TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

Appeal by Broadview Energy Developments Limited against a refusal to grant planning permission by South Northamptonshire Council for five wind turbines on land to the north of Welsh Lane between Greatworth and Helmdon

REBUTTAL PROOF OF EVIDENCE OF MICHAEL J MUSTON ON BEHALF OF THE HELMDON, STUCHBURY AND GREATWORTH WINDFARM ACTION GROUP

PINS Reference APP/Z2830/A/11/2165035

South Northamptonshire Council Reference S/2010/1437/MAF

1. This rebuttal proof is in relation to the proof of evidence of David Bell of Jones Lang LaSalle. References to paragraph numbers are to paragraph numbers in his proof of evidence (BEL/DB/2). I only respond in this rebuttal proof to the main points which I consider need a response through written evidence, so it should not be assumed that because I do not respond to part of David Bell's evidence that I agree with it.

2. In paragraph 3.3.2, David Bell refers to Policy S11 of the draft Joint Core Strategy. In preparing my proof, I inadvertently referred to an earlier version of Policy S11 in my paragraph 4.12. I am aware that the policy was subject to a proposed change and that the version set out by David Bell in his paragraph 3.3.2 is the most up-to-date version. This version still states that the location of wind energy proposals should have no significant adverse impact on amenity, landscape character and access. I consider that the appeal proposal does have a significant adverse impact on both amenity and landscape character, is not sensitively located, and is not designed to minimise adverse impacts on people, the natural environment, biodiversity and historic assets. The changes reinforce rather than detract from my conclusions in paragraph 4.12 of my proof that Policy S11 is compliant with the NPPF.

3. In paragraph 5.5.9, David Bell notes that the national pipeline to 2020 in terms of renewable technologies overall and onshore wind specifically is "reasonably healthy". I agree with this assessment and note that on this point there is no difference between us.

4. David Bell argues in a number of places (paragraphs 3.2.3, 3.5.12-15, 3.5.19, 4.3.30, 6.2.3, 6.3.6) that the Local Plan and draft Core Strategy policies on cultural heritage are not compliant with the NPPF because they do not contain a "balancing provision". In my opinion, this is wrong and based upon a misunderstanding of how to apply the NPPF. First, the reference in paragraph 134 to weighing harm against benefits only applies in circumstances where there is less than substantial harm to the significance of a designated heritage asset. In other circumstances the policy does not contain a "weighing" provision but contains tests of "exceptional" and "wholly exceptional" (paragraph 132). Secondly, the wording of paragraph 134

of the NPPF does not suggest that the "weighing" or "balancing" must be an inherent part of any cultural heritage policy; by using the phrase "harm should be weighed against the public benefits of the proposal" it suggests that the "weighing" or "balancing" should be done in the overall balancing exercise when testing overall compliance with the planning policy document. It is not necessary for every policy dealing with potential harm to state this explicitly or make it part of the policy. Indeed it could result in multiple counting of the benefits if the same benefits (in this case the reduction in CO2 emissions) were weighed against each individual harm identified. The NPPF in paragraph 134 simply notes, in relation to proposals that cause less than substantial harm to the significance of a designated heritage asset, that this should be weighed against the public benefits of the proposal. This should not be taken to mean that every Local Plan policy dealing with the subject needs to contain a similar statement in order to comply with the NPPF. The balancing exercise should be undertaken as part of considering overall compliance with the development plan, at the end of the process, having considered all harm and all benefits, as is commonly the case in planning decision-making.

5. In paragraph 3.3.9, David Bell concludes, amongst other things, that the development is acceptable with regard to its potential effects in relation to cultural heritage. I consider this in my proof (paras 5.9 – 5.16) and disagree. I consider that a mixture of substantial and less than substantial harm would be caused to various heritage assets, amounting to an unacceptable impact in NPPF paragraph 98 terms. I am aware of the recent Bedford BC v SoSCLG case and the publication for consultation of the National Planning Practice Guidance (NPPG) on conserving and enhancing the historic environment (which as a draft document for consultation only at this stage should only be afforded limited weight). I consider the approach in my proof to accord with them, such that no change to my conclusions arises.

6. In paragraphs 3.8.6 and 3.8.7 David Bell refers to the HS2 route. In my opinion, this is too remote to be considered part of the 'baseline' for assessment of this appeal. It may not happen. The final design is not settled yet. If it does happen it

is not certain when it would happen. It is however clear that HS2 would not be operational for all the duration in which the wind farm would be operating.

7. In paragraphs 3.9.8 and 3.9.34, David Bell refers to Tanks a Lot. The planning statement for the retrospective application for that use stated that the use would have no significant environmental impact and would protect the local environment. The officer report (extract included as Appendix 2 to this rebuttal proof) concluded that noise from the use would not be significant. Despite the comment from the officer that Sunday shooting should not be prohibited, the planning permission for the use provides that no shooting should take place on the site outside the hours of 09.00 and 17.00 on weekdays and at no time on Saturdays and Sundays. It is also worth noting that the use was retrospective, meaning that there was experience as to the noise caused by it. This use has been ongoing for several years and no noise that it might generate is new.

8. In paragraph 3.4.2, David Bell states that Local Plan Policy EV2 is "of very limited relevance to this determination". I am content to accept this point.

9. In paragraph 3.5.9, David Bell suggests that Policy EV12 deals primarily with alterations and extensions to listed buildings and that the part of the policy that deals with affects on the setting of a listed building "refers to vicinity and use of adjoining land and is primarily concerned" in his view, "with regard to local design consistency". I disagree. Policy EV12 plainly deals with both alterations to listed buildings and development affecting their setting. It is this latter part of the policy which is relevant. Mr Bell's comments relate to the part of the policy which is not relevant to the appeal proposal. The use of the word "vicinity" shows that the policy is intended to cover effects on setting of development in the locality of listed buildings. The "vicinity" that might lead to harm to the setting of a listed building will be much greater where the development in question is a large wind turbine than where it is, for example, a single storey building.

10. In paragraphs 3.11.5 – 7, David Bell suggests that the SPD on wind turbines is contrary to national policy, because it mentions the usefulness of knowing how much renewable energy will be created and how much CO2 emissions saved.

However, paragraph 38 of the July 2013 "Planning Practice Guidance for renewable and low carbon energy" says in paragraph 38, entitled *"How to assess the likely energy output of a wind turbine?"*, that such information can be useful, *"in considering the energy contribution to be made by a proposal, particularly when a decision is finely balanced"*. The SPD is therefore in accordance with up-to-date planning guidance from central Government and not inconsistent with it.

11. In paragraph 3.11.12, David Bell says that the SPD on renewable energy is not relevant to the assessment of the proposed development. I disagree. As I set out in paragraph 4.38 of my proof, it does not deal specifically with wind turbines, but still contains relevant advice about renewable energy more generally. I said in my proof that the general thrust of the SPD on renewable energy was relevant and that remains my opinion.

12. In paragraph 4.5.28 of his proof, David Bell suggests that nothing has really changed with the publication of the *"Planning Practice Guidance for renewable and low carbon energy"*. Similar points are made elsewhere in Mr Bell's proof (e.g. paragraphs 4.5.7, 4.5.21 and 4.5.25). I would just ask, if that is the case, why has the Government published it? Why publish it if it changes nothing? The Government published the guidance because it was felt necessary to give additional guidance to planning decision-makers given previous decision-making. I quoted the words of the Secretary of State in paragraph 4.61 of my proof of evidence (see CD 2.10).

13. David Bell's Appendix 6 refers to the Red Route Study, covering the B4525 between Crowfield and Middleton Cheney, published by the County Council in September 2012. He has not appended the report itself, which I now do as Appendix 3 to this rebuttal proof. In my opinion, this report highlights an unusually high number of accidents have already occurred along the stretch of the B4525 from which the turbines would be visible. To me, this is evidence that driving along this stretch of road, and joining and leaving it, requires a high level of attention to that task from drivers. I consider that it falls within the Highways Agency definition of a situation where *"... turbines should not be provided where drivers need to pay attention to a particular driving task."*

14. Table 10 in David Bell's Appendix 10 says that between 143,200 and 148,900 tonnes of CO2 will be saved over the lifetime of the project. This is repeated in paragraph 1.4.3 of Mr Bell's proof. This should be contrasted with the much higher figures which the Appellant put before the Council when it considered the application and the Inspector at the previous inquiry. On page 5 of the non-technical summary to the Environmental Statement (appended to this rebuttal proof), it stated that *"the carbon dioxide reduction potential of the proposed development is estimated to be between 11,276 and 14, 215 tonnes annually. Based on an operational lifespan of 25 years and a generation of 33,060 MWh per annum, it can be estimated that the proposed development could offset around 355,000 tonnes of CO2 over the lifetime of the development"*. The figure now set out in David Bell's appendix suggests savings of CO2 emissions would in fact be less than half of that. In paragraph 1.3.7 of his proof of evidence to the last inquiry (appended to this rebuttal proof), David Bell says that the reduction in CO2 emissions would be between "11,276 and 14,215 tonnes per year". No suggestion was made in the proof that any calculation should take place other than simply multiplying these figures by 25, resulting in a total saving of between 281,900 and 355,375 tonnes in total. Again, this is a figure over double that now stated. This is a hugely significant reduction in the benefits of the proposal and one that the Inspector should bear in mind when attributing weight to the benefits of the development. In effect, as the CO2 benefits of the proposal are now said by the Appellant to be less than half what they were said to be at the time of the original inquiry, the weight on the benefits side of the overall balance must be radically reduced, while the harm on the other side of the balance remains the same.