

BROADVIEW ENERGY DEVELOPMENTS LIMITED – LAND AT SPRING FARM RIDGE, NORTH OF WELSH LANE BETWEEN GREATWORTH AND HELMDON

APP/Z2830/A/11/2165035

ERECTION OF 5 WIND TURBINES (MAXIMUM HEIGHT 125M TO BLADE TIP) AND ASSOCIATED INFRASTRUCTURE

COUNCIL'S CLOSING REMARKS

[[CD 8.2] = Core Document 8.2, X = Examination in Chief, XX = Cross examination, Re-ex = Re-examination)

Introduction

- 1 It was said in opening that the determination of this appeal involved striking the appropriate balance between, on the one hand, the protection of the local landscape, the historic environment, and the amenity of local people (both in and around their homes and on public rights of way in the surrounding area) from harmful effects, and on the other hand, the need to tackle climate change through the development of renewable energy projects.
- 2 Following the successful challenge to the previous Inspector's decision, the Council quite properly revisited its case this summer, as it was entitled to do, and sought the authorisation of its planning committee as to the grounds on which it would contest this appeal. This was in fact no different from the way in which the appeal was actually contested in May 2012, and formalised the weighting to be given to the various objections: the landscape and visual impacts (including impacts on residential amenity and visual outlook) were sufficient to justify refusal of the scheme alone and significantly and demonstrably outweighed the benefits; the impacts on cultural heritage assets and perception of harm to users of the public rights of way network would not justify refusal of the scheme alone, but would each carry significant weight in the planning balance.

- 3 This narrowing of the Council's case appears to have caused much consternation to the Appellant. Yet any complaint in relation to it is unwarranted. The Appellant was well aware of the Council's position at the inquiry last year and all of the witnesses on both sides have remained the same for this inquiry. Since then, the Council's position has been authorised by its Planning Committee on 6 June 2013 and confirmed in its Statement of Case for this inquiry.
- 4 Specifically, the evidence given by each of the witnesses on impacts has not materially changed. Ms. Archer's overall view remains that, whilst there would not be substantial harm to the setting of any individual cultural heritage asset, there would be considerable harm to a number of heritage assets in the area. Ms. Ahern still considers that there would be major harm to the local landscape and visual receptors, plus particularly harmful visual effects to the residential amenity of Stuchbury Hall Farm (amongst others) and for users of the PRoW network. Mr. Hall remains of the view that there would be a harmful effect on the perception of safety for users of the PRoW network. Their credibility has not been impugned by the narrowing of the Council's case. That case was initially assessed by a planning officer whose recommendation was translated into the reasons for refusal. Mr. Callis, the planning officer involved after that determination, gave his views at the last inquiry and produced the Report to committee in June which lay the foundation for the Statement of Case.
- 5 On that basis, the Council maintains its position that it struck the correct balance then, when it originally refused the scheme, and now.
- 6 Any visitor to the appeal site and its local surroundings will experience the intimate, smaller scale nature of the local landscape and its valley setting when moving north from Welsh Lane. The experience of the landscape generally is one of tranquillity and of an area relatively undisturbed by modern development. Consistent with this undisturbed, tranquil, landscape are the attractive villages which are in close range and surround the appeal site: Sulgrave, Greatworth, and Helmdon. Their quality, intactness, and historic qualities are marked by the Conservation Area status of 2 of them, and the designated heritage assets which are found in an around them. The appeal site is criss-crossed and surrounded by a local network of footpaths which is well used by the local people and visited by others for its amenity and unspoilt qualities. This is an intimate landscape, with attractive designated villages, nationally designated cultural assets, and a well used network of rights of way. The value to local people of each of these features has been underlined by the presence of a significant number of local people each day at this inquiry.

7 The fact that several of the impacts here are felt at a more localised level does not mean that they should be easily overridden by the national need for renewable energy. This is an issue which strikes right at the heart of central government policy. The Planning Practice Guidance on renewable energy and low carbon energy is the most recent statement from central government on these issues [CD 2.5]. Its focus is on decision making at a local level and it makes plain that in considering planning applications for renewable energy it is important to be clear that:

- (1) The need for renewable or low carbon energy does not automatically override environmental protections
- (2) Local topography is an important factor in assessing whether wind turbines could have a damaging effect on landscape
- (3) Great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting.
- (4) Protecting local amenity is an important consideration which should be given proper weight in planning decisions. (para. 15)

8 The Appellant's relative silence on this Guidance speaks volumes. Each of Mr. Brown, Mr. Stevenson, and Mr. Bell cite planning qualifications within their areas of expertise, yet each of Mr. Brown and Mr. Bell pays mere lip service to this recent Planning Practice Guidance in their evidence, whilst Mr. Stevenson does not mention it at all in his proof of evidence.

9 If the Appellant is right in its submission that the Guidance 'makes no difference' it must be relevant to ask why it was published at all, given the policy in the NPPF and the approach in EN-1 and EN-3. The Written Ministerial Statement of Secretary of State Mr. Pickles which foreshadowed the PPG makes his concerns clear [CD 2.3]:

- (1) Current planning decisions on onshore wind are not always reflecting a locally-led planning system.
- (2) Following the DECC call for evidence it has become clear that action is needed to deliver the balance expected by the NPPF to ensure that protecting the local environment is properly considered alongside the broader issues of protecting the global environment.

10 Mr. Bell was able to agree the principle that Ministerial Statements which foreshadow policy guidance can be considered when looking for the intentions behind such guidance, and that

when considering Ministerial Statements which refer to forthcoming guidance, it would be logical to attach more weight to the Statement of the Minister from whose Department the guidance is then published (XX of Bell). Even if the Ministerial Statement of Mr. Davey is considered to be of more relevance, that refers to the forthcoming issue of new and streamlined planning practice guidance *'to ensure that planning decisions get the environmental balance right...'*. This suggests something more than just a restatement is envisaged by DECC. The Ministerial Statement of Mr. Pickles makes the point abundantly clear when saying action is needed to deliver the balance expected. As was eventually accepted by Mr. Bell, it is a fair reading of that Ministerial Statement that it is recognising there is something wrong with current decision making in this area and that it needs to be addressed by the issue of Guidance (XX of Bell).

- 11 The Appellant's attempt to interpret the Guidance as nothing more than a streamlined restatement of policy for renewable energy stemming from the Taylor review is simply not borne out by its content and a fair reading of the Ministerial Statements which foreshadowed it. There is no mention of streamlining in the Statement of Mr. Pickles. Mr. Bell's misinterpretation of the thrust of the Guidance leads to his anodyne *'we've always done that'* analysis of the sections of the Guidance in his proof (p.37-39). He glosses over the focus on local communities and impacts on the local environment, and fails to reflect that that is a recurring theme of the Guidance, though he accepted that it was when he gave his evidence (XX of Bell). His limp response in oral evidence (XX) that he was *'not seeking to downplay any part of the Guidance'* in his proof does not measure up well to a fair reading of the document.
- 12 Should there be any doubt as to the intentions behind the Guidance, the SoS's reference to his Ministerial Statement and application of the Guidance in the Treading Field decision [ID 14] indicates that the two documents should be read together and should not simply be glossed over as a restatement. The decision carries significant weight as a material consideration since it postdates the publication of the Ministerial Statements and the Guidance. The importance of the Ministerial Statement to the SoS is underlined by the fact that, having consulted upon it, he did not consider that further consultation was necessary on the Guidance since its *'main intentions'*, as related to the appeals, were reflected in the Ministerial Statement (SoS, para. 7). The SoS's decision is peppered with references to the Guidance. Even under topics such as Landscape, where the main parties had agreed no conflict with development plan and NPPF

policies, the SoS's focus on local concerns indicates the added emphasis he is attaching to those concerns in decision making.

13 This inquiry is not the place to consider a legal challenge on a point of law to the Treading Field decision. That is for the High Court if any challenge is indeed made by the party involved. This inquiry should attach significant weight to the decision as a recent SoS decision which has not been appealed. The Appellant's fixation with pointing out what it considers to be meritorious legal grounds for challenge of the decision only betrays its underlying fear that this inquiry might attach material weight to a recent decision which does not help its cause on interpretation of recent national policy, on noise, and on the planning balance.

14 The Council submits that the effect of the PPG when read with the Ministerial Statements is twofold:

(1) Decision makers should scrutinise impacts on the local environment carefully to ensure that they are afforded proper and appropriate weight.

(2) Previous decisions on impacts on the local environment should carry less weight as material considerations given the central government concern that decisions are not always reflecting a locally led planning system and that action is needed to ensure the local environment is properly considered.

15 More broadly, the PPG is a timely counterpoint to the Appellant's rhetoric about the massive scaling up of renewable energy needed, the direction of travel when translated into national planning policy, and the argument that the totality of the guidance in EN-1 and EN-3 should be applied to sub 50MW schemes, rather than the broad approach of those documents.

The effect on the character and appearance of the area

16 Recognition of the intrinsic character and beauty of the countryside is a core principle within the NPPF ([CD 2.1], para. 17) and the protection and enhancement of valued landscapes as part of the contribution and enhancement of the local environment through planning flows from that principle (ibid, para. 109). A landscape does not have to be designated to be valued, and Mr. Stevenson's attempts to link the two concepts are not borne out by the plain wording of the NPPF (XX of Stevenson). It cannot reasonably be argued that the scheme will protect or bring about any kind of enhancement of the local environment in this context. The failure to

appreciate the objective of the core principle and the overemphasis on the hierarchy of designation (ibid, para. 113) are recurring themes in Mr. Stevenson's evidence. Whilst it is right to acknowledge that the appeal site and its surroundings are not designated, the recent Planning Practice Guidance specifically emphasises the importance of local topography in assessing whether wind turbines could have a damaging effect on landscape ([CD 2.5], para. 15).

- 17 Ms. Ahern's valid criticism of Mr. Stevenson's assessment of landscape effects is that it relies too heavily on the theoretical without providing a proper assessment on the ground (X of Ahern). Whilst she does not find the approach to ranges of character effects to be useful (theoretical wind farm landscape, probable theoretical local landscape with wind farm sub-type, and possible theoretical local landscape with wind farm sub-type), her real criticism is that they fail properly to reflect the particular topography of the area. There is a degree of consensus between the experts as to the extent of landscape effects at a local level to the west and south of the appeal site, though Ms. Ahern and Ms. Farmer consider those effects to extend further east down the Helmdon valley, and significantly further than Mr. Stevenson to the north of the site and indeed north of Sulgrave. The point here is that the drawing of a line on a map cannot properly represent the landscape characterising effects felt on the ground especially where the experience of the landscape is so important, as here.
- 18 Ms. Ahern's assessment of the local landscape area of the appeal site and its local landscape concludes that there would be a fundamental adverse effect on that character. Beyond that, at a county level she finds a major significant adverse effect on the Undulating Claylands landscape type (Tove Catchment character area) up to 3 - 4km from the appeal site. It is noteworthy that her overall conclusion of the extent of significant landscape effects is similar to that of Stephenson Halliday who carried out the ES, before Mr. Stevenson became involved (Stevenson, para. 4.16). The on the ground analysis conducted by Mr. Stevenson in just 2 paragraphs of his proof of evidence 4.27-4.28) does little to demonstrate how there would be a sense of separation from the appeal site to the north of Sulgrave. The characterising effect of the moving turbines perceived on the skyline above Sulgrave would clearly have a strong characterising effect (Farmer, App. A, Vwpts 1 and 2).
- 19 The other important difference between the evidence of Ms. Ahern and that of Mr. Stevenson is in their assessments of sensitivity. Ms. Ahern's careful and methodical analysis of the Landscape Character Assessments both in her review of the FEI and in her Appendix 2.5 analyses the Regional and District LCAs in order to form a view as to the sensitivity of the landscape at wider

levels. Mr. Stevenson's assessment of those same LCAs fails to reflect the higher sensitivity recognised by those documents with regard to the parts of the landscape which are more intimate and enclosed, tranquil in character, with little in the way of modern development to affect the predominantly rural character. This skewed assessment is the effect of focussing on the key characteristics of the landscape and primarily considering whether those key characteristics would be physically altered by this development (Stevenson, 4.5-4.6). The inevitable conclusion of such an approach is that there would be locally characterising effects and it is hard to imagine any form of development which would physically alter the regional or county landscape in that way.

- 20 The error in this approach is further compounded by Mr. Stevenson's reliance on the theoretical argument that wind turbine development is additive rather than subtractive. The application of that concept is of little relevance to the real world impacts. The primary impact of this scheme in the landscape will be of 5 large utilitarian structures of up to 125m with moving blades at a diameter of 90m, counteracting the sense of permeability.
- 21 As was pointed out in Ms. Ahern's review of the FEI (Ahern, App. 2.4), the Appellant did not carry out a local landscape character sensitivity analysis at a finer grain than that based at a county level. Table 4.2 of Mr. Stevenson's proof is the first time he has carried out such a local landscape sensitivity analysis. The extent of the landscape and local setting assessed was not clear from the text (Stevenson, para. 4.36), and his clarification in evidence that it covered the local landscape 'up to 2-3 km' from the appeal site is highly significant (X of Stevenson). Such an area covers the Springs and Valleys as well as the Interfluves character types, yet his assessment focuses on the less sensitive elements of the Interfluves landscape. The higher sensitivity of the local landscape in terms of its smaller scale, relatively enclosed and intimate nature, and absence of contemporary built form have been downplayed, and these are physical characteristics of the local landscape which are referred to in the descriptions of the landscape character areas referred to above.
- 22 By contrast, Ms Ahern's assessment is both careful and comprehensive. There is a consistency between the conclusions of her review of the FEI and her evidence to this inquiry. The factors which in her view elevate the sensitivity of the local landscape appear in the objective landscape character assessments from which she quotes in her Tables (Ahern, App. 2.5). This gives her assessment credibility as she identifies features of the local landscape which others have done at

a county, district, and regional level. Principal among those are the physical factors (small scale, intimate, valley landscape; the sense of enclosure and gentle undulation of the landscape; the complex land cover) and the perceptual and visual factors (the tranquil, undisturbed, rural nature of the landscape; and the way in which the crests / valleys form settings and skyline locally). Landscape assessment is not just about views and viewpoints but about how it is experienced by people.

23 Mr. Stevenson accepted that the experience on the ground is of a landscape which becomes more enclosed, intimate, gently undulating, with higher levels of tranquillity and a stronger undisturbed rural character as one moves north from the B4525 between those types (XX of Stevenson). As Ms. Ahern noted in her evidence, there is a quick transition between the character types of the Interfluves and the Springs and Valleys. The turbines are positioned within the transitional area between those types and at a scale of 125m any change in one area will clearly affect the adjacent area, both of which form part of the same landscape unit.

24 In that context, plotting the exact location of the turbine bases in order to argue that there are more within the 'less sensitive' Interfluve character type is far too simplistic an approach. This misses the point as to the experience of the landscape in the real world. The apparent criticism of Ms. Ahern for redrawing the line between the 2 character types in her Appendix 2.5, Figure 2.1 is misconceived. She referred to this change openly in her proof (para. 3.18) and did it to seek to diffuse an artificial argument about the exact location of the turbines relative to the 'boundaries' between the landscape types. Landscape boundaries are not precise lines on the ground but *'landscape is a continuum and that character does not, in general change abruptly'* ([CD 8.4]. In any event, both landscape types are sensitive (High for the Springs and Valleys, Medium – High for the Interfluves (App. 2.5, Tables C and D)) and the turbines are on the downward slope of the Helmdon valley well away from the B4525.

25 Mr. Stevenson's regular references to the 'potential' impacts of HS2 in his proof of evidence were clarified in his evidence to the inquiry: he has rightly not taken them into account in his assessment (XX of Stevenson). The potential impacts of HS2 cannot be a material consideration in the assessment of this appeal. It is at draft ES stage and clearly subject to change, may not go ahead at all, and in any event would not be completed for many years yet. What can and it is submitted should be taken into account is the objective assessment of the environmental baseline by ARUP as it relates to the local landscape (between Greatworth and Lower Boddington). The assessment highlights a number of features which are consistent with those

identified by Ms. Ahern and Ms. Farmer including the predominantly rural landscape and the gently undulating topography ([CD 14.1], Second Tab, para. 9.4). By contrast, there is no reference to the perception of the developed countryside which Mr. Stevenson highlights as a feature in that assessment (XX of Stevenson).

- 26 Similarly, Mr. Stevenson's own evidence as to the activities at the Tanks a Lot site is very limited. Retrospective planning permission was granted this year for activities which have been present for a number of years. There is no evidence of escalation of activity given by Mr. Stevenson and he merely states that the activities will continue on their own site. This cannot make any material change to the environmental baseline which was tranquil before and will remain so. The "last minute" letter to this inquiry from Tanks a Lot which claims that car crushing activities have doubled at the site in the last year should be considered against the consistent evidence of residents, several of whom have given evidence. Notwithstanding that apparent, claimed, unsubstantiated, and untested assertion of an increase in activities, residents have continued to enjoy a tranquil environment [ID 37].
- 27 Reliance on the Heat Mapping Study for the East Midlands document ([CD 4.3] by Mr. Stevenson in the landscape context was misplaced. The study clearly approaches matters at a strategic level and it is expressly noted that it represents the 'technical potential' - i.e. the total amount of potential that is theoretically available. It does not consider deployable potential i.e. what could actually be achieved following site selection and screening on a case by case basis (p.ii).
- 28 All of this illuminates the way in which Mr. Stevenson has underplayed the extent of the impact on the local landscape, failed to identify the common themes in the objective character assessments at a wider level, and failed properly to assess the sensitivity of the local landscape. The landscape at a local and wider level does not have capacity to accept this development without a fundamental adverse and harmful landscape impact.
- 29 In terms of impacts on visual amenity, the Appellant itself acknowledges that there will be significant effects at all 8 of the viewpoints up to 4km from the site (FEI, Vol. 1, p.31, Table 7.5). These visual amenity impacts should be separately weighed against the scheme as distinct from landscape effects as Ms. Ahern explained. They are related to public viewpoints and to that extent show how the development would affect visual receptors, namely the people who would

access those areas. It is also right that they be counted as separate to the impacts on residential amenity considered below.

The effect on the setting of heritage assets

30 Under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, there is a duty to have special regard to the desirability of preserving the setting of listed buildings. Under section 72 of the same Act special attention must be paid to the desirability of preserving and enhancing the character or appearance of a Conservation area. Through those duties, the cultural heritage assets in issue at this inquiry are afforded statutory protection and their national importance is recognised. The effect of the decision in East Northamptonshire DC (et al.) v SoSCLG [2013] EWHC 473 (Admin) is that special weight or considerable importance should be attached to the desirability of preserving the setting of listed buildings (para. 46), though it should be noted that that decision has been appealed further and that interpretation was declined to be followed in Bedford BC v SoSCLG [2013] EWHC 4344 (Admin) at paragraph 40. The Council submits that separate consideration should be given to the duties in the assessment with full recognition that these are statutory duties to be applied.

31 Mr. Brown is too quick to summarise the position of English Heritage as one of unqualified support for renewable energy. English Heritage grappled with the effect of the climate change agenda and particularly wind energy proposals providing guidance in 2005 (Wind Energy and the Historic Environment) and 2008 (Climate Change in the Historic Environment) ([CD 10.5] and [CD 10.3]). Both documents acknowledge the threat of climate change and the Government's commitment to reducing the emissions which contribute to it. However, there is an equal emphasis on the fact that some renewable energy technologies have the potential to cause serious damage to irreplaceable historic sites, which are themselves an integral part of the wider and environmental sustainability agenda ([CD 10.5], p.3 left hand column), and that some policies for adaptation and mitigation may have a damaging effect on historic buildings which can diminish the public's quality of life and be detrimental to the important social and economic contribution our cultural heritage makes to society ([CD 10.3], p.10).

32 Importantly, those same considerations have been taken forward into the NPPF. The conservation of heritage assets in a manner appropriate to their significance is a core planning principle ([CD 2.1], para. 17). In the context of renewable energy proposals, the way in which the Government's objective for conservation and enjoyment of the historic environment is framed is

particularly apt. Amongst other considerations, it should be recognised that heritage assets are an irreplaceable resource (ibid. para. 126). The wider social, cultural, economic and environmental benefits that conservation of the heritage conservation can bring should be taken into account (ibid. para. 126). At a national planning policy level, this is the counterpoint to the wider environmental and economic benefits of renewable energy projects which should be taken into account under the renewables agenda.

- 33 The recent Planning Practice Guidance places importance on the 'great care' that should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including impacts on views important to their setting. Specifically in the context of wind turbines, the Guidance provides that 'careful consideration' should be given to the impact of wind turbines on such assets ([CD2.5], paras. 15 and 34). Mr. Brown accepted that the focus of this Guidance was at a local level, that the Written Ministerial Statement could be read to understand why the Guidance was published and that it was a fair reading of that Ministerial Statement that the Government was concerned that current planning decisions were not reflecting a locally led planning system and that action was needed to ensure that protecting the local environment was properly considered alongside the broader issues of protecting the global environment (XX of Brown). All of this indicates that Central Government is concerned that its policy of preservation of cultural heritage assets appropriate to their significance is not being maintained.
- 34 All parties agree that the impacts here are indirect, and to that end it is the contribution of setting to the significance of the asset and the impact on that setting which is relevant. The relatively up to date guidance from English Heritage, The Setting of Heritage Assets [CD 10.1], carries significant weight as a material consideration in that context and both witnesses have used it for its methodology.
- 35 The broad scope of that Guidance should be noted: setting embraces all of the surroundings from which the heritage asset can be experienced or that can be experienced from the asset ([CD 10.1], para. 2.2). Setting can enhance the significance of a heritage asset whether or not it was designed to do so ([ibid. Key Principles for Understanding Setting, p.5). The setting is likely to include a variety of views of, across, or including the asset, and views of the surroundings from or through the asset (ibid. 2.3 Views and Setting, p.6).

- 36 In analysing the importance of setting by assessing what it contributes to the significance of a heritage asset, the Guidance expressly notes that this depends on a wide range of physical elements *'as well as perceptual and associational attributes pertaining to a heritage asset's surroundings'* (ibid. p.7, emphasis added). The assessment of whether, how and to what degree settings make a contribution to significance of the heritage asset then provides a non-exhaustive list of potential attributes where the experience of the asset and its associative attributes are sub-sets carrying equal weight with an asset's physical surroundings ([CD 10.1], Assessment Step 2, p.21) as Mr. Brown accepted (XX of Brown). Views of from and including an asset, and visual dominance / prominence of the asset are attributes of setting which are highly relevant to Castle Ringworks, Church Towers, and Scheduled Ancient Monuments such as Astwell Castle. These assets were deliberately positioned to see and be seen from, demonstrating command in height.
- 37 In that context, the criticism of Ms. Archer for her use of Conservation Principles is unwarranted. Mr. Brown accepted that it remains a useful tool for analysis as one of a suite of guidance documents (XX of Brown). Ms. Archer has properly drawn on its concepts acknowledging its objective to provide a clear overarching philosophical framework for what conservation means at the beginning of the 21st Century (X of Archer). The discussion of heritage values in Conservation Principles makes no reference to settings and their application. The point here is that there is a clear resonance between the aesthetic and communal values in Conservation Principles and the sub-sets of attributes of setting in the Settings Guidance, so whether they are taken from Conservation Principles or from the Settings Guidance the application of these concepts makes no material difference to the assessment (see also Ms. Farmer's Appendix 3 which demonstrates the close link between the values in Conservation Principles and the definitions in the NPPF).
- 38 The fact that experiential and associative attributes are more subjective and difficult to pin down does not detract from their relevance and significance to settings impacts. The way Mr. Brown expressed himself in his proof should be noted: he has used the categories in the NPPF *'in preference to'* those suggested in Conservation Principles (Brown, para. 3.09). The two documents are not mutually exclusive. The Council contends that the categories of significance in the Glossary to the NPPF are not exhaustive and that there should be no downgrading of aesthetic and associational aspects as a result. The Appellant's interpretation of the 'settings' definition in the Glossary is equally too narrow. Regard should be had to the whole of that definition which is open textured and covers the surroundings in which a heritage asset is

experienced. An element of setting may make a positive contribution to the significance of the asset whether or not it affects the ability to appreciate significance, and the plain wording in the Glossary does not make that appreciation clause the trigger or set up a staged approach (XX of Brown). The effect of the Appellant’s interpretation is to set the bar too high for recognition of settings impacts.

39 Whilst in overall terms, there is little between Ms. Archer and Mr. Brown on the headline impacts, Mr. Brown’s failure to give due weight to aesthetic and associational elements of the settings of the heritage assets has led to an understatement of the impacts in places. Having re-calibrated the sensitivity of Conservation Areas in his assessment for this Inquiry, his assessment is now much closer to that of Ms. Archer.

40 As was clarified in evidence, Ms. Archer and Mr. Brown agree as to the following effects, using Ms. Archer’s Table 1 (Archer, 1.1.22):

Sulgrave Castle Ringwork	Moderate adverse
Church of St. James, Sulgrave	Moderate adverse
Astwell Castle	Moderate adverse
Greatworth Hall	Moderate adverse
Sulgrave CA	Moderate Adverse
Church of St. Peter, Greatworth	Minor adverse
Greatworth CA	Minor adverse

41 As for Sulgrave Manor and its Registered Park and Garden, Ms. Archer identifies a minor adverse effect whilst Mr. Brown concludes that the effect would be neutral. This matter has been taken up in detail by the Action Group, but Ms. Archer drew attention in her evidence to the visibility of the rotating blades in southward views out of the garden particularly in the area around the vegetable garden and the blacksmith’s hut. The degree of screening provided by the trees would be deciduous and likely to be effective only in the summer months and this would affect views out over the rural landscape in which the Manor is set, which are attributes of setting contributing to the experience of the asset.

42 The Council’s case on each of the assets is set out in Ms. Archer’s proof and evidence in chief. In XX, Mr. Brown was asked questions concerning Greatworth Hall, Greatworth CA, and Astwell

Castle. The rest of the assets were covered by the Action Group and will not be considered further here.

- 43 As for Greatworth Hall, Mr. Brown places too much emphasis on the modern access to the property from the north. The Manor House and its principal elevation are orientated to face south towards the village whose name the House shares. The Classical facade of its southern elevation is designed to be appreciated and viewed from the south, and the PROW across the agricultural land between Greatworth village and the Manor House provide views of the asset. The turbines would be visually dominant behind the asset from this viewpoint. Mr. Brown has not considered views towards the asset from the south to be important to setting and focuses on physical alterations to the garden and agricultural land, thereby downplaying the experience of the asset. The Council contends that views towards the principal elevation clearly are an important element of setting here, and to the extent they are and have been left out of account by Mr. Brown, the effect would be (in his view) 'slightly' increased (XX of Brown).
- 44 As for Greatworth Conservation Area, the CA Appraisal provides a proper and up to date policy basis for assessing the important aspects of its character and appearance. The origins of the village are as a rural agricultural village. Glimpsed views of the open countryside from within the CA contribute to its character and stand as strong reminders of its setting and rural heritage. The view out to the east out from the Church of St. Peter is the only view from a public viewpoint on that side of the village. The breadth of the vista increases as one moves from the road through the churchyard and beyond the deciduous trees. Parts of all 5 turbines are visible from Mr. Brown's photomontage 1a which would draw attention as the blades move. The fact that views out from the CA are limited means that those which are available are of greater significance. The 3 paths leading out from the churchyard of the Church of St. Peter draw out views into the surrounding countryside. There is an overemphasis of the impact of the 20th Century housing on the setting by Mr. Brown. The 20th Century housing is well screened in views of the CA from the South and West and would be seen as clearly distinct from the historic village when viewed from the north and east. Ms. Archer indicated an example of a location on the OS map at the south of the village (near the T-junction at the bottom of the road running south from the CA) from where the turbines would be seen competing with the tower of the church (X of Archer).
- 45 As for Astwell Castle, commanding views are important to the siting and significance of the castle and it is set within the landscape to demonstrate wealth and power. The views,

particularly to the west, provide a sense of tranquillity and remoteness which would be disrupted by the presence and movement of all 5 turbines. The more limited arc of view is not as significant when the disruption to the sense of remoteness is considered. Again, Mr. Brown places too much emphasis on the lack of any physical alteration to the garden and surrounding farmland downplaying the importance of the experience of the setting to the asset.

46 By stating that there would be '*no confusion*' as to the significance of an asset by the presence of the turbines is to set the threshold too high (Brown, para. 6.24). Where experiential elements of setting are an important attributes of an asset's setting, impacts on them will very rarely, if ever, lead to confusion as to the significance of the asset. Such a test should not be applied to impacts on settings and that reading is consistent with the Settings Guidance and the thrust of the Planning Practice Guidance which confirms that wind turbine development can cause substantial harm to the significance of an asset.

47 The Council does not contend that the impacts assessed by Ms. Archer in her proof are now in a different category by reference to the questioning of Mr. Brown. Rather that within the broad category of moderate (or in the case of Greatworth CA minor) effect, the impacts should be increased from Mr. Brown's assessment. All of these impacts must still be weighed in the balance under paragraph 134 of the NPPF.

48 Finally, on reversibility, it is clear that Ms. Archer has paid proper regard to this aspect of the development and attached weight to it in her assessment. She properly referred to EN-3 in her proof and the English Heritage Guidance (Archer, 1.1.172). The point here is that she does not attach significant weight to it as a consideration because the impacts would be present for a generation and one objective of the Core Principles in the NPPF is to conserve heritage assets as appropriate so that they can be enjoyed for their contribution to the quality of life of this and future generations. English Heritage have expressed themselves carefully in their Wind Energy guidance [CD 10.6]. Consideration should always be given to reversibility, but that guidance does not say that this should result in a downgrading of the impacts ([CD 10.6], p.9). Ms. Archer has properly assessed the impacts as lasting for 25 years.

The effect on living conditions including visual amenity, shadow flicker, noise, and disturbance

49 There is a very real danger in applying a Lavender pass / fail 'test' to impacts on residential amenity as the Appellant appears to urge upon this inquiry. The Council acknowledges the principle that no person has a right to a view and that there is a public interest in delivering projects which can deliver sources of renewable energy. However, a high degree of caution should be exercised before identifying a pass / fail 'test' of whether an impact on residential amenity is acceptable for a number of reasons:

- (1) There is no such test in statute, planning policy, nor even national guidance. The recent Planning Practice Guidance could have set up a closely prescribed test to be applied which was consistent with the ways in which the principles have come to be applied. The Planning Practice Guidance does not set up such a test, instead stating that the protection of local amenity is an important consideration which should be given proper weight in planning decisions ([CD 2.5], para. 15).
- (2) Whilst the decisions of other planning inspectors are capable of being material considerations, the weight to be attached to them is a matter for the decision maker. They are not binding on this Inquiry and ultimately each case must be decided on its own merits.
- (3) Inspector Lavender did not refer to a 'test' in Enifer Downs, and there are several passages where the Inspector grappled with the issue. To focus on one passage as the 'test' is at odds with the way the decision letter was written and the intention behind it.
- (4) The approach in subsequent Inspectors' decisions is not to formulate a 'test' as such, but rather to find a way of articulating, on a case by case basis, the acceptability (or otherwise) of the impacts on residential amenity.
- (5) The assessment of effects on residential amenity does not lend itself to an overly mechanistic approach. It is necessarily subjective and involves the exercise of professional judgement.

50 Against that background, analysis of the decisions provides a useful context as to the circumstances which have been found to involve overbearing impacts. The following are key factors:

Proximity	How far the turbines are from the property in question is always a key factor. Being within 800m is not in itself determinative although the significance of proximity as a factor clearly increases at that distance or below.
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Lack of screening	Where turbines are screened by vegetation or other buildings their impact is lessened.
Orientation	Direct views are considered more likely to cause harm than oblique ones. Orientation includes the orientation of the windows of the house, the location and orientation of external amenity areas and the orientation of the approach to the house.
Spread of Turbines	Where the turbines occupy a significant proportion of the view, this increases the impact, although single and two turbines have been considered to give rise to unacceptable effects.
Blade stacking	Where turbines appear behind one another in the view, the 'clash' or overlap of blades has been considered to be a factor giving rise to unacceptable effects.

51 At the same time, as is accepted by the Appellant, the fact that impacts on residential amenity are considered significant in EIA terms should not be ignored. To that end the Council contends that such impacts must weigh in the planning balance or else they would be ignored. In this case there are 16 properties or groups of properties within 2 km which would experience major and significant adverse effects, 10 of which are within 1 km of the turbines (ES, Vol. 4, p.25, Table 1) with no discernible change noted after relocation (FEI, Vol. 3, p.51, Table 9). Turbine 5 was moved closer to Stuchbury Hall Farm, Stuchbury Lodge, and Stuchbury Gatehouse by that relocation. Mr. Stevenson acknowledges that of those 10 properties, 8 would be within the 'dominant' range of at least 1 turbine. All of these impacts should be weighed in the planning balance.

52 Ms. Ahern considers that all of the factors would be engaged at Stuchbury Hall Farm. Whilst this will clearly be a matter for the site view, she highlights the following points:

- The nearest turbine (T5) would be about 800m from the property, though the landholding is much closer at around 200m from the turbine.
- The turbines would appear on the opposite side of the valley with the bases of the turbines at the same height or higher than the occupier such that their vertical prominence would be exaggerated.
- Turbines will be a prominent feature at times in the view on the main approach to the house along the drive from Helmdon / Sulgrave Road.

- The orientation of the house on the valley side means that there are principal views from the south facing windows of the lounge (French windows) and upstairs bedroom. There is also a garden amenity area which faces south. It is likely that south facing aspects of any residential property will be cherished for their view.
- The turbines will be directly in view from the south facing parts of the property, not in oblique views.
- The buildings between the garden and the turbines are low level and would only screen the blades of the turbines when close up to them.
- There are deciduous trees in the distance which provide some degree of screening depending on the season, but blades will be moving and will overtop that screening in places.
- The moving blades of the turbines whether prominent or partially screened will fill a large arc in the view to the south of the property.

53 The fact that the Tims family work the agricultural holding on which they live is also highly relevant and an unusual factor. The agricultural holding here also extends as far as the appeal site boundary. The prospect for the Tims family is that they will have little respite from the presence of the turbines in their main amenity view. No respite during the working day, whilst enjoying their main living room, whilst enjoying their garden, and at night. The fact that there will be a view east and to the north away from the turbines carries little weight given the importance of the views to the south. Following the submission of a planning application, there will be another barn to the south which might be affected and the note submitted by Edward Tims, and not disputed by Mr. Bell, makes clear that the limited tree felling was carried out for good land management reasons. It was entirely irrelevant to the planning permission (XX of Bell by Honey).

54 Visual impacts are only one element of residential amenity and impacts in terms of noise and shadow flicker can be added to the overall assessment. As was accepted by Mr. Arnott, there will be perceptible noise effects for the occupiers of Stuchbury Hall Farm both during the day and at night (XX of Arnold by Honey). The turbine noise will be easily distinguishable in terms of its character from the other sounds of the rural environment and the dominant wind direction from the SW will place the property and landholding downwind from the Turbines for the largest proportion of the year.

- 55 Ms. Ahern concludes that the visual impact of the development would render the property - in her words - an unpleasant and significantly less attractive place to live, which she considers to be at the threshold of 'acceptability'. When considered in the round with the effects on the access paths to the premises and the noise effects, the Council contends that the impacts here would be unacceptable.
- 56 Ms. Ahern also concluded that the visual impacts at Grange farm would render it a significantly less attractive place in which to live (Ahern, 4.18). The proximity of the turbines, with direct views to the turbines channelled along and through the rural Helmdon Valley, the blade stacking of T2, T3, and T4, framed in a wider arc of view by turbines T1 and T5, and all perceived at different heights, would provide an uncomfortable viewing experience. These turbines would be a pervasive presence in direct views from within and around the properties and gardens. Natalie Atkins provided detailed evidence of the extent to which some of the occupiers (Orchard End and The Granary) work in the land around their properties. Again, as for all properties within 1 km of the turbines, noise effects from the turbines will be experienced and distinguishable from the background, both day and night. It should be noted that Mr. Bell accepts that there would be degree of shadow flicker at this property too (albeit limited and conditioned) (Bell, 3.6.8).
- 57 As the Appellant accepted in Opening, as a matter of principle, the impacts on one property, if sufficiently serious, could lead to harm and justify refusal. The fact that the impact would also be on the working part of the property on which the residents live can be taken into account. The decision in Brightenber establishes these 2 points of principle [CD 6.27]. As ever, the Appellant seeks to make factual comparisons between the cases ([CD 14.4]) but that misses the point. Benchmarking should mean just that. Having regard to what previous Inspectors have decided when assessing impacts, without slavishly comparing those decisions on the facts as if they were binding legal precedent on the interpretation of law. Inspectors' decisions are material considerations but here they deal with subjective issues as experienced on the ground.

The effect on safety and perceived harm

- 58 The Council's evidence on the perception of harm to the safety of users of the PROW in the area is substantiated by Mr. Hall. As he readily accepted, the Council does not rely on survey evidence of deterrence rates caused by the presence of wind turbine development to make its case. That should not detract from the force of the case on this point. As Mr. Callis confirmed, perception

of harm to safety can be a material planning consideration (Callis, I's questions). The fact that fears and concerns are held by members of the public may itself constitute a material consideration if they relate to a matter (such as public safety) which itself is a material consideration, or if the fact that they exist may have land use consequences, as here where the impacts will be on the use of the PROW network (Planning Encyclopaedia, Vol. II, P70.39). Mr. Hall relies on his expertise in Public Rights of Way and his considerable experience in dealing with impacts upon them. He also has relevant experience of the impacts of wind turbine development on Public Rights of Way, having given evidence at other wind farm inquiries (Hall, App 3.2.1). The Inspectors' decisions to which he refers are all examples of cases where Inspectors have imposed conditions or accepted permissive paths in order to deal with impacts on PROW and in effect to make them acceptable. In each case the Inspector went beyond the 'minimum' requirement that turbines should be located so that they do not oversail a PROW (Hall, 8.8-8.10).

59 The questions asked of Mr. Hall as to whether he had objected to the application carry little weight. Mr. Hall did not draft the consultation response. Whilst the response did not use the word 'object', that was the clear thrust of it (Hall, App. 3.2.2). Indeed, this is how it was interpreted in the Planning Officer's Report and in fact by Mr. Bell, who himself summarises the response of NCC Rights of Way as 'Objected' in his Table 2.1 (Bell, para. 2.2.1).

60 The position taken by Mr. Hall and his officers is understandable in the circumstances. The Highways Department was not consulted by the Appellant during the pre-application stage when they would have raised real concerns as to acceptable separation distances. The ES submitted with the application set out the Appellant's interpretation of the Companion Guide to PPS22 which was then in force, that *'fallover distance is usually the accepted separation distance from public rights of way'* (ES, Vol. 3, p.305). The application itself then sought to place several of the turbines within fallover distance of footpaths. The locations of the turbines set out in the FEI (which had been revised in order to take into account impacts on bat activity) resulted in T1 being within fallover distance of footpath AN9 and T2, T3, and T4 within fallover distance of footpath AN10. T3 would in fact have oversailed AN10. Having started this inquiry adopting the position they ended up with last time around, T1 – T4 remain within the fallover distances of those same footpaths.

61 The technicalities do not convey the whole experience which would be felt on the ground. The appeal site is in fact criss-crossed by a number of footpaths and one BOAT (AN36). It is also

surrounded by other footpaths and bridleways. Of those which cross the site, footpath AN10 and BOAT AN36 are particularly relevant. AN10 provides the most direct route by which people can travel on foot between Greatworth and Helmdon, avoiding the B4525 (which has no pavement) as much as possible. Yet, as an example, footpath AN10 runs alongside the development, is within the fallover distance of 3 of the turbines, and runs between T3 and T4.

62 The Council does not focus on the effect for users of the bridleways in the area, aware that Mr. Cross (amongst others) takes up this point. When asked, Mr. Hall noted that the Parish of Greatworth is not well served by bridleways, particularly north of the B4525 and so AN36 is a particularly important link towards the bridleways around Sulgrave and Helmdon, and beyond. It would therefore be of particular importance to horseriders in the area of which it would seem there are many.

63 The micrositing condition and a permissive path, whilst welcome, do not provide sufficient mitigation for Mr. Hall. The coordinates for the microsited T3 would locate it within 9m of oversailing footpath AN10 (56m). The rotating blades at a height of 125m would still be within a range which would be perceived as harmful to users of the footpath (X of Hall). The micrositing of the turbines to the north would also bring T3 closer to the permissive path. There would remain a network of footpaths significantly adversely affected by the presence of the turbines and the creation of a wind farm landscape for all who use the area.

64 Mr. Hall accepts that wind turbine development is a safe technology but gives a reasonable account of how perceived safety would be an issue for ordinary people using this network of PROW. There would be a behavioural effect on regular users and visitors to the network of PROW. The British Horse Society's own guidance seeks a 200m exclusion zone and to the extent that that guidance is well known to horseriders – there is no reason it would not be -, it would have a similar effect on whether the BOAT was used.

65 The point here is that the guidance on separation distances in the Companion Guide to PPS22 has been cancelled. The replacement Planning Practice Guide does not provide any specific guidance on what should be considered acceptable separation distances from PROW but places express emphasis on protecting local amenity in circumstances where the SoS has noted that local concerns have not always been reflected in decision making [CD 2.5] para. 15]. Thus there will be cases where permission has been granted in circumstances where turbines are within fallover distances when the old guidance was in force. Those decisions should now be treated

with caution and should carry less weight. The question here is, given the particular network of footpaths and the way in which the experience would be affected, what would be the effect perceived safety.

66 The Planning Practice Guidance is somewhat guarded in its wording that safety '*may be an issue in certain circumstances*' but that risks can often be mitigated (para. 31). There is no repeat of the guidance in the now cancelled PPS22 Companion Guide and references to oversail, fallover, and BHS guidance. This leaves the issues to be considered on a case by case basis. Here, there are multiple impacts to several PROWs across the appeal site. Subject to micro-siting of T3 to avoid oversail, Mr. Bell accepted the facts as set out on Mr. Hall's Figure 2 as to turbines coming within the fallover distance and the BHS guidance limits of several footpaths and the BOAT (XX of Bell).

67 There would be a similar impact on visual outlook. As Mr. Stevenson acknowledged, each of the PROW listed by Mr. Hall (Footpaths AN7, AN8, AN9, and AN10, BOAT AN36, and BR AN32 and AP15) would be within his windfarm landscape for the whole of their length (XX of Stevenson). Essentially, all those using the network of paths between Greatworth, Sulgrave, and Helmdon would be affected by the wind turbine development for the majority of their journey using any number of PROWs and the perception of being within a windfarm landscape would be there, whether they are moving towards or away from the appeal site.

68 The effect is necessarily one that it is difficult to quantify and is a highly subjective matter. One thing is clear, the network of paths is locally promoted and currently well used. Mr. Stevenson had to accept at least reasonable use (more on holidays such as long weekends). His evidence is limited to surveillance of 3 footpaths across 2 weekends in April last year (one of which was the Easter weekend), without any evidence of use on weekdays (XX of Stevenson). No update to that evidence has been provided for this inquiry. By contrast, the picture painted by the residents is resoundingly clear: these are footpaths used on a regular basis both functionally and for recreation and often for both reasons. Mr. Miles' evidence (Helmdon Parish Council Paths Warden) carries particular force as to regular users from the local area, those who use the network for health walks, and those who come from the wider area to enjoy the countryside. Both he and Mr. Burns (Helmdon Parish Council) have noticed an increase in numbers on the health walks which rebuts any suggestion from the letter from Tanks a Lot that any increase in business activities has had any effect on the attractiveness of the PROW network.

69 The Council contend that the impacts on PROW both in terms of visual outlook and perceived safety carry considerable weight in the planning balance.

Whether the benefits of the scheme are sufficient to outweigh the harm caused

70 The starting point must be, and remains, section 38(6) Planning and Compensation Act 2004 (NPPF 196) which provides that:

'If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

71 The purpose behind section 38(6) PCPA 2004 is clearly to ensure that the development plan is given primacy since it represents the policy and intentions at a local level and has been through the statutory adoption process. The importance of that statutory test must not be overlooked in the analysis of the weight to be attached to development plan policy. The decision maker is required to apply properly adopted and saved development plan policy, and determine in accordance with those policies unless material considerations indicate otherwise.

Development Plan Policy

72 Following revocation of the East Midlands Regional Plan on 12 April 2013, the Development Plan consists of the saved policies of the South Northamptonshire Local Plan 1997. The position is that the explanatory text to those policies is not saved. Whilst reference to the explanatory text might provide a historical context, the policies fall to be analysed on their plain wording (XX of Bell).

73 The Policies in the Local Plan remain relevant and should not be considered out of date simply because they were adopted in 1997 prior to the publication of the NPPF (NPPF, para. 211). Due weight should be given to relevant policies according to their degree of consistency with the NPPF (NPPF, para. 215). Mr. Bell recognised that there are difficulties in analysing an individual policy for consistency against the NPPF as a whole (XX of Bell). The policies in issue are all wide in their ambit. That is, they are not development specific and are apt to apply to the development proposed here. As was noted in XX of Mr. Bell:

- G2 and G3 are general policies. G2's restriction of development in the open countryside reflects the core principle of recognising the character and beauty of the countryside and the policy of re-using brownfield land (NPPF, paras. 17, 111). G3 is a permissive policy which reflects the core principles on securing good standards of amenity, the conservation and enhancement of the natural environment, and conservation of heritage assets. Mr. Bell's only criticism of it is in relation to the criteria relating to cultural heritage (see below) and he accepts some conflict with its other terms.
- EV1 is not restrictively worded and seeks to secure high quality design consistently with paragraph 17 of the NPPF.
- EV2 is similar to G2 in its restrictive approach to development in the countryside. Mr. Bell accepts some conflict with it. Its list of exceptions is not exhaustive and apt to include other types of development such as this.
- EV11 is a normal Conservation Area policy. Mr. Bell accepts some conflict with it.
- EV12 seeks to preserve and enhance the setting of listed buildings by control of design of new development within their vicinity. Vicinity amply covers impacts on setting here.
- EV28 'may' be interpreted to include Sulgrave Registered Park and Garden (XX of Bell). Whether there is a serious adverse effect on it is the issue.

74 These are all relevant Local Plan policies which can and should be applied to the development here. Mr. Bell is too quick to dismiss them because they predate renewable energy development and so do not contain specific renewable energy provisions. Mr. Muston rightly noted that you could not expect Local Plans to cover every conceivable form of development (XX of Muston). Where policy wording is capable of applying to a particular proposal (particularly where it is expressed in general terms) it should be applied.

75 Each of the policies is also broadly consistent with the NPPF. Again, it is too easy to dismiss the cultural heritage policies because they do not contain a balancing provision. Mr. Bell accepted that they are consistent with the cultural heritage conservation aspects of the NPPF (paras. 17, 126, 131). They therefore should be accorded full weight as consistent with the NPPF.

Other material considerations

Core Strategy

76 There is little of substance in the Appellant's concerns with regard to relevant emerging plan policy. Mr. Bell agreed that the draft Core Strategy is relatively well advanced (XX of Bell). It has been submitted and was examined in April / May of this year. The only further assessment relates to housing and strategic environmental assessment. There are no outstanding objections to the policies relevant to this appeal. Thus, under the first 2 bullet points of paragraph 216, policies S1, S10, S11 and BN5 must carry significant weight.

77 Policy S1 is a strategic, criteria based policy limiting new development with emphasis on enhancing and maintaining the distinctive character of the rural communities, and respecting the quality of tranquillity. Mr. Bell had no problem in applying 'some weight' to this policy (XX of Bell).

78 Policy S10 provides sustainable development principles to achieve the highest standards of sustainable design incorporating a strong sense of place, conserving the natural and built environment, and heritage assets, and minimising pollution from noise. Despite being a 'high level' policy it falls to be considered and applied (XX of Bell).

79 Policy S11 specifically relates to Low Carbon and Renewable Energy. Mr. Bell accepted that it was positively framed to support renewables and was appropriately worded in recognising that some harm may result. The policy provides that wind energy proposals '*should have no significant adverse impact*', which is not the same as significant effects for the purposes of an EIA and turns on how the word significant is interpreted. Read with the recognition that potential adverse impacts should be minimised, it is clear that a relatively high threshold is set. Policies can always be rewritten or better worded, but this policy has been considered for soundness at examination and there are no outstanding objections to it. It can be given full weight.

80 Policy BN5 also seeks to conserve heritage assets and their settings. There is recognition within the policy that some harm could result from development but that it should be minimised. There is no substance to the point that an absence of a balancing provision makes it inconsistent with the NPPF for the same reasons as set out above (para. 75).

81 Significant weight must be attached to the emerging Core Strategy policies.

SPDs

82 As Mr. Callis explained, the Council's Wind Turbines in the Open Countryside (Dec 2010) and Low Carbon and Renewable Energy (Jul 2013) SPDs together establish a positive approach to renewable energy (X of Callis). The Wind Turbines SPD refers appropriately to PPS22 as then in force and refers to favourable consideration of such development if environmental considerations are met ([CD 4.1, para. 5.4). Whilst the Low Carbon SPD is focused on other technologies, it provides that similar themes apply to both and the two SPDs sit side by side ([CD 4.10], para. 1.9).

Energy policy and planning

83 The climate change targets contained in the Climate Change Act 2008 and the strategy by which they are to be achieved are acknowledged by the Council, including the legally binding target of sourcing 15% of energy from renewable by 2020. The positive thrust of energy policy should not be dismissed and the Council does not ask this inquiry to do so. However, whilst the various national energy policy documents are all capable of being material considerations, a logical approach should be adopted in attaching weight to such documents. That approach must recognise that when considering national energy and planning policies, it is national planning policy which should be the starting point and should carry considerable weight. Such land use planning policy must reflect that there is a balance to be struck and where planning policy statements post date energy policy, they can be taken to reflect the thrust of energy policy. The publication of the NPPF in March 2012 was the method by which national energy policy was read into the planning system.

National Planning Policy Framework

84 There is no express presumption in favour of renewable energy contained within the NPPF. As was noted in Opening, the consolidation (and simplification) of the various national planning policy guidance documents within the single NPPF presented the perfect opportunity for the Government at a national level to emphasise the urgent need for renewable energy by creating a presumption in its favour. The opportunity was not taken. As Mr. Bell accepted, the encouragement of the use of renewable resources is but one of 12 core planning principles each of which carry equal weight in paragraph 17 of the NPPF (XX of Bell). Others include the requirement that planning should be genuinely plan-led (see conflicts with Local plan policy

above), recognise the intrinsic character and beauty of the countryside, always seek to secure a good standard of amenity, conserve and enhance the natural environment, conserve heritage assets in a manner appropriate to their significance, and actively manage growth to make the fullest possible use of, inter alia, walking.

85 Section 10 of the NPPF on Climate Change contains no such presumption either (paras. 98-108). The ‘test’ to be applied from this section is that contained in paragraph 98 whereby LPAs should approve the application *‘if its impacts are (or can be made) acceptable’*. The acceptability of the impacts is at the heart of this appeal.

86 Footnote 17 and its references to the Overarching National Policy Statement should not be construed so as to elevate those energy statements to be read as a substitute for national planning policy as contained in the NPPF. The bullet point in the NPPF to which the footnote relates concerns identification of suitable area for renewables and can reasonably be said to apply at a strategic level. As Mr. Callis noted, whilst it does refer to determining planning applications for such development, it recommends following ‘the approach’ set out in the NPS read with the relevant sections of the Overarching National Policy Statement (Callis, 4.72). That does not mean that all of the detail of that guidance should be read as policy here, but that the approach of Part 4 of EN-1 (Assessment principles) and Part 2 of EN-3 (Assessment and technology specific information) should be used. It should be remembered that EN-1 and EN-3 are primarily directed at large infrastructure schemes (onshore wind over 50MW, EN-3, para. 1.8).

87 The general presumption in favour of sustainable development in paragraph 14 must be read in context. As was agreed by Mr. Bell, there is no definition of sustainable development in the Glossary, and the statement in paragraph 6 provides the nearest thing to the Government’s definition of sustainable development (XX of Bell). That is,

‘The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.’

88 In effect, this means that a proposal must be assessed against the NPPF as a whole and be reasonably compliant with it, for it to be considered sustainable development. That is the only

way to give meaning to this crucial part of the NPPF. The fact that the Framework is to be 'taken as a whole' echoes the wording in paragraph 14 for decision taking.

89 Interpreted in that proper context, the proposal does not represent sustainable development when assessed against the NPPF as a whole and so it cannot be sustainable development under the definition in paragraph 6. Whether the development is sustainable is an output when considered against the whole of the document.

90 For decision taking the presumption means:

- *approving development proposals that accord with the development plan without delay.*

Mr. Callis' evidence assesses the appeal proposal against the development plan and notes the overall conflict (para. 6.5)

and

- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

This bullet point applies only insofar as the Local Plan 'is silent'. In the light of the saved policies which are relevant and applicable, it cannot be said that the Development Plan is silent in its application to this proposal. Mr. Bell accepted that application of this bullet point did not mean that the Local Plan was cast aside (XX of Bell). It should not be just because it does not have a specific policy for each and every application. It is submitted that this reflects the requirement under section 38(6) PCPA 2004 to determine in accordance with the Development Plan.

- *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*

In any event, when assessed against the NPPF as a whole including Section 10 (Climate Change), Section 7 (Requiring Good design), Section 11 (Natural Environment), and Section 12 (Historic Environment), the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

or

specific policies in the Framework indicate development should be restricted.

This part is taken up by the Action Group.

91 The Council maintains its submission that national planning policy reflects the balance to be struck with environmental and social impacts with particular regard to landscape and visual effects, cultural heritage, and PROWs.

Targets

92 No material weight should be weighed in favour of the proposal in reliance on performance against targets. Whilst the policy urgent need for renewables should be and is acknowledged, that should be tempered by reference to the performance of the UK in deploying onshore wind within the strategy contained in the Roadmap.

93 The following points were accepted by Mr. Bell in XX (with caveats):

- (1) The Roadmap is a relatively recent and comprehensive expression of Government policy on renewable energy and the strategy for its deployment. It should be accorded significant weight (Bell, 5.2.43).
- (2) The goal of the strategy is to meet the legally binding commitment of 15% energy from renewable sources by 2020 (CD 7.6), para. 1.2). That remains the focus in the 2012 update (1.3). Whilst both documents refer to ambitions beyond that (2011, para. 1.3, 2012, para. 1.3) that reflects Government's aspirations (not its focus for the purpose of this strategy).
- (3) The model based central range for onshore wind deployment of 10 – 13GW by 2020 represents a range of what could reasonably be achieved from this technology in order to meet the UK's commitments for 2020.
- (4) Factoring in the significant attrition rate at the planning stage, the stated view in the 2012 Update is that the current (Dec 2012) pipeline is likely to represent the appropriate quantity of deployment to fulfil the central estimated range in the Roadmap.
- (5) As at July 2013, the RESTATS figures show that the UK has exceeded the upper end of the central range (13GW) for onshore wind (operational plus pipeline).
- (6) The figures show a rapidly accelerating performance in onshore wind in the last two years.
- (7) Performance against targets is a material consideration.

94 In that context, whilst the policy urgent need, attrition rates, uncertainties, and concerns about shortfalls from other technologies should be acknowledged, it should also be acknowledged that the Government's response to those concerns has not been to revise the central range for

onshore wind upwards. Doubts cast about as to whether offshore wind or other technologies would meet their targets should not be given credence without more.

95 The Roadmap Update 2012 provides that there is a healthy pipeline of onshore wind projects in the formal planning system as at June 2012 (2.31) and the position has significantly improved since then.

Reversibility

96 As Mr. Callis explained, reversibility was considered by Ms. Archer, Ms. Ahern, and Mr. Hall in assessing the impacts of the proposal (X of Callis). It has not been double counted by him. Significant weight was not attached to it by Ms. Archer, relying on the fact that cultural heritage assets are to be enjoyed by this and future generations (NPPF, para. 17). Mr. Brown accepted that the enjoyment of this generation was of equal weight to the enjoyment of future generations in that context (XX of Brown).

97 The fact that the scheme is 'reversible' still means that the wind turbines if the scheme is granted will be in place for 25 years plus a period for decommissioning. The turbines and their visual impacts will be here for at least a generation, if the appeal is allowed, affecting people in the surrounding area on recreational footpaths and bridleways. In terms of impacts on residential amenity, the visual impacts will be felt by local people, in their homes, in their gardens, and on their way to and from their properties. Where the occupiers operate an agricultural smallholding as in the case of Stuchbury Hall Farm, there will be little respite from the presence of the turbines at home, at work, or at night.

98 Overall, it is submitted that the Appellant has attached undue weight to the arguments in favour of renewable energy.

Conclusion

99 The Appellant has underestimated the landscape and visual, residential amenity, cultural heritage and PROWs impacts of the appeal proposal, and overstated the renewable energy case for approval. For the reasons set out above, the Council invites this inquiry to recommend to the SoS that the appeal be dismissed.

Note 1 The Council's position on the Arun DC case [ID 20] sets out its position with regard to the previous Inspector's decision.

Note 2 Having considered the Action Group's note on the materiality of a Community Fund. The Council agrees with it and has nothing to add.

ASITHA RANATUNGA

24 October 2013

Cornerstone Barristers, 2-3 Gray's Inn Square, London