



Department for
Communities and
Local Government

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Our Ref: APP/Y2430/A/12/2186471
Your ref:

11 November 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL B BY PROFESSOR GARY ENGLAND HALL FARM, KLONDYKE LANE,
THORPE SATCHVILLE, MELTON MOWBRAY, LE14 2TB
APPLICATION REF: 12/00460/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA, who held an inquiry into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Melton Borough Council ("the Council") to refuse an application for the erection of a single wind turbine with a maximum height to blade tip of 46.1m height, dated 26 June 2012, in accordance with application Ref: 12/00460/FUL. This decision supersedes that issued on 23 May 2013. That decision on the appeal was quashed by order of the High Court.
2. The appeal was recovered for the Secretary of State's determination on 30 June 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves a renewable energy development.
3. Appeal A by Mrs H Tolton, Park Farm, Klondyke Lane, Thorpe Satchville, Melton Mowbray LE14 2TB is dealt with by separate decision.

Inspector's recommendation

4. The Inspector, whose report is enclosed with this letter, recommended that planning permission be granted. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendation, refuses the application and refuses planning permission. All paragraph numbers, unless otherwise stated, refer to the Inspector's Report (IR).

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Procedural matters

5. The Secretary of State has noted the Inspector's remarks and actions at IR1-4.

Matters arising after the close of the inquiry

6. Following the close of the inquiry the Secretary of State wrote on 19 June 2015 to you, the Council and other interested parties inviting further information for the purposes of his consideration of the application. This matter was: the implications of the terms of the Written Ministerial Statement (WMS) of the Secretary of State on local planning of 18 June 2015 for the proposed scheme. The Secretary of State has taken account of all the representations received in his consideration of the application before him but does not consider that they raise any new issues requiring circulation to assist his decision. He does not consider it necessary to summarise the representations here or attach them to this letter. Electronic copies of the correspondence can be made available upon written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

7. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the adopted development plan comprises the saved policies of the Melton Local Plan (LP). The Secretary of State agrees with the Inspector that the most relevant policies for this case are those set out at IR8, namely: LP OS2 (Development within the countryside) and LP Policy C2 (Farm diversification). He notes (IR9) that the Council has embarked upon a new Melton Local Plan, but this remains at the consultation stage of development. He further notes the Council's adoption of the Rushcliffe Landscape Sensitivity Study: Wind Energy Development (LSS) in 2014 as informal guidance but without formal consultation and that the appeal site falls within LCU8 but could influence adjacent areas in particular LCU12 (Burrough Hills).
8. The Secretary of State has had regard to his WMS of 18 June 2015. The statement explained that the Secretary of State was setting out new considerations to be applied to proposed wind energy development. Subject to a transitional provision, the statement explained that the new considerations had immediate effect. Given its relevance to this case, the Secretary of State attaches substantial weight to the statement as the most recent expression of government planning policy for onshore wind development.
9. The statement includes a transitional provision for where a valid planning application for wind energy development had already been submitted to a local planning authority at the date on which the statement was made and the development plan does not identify suitable sites. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing. In applying the transitional provision to this appeal proposal the Secretary of State has considered the representations reported in the Inspector's report and the correspondence referred to in paragraph 6 above.

10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (“the Framework”) and the planning practice guidance published March 2014; the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended and Planning Practice Guidance for Renewable and Low Carbon Energy (2013). The Secretary of State has also taken into account the WMSs on renewable energy published in June 2013 by the Secretaries of State for Energy and Climate Change and for Communities and Local Government; the WMS on renewable energy published by the Secretary of State for Communities and Local Government in April 2014; and the English Heritage/Historic England guidance entitled “*The Setting of Heritage Assets*” as updated in July 2015.
11. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main issues

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR45. The other consideration he has taken into account when reaching his decision is the WMS on Local Planning of 18 June 2015.

Character and Appearance

13. The Secretary of State notes the Inspector’s remarks at IR46-51, in particular his reference to the Council’s Landscape Sensitivity Study (2014) adopted as informal guidance and the low-medium sensitivity to heights from 25-50m. He further notes that an aim of the guidance is to prevent wind energy developments becoming a key characteristic of the landscape (IR50).

Landscape Appearance

14. The Secretary of State agrees with the Inspector’s comments regarding the effect of the Hall Farm turbine on public views and has considered the cumulative impacts of the current turbines within 5km of the site, plus a number of other individual turbines or wind farms with multiple turbines approximately 13-15km from the site (IR51). He agrees with the Inspector that the Hall Farm turbine is easily visible from Burrough Hill alongside a number of other turbines dispersed across the panorama, all with blades below the horizon (IR52).
15. The Secretary of State further agrees with the Inspector that from other significant viewpoints the turbine would be seen above the horizon (IR53). Further, if the Park Farm turbine were to be allowed, overall there would be some cumulative visual harm arising from the presence of the two turbines together (IR58). He agrees that, from closer viewpoints, the visual interaction of the two turbines could become substantially harmful (IR57).

Landscape Character

16. The Secretary of State has given careful consideration to the Inspector's analysis at IR59-61. He notes the Inspector's observation at IR59 that the effect on the landscape character would be limited to 25 years. However, he disagrees with the Inspector's conclusion that, in view of the limited lifespan of the turbine, the effect on the fabric of the landscape would thus not be materially harmful. While the Secretary of State agrees that the visual harm caused by the Hall Farm turbine would be less than the other proposed turbine at Park Farm, he considers that nevertheless there would be moderate harm to the fabric of the landscape which would remain for a significant period of time.
17. The Secretary of State agrees with the Inspector that if the Park Farm turbine were to be allowed the close proximity of the turbines would create visual harm to the scenic qualities of the landscape (IR61).

Heritage Assets

Burrough Hillfort Scheduled Monument

18. The Secretary of State has carefully considered the Inspector's analysis of Burrough Hillfort's archaeological and historic significance. He agrees that the presence of the turbine and the movement of the blades may attract attention but that the feeling of being in a commanding elevated position and overlooking distant countryside would remain. He further agrees that the turbine would not interfere with the presence of the Hillfort in the countryside as experienced from surrounding areas. The diversion of attention caused by the turbine, either on its own or in cumulation with the proposed turbine at Park Farm if built, would not be of such a degree as to threaten the significance of the Hillfort. Therefore the Secretary of State is satisfied that the setting of the Hillfort would be preserved (IR67).

Thorpe Satchville Hall

19. The Secretary of State agrees with the Inspector that the significance of the Hall springs largely from its historic interest. Although the turbine would appear in views from the curtilage of the Hall, it would not affect its historic interest. Like the Inspector he finds that the heritage significance of the Hall would be preserved (IR69).

Other Heritage Assets

20. The Secretary of State has noted the Inspector's review of other heritage assets (IR74) and concludes that overall no harm would arise to the heritage assets or conservation areas, either from the turbine or its own or in cumulation with other current or proposed turbines.

Living Conditions

Outlook

21. For the reasons given at IR75-77 the Secretary of State agrees with the Inspector that the effects of the developments on residents' living conditions or outlook would not be oppressive.

Noise

22. The Secretary of State has taken account of the Inspector's remarks at IR78-86 regarding the proposed EAM condition and the application of ETSU model conditions. Like the Inspector he has also considered the impact of combined noise effects. Overall, in parallel with the Inspector he finds the effects of the turbines, individually or in combination, on living conditions to be acceptable (IR87).

Other Matters

23. The Secretary of State has given careful consideration to the proposed operation of the appeal schemes in relation to other matters, and like the Inspector concludes that no persuasive evidence was presented (IR88-90).

Balance and conclusions

24. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 (see paragraph 7 above), the Secretary of State has concluded that the development does not accord with the development plan taken as a whole, in particular owing to the clear conflict with policies OS2 and C2. In reaching this conclusion the Secretary of State has given careful scrutiny to the relevant policies. With regard to policy OS2, the Secretary of State disagrees with the Inspector that the development meets this policy (IR95) as he is not satisfied that it falls within any of the limited exceptions to the general requirement that permission will not be granted for development outside the town and village envelopes. Further, with regard to policy C2, the Secretary of State does not accept that the development is compatible with its rural location in terms of its scale, design and layout. While he acknowledges that the turbine is smaller in scale than some other current or proposed turbines in the vicinity, such as the proposed turbine at Park Farm, he is nevertheless of the view that the scale of the development would result in considerable harm overall to the landscape such as to make it incompatible with its rural location.
25. Having concluded that the development is not in overall accordance with the development plan, the Secretary of State has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeal.
26. The Secretary of State, in applying paragraph 215 of the Framework, has taken into account the degree of consistency between the development plan policies and the Framework. Although there are marked differences between the policies and the Framework, such as in relation to countryside protection, he is satisfied that the policies are consistent with the Framework insofar as they endeavour to conserve the natural environment and to encourage the diversification of agricultural businesses, and to this extent he considers that the relevant policies merit limited weight.
27. The Secretary of State has also considered Paragraph 216 of the Framework. However, given the emerging plan is still at Issues and Options stage it is as yet unclear what, if any, relevant policies will emerge and he therefore gives the emerging plan little weight.

28. The Secretary of State agrees with the Inspector that the public benefits of the turbine comprise the environmental advantages of the generation of renewable energy. To the extent that the turbine might serve a working farm, it would help diversify farm business, protect employment, provide a sounder financial footing and reduce energy costs (IR91).
29. The Secretary of State further finds that the appeal scheme would provide a valuable contribution to cutting greenhouse gas emissions and attributes substantial weight by virtue of the support in principle given to renewable energy projects by the Framework (paragraphs 93-97, 98) and the overarching National Policy Statements for Energy (EN-1) and Renewable Energy Infrastructure (EN-3).
30. However, the Secretary of State, like the Inspector, has also found considerations that weigh against the scheme. He finds that the harm identified arises from the effect of the turbine on the character and appearance of the countryside, as well as the identified cumulative visual harm with other turbines in the vicinity.
31. Further, the Secretary of State finds that, if both the Hall Farm and Park Farm developments were allowed, the close proximity of the turbines and their disparate scale and speeds of rotation would be harmful, experienced both close to their sites and in views where they are seen near together.
32. In addition, having applied the transitional provision set out in the June 2015 WMS, the Secretary of State is not satisfied that the planning impacts identified by affected local communities have been addressed. There has been extensive involvement of the local population throughout the process (IR43), including the granting of Rule 6 status to Thorpe Says No (IR3). In their responses to the Secretary of State's letter of 19 June 2015, the affected communities have repeated the concerns which they expressed previously about the planning impacts of the scheme. These include harm to the landscape and visual impacts and it is clear from the IR that those planning impacts have not been addressed. This is demonstrated, in particular, by the Inspector's conclusions at IR 53 and 54. As those planning impacts as identified by the affected communities have not been addressed, the proposed scheme would not meet the transitional arrangements set out in the WMS of 18 June 2015; and the Secretary of State gives significant weight to this non-compliance.
33. Having weighed up all considerations, the Secretary of State concludes that the factors which weigh in favour of the proposed development do not outweigh its shortcomings and the conflict identified with the development plan and national policy. He considers that there are no material considerations of sufficient weight which would justify granting planning permission.

Conditions

34. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions, as set out at IR96-99. He is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework and the guidance. However, the Secretary of State does not consider that the conditions would overcome his reasons for dismissing the appeal.

Formal Decision

35. Accordingly, for the reasons given above, the Secretary of State refuses your client's application and refuses planning permission.

Right to challenge the decision

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

37. A copy of this letter has been sent to Melton Borough Council, and 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

Report to the Secretary of State for Communities and Local Government

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Date: 10 February 2015

Town and Country Planning Act 1990

Melton Borough Council

Appeal A by Mrs H Tolton

Appeal B by Professor Gary England

Hearing held on 5 August, 16 December and 17 December 2014

Appeal A: Park Farm, Klondyke Lane, Thorpe Satchville, Melton Mowbray, LE14 2TB

Appeal B: Hall Farm, Klondyke Lane, Thorpe Satchville, Melton Mowbray, LE14 2TB

File Refs: APP/Y2430/A/12/2187098 and APP/Y2430/A/12/2186471

Appeal A: File Ref: APP/Y2430/A/12/2187098

Park Farm, Klondyke Lane, Thorpe Satchville, Melton Mowbray, LE14 2TB

- 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 Mrs H Tolton against the decision of Melton Borough Council.
- The application Ref 12/00454/FUL, dated 26 March 2010 (recorded by the Council as 26 June 2012), was refused by notice dated 14 September 2012.
- The development proposed is the erection of a single wind turbine with 50m hub height.
- This decision supersedes that issued on 23 May 2013. That decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: The appeal be dismissed.

Appeal B: File Ref: APP/Y2430/A/12/2186471

Hall Farm, Klondyke lane, Thorpe Satchville, Melton Mowbray, LE14 2TB

- 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 Professor Gary England against the decision of Melton Borough Council.
- The application Ref 12/00460/FUL, dated 26 June 2012, was refused by notice dated 14 September 2012.
- The development has already been built and comprises the erection of a temporary Endurance E3120 wind turbine, with a maximum height of 46.1m and access track and cable trench.
- This decision supersedes that issued on 23 May 2013. That decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural Matters

1. The appeals were recovered for decision by the Secretary of State in separate directions dated 30 June 2014. The directions were made because the appeals involve a renewable energy development.
2. The Council's single reason for refusal of the applications is identical in each case. It identifies the developments as prominent features in the open countryside which would fail to protect or enhance its distinctive local character, not being capable of mitigation or adequate compensation. The Council considers the impacts are not outweighed by the benefits of the proposals in terms of the generation of renewable energy.
3. The Hearing opened on 5 August 2014 but was adjourned because of the uncoordinated state of evidence held by all parties, some of which appeared to be missing from files. At my request, a statement of common ground (SOCG) was then prepared by the appellants for each appeal, the Council, and Thorpe Says No (TSN - an organised group of objectors). Attached to the SOCG is a schedule of documents which had previously been submitted or referred to by the parties, each document identified by reference number. Where appropriate, the reference number is used within this report. To allow them to become clear and accessible to all parties, these documents were resubmitted in tabulated form.

In addition, an in-situ noise survey was carried out in relation to the Hall Farm turbine.

4. The Hearing was resumed on 16 December and closed on 17 December 2014. The accompanied site visit was carried out on 17 December.

The Site and Surroundings

5. Klondyke Lane runs east-west with Park Farm to the north and Hall Farm to the south. The Park Farm turbine (Appeal A) would be located a little north of the working farm buildings in open countryside. Access would be via a new track running from the existing farm buildings. The maximum height to blade tip would be 77m and the rated output up to 500kW. Hillside, the nearest dwelling, is to the southeast of the site at a distance of approximately 660m.
6. The Hall Farm turbine (Appeal B), is located some 900m south of the Park Farm site, in a field to south of Hall Farm. Access is through the existing group of farm buildings. The maximum height to blade tip is 46.1m and the rated output 50kW. A solar array of 1002 photovoltaic panels was recently constructed between the turbine and the farm buildings. The settlement of Thorpe Satchville lies to the south and the nearest dwellings are flats located in the undesignated Thorpe Satchville Hall, on the northern edge of Thorpe Satchville, approximately 470m distant. Hillside is some 707m to the north east.
7. There are a number of public footpaths both close to the sites and in the wider area. The line of a dismantled railway runs in a north-south direction, immediately west of the sites, but does not carry a footpath and is not designated for ecological reasons or other reasons.

Planning Policy

8. The development plan comprises the saved policies of the Melton Local Plan adopted 23 June 1999 (LP). The most relevant saved policies are LP OS2 (Development within the countryside) and LP Policy C2 (Farm diversification).
9. Following advice from the Planning Inspectorate, the Melton Local Development Framework Core Strategy (Publication) DPD February 2012 was withdrawn on 16 April 2013. The Council has since embarked on a comprehensive development plan document (the 'new' Melton Local Plan). However, it is at such an early stage that it carries little or no weight in relation to the appeals.
10. In September 2014, during the adjournment, the Council adopted the Melton and Rushcliffe Landscape Sensitivity Study: Wind Energy Development (LSS)¹ as informal guidance, but without it having undergone a consultation exercise. The sites fall within Landscape Character Unit 8 (LCU8) (High Leicestershire Hills: Great Dalby and Gaddesby Pastoral Farmland) but could influence adjacent areas, in particular LCU12 (High Leicestershire Hills: Burrough Hills).

The Case for Mrs H Tolton (Appeal A: Park Farm)

11. The LP was adopted some time ago. It is silent with regard to renewable energy, including wind energy, and LP Policy OS2 and C2 are not compliant with the National Planning Policy Framework (NPPF). Moreover, the LSS, which has been

¹ M17

adopted by the Council without any form of consultation, cannot set policy. The previous Inspector's decision was struck down only on the wording of the noise condition and failure to give third parties an opportunity to comment on evidence, rather than on the Inspector's planning judgment.

12. It is important to consider impacts on landscape character, views, and heritage assets separately. Both the Council and TSN recognise that, in site specific assessments, harm to the character of the landscape would be limited. Although the development would have a significant effect on the character of the landscape within its immediate locality, as national policy accepts is the case with any wind energy development,² it would not be materially harmful to the wider locality or the broad landscape. Likewise, it would not give rise to significantly harmful effects on views, either locally or in relation to the wider landscape, including the outlook from residential properties.
13. The proposal would not give rise to any significantly harmful cumulative landscape and visual effects, either generally or in relation to the Hall Farm turbine. In addition, as the previous Inspector's decision makes clear, there would be no material effect on the settings of heritage assets.³
14. Noise assessments were carried in accordance with accepted guidance. The proposal meets the required standards and compliance can be assured through the use of conditions. At no time has excess amplitude modulation been considered an issue with regard to the Park Farm turbine.
15. When properly considered against the NPPF, the proposal gives rise to limited harm and provides significant benefits. The proposal is sustainable and planning permission should be granted.

The Case for Professor Gary England (Appeal B: Hall Farm)

16. The previous Inspector's decision allowed the appeal and it was quashed only on a technicality in the wording of the noise condition. Recent case law indicates that this may not have been necessary.⁴
17. With regard to landscape and visual impact, the appellant's assessment accords with guidance in the Guidelines for Landscape and Visual Impact Assessment, unlike TSN's assessment. The assessed sensitivity for LCU8 is low to moderate for turbines up to 50m height and transmission pylons some 1.3km to the west already detract from the scenic qualities of the LCU. The previous Inspector carefully considered both the landscape and the visual impacts and did not consider either to be of sufficient weight to lead to the dismissal of the appeal.
18. The appellant's approach to cumulative effect has been to assess the worst case. The Statement of Cumulative Impacts report concludes⁵ that the vast majority of views towards Hall Farm and other turbines are screened from the major road and recreational routes. It notes that the turbine would not cause any significant

² NPS EN-3 states that modern onshore wind turbines will always cause significant landscape and visual effects from their construction and operation for a number of kilometres around a site.

³ Paragraphs 16 and 27

⁴ Greaves and another v Boston Borough Council [2014] EWHC 3950 (Admin).

⁵ H19, para 8.3

extra adverse impacts upon the experiences and perceptions of the surrounding landscape further to the consents of the Eye Kettleby and Frisby Grange turbines, and the Park Farm proposal. These findings were also drawn in the previous Inspector's decision.

19. The extensive pastoral farmland of the area has capacity for other turbines of up to 50m height, beyond the Hall Farm and other existing turbines. The separation distances of over 3km between existing turbines would give sufficient space for other turbines to be erected without creating a windfarm landscape. Rather, it would be a landscape of occasional wind turbines.
20. Regarding public rights of way, the County PROW officer made no observations on the impact of the turbine. The previous Inspector noted that the most significant impact would occur with the full height of the turbine seen in views, such as from the open section of the public footpath which runs adjacent to the site and within 115m of the turbine. However, the view would be a passing one and from other parts of the footpath the views would be largely screened or filtered by trees and hedges. Other views from footpaths would be intermittent and the impact filtered.
21. The Council takes no issue with the impact on heritage assets. The only notable affected heritage receptor is Burrough Hillfort scheduled monument, some 3km to the east. The turbine is seen in the context of accompanying modern farm buildings, and previous landscapes would have been very different with extensive woodland beyond the immediate banked walls. The landscape is dynamic and the present pattern of open fields with boundary hedges is a recent construct. TSN agree that the turbine is not out of scale, not a large feature in views, and not dominant.⁶
22. None of the other heritage assets, including the Church of St Mary Thorpe Satchville, Thorpe Satchville Hall, the Great Dalby Conservation Area, or the Church at Burrough on the Hill are affected.
23. Turning to the effect of noise on living conditions, the appellant's expert, Dr McKenzie and TSN's witness agree that the turbine is ETSU-7-97 (ETSU) compliant. The maximum 5dB tonal penalty has been applied and an additional 3.1dB for uncertainty, despite current advice that only 2dB is necessary for uncertainty, resulting in an additional margin of 1.1dB. The ground absorption factor of 0.5 is recommended in guidance and there is no reason to suppose that there are reflective conditions requiring a zero factor as TSN maintain.
24. Balancing harm against public benefit, the figures given by TSN for electricity production relate to a shorter period than they calculate and do not take into account the shutdown period for gearbox replacement. Even ignoring the shutdown period, the figures TSN quote show an annual production 90% of that predicted in the Design and Access Statement, giving a very creditable capacity factor of 36%, with the turbine operating 75% of the time. This equates to the average energy consumption of 38 homes. To date the turbine has offset 91,000kg of CO₂ compared with electricity produced by conventional sources. In the next 12 months, without shutdown, production and savings will be higher.

⁶ T33 page 10, para 2.12 and page 11, para 2.18

Moreover, the energy used to start the turbine over a 52 week period has amounted to 0.49% of the energy produced, a very small figure.

25. In response to TSN's implied argument that the benefits of only larger turbines with higher production rates should be considered, NPPF paragraph 98 tells us that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
26. Even if harm to the setting of Burrough Hillfort were to be identified, TSN acknowledge that it would be less than substantial, to be weighed against the public benefit of the project. In this case, the benefits clearly outweigh any harm. The areas of concern are at best minimal and, despite a challenge on a number of grounds, the Secretary of State conceded only on the technical issue of the enforceability of the noise condition. The project is sustainable and the appeal should be allowed.

The Case for Melton Borough Council

27. As demonstrated by its record of decision making, the Council is not opposed in principle to the development of wind turbine schemes. It fully recognises the environmental role they play in the production of renewable energy and consequent carbon savings. It also recognises its responsibilities in facilitating the aims of the NPPF and the need to reach a balanced decision on a site by site approach. Each project presents different impacts and different degrees of public benefit.
28. The Council's misgivings regarding the landscape impact of the present schemes have been confirmed overall by the evidence presented at the Hearing. Guidance has been taken from two recent appeal decisions in the Borough, at Hindle Farm⁷ and at Somerby.⁸ In both cases, landscape impacts similar to those in the present cases were held to outweigh the benefits of the proposals.
29. The elevated position of the Hall Farm turbine and the relative lack of visual obstructions in views towards the turbine with its rotating blades offer parallels to the situation in the recent appeal decisions. Moreover, the power output is considerably less than would have been the case in each of those proposals.
30. The Park Farm turbine would not be located at such a high point on the ridge as the Hall Farm turbine, but would be taller. It would be visible from all directions and from distances up to 15km, including populated areas and arterial routes to and from Melton Mowbray. In particular, it would be dominant seen from the B6047 Melton Mowbray to Market Harborough road from a significant distance in either direction.
31. Whilst it offers no other objection, the Council considers that the harm to the character and appearance of the landscape outweighs the benefit of the present schemes in each case.

The Case for Thorpe Says No

32. A suite of landscape character studies apply to the sites. Regarding the LSS, although the sites are within LCU8, they also fall within the view cone of

⁷ M16 – APP/Y2430/A/13/2191948

⁸ Document 2 – APP/Y2430/A/14/2221470

- Burrough Hill, which itself is in LCU12. Therefore the schemes must be weighed against both sets of characteristics. The areas of relatively high sensitivity noted in the LSS report are the edges of the area forming skylines⁹ and the strongly rolling land towards the river valleys of the Gaddesby and the Eye.
33. The report also notes the human scale of the landscape, its tranquil nature, undeveloped skylines, scenic qualities and deeply rural character. It tells us that particular care is needed to ensure that the panoramic and rural nature of the views from Burrough Hill are preserved.¹⁰ In addition, the guidance states that multiple developments should be of similar scale and design¹¹ and the overall aim should be to make sure that wind energy developments do not become a key characteristic of the landscape.¹²
34. The schemes represent unprecedented and industrial intrusions into the landscape, an analysis confirmed in the recent findings in the turbine appeal at Southfields Farm, Somerby.¹³ The moving blades, drawing the eye, are a clear point of distinction between the schemes and pre-existing pylons and masts.
35. Regarding cumulative effect, the LSS report notes that if two or more wind energy developments are clearly visible in the same view and appear in the same type of landscape they should appear of similar scale and design. The closer they are to each other the more important this is.¹⁴ It also emphasises the importance of ensuring that wind energy developments do not have a defining influence on the overall experience of the landscape. Park Farm's own experts tell us that, should both turbines be allowed, wind turbines would become a landscape characteristic.¹⁵
36. Turning to heritage, the most significant asset is the Burrough Hillfort, dating from about 1000BCE, the best example of a univallate hillfort (surrounded by a single ditch and rampart) in Leicestershire. Absent any significant built form on its site, Burrough Hillfort derives most of its significance from its setting. This is because views to and from Burrough Hill determined its selection as a fort site with its key functions of defence and communication by beacon.¹⁶
37. Regarding Thorpe Satchville Hall,¹⁷ the cumulative effect of the schemes on the setting of the Hall would be substantial. This is based on the location of the Park Farm turbine at the end of the avenue of trees, albeit the parkland is no longer in the Hall's ownership, in addition to the clear visibility of the Hall Farm turbine some 400m to the north-west.
38. With regard to living conditions, an ETSU model noise condition¹⁸ is acceptable in relation to the Park Farm turbine so long as a condition guarding against excess

⁹ Para 7.135

¹⁰ Para 7.17

¹¹ Para 7.18

¹² Para 7.19

¹³ Document 2

¹⁴ Para 6.7

¹⁵ P16, page 17, para 10.9 and P17, page 49, para 7.106

¹⁶ T16, pps 26-29, paras 5.17-5.27

¹⁷ T16, pps 29-30, paras 5.28-5.35

¹⁸ As Annex B to A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise, Institute of Acoustics, May 2013.

amplitude modulation (EAM) is also applied. However, ETSU advice should not be applied to a small scale turbine such as that at Hall Farm.¹⁹ Moreover, the Hall Farm turbine has a serious problem of tonality, variously described as a modulating hum or pitched whine. It cannot be resolved by adjusting the permissible amplitude level, since it causes significant harm to living conditions at present. It remains after the change of gearbox and there are no other means of mitigating the effect.

39. Concerning cumulative impact, whilst it has been shown that the 35dB limit could be met with a ground absorption factor of 0.5, this would not be the case with a factor of 0, which TSN's noise expert considers more likely. Although the prevailing winds are west south-west, northerly winds must also be considered and would be critical in terms of the cumulative effect on Thorpe Satchville Hall.
40. Outlook would be most critical for the property known as Hillside. The Hall Farm Turbine already intrudes into Hillside's curtilage and the Park Farm Turbine would be nearer and larger. Although it is common ground that the effect would not be overbearing, the harm weighs against granting permission. The distracting effect of Park Farm turbine on play at Great Dalby cricket ground, especially if flicker were present, must also be considered.
41. Balancing harm against public benefit, for both turbines, TSN's calculations²⁰ point to considerable exaggeration in claimed output and CO2 savings. In terms of benefit, the balance weighs in favour of the 500kW Park Farm turbine and against the 50kW Hall Farm turbine. Although the harm arising from the Park Farm turbine would be greater than from the Hall Farm turbine, it would not be ten times greater.
42. The harm resulting from each scheme, in terms of landscape and visual impact, heritage impact, and harm to living conditions, significantly and demonstrably outweighs the benefits of each. Moreover, neither scheme is sustainable taking account of the NPPF as a whole. The schemes' impacts cannot be made acceptable within the meaning of paragraph 98 of the NPPF.

Written Representations

43. A substantial number of written representations were submitted, both objecting to and supporting the turbines. These included representations from the Rt Hon Sir Alan Duncan KCMG MP. I have taken note of the points made and respond to them in the report's conclusions.

Conditions

44. Conditions suggested by the Council, should the appeals be allowed, are contained in their documents.²¹ Other versions of the noise conditions were put forward and all were discussed at the Hearing. No s106 obligations were submitted.

¹⁹ See the Institute of Acoustics, May 2013, Good Practice Guide, page 4, para 1.2.1

²⁰ T46

²¹ M5 and M11

Inspector's Conclusions

45. The main issues are:

- The effect on the character and appearance of the countryside
- The effect on heritage assets
- The effect on living conditions through outlook and noise
- The balance of harm against public benefits

FIRST ISSUE - Character and Appearance

46. The landscape containing the sites, which is not designated, is described separately at national, regional and local levels. National Character Area 93: High Leicestershire describes it as a remote, rural landscape of small villages and scattered farms with a well-treed character in many places, a long tradition of hedgerow management, frequent hedgerow trees and copses and spinneys and farm woodlands on the ridges. The landform is essentially rolling with quite broad ridges where the majority of arable land is sited.
47. Landscape Character Type 5c: Undulating Mixed Farmlands, of the East Midlands Regional Landscape Character Assessment confirms its varied landform of broad rolling ridges, well-treed character, sparse settlement patterns, remote, rural and sometimes empty character. Locally, the sites fall into Landscape Character Area (LCA) 11: Pastoral Farmland, of the Melton Borough Landscape Report 2006. It is described as a typical, pleasant, rural, gently rolling lowland pastoral farmland landscape, generally well managed, with diverse field shapes and sizes, good hedges and scattered trees.
48. For LCU8, the LSS notes medium sensitivity for all landscape aspects except skylines and scenic qualities, for which it identifies medium-high sensitivity. Regarding sensitivity to different turbine heights, it notes low-medium sensitivity to heights from 25-50m (Hall Farm), medium sensitivity to 51-75m, and medium-high to 76-110m (Park Farm turbine just enters this category).
49. The LSS advises that particular care will need to be taken to ensure that:
- The rural setting of the historic villages is preserved
 - Development does not harm the special character of conservation areas
 - The village churches continue to form local landmarks
 - Areas of woodland are conserved
 - The deeply rural character and sense of tranquillity is preserved
 - The pleasing combination of field, hedgerows, woodlands and villages is preserved, particularly as viewed from Burrough Hill
50. LCU8 advice, therefore, encompasses the Burrough Hill view from LCU12. It identifies an overall aim of making sure that wind energy developments do not become a key characteristic of the landscape or have a defining influence on the overall experience of the landscape, remaining occasional features without significant cumulative impact.
51. The most prominent operational turbines within 5km of the sites, measured to blade tip, are a pair of two bladed turbines, 24.5m high, at Moscow Farm, 2km to

the east; Eye Kettleby turbine, 34.5m high, 3 or 4km to the north; and Frisby Grange turbine, 46m high, some 4.5km to the north-west. There are also a number of smaller turbines, operational or with permission, and larger turbines more distant, notably a 78.5m turbine at Glebe Barn Farm, some 15km to the north-west; Dalby Wind Farm with 9 turbines, 79m high, about 13km to the north-west; and a 132m turbine at the Severn Trent site, Wanlip, some 14km to the west, on the northern outskirts of Leicester.

Landscape Appearance

52. Regarding the effect on public views, Burrough Hill offers a wide panorama westwards towards the appeals sites from its raised position. Eye Kettleby, Frisby Grange, Moscow Farm, and Hall Farm turbines are easily visible, dispersed across the panorama, all with blades below the horizon. The Moscow Farm turbines attract most attention, despite their relatively small size. This is partly because of their proximity, and the close grouping of two turbines, but also because their two bladed rotors attract attention with their unsynchronised apparent rising and falling motion, rather than the simple evenly swept circle of the three bladed rotors. Despite its slightly lower site elevation, the Park Farm turbine would be noticeably taller with a larger swept area, than the Hall Farm turbine, and its blades would break the skyline, attracting marked attention.
53. Other significant views from the surrounding countryside include those from or adjacent to public routes. From Leicester Road and Thimble Hall Road, some 3 or 4 km south of the sites, the turbines, when not screened by roadside vegetation, would be seen above the horizon near to each other. The distinctly different turbine assemblies would appear uncomfortably close together, and their unsynchronised speeds of rotation would attract further attention. Similar effects would be seen by users of the Midshire way moving northwards, and sections of the footpath between Barsby and Twyford. Harm would arise from both individual and cumulative effects, but would be mitigated to an extent by the distances involved. Further south, at Tilton on the Hill some 7km from the sites, open views from a higher level would be available, but the distances would mitigate harm substantially.
54. Similarly, from Dalby Road, north of Great Dalby, the turbines would be seen to the south-west, close together across the disused airfield above a treed horizon, with the Moscow Farm turbines to the east. Here the scenic, rolling pastoral landscape is less in evidence, and the harm, also mitigated by the distance of 3 or 4km, would be correspondingly reduced. Nevertheless, as with the views from the south, harm would arise from the uncomfortable near conjunction of the appeals turbines.
55. Views from the east include those from Melton Lane, running southwards from Great Dalby to the settlement of Burrough on the Hill, passing close to the Moscow Farm turbines, on the eastern side of the road. From the northern and southern parts of this road, there would be views westwards towards the turbines, intermittently seen from a distance of some 2km above a treed skyline when not shielded by vegetation. The turbines would generally be seen at their maximum separation so that their visual interaction would be smaller. Views would be limited from the Leicestershire Round footpath, but rather more continuous on the footpath from Burrough on the Hill to Thorpe Satchville. Views from the settlement of Borough on the Hill would be very limited because of its enclosed, inward looking nature.

56. From the west, including Barsby and Ashby Folville, the turbines would be occasionally visible from a distance of some 2.5 to 3km above the ridge line, where not obscured by foliage. However, the high tension power line with its lattice pylons, which runs on a north-south route approximately 1.5km west of Thorpe Satchville, would frequently intervene. The turbines would add little to this existing visual harm. From the Leicestershire Round, running eastwards from Ashby Folville, the turbines would be intermittently visible approaching Thorpe Satchville. As in views from the east, their visual interaction would be reduced by their apparent separation given the viewing angles.
57. From closer viewpoints, from roads and footpaths, the presence of the turbines would clearly be of greater impact, although masking by built form and foliage means that this would be by no means continuous. From these distances, the visual interaction of the two turbines could become substantially harmful.
58. Regarding cumulative visual effects generally, from Borough Hill the harm would largely arise from the scale of the Park Farm turbine and the effect of its blades breaking the horizon, rather than from cumulative impacts. Elsewhere, the occasional visual conjunction of the appeal turbines has been described. Some harm might arise from the serial experience of turbines, for instance travelling on the B6047 south from Melton Mowbray past the Eye Kettleby turbine, and then the appeal turbines. In addition, from Gartree Hill, a kilometre or so east of Great Dalby, the Eye Kettleby, Park Farm, Hall Farm, and Moscow Farm turbines would be seen in succession. Also, for a short spell on the Melton Lane with the Moscow Farm turbines on one side and the appeals turbines some distance away on the other. Overall, some cumulative visual harm would arise from the presence of the appeal turbines.

Landscape Character

59. Turning to the effect of the appeals turbines on the character of the landscape, the footprint of the turbines is small, and the intrusion of the access tracks not significant. Moreover, the permissions would be limited to 25 years, after which the landscape would be returned to agricultural use. The effect on the fabric of the landscape would, therefore, not be materially harmful.
60. Regarding the character and quality of the landscape, the LSS criteria²² would be largely satisfied, with the exception of harm occurring to the view from Burrough Hill. Overall, wind turbines would not become a key characteristic of the landscape or have a defining influence on the overall experience of the landscape. They would remain occasional features without significant cumulative impact.
61. However, the harm to the character of the landscape arising from the impact of Park Farm turbine on the skyline, seen from Burrough Hill, and the harm to the scenic qualities of the landscape,²³ caused by the visual proximity of the two turbines, would be of concern. The effect of this, and the harm identified to public views will be balanced against the public benefits of the projects.

²² Para 49 above

²³ See para 48 above, skylines and scenic qualities are both rated of medium-high sensitivity.

SECOND ISSUE - Heritage Assets

62. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
63. Likewise, S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in the exercise, with respect to any buildings or other land in a conservation area, of any powers mentioned in the planning Acts or Part I of the Historic Buildings and Ancient Monuments Act 1953, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
64. Great weight and importance attaches to the exercise of these statutory duties, over and above the requirements of the development plan and the NPPF. The report's analysis has been conducted with this in mind.

Burrough Hillfort Scheduled Monument

65. The Burrough Hillfort's significance derives from its archaeological and historic interest. Central to that interest is its positioning in the landscape for defensive, symbolic and communications purposes. Its setting is therefore quite wide, involving looking outward from the Hillfort and awareness of the presence of the Hillfort from the surrounding countryside. Elements within the setting may make a positive or negative contribution to the significance of the asset.
66. The countryside is constantly evolving and has changed dramatically over the last three millennia. The central question concerns the nature of the appeals turbines' contribution to the significance of the Hillfort through their presence within its setting. This does not necessarily depend on their effect on the scenic or other qualities of the countryside.
67. From the Hillfort, although the presence of the turbines and particularly the movement of their blades might attract attention, the feeling of being in a commanding elevated position, overlooking distant countryside would remain. Likewise, the turbines would not interfere to any material extent with the presence of the Hillfort in the countryside experienced from surroundings areas. Overall, the diversion of attention caused by the turbines would not be of such a degree as to threaten the significance of the Hillfort, experienced through such impressions. The setting of Burrough Hillfort would, therefore, be preserved.

Thorpe Satchville Hall

68. Land now in agricultural use beyond the present boundaries of the undesignated Hall is said to have once formed part of its formal grounds, with 'borrowed' landscape views into the Leicestershire countryside to the west. The land to the north includes trees which may once have comprised a formal avenue. However, the Hall is now subdivided into flats and there appears to be little surviving relationship between the present nature and function of the Hall and its internal spaces, together with the use of its immediate curtilage, and the wider landscape.

69. The significance of the Hall springs largely from its historic interest. Architectural merit is not immediately apparent in its altered state, and its setting is largely enclosed by trees and partly inward looking. Hall Farm turbine, 450 or 500m to the north, can be seen from the garden through foreground trees. Park Farm Turbine would appear some 900m further north and slightly to the east, as the focus of the avenue, we are told. However, I am not satisfied this would be the case and think it more likely that such alignment would not occur and instead its blades might be seen above the tree canopies. Although the turbines would appear in views from the curtilage of the Hall, they would not affect its historic interest. I find that the heritage significance of the Hall would be preserved.

Other Heritage Assets

70. The conservation areas of Great Dalby, Burrough on the Hill, Barsby and Ashby Folville all lie approximately 3km from the appeals sites. Although there might be views towards the turbines from the edges of these conservation areas, by nature they are largely enclosed and inward looking. Their character and appearance would be preserved with the turbines in place.
71. The listed churches at the heart of these settlements, together with the listed church at Twyford, are likewise well contained by built form and generally in treed surroundings. Their settings are unlikely to encompass the appeal sites. Views of the turbines might be available from the church towers, but the effect would not be material and their heritage significance would be preserved.
72. The listed Church of St Michael and All Angels, Thorpe Satchville lies to the south of the Hall. Although less than 1km from Hall Farm turbine, its enclosure by built form and mature trees is such that its setting would not be affected by the turbines and its heritage significance would be preserved.
73. Old Manor Cottage, Grade II listed, is on the southern outskirts of Great Dalby. Its significance arises from its interest as an example of traditional local vernacular architecture, and from its historic interest, having said to have been owned by Sir Isaac Newton. Park Farm turbine would lie some 1.5km to the south-west, its blades seen above a hedgerow on the horizon, beyond the building's setting.
74. Overall, no material harm would arise to heritage assets. The effect on heritage assets would be acceptable, meeting the heritage aims of the development plan and the NPPF.

THIRD ISSUE - Living Conditions

Outlook

75. There is no right to the preservation of a private view in planning practice, but the effect of a development on residents' living conditions can be material if overbearing. Hall Farm turbine lies a little under 500m to the north of Thorpe Satchville Hall. Because of the distances involved, and the presence of mature trees and hedgerows, the outlook from the garden and windows oriented in that direction would not be oppressive.
76. Hillside, a bungalow just to the east of Satchville Road, is a little over 700m from Hall Farm turbine to the south-west and would be a little closer to Park Farm turbine to the north-west. In addition, the Moscow Farm turbines are some 1.5km to the east, and Eye Kettleby turbine lies some 3km to the north. All of

the existing turbines can be seen from Hillside, albeit often with some difficulty. However, Park Farm turbine would be much more prominent seen squarely through windows facing the road. The lower parts would be screened by hedges either side of the road, but it is highly likely that the rotating blades would be visible.

77. The impact of Park Farm turbine must be assessed in the context of the occupants' awareness of the other turbines. Nevertheless, the effect would not be so severe as to render Hillside an unattractive place to live, and the outlook would not be oppressive.

Noise

78. In relation to the Park Farm turbine, TSN agree that noise immissions at residential receptors not involved in the development would be acceptable subject to application of the ETSU model condition²⁴ and I see no reason to disagree. However, TSN also argue for a condition²⁵ to guard against excess amplitude modulation (EAM).
79. The Institute of Acoustics (IOA) make no recommendation regarding such a condition, but TSN's consultants tell us that the condition is the outcome of increased understanding of the phenomenon in the last year or two. They also note that they have experience of EAM occurring in connection with the candidate turbine, and that susceptibility would be especially high at night with background noise levels low. They recommend that the condition should also apply to the Hall Farm turbine were it to be granted planning permission.
80. In my view, the EAM condition proposed would not be suitable in the present cases. This is because, although it may have been attached to recent permissions, no feedback on its effectiveness has been made available. There is also no reason to suppose that the present cases are susceptible to EAM. EAM may have occurred with turbines other than the candidate model, and there is no reason to suppose that the candidate model would pose a particular risk. Moreover, at night residents are generally indoors benefitting from the attenuation of the building. In these circumstances, it would be premature to impose the condition, which would represent an unnecessary burden on the appellants.
81. In relation to Hall Farm turbine, TSN questioned the suitability of applying ETSU advice to a turbine of only 50kW rating in the light of advice in the IOA's May 2013 good practice guide that it should apply to all wind turbine developments above 50kW.²⁶ However, the guide does not advise against the use of ETSU for a 50kW turbine, no practical alternative was suggested, and Planning Practice Guidance (PPG) states that ETSU should be used when assessing and rating noise from wind energy developments.
82. TSN pointed to the tonality of the sound produced by the Hall Farm turbine as the overriding problem. Though not loud, a modulating whine or hum can be

²⁴ As Annex B to A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise, Institute of Acoustics, May 2013.

²⁵ As recommended by their consultant, MAS Environmental in a letter dated 1 July 2014.

²⁶ Page 4, para 1.2.1

extremely disturbing. However, emissions from the Hall Farm turbine meet ETSU standards, even with the full penalty of 5dB applied for the tonal component. Moreover, the Council undertook an environmental health investigation into the Hall Farm turbine immissions as a possible statutory nuisance. After completion of the survey they concluded that there were no grounds for taking action at present, and regard the matter as closed for the time being.

83. I listened to the sound generated by the turbine from a distance of approximately 190m during the accompanied site visit. The wind appeared to be of moderate strength. On that occasion, I did not find the sound disturbing or likely to be so were it constantly present. Overall, since ETSU standards have been met, the Council considers there to be no grounds at present for nuisance action, and personal experience of the noise generated has been satisfactory, I find the immissions to be acceptable subject to application of the ETSU model condition.
84. Turning to combined noise effects, an exercise has been undertaken by the Hall Farm consultant giving predicted noise levels at Thorpe Satchville Hall for each turbine operating in isolation and for the cumulative effects of both turbines operating together.²⁷ The results show that, even with a maximum 5dB penalty applied for any tonal component generated by the Hall Farm turbine, the predictions for cumulative effects fall well within accepted limits.
85. A discussion took place at the Hearing regarding the susceptibility of Hillside to unacceptable cumulative effects with a west wind blowing and both turbines operating. As a result of the exchanges, I am satisfied that the sum of the north-westerly and south-westerly components of the noise generated would not be excessive.
86. TSN contend that with a lower ground absorption factor, the predicted cumulative noise levels would exceed acceptable limits. However, there appears to be no reason to depart from ETSU guidance in this respect. Moreover, the predictive calculations include an addition of 3.1dB for source noise level uncertainty, whereas current standards recommend only a 2dB addition, together with a conservative correction for wind shear. This margin would cover the effects of any greater ground reflectance there might be.
87. Overall, I find the effects of the turbines, individually or in combination, on living conditions to be acceptable.

Other Matters

88. Concerns regarding the turbines' effects on health were raised, but no persuasive evidence in support is available. Although concerns regarding effects on ecology were expressed, these were not confirmed by Natural England (NE), the Royal Society for the Protection of Birds (RSPB) or the County Ecologist. Bridle paths are too far distant for there to be a credible risk of distraction to horses. Distraction to motorists using the B6047 is also unlikely.
89. Great Dalby cricket ground lies on raised land to the south of the settlement and the rotating blades of the Park Farm turbine might be seen above the horizon to the south west, particularly in sunny conditions. However, the pitch is not aligned with the turbine and the separation of some 1.4km would help mitigate

²⁷ H22, paras 26-30

any effects. I do not think that any residual distraction would add materially to that from traffic on the Barsby to Great Dalby road.

90. Concern has been expressed over the effects of the turbines on property prices. However, I cannot take such effects into account as material planning matters.

FOURTH ISSUE - Balance

91. The public benefits of the turbines comprise the environmental advantages of the generation of renewable energy, reducing carbon emissions, helping meet policy targets and creating employment. To the extent that the turbines might serve working farms, they would help diversify farm business, reducing energy costs, protecting employment and providing a sounder financial footing.
92. The harm identified arises from the effect of the turbines on the character and appearance of the countryside. Whilst, in my view, that arising from the Hall Farm turbine is not substantial, the Park Farm turbine would bring much greater harm, because of its scale and prominence, in particular revealing its blades above the skyline seen from the important public viewing point of Burrough Hill. In addition the close proximity of the turbines and their disparate scale and speeds of rotation would be harmful, experienced both close to their sites and in views where they are seen near together. The Hall Farm turbine is not entitled to preferential treatment simply because it has already been built. However, it would give rise to significantly less visual harm on its own than either the Park Farm turbine on its own, or the two turbines together.
93. Although Park Farm turbine would produce in the order of ten times the renewable energy of the Hall Farm turbine, the harm arising from the Park Farm turbine would be of a critical nature, in my view. I find, therefore, that the benefits outweigh the harm in the case of the Hall Farm turbine, but not in the case of the Park Farm turbine.
94. The Park Farm turbine proposal conflicts with LP Policies OS2 and C2, particularly criteria (c) and (d), and with the development plan as a whole. It also conflicts with the relevant aims of the NPPF and would, therefore, not comprise sustainable development. It would be unacceptable.
95. The Hall Farm turbine meets LP Policies OS2 and C2 and accords with the development plan as a whole. It also meets the aims of the NPPF and comprises sustainable development. It would be acceptable subject to conditions.

Conditions

96. The Council's suggested conditions and others were discussed during the Hearing. They are assembled, amended and reworded, in schedules attached to the report. Annex 1 sets out conditions appropriate to Appeal A (Park Farm), Annex 2 lists those appropriate to Appeal B (Hall Farm), and Annex 3 contains the EAM condition put forward by TSN, although I do not consider it appropriate in these cases.
97. Regarding Appeal A (Park Farm), the first condition is necessary to prevent implementation when planning circumstances may have changed. The second, adherence to plans, is necessary for the avoidance of doubt and in the interests of proper planning. The third, regarding external materials, is necessary to help preserve local character and appearance. The fourth is necessary in the interests of preserving archaeological remains. The fifth, sixth and seventh conditions are

necessary for reasons of ecology, and the eighth and ninth in the interests of air safety.

98. The tenth and eleventh conditions involve restoring the land's character and appearance after termination of use and are therefore necessary. The twelfth, thirteenth and fourteenth conditions are necessary to protect living conditions against disturbance from excessive noise. The fifteenth and sixteenth conditions are necessary in the interests of highway safety.
99. Regarding Appeal B (Hall Farm), the first condition, adherence to plans, is necessary for the avoidance of doubt and in the interests of proper planning. The second, regarding external materials is necessary to help preserve local character and appearance. The third and fourth conditions are necessary for reasons of ecology, and the fifth and sixth conditions to restore the land's character and appearance after termination of use. The seventh, eighth, and ninth conditions are necessary to protect living conditions against disturbance from excessive noise.

Recommendations

Appeal A:

100. I recommend that the appeal be dismissed. Should the Secretary of State disagree with the report's recommendation and wish to allow the appeal, a schedule of conditions is attached at Annex 1.

Appeal B:

101. I recommend that the appeal be allowed and planning permission be granted subject to conditions contained in the attached schedule at Annex 2.

Alan Novitzky

Inspector

APPEARANCES

FOR THE APPELLANT APPEAL A (Park Farm):

David Bridgwood	Technical Director, Wordell Armstrong
Brian Denney	Pegasus Group – Landscape and Visual

5 August only:
Adrian Presbury

FOR THE APPELLANT APPEAL B (Hall Farm):

Gavin Collett	Of Counsel, Magdalen Chambers
Philip Cookson	Holistic Ideas
Dr Andrew McKenzie	Hayes McKenzie, Noise Consultants
Professor Gary England	Appellant

<i>5 August Only:</i>	
Vince Steele	Landscape Consultant
Mike Craven	Hayes McKenzie
David Burgess	Manager, Endurance Windpower

FOR THE LOCAL PLANNING AUTHORITY:

Jim Worley	Head of Regulatory Services, Melton BC
Denise Knipe	Senior Planning Officer MBC
Sarah Legge	Planning Officer MBC

FOR THORPE SAYS NO (TSN):

Zack Simons	Of Counsel, Landmark Chambers
Jonathan Billingsley	The Landscape Partnership
Steve Arnold	Planning Consultant
Sarah Large	MAS Environmental, Noise Consultants

INTERESTED PERSONS:

Helen Chadwick
Mark Pluciennik
Richard Randell
Michaela Kelly
Leigh Higgins
Vaughan Wray
Sally Ireland
Councillor Janet Simpson
Anna Freij
Sally Woland

Tim Turner
Anthony Paphiti

DOCUMENTS

- 1 Notifications of hearing and resumption with lists of those notified (4 documents)
- 2 Appeal decision APP/Y2430/A/14/2221470 put in by TSN
- 3 Various suggested noise conditions
- 4 Extract from definitive map of public rights of way
- 5 Map showing relationship of Great Dalby cricket pitch to Park Farm turbine site
- 6 Text of Council's closing comments
- 7 Text of TSN's closing comments
- 8 Text of closing comments for Hall Farm appellant.
- 9 Park Farm's resubmitted documents P1-P22 (Appeal A)
- 10 Hall Farm's resubmitted documents H1-H24 (Appeal B)
- 11 Melton Borough Council's resubmitted documents M1- M17
- 12 TSN's resubmitted documents T1-T47

Annex 1 - Appeal A: Schedule of Conditions – Park Farm

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the plans listed below unless required otherwise by this decision or its attached conditions:

Appendix 2 Park Farm Precise Location
E439-25-01-A
1000900 rev 01
B12037 – Sk 01
- 3) The external materials to be used in the development hereby permitted shall be in strict accordance with those specified in the application unless alternative materials are first agreed in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details
- 4) No development or other works shall take place until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. No demolition or development shall take place other than in accordance with the Written Scheme of Investigation.
- 5) Prior to the installation of the turbine, the hedgerow to the south-west of the site must be removed and re-planted in accordance with the 'Park Farm Bat Mitigation' plan submitted by Pure Renewable Energy. The new hedgerow must be planted with an average of 7 woody species per 30m.
- 6) All works to hedgerows (including removal and replanting) should be completed outside of the bird-breeding season (1 April to 5 September) to protect any nesting birds.
- 7) Bat and bird strikes caused by the turbine must be recorded and forwarded to the Local Planning Authority.
- 8) Within 30 days of the date of this permission, the developer must notify the Local Planning Authority in consultation with the MOD and East Midlands Airport of the date construction starts and ends; the maximum height of construction equipment; the latitude and longitude of the turbine; and the height of the turbine.
- 9) At the time of the installation of the mast it shall be fitted at the highest practicable point with 25 candela omni-directional red lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration.
- 10) Unless otherwise authorised by a grant of planning permission, by the end of 25 years from the first generation of electricity exported from the development to the grid all surface elements of the development shall have been removed from the site and the land reinstated in accordance with a scheme which shall have been submitted to and approved in writing by the Local Planning Authority not later than 12 months prior to the expiry of the said period of 25 years.

- 11) If the wind turbine fails to produce electricity to the grid for a continuous period of 12 months, the wind turbine and its associated ancillary equipment shall be removed from the site and the land reinstated within a period of 6 months from the end of that 12 month period unless otherwise agreed in writing by the Local Planning Authority. The land shall be reinstated in accordance with a scheme which shall have been submitted to and approved in writing by the Local Planning Authority.
- 12) The rating level of noise immissions from the effect of the wind turbine (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed 35dB $L_{A90, 10 \text{ minute}}$ once corrected for tonal noises at any dwelling not associated with the turbine which is lawfully existing or has planning permission at the date of this permission and:
 - a) The turbine operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.
 - b) No electricity shall be exported until the turbine operator has submitted to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.
 - c) Within 21 days from receipt of a written request from the Local Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the turbine operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise immissions from the turbine at the complainant's dwelling in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.
 - d) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall, prior to the commencement of any measurements, have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Local Planning Authority under paragraph (c),

and such others as the independent consultant considers likely to result in a breach of the noise limits.

e) The turbine operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, the assessment shall be accompanied by all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes with the exception of audio data which shall be supplied in the format in which it is recorded. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

f) Where a further assessment of the rating level of noise immissions from the turbine is required pursuant to Guidance Note 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 (d) above unless the time limit has been extended in writing by the Local Planning Authority.

Guidance Notes for Noise Condition 12

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 turbine. The rating level at each integer wind speed is the arithmetic sum of the turbine noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

(a) Values of the $L_{A90,10 \text{ minute}}$ noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by

the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her dwelling to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The $L_{A90,10 \text{ minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the turbine.

(d) To enable compliance with the conditions to be evaluated, the turbine operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for the turbine and during any noise measurements from an installed 10 metre height meteorological mast, which shall also log wind direction, together with the arithmetic mean power generated by the turbine, all in successive 10-minute periods. It is the measured 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter.

(e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)

(b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the $L_{A90,10 \text{ minute}}$ noise measurements and corresponding values of the 10-minute measured ten metre height wind speed, as derived from the site measured wind speed source(s) agreed in writing with the Local Planning Authority in accordance with Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should

be fitted to the data points and define the turbine noise level at each integer speed.

Guidance Note 3

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

(b) For each 10 minute interval for which $L_{A90,10 \text{ minute}}$ data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

(c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.

(d) The average tone level above audibility shall be calculated for each wind speed bin, each bin being 1 metre per second wide and centred on integer wind speeds. 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 penalty scheme described within ETSU-R-97.

Guidance Note 4

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written protocol under paragraph (d) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

(c) In the event that the rating level is above the limit set out in the 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 the turbine is turned off for such period as the independent consultant requires to undertake any further noise measurements required under Guidance Note 4(c).

(e) To this end, the steps in Guidance Note 2 shall be repeated with the turbine shut-down in accordance with Guidance Note 4(d) in order to determine the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) The turbine noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L1 = 10 \times \log [10^{(L2/10)} - 10^{(L3/10)}]$$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with Guidance Note 3 above) at any integer wind speed lies at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out then the development fails to comply with the conditions.

- 13) Should the wind turbine noise level specified in Condition 12 be exceeded, the wind turbine operator shall take immediate steps to ensure that noise emissions from the wind turbine are reduced to or below such level, and obtain written confirmation from the Local Planning Authority that the reduction is satisfactory.
- 14) No tonal element to the noise generated by the turbine involved in this development is to be audible at the boundary of the nearest non-associated residential property.
- 15) No development shall commence until such time as a traffic management scheme has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highways Authority giving details of traffic control methods to be used to ensure the safety of highway users during the construction phase and including a highway conditions survey. The approved scheme shall then be implemented at all times during the construction phase.
- 16) Any damage caused to the highway as a result of the construction traffic shall be permanently repaired in accordance with Highway Authority standards within one month of the damage occurring.

Annex 2 - Appeal B: Schedule of Conditions – Hall Farm

- 1) The development hereby permitted shall be completed in accordance with the plans listed below unless required otherwise by this decision or its attached conditions:
1253/2508 rev V3
1253/2509 rev V2
E-3120 – 50kW Monopole rev A
1253/2514 rev V1
1253/2523 rev V1
- 2) The external materials used in the development hereby permitted shall be maintained in strict accordance with those specified in the application unless alternative materials are first agreed in writing by the Local Planning Authority. The development shall be maintained in strict accordance with the approved details.
- 3) The boundary to the south of the development site shall be maintained as a post and rail fence throughout the life of the turbine. No hedgerow shall be planted within 54m of the turbine base.
- 4) Bat and bird strikes caused by the turbine must be recorded and forwarded to the Local Planning Authority.
- 5) Unless otherwise authorised by a grant of planning permission, by the end of 25 years from the first generation of electricity exported from the development to the grid all surface elements of the development shall have been removed from the site and the land reinstated in accordance with a scheme which shall have been submitted to and approved in writing by the Local Planning Authority not later than 12 months prior to the expiry of the said period of 25 years.
- 6) If the wind turbine fails to produce electricity to the grid for a continuous period of 12 months, the wind turbine and its associated ancillary equipment shall be removed from the site and the land reinstated within a period of 6 months from the end of that 12 month period unless otherwise agreed in writing by the Local Planning Authority. The land shall be reinstated in accordance with a scheme which shall have been submitted to and approved in writing by the Local Planning Authority.
- 7) The rating level of noise immissions from the effect of the wind turbine (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed 35dB $L_{A90, 10 \text{ minute}}$ once corrected for tonal noises at any dwelling not associated with the turbine which is lawfully existing or has planning permission at the date of this permission and:
 - a) The turbine operator shall continuously log power production, and wind speed, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

- b) Within 30 days of the date of this permission, the turbine operator shall submit to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.
- c) Within 21 days from receipt of a written request from the Local Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the turbine operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise immissions from the turbine at the complainant's dwelling in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.
- d) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall, prior to the commencement of any measurements, have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Local Planning Authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.
- e) The turbine operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, the assessment shall be accompanied by all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes with the exception of audio data which shall be supplied in the format in which it is recorded. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

- f) Where a further assessment of the rating level of noise immissions from the turbine is required pursuant to Guidance Note 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 (d) above unless the time limit has been extended in writing by the Local Planning Authority.

Guidance Notes for Noise Condition 7

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 turbine. The rating level at each integer wind speed is the arithmetic sum of the turbine noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

(a) Values of the $L_{A90,10 \text{ minute}}$ noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her dwelling to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The $L_{A90,10 \text{ minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the turbine.

(d) To enable compliance with the conditions to be evaluated, the turbine operator shall continuously log arithmetic mean wind speed in metres per second at hub height for the turbine and during any noise measurements from an installed 10 metre height meteorological mast, which shall also log wind

direction, together with the arithmetic mean power generated by the turbine, all in successive 10-minute periods. It is the measured 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter.

(e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)

(b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the $L_{A90,10 \text{ minute}}$ noise measurements and corresponding values of the 10-minute measured ten metre height wind speed, as derived from the site measured wind speed source(s) agreed in writing with the Local Planning Authority in accordance with Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the turbine noise level at each integer speed.

Guidance Note 3

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

(b) For each 10 minute interval for which $L_{A90,10 \text{ minute}}$ data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

(c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104109 of ETSU-R-97.

(d) The average tone level above audibility shall be calculated for each wind speed bin, each bin being 1 metre per second wide and centred on integer wind speeds. 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 penalty scheme described within ETSU-R-97.

Guidance Note 4

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written protocol under paragraph (d) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

(c) In the event that the rating level is above the limit set out in the 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 the turbine is turned off for such period as the independent consultant requires to undertake any further noise measurements required under Guidance Note 4(c).

(e) To this end, the steps in Guidance Note 2 shall be repeated with the turbine shut-down in accordance with Guidance Note 4(d) in order to determine the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) The turbine noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L1 = 10 \times \log [10^{(L2/10)} - 10^{(L3/10)}]$$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with Guidance Note 3 above) at any integer wind speed lies at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling then no further action is

necessary. If the rating level at any integer wind speed exceeds the values set out then the development fails to comply with the conditions.

- 8) Should the wind turbine noise level specified in Condition 7 be exceeded, the wind turbine operator shall take immediate steps to ensure that noise emissions from the wind turbine are reduced to or below such level, and obtain written confirmation from the Local Planning Authority that the reduction is satisfactory.
- 9) No tonal element to the noise generated by the turbine involved in this development is to be audible at the boundary of the nearest non-associated residential property.

Annex 3: EAM Condition

The wind turbine shall not emit greater than expected amplitude modulation (EAM). Amplitude modulation is the modulation of the level of broadband noise emitted by a turbine at blade passing frequency. These will be deemed greater than expected if the following characteristics apply:

- a) A change in the measured $L_{Aeq, 100 \text{ milliseconds}}$ turbine noise level of more than 3dB (represented as a rise and fall in sound energy levels each of more than 3dB) occurring within a 2 second period.
- b) The change identified in (a) above shall not occur less than 5 times in any one minute period provided that the $L_{Aeq, 1 \text{ minute}}$ turbine sound energy level for that minute is not below 28dB.
- c) The changes identified in (a) and (b) above shall not occur for fewer than 6 minutes in any hour.

Noise emissions shall be measured at a complainant's dwelling not further than 35m from the relevant dwelling building, and not closer than 3.5m of any reflective building or surface other than the ground, or within 1.2m of the ground.

i) Within 21 days from receipt of a written request of the Local Planning Authority, following a complaint to it alleging noise disturbance at a dwelling which relates to amplitude modulation, the wind turbine operator shall, at its expense, employ a consultant approved by the Local Planning Authority in writing, to assess whether there is greater than expected amplitude modulation from the wind turbine at the complainant's property. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the Local Planning Authority made under this condition, the wind turbine operator shall provide the information logged in accordance with this condition to the Local Planning Authority in the format set out in the Guidance Notes.

ii) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with this condition, the wind turbine operator shall submit to the Local Planning Authority for written approval the proposed measurement location identified. Measurements to assess compliance with the noise limit of this condition shall be undertaken at the measurement location or locations approved in writing by the Local Planning Authority.

iii) Prior to the submission of the independent consultant's assessment of the noise emissions in accordance with the requirements of this condition, the wind turbine operator shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, turbine power generation and where available, rotational speed and blade pitch settings and also the times of day) to determine the assessment of noise emissions.

iv) The proposed range of meteorological conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, or are identified as causing greater than expected amplitude modulation, having regard to the written request of the Local Planning Authority, and such other conditions as the independent consultant considers likely to result in a breach of the noise limits.

The assessment of the noise emissions shall be undertaken in accordance with the assessment protocol approved in writing by the Local Planning Authority.

- v) The wind turbine operator shall provide to the Local Planning Authority the independent consultant's assessment of greater than expected amplitude modulation within 2 months of the date of the written request of the Local Planning Authority unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in the Guidance Note to this condition where that guidance is provided on that data type.
- vi) The wind turbine operator shall continuously log power production, nacelle wind speed, nacelle wind direction and nacelle orientation at the wind turbine and where available, blade pitch and revolutions per minute, expressed as 10 minute averages. 10m height wind speeds averaged over 10 minute periods shall be measured at a location approved by the local planning authority for comparison with noise levels, for the duration of the noise level compliance check survey. Rainfall shall also be measured during any measurement regime at a location approved by the local authority in writing. These data obtained shall be retained for the life of the planning permission. The wind turbine operator shall provide this information in the format set out in the Guidance Note to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.
- vii) Once the Local Planning Authority has received the independent consultant's noise assessment required by this condition, including all noise measurements and audio recordings, where the Local Planning Authority is satisfied of an established breach of the noise limit, upon notification by the Local Planning Authority in writing to the wind turbine operator of the said breach, the wind turbine operator shall within 14 days propose a scheme for the approval of the Local Planning Authority. The scheme shall be designed to mitigate the breach and to prevent its future recurrence. This scheme shall specify the timescales for implementation. The scheme shall be implemented as approved by the Local Planning Authority and according to the timescales within it. The scheme as implemented shall be retained thereafter unless otherwise agreed with the Local Planning Authority.

Guidance Note in relation to EAM condition (this is part of the condition)

Amplitude Modulation (AM) is the regular variation of the broadband aerodynamic noise caused by the passage of the blades through the air at the rate at which the blades pass the turbine tower. Where the local planning authority considers the level of AM may be at a level exceeding that envisaged by the condition, they may require the operator to appoint an approved independent consultant to carry out an assessment of this feature under this condition. In such circumstances, the sound level meter provided for assessment should include a switchable noise recording system (unless permanently recording all parameters and audio) which can be activated by the complainant, the independent consultant appointed by the operator or the local planning authority. The independent consultant shall initiate recordings of the turbine noise at times and locations when significant amplitude modulation is considered to occur. Such recordings shall allow for analysis of the noise in decibels using one-third octave bands from 20 Hz up to 10kHz and 'A' weighted decibel levels both at intervals of 100ms (milli-seconds). It shall also record audio at a standard of not less than 16 bit, 44KHz rate.



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.