be seen along with traffic moving along the busy A361, they would considerably intrude into the outlook. The turbines would be visually dominant and would adversely affect the living conditions for the occupiers of this neighbouring property. This also weighs against an approval. The turbines would not however be so close or so tall as to result in an overbearing or oppressive outlook for residents. Views across open fields to the east would remain and overall, residents would not have an unattractive outlook. MDC is unconcerned by the impact upon the outlook of neighbouring residents. On balance, Quarry Lodge would not become a significantly less attractive place in which to live. A satisfactory living environment would exist for neighbouring residents. There would be no conflict with LP policy DP7. [7, 16, 22, 168, 169, 171]
303. There is no cogent evidence to substantiate fears that the proposed wind turbines would be so distracting / disturbing to horses that they would prevent one of occupiers of Quarry Lodge from pursuing her equine / sporting interests. The appeal decision at Spaldington and the Advice Notes from the British Horse

Society suggest that the speeds at which the turbine blades would move and their distance from the manege would be unlikely to seriously harm dressage or other equine activities. [92-95, 172, 197]

#### Other Matters

304. The proposed development would accord with the Government's recommended guidance for assessing the noise impacts of wind farms. At some wind speeds the turbines would be audible above the existing background noise levels at some neighbouring properties. However, the noise imissions would be within limits that have been deemed to be acceptable. The proposal would accord with the pollution provisions of LP policy DP8. [107, 213]
305. There is no cogent evidence to substantiate the fears of some interested parties that the proposal would result in serious health issues for neighbouring residents. Planning conditions could be used to avoid any harmful shadow flicker and address any interruption to television reception should it occur. There is nothing of substance to demonstrate any violation of human rights. [217-218, 220-223]
306. I note the findings of the SoS and Inspectors in the numerous decisions relating to wind energy schemes elsewhere and which have been provided by the main parties. These include some of my previous decisions where the circumstances were materially different. No two sites are the same and each case must be determined on its own merits. The harms and benefits identified in all of these previous decisions are different to the circumstances of this appeal. *(Many of these decisions are contained within CDs 7.1-7.34.)* As a consequence, the planning balance is different. Moreover, very many of these decisions pre-date the latest expression of the Government's policy regarding wind energy development as set out in the WMS of June 2015.

#### Planning Conditions

307. The Schedules below set out those conditions that would be necessary if the appeal was allowed and planning permission was granted. In the event of a split decision, Schedule A relates to the anemometer masts and Schedule B relates to the proposed wind turbines and associated infrastructure (including the anemometer masts). Whilst not discussed at the Inquiry, for the avoidance of doubt and in the interests of proper planning, conditions would be necessary specifying the approved drawings. Attaching such conditions to an approval would not prejudice any party. I concur with the reasons for the other conditions as set out in the list agreed by the appellant and MDC. [227]
308. Whilst new planting would not mitigate the landscape and visual impacts of the proposed wind turbines it would make a limited contribution towards off-setting them. Provision for new tree planting would also accord with the duty under section 197(a) of the Town and Country Planning Act 1990 (as amended). [238]
309. The conditions in the attached Schedules accord with the provisions of paragraph 206 of the Framework.
310. The suggested condition, that I requested the appellant explore, with the aim of linking power generation from the proposed wind turbines to use at Torr Works, would be difficult for the LPA to enforce. The appellant is correct in arguing that the appeal scheme would deliver benefits irrespective of the end

user. Nevertheless, the scheme was advanced on the basis that it would: supply electricity directly to the quarry; assist the appellant in fulfilling a planning condition on the minerals permission for deepening the quarry; and enable the appellant to implement its CFRS. The appellant's decision to retract the offer of a section 106 obligation after submitting its Statement of Case and its argument that a condition to this effect would be unnecessary do not weigh against granting permission. However, the appellant's change in stance at a late stage in the appeal process has only served to increase the concerns of those who oppose the scheme and / or remain sceptical to the claimed benefits. As this suggested condition would not be enforceable it should not form part of any permission. [9, 140, 189, 239, 240]

#### Planning Balance / Overall Conclusion

311. The harm to the character and appearance of the area and the adverse effects upon the outlook of some neighbouring residents are outweighed by the benefits of the proposed development and the encouragement / support contained within national planning and energy policies for increasing the supply of renewable energy. Moreover, if the appellant is correct in its assertion that paragraph 134 of the Framework is a 'gateway policy' rather than a restrictive policy to which Footnote 9 applies (there would appear to be a measure of support for such an approach in paragraph 24 of the SoS's decision letter of 14 September 2015), then the adverse impacts upon the local landscape and those living nearby would not significantly and demonstrably outweigh the benefits.
312. There is cogent evidence to demonstrate that the proposal would adversely affect the heritage interest of six designated heritage assets. This includes several grade II\* assets. Notwithstanding the reversibility of the appeal scheme, this less than substantial harm does not amount to a less than substantial planning objection. When the totality of the harm to the designated heritage assets is weighed alongside the public benefits of the proposal and special regard is given to the desirability of preserving the settings of the listed buildings, the balance just tips against granting planning permission. The proposed wind turbines would conflict with the provisions of LP policy DP3. This element of the appeal scheme should not therefore succeed.
313. The SoS's decision of 14 September 2015, in respect of a wind farm in Lincolnshire, tends to support the arguments of MDC, TWAG and some others that the transitional provisions within the WMS of 18 June 2015 adds weight to the case for withholding permission. The proposal before the SoS in Mendip has attracted considerable opposition from many members of the affected local communities and cannot reasonably be said to have their backing. Where relevant to land use planning issues, I have taken these representations into account. I do not set aside lightly the concerns raised regarding matters such as landscape / visual impact and living conditions (outlook).
314. Nevertheless, I am also mindful of the continuing policy support for renewable energy schemes, including the National Policy Statements and the Framework, as well as the High Court decision in the above noted West Berkshire case. That decision relates to a different WMS and circumstances where the development plan was not silent. Although I am not a lawyer, and I am aware that the SoS has been granted leave to appeal the decision of the High Court, the decision in West Berkshire appears to lend support to the appellant's argument regarding

established law and the materiality of public approval. Whilst the June 2015 WMS is the most recent expression of government policy it does not affect / alter my assessment of the planning balance.

315. I have found that the proposal would conflict with LP policy DP3 but not some other development plan policies. Whilst the LP is silent in respect of schemes for renewable energy, the conflict with DP3 would be at odds with the environmental dimension to sustainable development. The achievement of sustainable development is central to the LP and the Framework. In this instance, the proposed wind turbines would not comprise sustainable development. This aspect of the proposal would not therefore accord with the development plan when read as a whole and would be at odds with the thrust of the Framework.
316. Given all of the above, I conclude that the appeal should succeed in part (temporary anemometer masts) but should otherwise fail (wind turbines).

### **Inspector's Recommendations**

317. I recommend that a split decision be issued with the appeal allowed insofar as it relates to the anemometer masts, subject to the conditions in Schedule A, but be dismissed insofar as it relates to the proposed wind turbines.
318. If the SoS disagrees with the above recommendation and considers that the appeal should be allowed for all elements of the proposed development, then the conditions and Guidance Notes in Schedule B of this report should be attached to any permission.
319. Should the SoS be minded to grant planning permission for all of the proposed development and disagree with my conclusions in respect of the adequacy of the ES, further information / evidence should be sought in respect of the likely effects upon nature conservation interests (birds and / or bats) under Regulation 22 of the EIA Regulations 2011 prior to the determination of the appeal.

*Neil Pope*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr T Sheppard of Counsel	Instructed by Mr M Evans, Solicitor for Mendip District Council
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He called

Mr D Clark MA (Hons), MSc, IHBC	Principal Conservation Officer
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Mr D Foster BSc (Hons), MA, MRTPI	Senior Planning Officer
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### FOR THE RULE 6 PARTY (TWAG):

Mr J Litton QC	Instructed by Ms S Ring of Richard Buxton Environmental & Public Law
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He called

Mr R M Lewis BA (Hons), MA (Arch Cons), MRTPI, IHBC	Director, Grover Lewis Associates
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Mrs J Garbutt	Local Resident
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Mrs S Voller	Local Resident
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Mr J M Billingsley BSc, BPhil, CMLI	Director, The Landscape Partnership
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Dr T Reed BA, MA, DPhil, MBOU, CBiol, MSB	Tim Reed Ecological Consultants Ltd
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Mr R G de Figueiredo FIQ	Management Consultant, R & M Services - Minerals and Quarrying
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### FOR THE APPELLANT:

Mr D R Hardy	Partner, Squire Patton Boggs (UK) LLP
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He called

Ms E Stephen BA (Hons), MSc, IHBC	Director, Heritage Collective UK Limited
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Mr J Truscott DipLA, CMLI	Director, ASH Design & Assessment Limited
Dr J Huckle CEnv, MSc, BSc CIEEM	Huckle Ecology
Mr R N Westell BSc (Hons), MRICS	Senior Estates Manager, Aggregate Industries UK Limited
Mr K Cradick BA (Hons), MSc, MRTPI	Director, Planning, Savills

INTERESTED PERSONS:

Cllr A Townsend	Member, MDC
Cllr D Skidmore	Ward Member, MDC
Cllr J Cole	Wanstrow Parish Council
Mrs F Britten	Local resident, Asham and East Mendip Group & Beacon Farm Residents
Mr J K Brown	AATOM
Mr G Robinson	Local resident
Mr K McCloud	Local resident
Cllr R Pelham	Wanstrow Parish Council
Cllr Van Dyk	Member, MDC
Mr J Bennett	Local resident
Mr D Warburton MP	Member of Parliament for Somerton and Frome
Mr P Foster	AATOM

LIST OF DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1	The appellant's Opening Submissions
Document 2	The appellant's Legal Submissions
Document 3	Bundle of documents accompanying the appellant's Legal Submissions
Document 4	The Local Planning Authority's Opening Submissions
Document 5	Cllr Townsend's Statement
Document 6	Mr Robinson's Statement
Document 7	Cllr Pelham's Statement
Document 8	Suggested planning conditions agreed by MDC and the appellant
Document 9	Cllr Van Dyk's Statement
Document 10	Officer's report to Committee
Document 11	Photomontages to Addendum ES
Document 12	Letter from Historic England dated 30 July 2015
Document 13	Mr Bennett's Statement
Document 14	Mr Warburton's Statement
Document 15	Mr Brown's Statement
Document 16	Errata to Mr Billingsley's proof
Document 17	Joint Statement (landscape) by the appellant and TWAG

Document 18	Revised Appendix A7.1A to ES, forming part of Mr Truscott's proof
Document 19	Amended colour copy of Figure 7.6a to the ES
Document 20	Aerial photograph showing locations of mineral planning permissions
Document 21	Appellant's Note on output from turbines if 'cut-in' wind speeds are applied
Document 22	Freight Routes in Somerset
Document 23	Mrs Britten's Statement
Document 24	Map (extract) of Mendip Bat Protection Zone
Document 25	BHS Advice Note on wind turbines
Document 26	BHS Scottish wind farm Advice Note
Document 27	Extract - decision ref. APP/E2001/A/10/2137617
Document 28	Mr Foster's Statement
Document 29	Planning permissions in respect of wind turbines at Weston Town Farm and Landmark Farm
Document 30	TWAG's revisions to suggested planning conditions
Document 31	Potential electricity supply condition
Document 32	Agreed list of listed buildings to be considered under S66(1) of the P(LBCA) Act 1990
Document 33	Representations by Mr J Powell
Document 34	Closing Submissions on behalf of TWAG
Document 35	Closing Submissions on behalf of MDC
Document 36	Closing Submissions on behalf of the appellant
<b>DOCUMENTS RECEIVED AFTER THE CLOSE OF THE INQUIRY</b>	
Document 37	SoS decision, dated 14/9/15, and Inspector's Report (Ref. APP/N2535/A/14/2217829)
Document 38	MDC's comments in respect of Document 37
Document 39	TWAG's comments in respect of Document 37
Document 40	Appellant's comments in respect of Document 37

### Core Documents List

<b>1 Adopted Development Plan Policies</b>		
	1.1	Saved Policies of the Somerset and Exmoor National Park Joint Structure Plan Review (adopted April 2000 and agreed as saved in September 2007) (extracts only)
	1.2	Saved Policies of the Mendip District Local Plan (adopted December 2002 and agreed as saved on 24 September 2007) (extracts only). Now superseded by the adopted Mendip Local Plan Part 1 (December 2014).
	1.3	Somerset Minerals Plan Development Plan Document up to 2030, adopted 18 February 2015
<b>2 National Planning and Energy Policy</b>		
	2.1	DCLG: National Planning Policy Framework (March 2012)

	2.2	Overarching National Policy Statement for Energy EN-1 (July 2011)
	2.3	National Policy Statement for Renewable Energy Infrastructure EN-3 (July 2011)
	2.4	Written Ministerial Statements relating to Local Planning and Onshore Wind issued by the Department of Energy and Climate Change and the Department for Communities and Local Government on 6 June 2013
	2.5	National Planning Practice Guidance (online resource) (Extracts)
	2.6	Written Ministerial Statement by Eric Pickles MP on Local planning and renewable energy developments - 9 <sup>th</sup> April 2014
	2.7	Written Ministerial Statement by the Rt Hon Greg Clark, Secretary of State for Communities and Local Government on Local Planning - 18 <sup>th</sup> June 2015
	2.8	Written Ministerial Statement made by the Rt Hon Amber Rudd, Secretary of State for Energy and Climate Change on Onshore Wind Subsidies – 18 <sup>th</sup> June 2015
	2.9	Oral Statement to Parliament delivered on the 22 <sup>nd</sup> June 2015 by the Rt. Hon. Amber Rudd, Secretary of State for Energy and Climate Change on ending new subsidies for onshore wind.
	2.10	The letter dated 3 <sup>rd</sup> September 2014 from Ed Davey MP, to Mary Creagh MP relating to the Renewable Energy Foundation's analysis of the Renewable Energy Planning Database.
	2.11	UK Treasury - National Infrastructure Plan (December 2014)
<b>3 Other Local Planning Authority Documents</b>		
	3.1	The Mendip District Local Plan Part 1: Strategy and Policies (MDLP pt 1 2014) was adopted on Monday 15 December 2014.
<b>4 Regional Spatial Strategy</b>		
	4.1	The Regional Strategy for the South West (Revocation) Order 2013
	4.2	Establishing County/Sub Regional Targets for Renewable Electricity Development to 2010 (June 2004)
<b>5 Planning, Renewable Energy and Climate Change Documents</b>		
	5.1	DTI Energy White Paper "Meeting the Energy Challenge" (2007) (Extracts)
	5.2	DECC: The UK Renewable Energy Strategy (2009)
	5.3	DECC: UK Renewable Energy Roadmap (July 2011)
	5.4	DECC: Onshore Wind, Direct and Wider Economic Impacts (May 2012)
	5.5	DECC: Special Feature – Sub-national renewable electricity, renewable electricity in Scotland, Wales, Northern Ireland and the regions of England in 2012 (September 2013)
	5.6	DECC: Annual Energy Statement (November 2012)
	5.7	Annual Energy Statement – Oral Statement by Edward Davey (29 November 2012)
	5.8	DECC: UK Renewable Energy Roadmap Update (December 2012)



	5.9	DECC: Onshore Wind Call for Evidence: Government Response to Part A (Community Engagement and benefits) and Part B (Costs) (June 2013)
	5.10	DECC: Digest of UK Energy Statistics (DUKES) (July 2014)
	5.11	DECC: UK Renewable Energy Roadmap Update (November 2013)
	5.12	DECC: Community Energy Strategy – Full Report (27 January 2014)
	5.13	DECC Annual Energy Statement (November 2014)
	5.14	Climate Change 2014 Synthesis Report – United Nations Intergovernmental Panel on Climate Change, November 2014
<b>6 High Court and Court of Appeal Decisions</b>		
	6.1	R (Hulme) v Secretary of State for Communities and Local Government [2010] EWHC 2386 (Admin)
	6.2	Michael William Hulme v Secretary of State for Communities and Local Government and RES Developments Limited [2011] EWCA Civ 638
	6.3	R (Lee) v Secretary of State for Communities and Local Government, Maldon District Council, Npower Renewables [2011] EWHC 807 (Admin)
	6.4	Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Ltd [2013] EWHC 2847 (Admin)
	6.5	(1) East Northamptonshire District Council (2) English Heritage (3) National Trust v (1) Secretary of State for Communities and Local Government (2) Barnwell Manor Wind Energy Limited [2013] EWHC 473 (Admin)
	6.6	Barnwell Manor Wind Energy limited v East Northants DC, English Heritage, National Trust and Secretary of State for Communities and Local Government [2014] EWCA Civ 137
	6.7	South Northamptonshire Council (2) Deidre Veronica Ward v (1) Secretary of State for Communities and Local Government (2) Broadview Energy Developments Limited [2013] EWHC 11 (Admin)
	6.8	R (on the application of The Forge Field Society, Martin Barraud, Robert Rees) v Sevenoaks District Council v West Kent Housing Association, The Right Honourable Philip John Algernon Viscount De L’Isle [2014] EWHC 1895 (Admin)
	6.9	R (Holder) v Gedling Borough Council [2014] EWCA Civ 599
	6.10	Lark Energy Limited v (1) Secretary of State for Communities and Local Government (2) Waveney District Council [2014] EWHC 2006
<b>7 Appeal Decisions</b>		
	7.1	Church Farm, Southoe (Common Barn) (APP/H0520/A/12/2188648)
	7.2	Burnthouse Farm (APP/D0515/A/10/2123739 & APP/D0515/A/10/2131194)

	7.3	Cleek Hall (APP/N2739/A/12/2172629)
	7.4	Carland Cross (APP/D0840/A/09/2103026)
	7.5	Chelveston (APP/K0235/A/11/2160077 & APP/G2815/A/11/2160078)
	7.6	Enifer Downs (APP/X220/A/08/2071880)
	7.7	Treading (APP/D0515/A/12/2181777 and APP/A2525/A/12/2184954)
	7.8	Potato Pot (APP/G0908/A/12/2189934)
	7.9	Gayton le Marsh (APP/D2510/A/12/2176754)
	7.10	Nun Wood (APP/YO435/A/10/2140401, APP/K0235/A/11/2149434 & APP/H2835/A/11/2149437)
	7.11	Dunsland Cross (APP/W1145/A/13/2194484)
	7.12	Turncole (APP/X1545/A/12/2174982, APP/X1545/A/12/2179484 & APP/X1545/A/12/2179225)
	7.13	Newark on Trent (APP/B3030/A/12/2183042)
	7.14	Bicton Industrial Estate between the villages of Kimbolton and Stow Longa (APP/H0520/A/13/2207023)
	7.15	Rotherham Road, Bolsover (APP/R1010/A/14/2212093)
	7.16	Semere Green Road, Pulham Market and Dickleburgh (APP/I2630/A/13/2203839)
	7.17	Maesbury Quarry, Maesbury (APP/Q3305/A/13/2201954)
	7.18	The Bath and West Showground, Shepton Mallet (APP/Q3305/A/14/2216306)
	7.19	Rockhouse Farm, Frome (APP/Q3305/A/14/2222024)
	7.20	Brackenhurst College, Southwell, Nottinghamshire (APP/B3030/A/13/2208417)
	7.21	Watford Lodge (APP/Y2810/A/11/2153242)
	7.22	Streetwood (APP/L2630/A/13/2207755)
	7.23	Barnwell Manor (APP/G2815/A/11/2156757)
	7.24	Roseland (APP/R1010/A/14/2212093)
	7.25	Asfordby (APP/Y2430/A/13/2191290)
	7.26	Churston golf club : (APP/X1165/A/13/2205208)

	7.27	Nook Farm : (APP/H0928/A/13/2198846)
	7.28	Long Furlong : (APP/Y2810/A/12/2186969)
	7.29	Kingsford : (APP/W1145/A/14/2211277)
	7.30	Ty Gwyn: (APP/L6805/A/12/2189266)
	7.31	Kings Farm : (APP/W3520/A/13/2193966)
	7.32	Hempnall : (APP/L2630/A/08/2084443)
	7.33	Beechbarrow Farm (APP/Q3305/A/14/2221160)
	7.34	Uttoxeter Quarry (APP/D3450/A/13/2200693)
<b>8 Cultural Heritage Documents</b>		
	8.1	English Heritage: Wind Energy and the Historic Environment (October 2005)
	8.2	English Heritage: Climate Change and the Historic Environment (January 2008)
	8.3	English Heritage: Conservation Principles, Policies and Guidance (April 2008)
	8.4	English Heritage: The Setting of Heritage Assets (October 2011)
	8.5	English Heritage: Historic Environment Good Practice Advice Notes 1 – 3 Consultation Drafts (11 July 2014)
	8.6	Historic Environment Good Practice Advice in Planning Note 2 (GPA2): Managing Significance in Decision-Taking in the Historic Environment
	8.7	Historic Environment Good Practice Advice in Planning Note 3 (GPA3): The Setting of Heritage Assets
	8.8	English Heritage's publication: Seeing The History in the View (May 2011)
<b>9 Landscape and Visual</b>		
	9.1	The Landscape Institute, Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment, Second Edition (2002)
	9.2	Scottish Natural Heritage and Countryside Agency: Landscape Character Assessment Series: Topic Paper 9 Climate Change and Natural Forces – the Consequences for Landscape Character (2003)
	9.3	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance (2006)
	9.4	Scottish Natural Heritage: Visual Representation of Wind Farms – Good Practice Guidance (Revised) (July 2014)
	9.5	Landscape Institute: Landscape Architecture and the Challenge of Climate Change (October 2008)

	9.6	Scottish Natural Heritage: Siting and Designing Windfarms in the Landscape, Version 1 (December 2009)
	9.7	Scottish Natural Heritage: Siting and Designing Windfarms in the Landscape, Version 2 (May 2014)
	9.8	Natural England: Making Space for Renewable Energy (2010)
	9.9	Natural England: All Landscapes Matter (2010)
	9.10	Landscape Institute: Photography and Photomontage in Landscape and Visual Impact Assessment, Advice Note 01/11
	9.11	Scottish Natural Heritage: Guidance Assessing the Cumulative Impact of Onshore Wind Energy Developments, Version 3 (March 2012)
	9.12	The Landscape Institute, Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment, Third Edition (2013)
	9.13	Landscape Assessment of Mendip (1997)
	9.14	Rural Landscapes of Bath and North East Somerset: A Landscape Character Assessment (2003)
	9.15	The Landscapes of South Somerset (1993)
	9.16	Wiltshire Landscape Character Assessment (2005)
<b>10 Noise Documents</b>		
	10.1	ETSU-R-97: The Assessment and Rating of Noise from Wind Turbines (September 1996)
	10.2	Institute of Acoustics: A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise (May 2013)
<b>11 Planning Application and Appeal Documents</b>		
	11.1	Planning Application and Supporting Documents [provided in the Appeal Bundle]
	11.2	Torr Works Wind Farm Environmental Statement (December 2013) [provided in the Appeal Bundle]
	11.3	A review of LVIA Comments by Cranborne Chase and West Wiltshire Downs AONB - November 2013
	11.4	Torr Works Wind Turbines: Description of ES Photomontage Methodology and Critique of T.W.A.G artist impressions - November 2013
	11.5	Provision of Clarification Information to the Local Planning Authority - February 2014
	11.6	Report to the Planning Board Committee - 26 March 2014
	11.7	Minutes of the Planning Board Committee - 26 March 2014
	11.8	Decision Notice dated 16 April 2014
	11.9	Appellant's Statement of Case

	11.10	Draft Statement of Common Ground
<b>12 Somerset County Council Torr Works Deepening Planning Permission</b>		
	12.1	Deepening Planning Permission Decision Notice ref 2010/0984 dated 10 August 2012
	12.2	Planning Officer Committee Report ref 2010/0984 dated 5 January 2012
	12.3	Somerset County Council's letter dated 14 <sup>th</sup> August 2013 approving details pursuant of condition 30 of planning permission 2010/0984
	12.4	The approved 'Carbon Management Strategy' Un-dated Document titled 'Discharge of Condition 30: Carbon Management Strategy' by Aggregate Industries UK Limited.
<b>13 Other documents</b>		
	13.1	Report by Professor Cara Aitchison of the University of Edinburgh, entitled Tourism Impact of Wind Farms, submitted to the Scottish Government's Renewable Inquiry in April 2012

## **SCHEDULES OF PLANNING CONDITIONS**

### **Schedule A – Anemometer Masts**

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this decision.
2. The development shall be undertaken in accordance with the details shown on the following drawings: 1:50,000 scale site location plan (TORR01); 1:5,000 scale application boundary plan (TORR02); 1:5,000 scale proposed layout plan (temporary masts only) (TORR03); 1:500 and 1:100 scale typical details for the temporary met masts (TORR09).
3. No development shall commence until a scheme detailing the fitting of bird deflectors to the guy-wires has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for fitting the bird deflectors and the scheme shall be carried out in accordance with the approved details. The bird deflectors shall be retained on the guy-wires thereafter.
4. No later than one year after the masts have been erected, the masts shall be removed from the site and the land reinstated. The Local Planning Authority shall be notified in writing within seven days of the masts being erected.

### **Schedule B – Wind Turbines, Associated Infrastructure and Anemometer Masts**

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this decision.
2. The development shall be undertaken in accordance with the details shown on the following drawings: 1:50,000 scale site location plan (TORR01); 1:5,000 scale application boundary plan (TORR02); 1:5,000 scale proposed layout plan (TORR03); proposed windfarm access and track details (TORR04); 1:500 scale proposed wind turbine elevation (TORR05); 1:100 scale typical wind turbine foundation (TORR06); 1:50 scale proposed sub-station building (TORR07); 1:50 scale proposed wind turbine transformer kiosk (TORR08); 1:500 and 1:100 scale typical details for the temporary met masts (TORR09); cross sections (TORR10).
3. The permission for the wind turbines and associated infrastructure shall expire, and the development hereby permitted shall be removed in accordance with condition 4 below, after a period of 25 years from the date when electricity is first exported from the wind turbines (excluding electricity exported during initial testing and commissioning) ('First Export Date'). Written notification of the First Export Date shall be given to the Local Planning Authority (LPA) no later than 14 days after the event. No later than one year after the anemometer masts have been erected, the masts shall be removed from the site and the land reinstated where the temporary reference wind mast is to be sited. The LPA shall be notified in writing within seven days of the masts being erected.
4. Not later than 12 months before the date of expiry of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the Local Planning Authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and for the removal of the turbine foundations to a depth of at least 1 metre below the finished ground level. The scheme shall also

include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown 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 within 24 months of the expiry of this permission.

5. If any wind turbine generator hereby permitted ceases to export electricity for a continuous period of 9 months, unless otherwise agreed in writing with the Local Planning Authority (LPA), then a scheme shall be submitted to the LPA for its written approval within 3 months of the end of that 9 month period for the repair or removal of the turbine. The scheme shall include either a programme of remedial works where repairs to the turbines are required, or a programme for removal of the turbines and associated above ground works approved under this permission and the removal of the turbine foundations to a depth of at least 1 metre below finished ground level and for site restoration measures following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.
6. The anemometer masts shall not be erected until a scheme detailing the fitting of bird deflectors to the guy-wires has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for fitting the bird deflectors and the scheme shall be carried out in accordance with the approved details. The bird deflectors shall be retained on the guy-wires thereafter.
7. 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 only be carried out in accordance with the approved Statement. The CMS shall include:
  - a) details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
  - b) details of the proposed storage of materials and disposal of surplus materials;
  - c) dust management;
  - d) pollution control, including protection of the water environment, bunding of fuel storage areas, sewage disposal and discharge of foul drainage;
  - e) temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting;
  - f) details of the phasing of construction works;
  - g) details of surface treatments and the construction of all hard surfaces and tracks;
  - h) details of emergency procedures and pollution response plans;
  - i) siting and details of wheel washing facilities;
  - j) cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGV taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;
  - k) a site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and habitats, including implementing the measures set out in paragraph 4.11 of the Additional Phase 2 Dormouse Assessment dated November 2013 (Appendix A8.16 of the

- Addendum to the ES), the provision of a root protection area along the edge of Asham Wood and a soil management plan to protect the flora of this SSSI;
- l) details of areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant equipment and vehicles;
  - m) details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound; and
  - n) working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities as set out in British Standard 5228 Part 1: 2009;
  - o) an assessment of the hydrogeological context of the development.
8. 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 proposals for the routing of construction traffic, scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture and the reinstatement of any signs, verges or other items displaced by construction traffic. Thereafter the construction of the development shall only be carried out in accordance with the approved CTMP.
9. Except for the pouring of turbine foundations which will be undertaken in accordance with the terms of the Construction Method Statement referred to in condition 7 above, construction work shall only take place between the hours of 0700 – 1900 hours Monday to Friday inclusive and 0800 – 1300 hours on Saturdays with no construction work on Sundays or Public Holidays. Works outside these hours shall only be carried out (a) with the prior written approval of the Local Planning Authority (LPA), or (b) in the case of an emergency, provided that the LPA is notified by telephone and writing as soon as reasonably practicable (and in any event within 48 hours) following the emergency first being identified, such notification to include both details of the emergency and any works carried out and/or proposed to be carried out, or (c) dust suppression.
10. The delivery of any construction materials or equipment for the construction of the development, other than concrete material for turbine foundations and turbine blades, nacelles and towers, shall be restricted to the hours of 0700 – 1900 on Monday to Friday inclusive and 0800 – 1300 hours on Saturdays. Exceptions for deliveries outside these hours may be carried out with the prior written approval of the Local Planning Authority.
11. The blades of all wind turbine generators shall rotate in the same direction. The overall height of each wind turbine shall not exceed 80m to the tip of the blades when the turbine is in the vertical position as measured from ground levels immediately adjacent to the wind turbine base.
12. No development shall commence on the construction of the electricity sub-station until details of its external appearance and any associated compound or parking area, if different from the approved plans specified in condition 2 above, 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.
13. All electrical cabling between the individual turbines and the electricity



sub-station on the site shall be installed underground. The electrical cabling between the electricity sub-station and the existing Torr Works Quarry sub-station shall also be installed underground.

14. No development shall commence until a scheme providing for checking surveys of breeding birds (including the identification of any nests on the site) has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved scheme.
15. No habitat enhancements on site that would be likely to improve the quality of habitat for bats shall be undertaken. Fields should maintain their improved status.
16. No development shall commence until details of a survey method statement for monitoring and recording any bat casualties, in accordance with the principles set out in Appendix A8.18 of the ES Addendum, including surveying the site (using search dogs) in May and August / September in each of the first two years after the First Export Date has been submitted to and agreed in writing by the Local Planning Authority (LPA). The results shall be submitted to the LPA within three months of undertaking the final survey. Where adverse effects are found a strategy to mitigate and reduce any bat casualties, including a timetable, shall also be submitted to and agreed in writing by the LPA. The development shall thereafter be operated in accordance with the approved mitigation strategy.
17. No development shall commence until an Ecological Enhancement and Management Plan (EMP) that takes into account the requirements of condition 15 above, has been submitted to and approved in writing by the Local Planning Authority. Where not covered by condition 7(k) above, the EMP shall include mitigation measures during the construction phase and provide full details of the means by which such measures will be secured and delivered, as well as a mechanism for long term management and monitoring. The EMP shall be implemented as approved. The developer shall appoint an independent and suitably qualified ecologist as an Ecological Clerk of Works (ECoW) for the site at its own expense. The ECoW shall oversee the implementation of all ecology related planning conditions throughout the construction of the wind farm.
18. Prior to the erection of the first wind turbine, written confirmation shall be provided to the Local Planning Authority that the Defence Infrastructure Organisation has been provided with details of: the proposed dates of commencement and expected completion of the development; the maximum height of construction equipment to be used and; the latitude and longitude of the wind turbines.
19. No development shall commence until a scheme for aviation lighting to include MOD-accredited 25 candela omni-directional aviation lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point on the wind turbines has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and the approved aviation lighting shall be retained thereafter.
20. No development shall commence until a programme of archaeological

management and investigation has been secured in accordance with a written scheme which has been submitted to and approved in writing by the Local Planning Authority. The written scheme of investigation shall be implemented as approved.

21. Prior to the First Export Date a scheme providing for the investigation and alleviation of any electromagnetic interference to any television signal caused by the operation of the wind turbines shall be submitted to and agreed in writing by the Local Planning Authority (LPA). The scheme shall provide for the investigation by a qualified television engineer, within a set timetable, of any complaint of interference with television reception at a lawfully occupied dwelling which existed or had planning permission at the date of this decision, where such complaint is notified to the developer by the LPA within 12 months of the First Export Date. Where impairment is determined to be attributable to the wind turbines, details of the necessary mitigation works, including a timetable for their implementation, shall be submitted to and approved in writing by the LPA and completed as approved.
22. Prior to the construction of the first wind turbine a written scheme shall be submitted to and approved in writing by the Local Planning Authority (LPA) setting out a protocol for the assessment of shadow flicker in the event of any complaint to the LPA from the owner or occupier of any building which lawfully exists or had planning permission at the date of this decision. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Operation of the turbines shall take place in accordance with the approved protocol, subject to any variations approved in writing by the LPA.
23. The wind turbines and anemometer masts hereby permitted shall be erected at the following grid coordinates:

<b>Turbine</b>	<b>Easting</b>	<b>Northing</b>
1	371222	145186
2	371157	144849
3	370908	144556
4	370760	144671

Temporary reference Wind Mast – 370830 144471

Temporary Turbine Mast – 370908 144556

Notwithstanding the terms of this condition the turbines and other infrastructure hereby permitted may be micro-sited within 10 metres. 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.

24. No development shall commence until such time as the following Plans have been submitted to, and approved in writing by, the Local Planning Authority (LPA): 1) Pollution Prevention Plan covering the construction, operation and decommissioning phases of the development; 2) Environmental Management Monitoring Plan; and 3) Tree Planting Plan, separate to any planting already approved as part of a previous permission. The Plans shall be fully implemented and subsequently maintained, in accordance with the

timing / phasing arrangements embodied within the Plans, or any details as may subsequently be agreed, in writing, by the LPA.

25. No development shall commence until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
26. The rating level of noise emissions 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:

a) Prior to the First Export Date, the wind farm operator shall submit to the Local Planning Authority (LPA) 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 LPA.

b) Within 21 days from receipt of a written request of the LPA, 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 LPA to assess 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 LPA shall set out at least the date, time and location that the complaint relates to, and include a statement as to whether, in the opinion of the LPA, the noise giving rise to the complaint contains or is likely to contain a tonal component. Within 14 days of receipt of the written request of the LPA 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 LPA in the format set out in Guidance Note 1(e).

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 LPA 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 LPA 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 LPA for the complainant's dwelling.

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 LPA 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 LPA pursuant to paragraph (c) of this condition shall be undertaken at the measurement location approved in writing by the LPA.

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 LPA for written approval a proposed noise assessment protocol setting out the following:

- (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;
- (ii) the equipment to be used to measure noise including wind shields and rain gauges, the proposed tonal assessment methodology and any switch-off periods.

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 LPA under paragraph (b), and such others as the independent consultant considers necessary to fully 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 LPA and the attached Guidance Notes (GN).

f) The wind farm operator shall provide to the LPA the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the attached GNs within 2 months of the date of the written request of the LPA made under paragraph (b) of this condition unless the time limit is extended in writing by the LPA. 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 GN 1(e). The instrumentation used to undertake the measurements shall be calibrated in accordance with GN 1(a) and certificates of calibration shall be submitted to the LPA with the independent consultant's assessment of the rating level of noise immissions.

g) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to GN 4(c), 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 LPA.

h) The wind farm operator shall continuously log wind speed, wind direction and shall continuously log power production and nacelle wind speed, nacelle wind direction / orientation at each wind turbine all in accordance with GN 1(d). The data from each wind turbine and the meteorological masts 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 GN 1(e) to the LPA on its request within 14 days of receipt in writing of such a request.

**Notes:** 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.

Tables and data for this planning condition are provided at the end of this table of conditions

**Table 1 - Between 07:00 and 23:00 – Free-field Noise Limit, dB L<sub>A90</sub>, 10-minute**

Location northing coordinates)	(easting, grid	Standardised Wind Speed at Ten Metres Height, m/s, within the site averaged over 10-minute periods						
		4	5	6	7	8	9	10
		L <sub>A90</sub> Decibel Levels						
Broadgrove House (371623/144089 )		43.4	44.8	46.2	47.6	48.9	48.9	48.9
Westdown Farm (372081/145204)		47.4	47.8	48.3	49.0	49.9	49.9	49.9
Leighton Farm (370368/143901)		43.1	43.5	44.1	45.0	46.0	46.0	46.0
Lodge Hill Manor (369924/145713)		39.7	40.7	42.1	43.8	45.7	45.7	45.7

**Table 2 - Between 23:00 and 07:00 – Free-field Noise Limit dB L<sub>A90</sub>, 10-minute**

Location northing coordinates)	(easting, grid	Standardised Wind Speed at Ten Metres Height, m/s, within the site averaged over 10-minute periods						
		4	5	6	7	8	9	10
		L <sub>A90</sub> Decibel Levels						
Broadgrove House (371623/144089 )		43.0	43.0	43.0	43.0	44.1	45.5	47.0
Westdown Farm (372081/145204)		43.0	43.0	43.0	44.0	47.5	51.6	56.3
Leighton Farm (370368/143901)		43.0	43.0	43.0	43.0	43.0	43.0	43.0
Lodge Hill Manor (369924/145713)		43.0	43.0	43.0	43.0	44.2	45.5	46.0

**Note to Tables 1 and 2:** The geographical coordinate 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 wind speed at 10 metres height within

*the site refers to standardised wind speed calculated to a height of 10 metres from the mast wind speed data.*

## **GUIDANCE NOTES (GN) 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 GN 2 and any tonal penalty applied in accordance with GN 3 with any necessary correction for residual background noise levels in accordance with GN 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).

### **GN 1**

(a) Values of the LA<sub>90</sub>,10-minute noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in GN 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 before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (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 GN 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 (LPA), 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 LPA details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA<sub>90</sub>,10-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 GN 1(d) and rain data logged in accordance with GN 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 metres from north in each successive 10-minutes

period at the permanent meteorological mast erected in accordance with the planning permission on the site. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. Unless an alternative procedure is previously agreed in writing with the LPA, wind speed data measured directly at hub height by the meteorological mast shall be used as the basis for the analysis. It is this standardised wind speed data which is correlated with the noise measurements determined as valid in accordance with GN 2(b), such correlation to be undertaken in the manner described in GN 2(c). The wind farm operator shall also continuously log arithmetic mean nacelle anemometer wind speed, arithmetic mean nacelle orientation / wind direction as measured at the nacelle and arithmetic mean power generated during each successive 10-minutes 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 LPA 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 GN 1(d). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the LPA prior to the commencement of measurements.

## **GN 2**

(a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in GN 2 paragraph (b).

(b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the LPA under paragraph (e) of the noise condition but excluding any periods of rainfall measured in accordance with GN 1(f).

(c) Values of the LA90,10-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 GN 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.

## **GN 3**

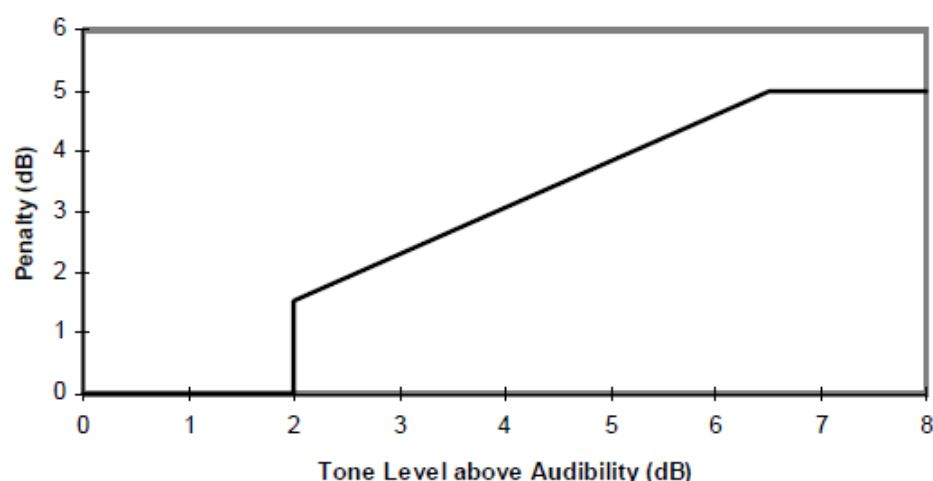
(a) Where, in accordance with the approved assessment protocol under paragraph (e) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.

(b) For each 10-minute interval for which LA90,10-minute data have been determined as valid in accordance with GN 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 bin. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

(e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



#### GN 4

(a) If a tonal penalty is to be applied in accordance with GN 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 GN 2 and the penalty for tonal noise as derived in accordance with GN 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 GN 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 LPA 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 GN 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 GN 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 (iii) 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 LPA 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 LPA for a complainant's dwelling in accordance with paragraph (c) of the noise condition then the development fails to comply with the conditions.

## **LIST OF ABBREVIATIONS USED IN THIS REPORT**

AATOM – Action Against Turbines On Mendip

AOD – Above Ordnance Datum

AONB – Area of Outstanding Natural Beauty

ASLF – Assessment of Special Landscape Features

BHS – British Horse Society

CD – Core Document

CFRS – Carbon Footprint Reduction Strategy

CMS – Construction Method Statement

CO<sub>2</sub> – Carbon Dioxide

DMRB – Design Manual for Roads and Bridges

EIA – Environmental Impact Assessment

EN-1 – Overarching National Policy Statement for Energy

EN-3 – National Policy Statement for Renewable Energy Infrastructure

ES – Environmental Statement

HE – Historic England

LAMD – Landscape Assessment of Mendip District (1997)

LCA – Landscape Character Area

LP - Mendip District Local Plan Part 1: Strategy and Policies 2006-2029

LVIA – Landscape character and Visual Impact Assessment

MDC – Mendip District Council

NE – Natural England

NTS – Non Technical Summary

P(LBCA)A – Planning (Listed Buildings and Conservation Areas) Act 1990

PPG – Planning Practice Guidance

RPG – Registered Park and Gardens

SAC – Special Area of Conservation

SCC – Somerset County Council

SLF – Special Landscape Feature

SMDPD - Somerset Minerals Plan Development Plan Document up to 2030

SoCG – Statement of Common Ground

SoS – Secretary of State

The Framework – The National Planning Policy Framework

TWAG – Torr Wind Action Group

WMS – Written Ministerial Statement



## **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.