Town and Country Planning Act 1990

Appeal by Broadview Energy Developments Limited

Land at Spring Farm Ridge, land to the north of Welsh Lane between Greatworth and Helmdon

Appeal Reference Number: APP/Z2830/A/11/2165035

Closing submissions on behalf of the Appellant

Because my Opening Submissions remain intact, additions and amendments resulting from the inquiry have been highlighted

1. Introduction

1.1 I opened this inquiry on the 8th October by saying that whilst the basis on which the High Court quashed the previous decision letter is not questioned, having read Inspector Fieldhouse's decision letter and the written evidence submitted this time around, an objective observer might be forgiven for scratching his or her head. Having now heard all of the oral evidence and Closing Submissions, that observer will still be scratching his or her head.

1.2 Little, if anything on the ground of any substance has changed in the interim. Where it has, say, with the grant of planning permission for the business at Tanks A Lot, it tends to weigh in favour of the scheme.

1.3 The Appellant submits that when the decision making process starts, quite properly, with the adopted development plan and the consideration is properly given to "other material considerations", exactly the same result would and should be reached this time around.

Status of the previous decision

1.4 Both the Council and HSGWAG have provided written notes on the High Court decision in Arun District Council v SSCLG in response to my Opening Submissions. The Appellant's view remains that that this redetermination process should be carried out afresh without any reference to what has gone before. The Appellant has studiously avoided referring to either the overall conclusions or constituent elements of the previous decision letter in oral evidence. The Appellant doesn't need to. This is manifestly a good scheme, tripped up in the High Court only because of the way in which the decision was written and not because of any problem with the underlying assessment of harm or planning balance.

Position of the Council

1.5 The Council's handling of this application and appeal has been beset by basic difficulties, tensions and flaws:

- The Notice of Decision contained six reasons for refusal. Reasons for refusal (3), (4) and (6) were dropped. No proper explanation has ever

been provided as to why. The tourism element of Reason for Refusal 1 has also been dropped, apparently after a further review of the position. Without any other factor changing, the amount of harm on the planning scales must have reduced from the time the refusal of planning permission was made. Having set down that track, the Council has not been able to get off those rails but the weightiness of reasons for objection clearly has unarguably diminished

- It is a basic principle that each and every reason for refusal should be capable of justifying refusal of planning permission on its own. The Council now accepts that neither impacts on cultural heritage nor impacts on public rights of way would justify refusal in their own right
- Acting properly, the Council should only have a single reason for refusal which would be related to landscape character and visual amenity
- It is quite clear from paragraph 11.3 of the officer report to committee that the Council considered cultural heritage impacts to be more serious than any landscape character or visual amenity impacts summarised in paragraph 11.2. There was a hierarchy of issues and professional officers were manifestly applying a weighting to the potential reasons for refusal. There is no other reasonable or common sense way to read the phrase "More seriously...." at the start of paragraph 11.3. If this interpretation is correct, then the issue which was then considered to be the most serious issue is not now even considered to justify refusal of planning permission
- Within this context, it is also clear from paragraph 8.28 of the officer report to committee that the most important cultural heritage related concern of Miss Archer was that the proposed development would affect Stowe Park. This was endorsed by the officer in paragraph 10.62 of the officer report to committee. Within the topic of cultural heritage impacts, there was also apparently an internal hierarchy at play. If this interpretation is correct, impacts on Stowe Park, the key asset, no longer form any part of the Council's case and the point has been abandoned
- "Substantial harm" to cultural heritage significance, which carries with it a very particular meaning and important consequences was alleged in reason for refusal (1). The Council has moved away from alleging substantial harm for the purposes of paragraph 133

1.6 At the end of all this, on the Council's case, the only potentially proper reason for refusal is reason for refusal (2). This involves three principal sub-elements which are that relating to (1) landscape character (2) visual amenity and (3) likely effects on the visual component of residential amenity at the single property of Stuchbury Hall Farm. As set out above, this issue was always seen by the Council as being subservient to cultural heritage impacts. The Council has torpedoed its own case from the outset.

HSGWAG

1.7 Much has been made by HSGWAG and individual local objectors of local opinion. The NPPG is nothing like a local community veto of the sort which had been ventilated by those opposing wind farms prior to its publication. Whilst members of HSGWAG are articulate and forthright, the point remains that vocal opposition is limited to a relatively small number of local people drawn from an apparently narrow socio-demographic grouping. Interestingly, more than one local objector in an unguarded

moment indicated that diminution in house prices was a main concern of local residents a point which Mr. Muston was keen to distance himself from; it may well be the 'elephant in the room'. Of course local residents identify the local landscape as unique and as valued by them. The Appellant does not doubt the sincerity with which they expressed that view. Just like everywhere else, the local countryside is valued highly at a local level as it has been in the past and as it will be in the future. There is nothing unusual or unique in this situation.

1.8 However, the realistic position is that modern commercial wind turbines are large structures that always bring with them significant change in the open countryside, and it is unrealistic to expect otherwise. To argue that such impacts are unacceptable is to say that onshore wind should not, as a matter of principle, play any significant role in renewable energy provision – and that runs counter to express Government policy, reiterated again in the recent Ministerial Statements and in the NPPG.

1.9 Unlike the Council, there is no implicit or explicit requirement for third party objectors to take account of all relevant factors and come to a balanced decision on the basis of national and development plan policies. This is not to criticise their role in the inquiry system, but rather to acknowledge the limits of that role. The reasons for objection raised by such third party objectors, where they are of substance, must of course be given due weight in the decision making process. This has always been done by Inspectors and the Secretary of State and the NPPG says nothing new in this regard. But such objections have to be subjected to the rigours of careful and robust evidential testing, and their planning merit assessed. There was very considerable repetition in the various presentations.

Community Engagement

1.10 A consistent theme in submissions from HSGWAG and local residents has been criticism of the Appellant's approach to community engagement. The Onshore Wind Call for Evidence which was the document launched when the two Ministerial Statements were published on 6th June 2013 is illuminating in this regard. Benchmarking and Monitoring Good Engagement Practices provides a Case Example of good practice in Engagement Methods. As discussed in cross-examination, the Statement of Community Consultation details the degree of effort in relation to community engagement made by Broadview here at Spring Farm Ridge and there is a very high degree of fit. When confronted with this, Mr. Muston backed down on his criticism to agree that the community engagement here was to a "reasonably high standard".

1.11 Rather, he changed his position to suggest that the community engagement process was not effective because it did not result in giving the local community what it wanted. Mr. Muston accepts that there is no objection in principle to development of a commercial wind farm on the appeal site but he cannot say what type of scheme would be acceptable. However, the views of individual members of HSGWAG and other local residents who have appeared at this inquiry are entrenched; they do not

want to see any commercial wind farm of any type of description on this site. This gulf cannot ever be bridged by community engagement. The reality is that as a result of the effective consultation exercise, the scheme was amended from 6 turbines to 5 turbines. The position of the five turbines were further moved in response to ecology and Public Rights of Way amenity concerns. The process of community engagement has secured improved outcomes in the language used by Mr. Honey in paragraph 28 of his Closing Submissions.

1.12 As the NPPF makes clear, there is a responsibility on every community to accommodate renewable energy schemes. It was very interesting that local objectors are very clear that they don't want a wind farm but are singularly unable to think of ways in which this community could meaningfully contribute to renewable energy aims and objectives.

1.13 In his recent Ministerial Statement of 6th June 2013, Secretary of State Davey reaffirmed that:

"appropriately sited onshore wind, as one of the most cost effective and proven renewable energy technologies, has an important part to play in a responsible and balanced UK energy policy".

The Spring Farm Ridge wind farm is appropriately sited and can and should play its part in our low carbon future.

2. Planning policy framework

2.1 For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the adopted development plan comprises:

- South Northamptonshire Local Plan 1997 (saved policies)

2.2 The most relevant policies identified by the Council are policies G3, EV2, EV11, EV12, EV28 and EV29. Also relevant are G2, EV1, EV21 and EV31

Primacy of the development plan

2.3 Given what happened in the High Court, the Appellant is quite clear that the decision maker should (1) identify each and every relevant development plan policy and (2) assess whether or not the proposed development would accord with it or fail to be in accord with it before moving on to a consideration of "other material considerations".

Treatment of development plan policies

2.4 Of the "other material considerations", the NPPF is the most important and it provides advice on how development plan policies should be treated. It is only policy and can only ever be subordinate to the primary legislation but it is important policy nonetheless.

2.5 Paragraph 14 of the NPPF is the most important part of the document with respect to decision taking. Because the South Northamptonshire Local Plan

dates back to 1997 it is silent in relation to renewable energy policy. Mr. Callis seemed to have difficulty in accepting this concept, opting for a half-way house position of "partly silent" which is not one of the options described in paragraph 14 itself. The Appellant submits that the fact of silence on renewable energy leads inexorably to the second limb of the second part of Paragraph 14. It is precisely the situation for which it was written.

2.6 In the Treading Wind Farm decision, when faced with the 1993 Fenland Local Plan (FLP), Inspector Jackson concluded that the plan did not envisage and was silent on renewable energy development, certainly not of the scale proposed (paragraph 16 DL). In these circumstances, the Inspector concluded that:

"The FLP is silent and out of date on renewable energy. In these circumstances, in accordance with paragraph 14 of the NPPF, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits"

The fact that the Inspector recorded that it was a point not in dispute is because the point was obvious; Mr. Honey suggests in paragraph 8 of his Closing Submissions that the point is in dispute here and that is a clear distinguishing feature. It isn't. He may want to argue the point but it manifestly wrong. Notwithstanding the fact that Policies E1, E3 and E8 of the Fenland Local Plan were in play, the Inspector did not see the need to assess compliance of the proposed development against them at all. The Secretary of State specifically agreed with the Inspector in paragraph 9 of his decision letter and applied the presumption as set out in the first bullet point in the second part of Paragraph 14 of the NPPF.

2.7 The position with the South Northamptonshire Local Plan is exactly the same as in Fenland District; the Local Plan is silent on renewable energy development. Acting entirely consistently, the Secretary of State would doubtless adopt the same approach in this case. However, the Appellant is of the view that the NPPF should not operate so as to prevent the decision maker from considering compliance of the proposed development with each and every residual policy in the adopted development plan pursuant to section 38(6). This is urged on the Inspector and Secretary of State as the legally correct course of action. Thereafter, the weight to be attached to compliance or breach of residual policies is then a matter for the decision maker in accordance with the test of consistency in paragraph 215 of the NPPF and in fulfilment of the presumption in favour of sustainable development in paragraph 14. In addition, it is interesting that in the officer report to committee, the Council itself went on to say that the policies of the South Northamptonshire Local Plan were out of date.

2.8 The Appellant is clear on the correct position. The proposed development would not be in accordance with aspects of Local Plan Policies G3, EV2 and EV11 but largely as a result of the fact that such policies have not been framed to deal at all with renewable energy developments in general and commercial wind energy schemes in particular. Criteria J of Policy G3 requires there to be no harm to the character, appearance or setting of a Conservation Area. Policy G3 does not strike a balance by allowing a development to proceed where no harm to the important considerations in the list of criteria is caused which is the assertion of Mr. Muston. This is not what the wording of the policy says. The same goes for Policy EV11. Mr. Muston further agrees that the fact of compliance or otherwise with Policy

EV2 should carry little weight. Policy G2 is not referred to in the Reasons for Refusal but Mr. Callis relies on in his written evidence and does not qualify his reference to it. In his view, Policy G2 "severely restrains development in the open countryside". In paragraph 9 of his Closing Submissions, Mr. Honey has misread paragraph 10.1 of the Appellant's Statement of Case which does not say that the Appellant agrees that local plan policies are consistent with the NPPF; what it means is that the proposed development would comply with those policies of the Local Plan which are themselves consistent with the NPPF.

2.9 Against this backdrop, Mr Callis attempts to maintain that the residual policies in the Local Plan represent a "positive strategy towards promoting energy from renewable sources" and Mr. Muston suggests that taken as a whole the picture is of a "permissive plan, which allows development to take place except where harm caused by doing so would be unacceptable". This is simply not the interpretational reality.

2.10 Attempts by Mr. Callis to argue for "partial silence" and to argue for a "flexible" application of a suite of local plan policies which were clearly not designed to address a commercial wind farm are unnecessary. The Council appears to argue this because it is nervous about the likelihood of losing the case again if it accepts that paragraph 14 is fully engaged.

3. Other material considerations

Emerging Policy

3.1 The Council has been involved in preparation of the West Northamptonshire Joint Core Strategy. Policy S11 deals with renewable energy. For the reasons set out in cross-examination of both Mr. Muston and Mr. Callis, the Appellant submits that the wording is inconsistent with the NPPF. As EN-3 makes plain, each and every commercial wind farm will inevitably result in significant landscape and visual effects over a number of kilometres. These will be adverse in character. As the wording is currently proposed, the Appellant submits that no commercial wind turbine could ever comply with Policy S11. Whilst the wording refers to an impact rather than an effect, an impact is simply the thing which gives rise to an effect and there is nothing in this distinction. It is also inconsistent with the NPPF for a second reason, namely because of the way in which it seeks general minimisation of harm not limited to the application site itself as it is in paragraph 2.7.49 of EN-3. It is not a facilitative policy which is required by paragraph 97 of the NPPF.

3.2 The Appellant submits that Policy S11 should and is likely to be changed by an Inspector pursuant to section 20(5) of the Planning and Compulsory Purchase Act 2004. Substantially less weight can be placed on inevitable breach of this emerging policy as it is currently drafted than might be the case had the draft wording been correct. Even Mr. Muston and Mr. Callis were forced to accept that the wording of the policy would have been better and clearer had the word "unacceptable" been used. As it stands, Policy S11 captures any significant adverse effects and does not include any yardstick of seriousness. Adoption of the Core Strategy is being significantly delayed due to the housing need assessment work which the Inspector requires to be undertaken and may well not take place until late 2014 or even 2015.

3.3 In his written evidence, Mr. Muston indicated that it would be more appropriate to give greater weight to the locally calibrated policies of the draft Core Strategy than the more general policies in the NPPF intended to apply over the whole country. This point is carried forward by Mr. Honey in paragraph 11 of his Closing Submissions. In cross-examination, Mr. Muston amended this view to agree that both the NPPF and the emerging Core Strategy were the two most important "other material considerations". Even this changed position cannot be right; the NPPF in combination with EN-1 and EN-3 provide the decision maker with all the assessment tools required to make a decision on the proposed development. They must do because some adopted development plans, as is the case here, are silent in terms of renewable energy policy and national policy is all that there is to fill the vacuum. The NPPF is clearly the most important "other material consideration" in this case.

National Planning Policy Framework

3.4 The NPPF makes clear its support for renewable energy proposals in particularly trenchant terms. Encouraging the deployment of renewable energy is explicitly included within the Core Principles at paragraph 17; paragraph 93 urges that the planning system plays "a key role" in supporting the delivery of renewable energy; delivery of renewable energy is "central to the economic, social and environmental dimensions of sustainable development". This paragraph 'operationalises' the concept of sustainable development in the case of a renewable energy development such as this wind farm.

3.5 At paragraph 96, the NPPF states the responsibility on "all communities to contribute to" renewable and low carbon energy (something that the County Councillor did not want to hear). Need for renewable generation projects does not have to be demonstrated by the appellant (paragraph 98) and all applications should be granted permission provided only that the impacts are (or can be made) acceptable.

3.6 The NPPF makes an explicit direction that, in the determination of planning applications for wind energy development, the decision maker should follow the approach set out in the relevant National Policy Statements – which, of course, contain the Government statements on the magnitude and urgency of need, which is presumably why this Appellant does not have to deal with this issue. All of these factors and policy statements within the NPPF need to be given significant weight in the determination of these applications.

3.7 A key submission at the close of this inquiry is that in order to meet vital policy objectives, the threshold of acceptable change has to be set at the right level; it has to be set at a level which provides adequate protection for the local environment and communities but which allows us to 'get on with it'. In summary:

- In accordance with paragraph 98 of the NPPF, this appeal should be allowed if the impacts of the proposed development are (or can be made) "acceptable". This does not mean that the scheme has to display perfection; it means "satisfactory" or "generally agreeable"
- The policy imperative can be translated to mean "as many schemes as possible and as fast as possible, providing that in each case the

impacts of a given scheme are acceptable". This language and sentiment comes directly from EN-1

- "acceptable" can be interpreted to mean that planning permission should follow unless interests of acknowledged importance would be "unacceptably harmed" and such harm would "significantly and demonstrably outweigh" benefits
- Unacceptable harm is clearly not the same thing as a "significant effect" identified for the purposes of the Environmental Impact Assessment Regulations 1999. It must indicate something of much greater overall gravity and this was expressly agreed by the Council
- The only way to give expression to the overwhelming policy drive is to interpret paragraphs 14 and 98 of the NPPF in such a way as to set the threshold of acceptable change on the various interests of acknowledged importance at a level which allows sufficient schemes to go through in sufficient places.

3.8 Footnote 9 in Paragraph 14 of the NPPF suggests that the presumption in favour of sustainable development would not apply when a policy of restriction is engaged including cases involving impacts on designated heritage assets. The Appellant submits that once the requirements of the policies of restriction have been satisfied, whether that be paragraph 133 or paragraph 134, the presumption in favour of sustainable development in paragraph 14 would be re-engaged. In the Treading Wind Farm case which involved harm to designated heritage assets, this is how both the Inspector and Secretary of State appear to have approached the issue.

3.9 Mr. Honey on behalf of HSGWAG sought to argue that it was only certain of the cultural heritage policies in the NPPF that are policies of restriction for the purposes of footnote 9, namely paragraphs 132 and 133. For the reasons given by Mr. Bell, paragraph 134 is just as much a policy relating to designated heritage assets and is a policy of restriction as is paragraph 132 and 133. Paragraph 133 provides the same sort of balancing provision as paragraph 134 except to say that because the harm is substantial, the wider environmental benefits have to be commensurately greater. This is a proposition without foundation and argued only in an attempt to hold back the operational force of the presumption in this case. However, it is only a point which would apply if "substantial harm" was found to a designated heritage asset which in this case, on HSGWAG's case could only be Sulgrave Conservation Area. If less than substantial harm, the effect of the caveat falls away. Nor does Footnote 9 apply to policies dealing with undesignated heritage assets which would be Policy 135, a point recognised by Mr. Honey in paragraph 4 of his Closing Submissions..

Ministerial Statements and the Planning Guidance

3.10 Much has been made by the Council and HSGWAG of the Ministerial Statement from DCLG dated 6th June 2013 and the NPPG. It is very important to actually read the product rather than just focus on the advert or worse still the hype and rhetoric. Mr. Callis and Mr. Muston have talked themselves into reading words and motives into the NPPG which simply aren't there

3.11 The Ministerial Statement by Ed Davey also made on 6th June 2013 makes clear that on-shore wind remains central to renewable energy policy as the most mature, least cost option. Both Ministerial Statements were published together with the Government Response to the Onshore

Wind Call for Evidence. The table on page 31 of this document makes plain that the updated and streamlined advice in the NPPG was being prepared according to the Taylor Review. It is also the case that it was a useful place to gather together legal principles from the various High Court cases, all of which were known and being acted on anyway but usefully be translated in to policy.

3.12 Taken together and properly understood, the Ministerial Statements did not constitute a change in Government planning policy in relation to onshore wind development and deployment. Nor did the Ministerial Statements direct the decision maker to actually do anything. They gave notice of and looked forward to the policy guidance itself which was being prepared. Reading paragraphs 25 to 26 of Mr. Honey's Closing Submissions, he is making direct criticism of previous judgements made by the Planning Inspectorate. It has never been wind farm developers which have struck the overall planning balance in previous cases. It has always been the decision maker. The real point being made is a rather unfortunate suggestion that Planning Inspectors cannot be relied upon to accord due weight to local considerations.

3.13 When the NPPG actually arrived, the four bullet points identified within the Ministerial Statements as being matters that need to be carefully considered were carried forward with the addition of two more (1) the need case (2) cumulative matters (3) topography (4) heritage assets (5) national designations and (6) amenity. However, all these points were already addressed in national planning policy and guidance and well known decided case law and they gain no greater weight from being repeated. The Appellant agrees that each and every issue raised demands careful attention.

3.14 The important point is that the NPPG does not seek to recalibrate the threshold of acceptable change and does not say that any greater weight should be afforded to local concerns. Mr Callis was left unable to point to any reference in the text of the NPPG which suggested that such a recalibration of harm, explicit or implicit had taken place. His suggestion that the NPPG represents a "levelling of the playing field" and that it represents "a general reigning in of the direction of travel in which the policy had been evolving" does not bear scrutiny. That is what he wishes to read in to the wording rather than what is actually there. In this appeal:

- Whilst the need case does not automatically override environmental protection and the concerns of the community, it is an important material consideration in this case which should be afforded significant weight in the planning balance. This was established in the Sea Land and Power case in the High Court; and
- The Appellant has taken full account in its supporting information for the application of cumulative matters and local topographic considerations as part of the LVIA
- The Appellant has properly assessed the potential effects on heritage assets in line with national planning policy and guidance, taking account of the East Northamptonshire and Nuon v Bedford Borough Council cases

- Residential amenity has been assessed in line with the bench mark case of Burnthouse Farm, decided by Secretary of State Pickles himself

3.15 In summary, the considerations set out in the Ministerial Statements were those that would already be applied under the NPPF and in environmental impact assessment procedures and were considerations properly addressed by the Appellant in its evidence. Whilst helpful and welcome, the NPPG does not require the Appellant or decision maker to do anything more or different. Criticism made by Mr. Ranatunga in paragraph 8 of his Closing Submissions that the Appellant's consultants have merely paid lip service to the NPPG rather than act on it, cannot be right on any reading. Even if Mr. Ranatunga is right, his interpretation can only go to the relative weight to be attached to harm; it cannot go to how individual specialist assessments are carried out. Further, Mr. Ranatunga purports to criticise the Appellant for seeking to undertake a quasi legal review of the Treading Wind Farm decision in which he acted. The point is that the Appellant has very real concerns about the approach taken in that case on a number of points and in making a decision here at Spring Farm Ridge it is necessary to point out what are very real problems in law. Dealing with a point raised in paragraph 12 of his Closing Submissions, the WMS clearly did not accurately capture all of the Ministerial intentions. For example, the developer at Treading Wind Farm was never afforded the opportunity to submit representations on such differences which, for example, include paragraph 38 of the NPPF dealing with the materiality of energy output. Far from being frightened of Treading Wind Farm the Appellant submits that it cuts against the Council and HSGWAG in all sorts of way on interpretation of NPPF, interpretation of development policy and totally undermines Mr. Callis on his approach to energy policy.

Energy policy context

3.15 Energy policy is clear. When the following documents are read together:

- Climate Change: The UK Programme
- EU Climate Change and Energy Package
- Planning for a Sustainable Future
- The Renewable Energy Strategy
- The Planning Act 2008
- The Energy Act 2008
- The Climate Change Act 2008
- UK Low Carbon Transition Plan
- National Policy Statement on Energy Infrastructure
- National Policy Statement on Renewable Energy
- The Renewable Energy Action Plan
- The Annual Energy Statement of July 2010
- Ministerial Statement of 18 October 2010
- Renewable Energy Review of May 2011
- Presumption in Favour of Sustainable Development of 16 June 2011

- White Paper on Energy Market Reform of July 2011
- Renewable Energy Roadmap of July 2011
- Delivering our Low Carbon Future of December 2011
- Energy Bill of 2012
- Annual Energy Statement of November 2012
- Renewable Energy Roadmap Addendum of December 2012

there is no reasonable room for dispute regarding (1) the seriousness of climate change and its potential effects (2) the seriousness of the need to cut carbon dioxide emissions or (3) the seriousness of the Coalition Government's intentions regarding deployment of renewable energy generation.

3.16 There has been a thread running through the Council's evidence that the appropriateness of direct application of EN-1 and EN-3 to schemes below 50 MW needs to be considered (for instance Callis Proof of Evidence paragraphs 4.72 4.78 but picked up nervously by Ms Ahern). Mr. Callis then seemed keen to "follow the approach" rather than the detail of the content and to downplay the role of the NPS in this inquiry by stating their reference is only via footnote 17. The Council clearly misses the point about the Government seeking to make references to the national policy in the NPPF brief and the fact the topic is the only footnote in the NPPF cross-referencing a National Policy Statement. When considering the impacts of the proposed development, the policy guidance is directly applicable and the distinction between schemes over or under 50 MW is irrelevant.

3.17 The Roadmap Update, written at the end of 2012 and after considerable 'chatter' about the future role to be played by on-shore wind, confirms that the Roadmap produced illustrative 'central ranges' for deployment but did not represent technology specific targets nor the level of national ambition. The 13GW on shore wind is not any form of cap or limit. EN-1 specifically states that it is not the intention of the Government to impose a target or cap for any given technology type.

3.18 It is erroneous to suggest as Mr. Callis does that somehow the weight attaching to the need case for onshore wind has drastically reduced and consequently that it is necessary that a scheme should do less harm than in circumstances when need was more urgent. There are now no regional renewable energy targets but need at the national level has not lessened one bit. NPS EN-1 makes it crystal clear that the need for renewable energy remains urgent and unabated, a point which was confirmed only two weeks ago by the Secretary of State at Treading Wind Farm when he expressly endorsed what Inspector Jackson had to say in paragraph 69 of his report. Nor is it correct to suggest that because the NPPF does not repeat the specific language of PPS 22 in terms of significant weight to benefits that this represents a policy shift; the NPPF specifically cross-refers to EN-1 and EN-3 and when taken together with the NPPG and other policy documents, it is clear that the wider environmental benefits are very important factors indeed. This submission was specifically addressed and rejected by the Inspector in the Chelverston decision. The Appellant would also specifically refer the decision maker to the comments of Inspector Pinner in the recent decision at Gayton-Le-Marsh on exactly these issues.

3.19 Neither the Council nor HSGWAG are taking a performance related case against the proposed development; in other words, there is nothing relating to available wind speed, commercial viability, predicted output, carbon payback or emissions savings which specifically weigh against the scheme in the planning balance. Any recalculations of the likely benefits of the scheme are on the basis of revised assumptions which would be common to all commercial scale wind farms. For instance, it isn't that this wind farm proposal has suddenly become a certain percentage less beneficial; adjusted calculative assumptions would apply to all schemes across the United Kingdom. In terms of paragraph 38 of the NPPG, the capacity factor for both candidate turbines at Spring Farm Ridge would be ahead of the 5 year average of 26.1% as set out in the recently published DECC Dukes Report.

3.20 The Appellant specifically draws attention to the Renewable Energy Roadmap and the Renewable Energy Roadmap Update. Paragraph 2.20 in the original Roadmap notes that the pipeline for new plant across the United Kingdom is healthy but paragraph 2.21 adopts a more cautionary tone because, as it says, we cannot be certain that all the projects in the pipeline will be consented or commissioned or that they will progress quickly enough to contribute when needed. This is repeated in the Update. This is precisely why EN-1 states that there is an urgent need for new large scale renewable energy projects to come forward to ensure that we meet the 2020 target and wider decarbonisation ambitions.

3.21 In summary

- Paragraph 1.1 of the Roadmap set out that the Coalition Government has made clear its commitment to increase the amount of renewable energy deployed in the United Kingdom to make the nation more energy secure, to protect customers from fluctuations in the price of fossil fuels, to help drive investment in new jobs and businesses in the renewable energy sector as well as keeping us on track to meet our carbon reduction objectives for the coming decades. Paragraph 1.3 of the Update makes clear that renewable will have a 'pivotal' role to play
- Paragraph 1.2 notes that the goal is to ensure that 15% of all our energy demand is met from renewable sources by 2020 in the most cost effective way, with ambition equally strong across all areas of the UK
- Paragraph 1.3 looks beyond 2020 and cites advice from the CCC that there is scope for the penetration of renewable energy to reach 30-45% of all energy consumed in the UK by 2030

3.22 Reflecting all this, paragraphs 93, 97 and 98 of the NPPF say that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability, providing resilience to the impacts of climate change and supporting the delivery of renewable energy.

3.23 Against that background, the national pipeline to 2020 in terms of renewable technologies overall and onshore wind specifically may be healthy but that health depends to a large extent on proposals already 'on the table', that is, in the planning system, like this one at Spring Farm Ridge coming to fruition, on time. Onshore wind is the most cost effective way of generating renewable energy now and because it is a mature technology that can be deployed quickly, it will play an important part in

making up the shortfall in progress from other technologies. There are no technical impediments to rapid deployment.

Supplementary Planning Documents

3.24 The Council has adopted two Supplementary Planning Documents. In so far as they contain requirements relating to alternative sites and the need to compare a scheme with others sources of renewable energy generation, they are inconsistent with the NPPF. Neither the Council nor HSGWAG has made any case that they count against the proposed development. Through Mr. Stevenson, the Appellant demonstrates that the appeal site lies in an unconstrained area as defined by the Council; whilst this does not obviate the need for detailed assessment during the appeal process, the proposed development comes forward on exactly on the sort of site envisaged by the Council. This is corroborated by the conclusions of the Heat Mapping Study for the East Midlands, interestingly undertaken by LUC which is designed to represent theoretical potential.

4. Principal issues

(1) Cultural Heritage

Confusion in the Council case

4.1 Confusion reigned regarding what the Council was saying about cultural heritage impacts; in paragraph 4.11 of the Statement of Case, following the downgrading of the degree of harm to less than "substantial harm" the Council argued for something denoted as "additional harm" which should carry considerable weight in the planning balance. Whilst this is not a category of harm identified in the NPPF, it would now appear to be harm which is less than substantial harm which is to be weighed in the planning balance nonetheless.

4.2 The first reason for refusal refers to potential harm to a number of heritage assets, "in particular Scheduled Ancient Monuments at Sulgrave and Helmdon, Listed Buildings (all grades) and Registered Parks and Gardens at Stowe, Sulgrave, Helmdon, Canons Ashby, Greatworth, Marston Hill and Stuchbury (undesignated asset), as well as a "number of Conservation Areas, particularly at Sulgrave". It also refers to tourism but as set out above, this element has been dropped.

4.3 The Council's Statement of Case listed the designated assets to be focused on by the Council at paragraph 4.8. This list does not include Culworth Conservation Area which was in issue at the previous inquiry. Mr. Brown has had to deal with this in his rebuttal proof. Mr. Ranatunga indicated that he did not want to take the case in relation to Culworth Conservation Area any further; of course, the Appellant would wish to decision maker to consider this designated asset if the view is taken that the statutory duty and policy tests in the NPPF are engaged. In addition,

Ms Archer tries to associate herself with concerns of third parties regarding the deserted medieval village at Stuchbury notwithstanding the fact that it is not mentioned in the Statement of Case.

Statutory and policy framework

- With regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990, notwithstanding misgivings about it expressed in the Bedford BC case, the Barnwell Manor litigation has made plain, the statutory duty is separate to the planning policy position. Laborious as it may be, each and every heritage asset within the study area has to be considered separately under both regimes
- Development plan policies form the starting point to decision making. All those relevant to cultural heritage are inconsistent with the NPPF because they lack any balancing provision and accordingly, breach of their strict wording should be accorded limited weight
- The NPPF supersedes most previous national policy in this area although considerable continuity is apparent. One of the core planning principles in paragraph 17 is the conservation of heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations. Significance is something that is experienced through an understanding of the heritage asset and which should be expressed in terms of archaeological, architectural, artistic or historic interest
- Contrary to what was asserted by Miss Archer, this is an exhaustive list of the special interests which go towards significance, drawn from the definition in Annex 2 to the NPPF. Conservation Principles was originally intended as guidance to English Heritage officers, pre-dated PPS 5 and its approach was not followed in PPS 5 itself or the NPPF. The differences are material because as English Heritage sets out itself, the value based approach in Conservation Principles is more discretionary and less objective than the special interest based approach in the NPPF. The hierarchy of (1) primary legislation in the Listed Building and Conservation Area Act 1990 (2) national planning policy (3) Practice Guide and then below those three (4) English Heritage guidance (which includes Conservation Principles) is clear and set out in Figure 1 of the Guidance on Setting of Heritage Assets
- Significance is not the same thing as general visitor amenity; nor is it the same as a contemporary landscape and visual amenity assessment
- Any assessment of the significance of a heritage asset should include the contribution of its setting. Any assessment should recognise that elements of the setting may make a positive contribution to, better reveal, remain neutral or detract from the heritage significance of the asset. In other words it is not protection of the setting for the sake of setting; it is protection of what is required to understand the importance of the asset itself
- The NPPF, Practice Guide to PPS 5 and the EH Guidance on Setting do not use terms like 'wider setting' or 'landscape setting'. These are simply working terms and should not be used in place of the policy definition in Annex 2 to the NPPF
- When an asset is likely to be affected, significance must be assessed in its entirety. This involves looking at setting 'in the round'. Particular

views may be more important (because they were designed or because they convey more heritage relevant information) than others but an assessment must not be restricted merely to views in which a development may have an effect

- Paragraph 132 of the NPPF does not refer to Conservation Areas and it is therefore clear that substantial harm to a Conservation Area would not have to be "exceptional". In paragraph 55 of his Closing Submissions, Mr. Honey seeks to read things in to national policy which are not there; the new draft on-line cultural heritage guidance makes it clear that Conservation Areas were not left out of paragraph 132 by way of oversight
- Paragraphs 132, 133 and 134 of the NPPF deal with single heritage assets; they do not provide for combining impacts to arrive at some form of overall melded assessment. The same is also true of the methodology set out by English Heritage in 'the Setting of Heritage Assets'.

Reversibility

- Paragraph 2.7.17 of NPS EN-3 directs that when undertaking an assessment of the likely impacts of wind turbines on both the landscape and cultural heritage assets, the decision maker should take reversibility into account. This echoes English Heritage's own guidance on Wind Energy and the Historic Environment which provides in the last bullet point on the Checklist that consideration should always be given to the reversibility of wind turbines. Reversibility can only serve to mitigate any harm arising and militate in favour of the grant of planning permission.

Level of agreement

4.4 English Heritage does not object to the proposed development. Between Miss Archer and Mr. Brown there is very little disagreement indeed. Miss Archer finds a minor effect on Greatworth Conservation Area and Sulgrave Manor and Sulgrave Manor RHPG when Mr. Brown found a neutral effect. The differences are cigarette paper thin.

4.5 Ms Farmer agreed with Mr. Brown's assessment except in four cases; she concludes that substantial harm would be caused to (1) Sulgrave Conservation Area (2) Stuchbury Deserted Medieval Village and that "Significant but unacceptable harm" would be caused to (3) Church of St. Peter Greatworth and (4) Railway Viaduct, Helmdon.

Substantial harm

4.6 The Council does not allege that the proposed development would result in substantial harm to any individual heritage asset or to any group of heritage assets. It would appear from Ms. Archer that this has always been her view and that she did not support the previous stance of the Council.

4.7 Ms Farmer manifestly felt much more vulnerable and unsure of her ground when dealing with cultural heritage impacts than when dealing with the much more familiar territory of landscape character and visual amenity impacts. What also became clear was that she had found there to be substantial harm to Sulgrave Conservation Area and the undesignated Stuchbury Deserted Medieval Village only because she had set too low a threshold; she was then caught out by the High Court decision in Bedford Borough Council v (1) SSGLG and (2) Nuon UK Limited [2013] EWHC 4344 and rather than owning up and saying that she needed to reassess matters, she agreed the test and attempted to argue that it made no difference.

4.8 As Jay J concluded in the very recent decision of Bedford Borough Council v (1) SSGLG and (2) Nuon UK Limited [2013] EWHC 4344 that the Inspector was correct in saying that

"24.….for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away.

25. Plainly in the context of physical harm, this would apply in the case of demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced"

4.9 In his assessment, the full detail of which is not repeated here but adopted in these Closing Submissions, Mr Brown makes the following principal points:

Moderate

- **Greatworth Hall**
  - Principal views from the house are to the south-east and away from the appeal site
  - Views towards the appeal site are from within the group of farm buildings
  - There is no evidence that Greatworth Hall was approached from the village; there is no road or footpath on the south side of the hall that leads to the building
  - Limited public views are available from the public footpath and bridleway to the south
  - Screening by buildings and trees would limit views from the north-east side of the house

- **Astwell Castle**

- Principal views towards the buildings are from the east but these are difficult to obtain from the road which is without a footway
- The appeal site lies to the west and is physically and visually separate

- **Castle Hill, Sulgrave**
  - The turbines would be seen in views south from Castle Hill but at a considerable distance
  - Inter-turbine spacing is such that visual permeability through to the landscape beyond would remain
  - There would be no confusion between Castle Hill and the heritage significance of the site would still be understood to an acceptable degree
  - There are no views of the monument that would be disturbed by the turbines; they would only affect views out from what has been always been a panoramic viewpoint. It will remain just that, albeit with turbines as a new feature in the view. The turbines would not unacceptably affect the perception of the ringwork having a dominating position in the landscape; nor would they alter perceptions of tranquillity and timelessness of the wider countryside
  - There would be no adverse effect on the ridge and furrow which lies to the south on undulating ground
- **Church of St. James, Sulgrave**
  - Miss Archer had to accept that there were no views of Greatworth Church obtainable from St. James's Church
  - There are no or very limited views of the Church that would be disturbed by the turbines. The heritage significance of the Church would clearly remain to be experienced and appreciated
- **Sulgrave Conservation Area**
  - Public views of the turbines from within the Conservation Area would only be possible from around Castle Hill and the parish church and from Helmdon Road
  - The turbines would be seen beyond the village in views from the public footpaths that cross the higher ground to the north but in these views, the village would clearly be appreciated as a historic settlement identifiably different from the turbines
  - There are no views towards the Conservation Area across the appeal site
  - Ms Archer appeared to suggest that the ridge and furrow immediately south of Sulgrave extended to the appeal site, a distance of over 2 km. This is potentially misleading because there is no continuous stretch. Further, any ridge and furrow that may have previously existed on the appeal site could not be seen or appreciated from Sulgrave
  - As the Sulgrave Conservation Area Character Appraisal points out, the surrounding landscape has been heavily influenced over time; it is not evocative of the medieval with the effects of Parliamentary enclosure and much more modern development being evident. It was precisely because of these varying historical influences that Ms Archer thought the surrounding landscape was important; it is not

undisturbed with an intact time-depth and the suggestion in paragraph 65 of Mr. Honey's Closing Submissions that Sulgrave has been "buffered against modern life" is misplaced

Minor

- **Church of St. Peter, Greatworth**
  - The progressive nature of the views through the churchyard means that from the village street that little is actually seen of the open countryside. As will be seen on the site visit, the effect of the Church building and the trees, the progressive nature of the view is not gradual. It is a series of steps. As the viewer passes the east end of the Church and past key trees, the views eastwards changes dramatically. The really open views are only possible from the east end of the churchyard once the building and the majority of the trees have been left behind
  - It was suggested by Ms Archer that the turbines would compete with the Church tower in views of Greatworth from the south and west. A very limited geographical area was identified and in Mr. Brown's opinion, there are few, if any locations to the south and west of Greatworth in which the church tower is dominant and the turbines would be seen in such close proximity as to compete with it
  - The walking guide for Greatworth identifies a number of panoramic viewpoint from which five Northamptonshire churches can be seen; these are all looking towards Greatworth from the North round to East when the wind farm would be behind the viewer. This is an interesting insight into what the local community sees as being important about Greatworth
- **Church of St. Mary Magdalene, Helmdon**
- **Stowe**

Neutral

- Greatworth Conservation Area
- Sulgrave Manor
- Culworth Conservation Area
- Site of the village of Stuchbury
- Railway Viaduct, Helmdon
- Canons Ashby

4.10 In relation to Sulgrave Conservation Area, Ms Farmer concludes that the heritage significance of no individual asset within Sulgrave Conservation Area would be substantially harmed. However, when taken collectively, she asserts that substantial harm would be caused within the meaning of paragraph 134. The point has been made above that paragraph 134 refers to heritage asset in the singular and that it is not correct to lump heritage

assets together. For the detailed reasons set out above, Ms Farmer was setting the bar far too low and even then, she herself admitted that it had been a matter of fine judgement. None of the aspects of setting which currently exist would be lost; the turbines would be additive in nature and would be another element within the landscape. To suggest that Sulgrave Conservation Area is a designated heritage asset where such a large amount of the reservoir of significance is to be found in its setting and to go on to suggest that the wind farm would result in very much, if not all of that significance draining way is overblown.

4.11 In relation to Stuchbury DMV, Ms Farmer argued that it was clearly equivalent to a designated asset and as such should be dealt with under paragraph 139 of the NPPF. This is not accepted. Contrary to her assertion, study of the Historic Land Character Assessment demonstrates that DMV with and without fishponds are not rare in this part of Northamptonshire; Ms Farmer was keen to point out the lowish number of designated examples but did not give the figure for undesignated examples which are plentiful. English Heritage is undertaking further work and this may or may not lead to scheduling; the position is uncertain. It is also clear that Ms Farmer concentrated exclusively on views out from the DMV towards the appeal site; there is nothing in her assessment to suggest that she considered visual elements of setting contained in views towards the DMV as contributing to heritage significance. For her to be correct, Ms Farmer would have to allocate the great majority of heritage significance of the covered deserted village to its setting as opposed to its physical fabric and then conclude that visibility of the turbines in views out from the site in one direction would be so harmful that very much if not all of the heritage significance of the undesignated asset had drained away. This simply is not credible in terms of policy or a properly conducted assessment. Again, none of the aspects of the landscape which contribute to the significance of this heritage asset would be lost. To suggest that the turbines would all but remove the narrative of the landscape and the ability to understand and appreciate significance in relation to the settlement, farming and fish farming is again overblown.

4.12 In relation to Helmdon Viaduct, Ms Farmer did not seek to argue that it was equivalent to a designated asset and it should be assessed pursuant to paragraph 135 of the NPPF. The turbines would be located on the agricultural land to the west of the structure at a distance of about 800 m away. The turbines would be visually dominant in views to and from the heritage asset. However, the scale of the wind farm is relatively limited and the turbines would not surround the asset. The disused railway lines and the agricultural land would remain largely unaltered and the architectural and historic interest in the asset would not be affected.

4.13 Ms Farmer also specifically raised Priory Farmhouse, Helmdon and whilst she did not develop any case based on this asset, it should not be forgotten by the decision maker when applying all relevant statutory duties and policy tests. Mr. Brown included Priory Farmhouse within a group of listed properties that would sustain a moderate impact on significance.

4.14 The modest degree of harm identified in this case should be weighed against the wider benefits of the application and the public benefit of

mitigating the effects of climate change. No substantial harm would result. It is clear that the benefits of this scheme outweigh any harm within paragraph 134. It is not enough that (1) some people would prefer that the turbines were not there or (2) that interpretation of the heritage significance of the heritage assets would be easier if the wind farm was not built. This would be to ask the wrong question and set the bar too low. Wind energy projects can satisfactorily co-exist with the heritage environment in both policy and real life, providing that acceptable change is embraced.

(2) Landscape character and visual amenity

4.15 The second reason for refusal refers to potential impacts on (1) landscape character (2) visual amenity and (3) the visual component of residential amenity. As set out above, this was previously seen by the Council as subservient to its cultural heritage case. Inevitable effects on landscape character and visual amenity of modern commercial wind turbines are understood and written into all policy documents. This is expressly acknowledged in paragraph 2.7.48 of EN-3. These turbines will be seen; but it cannot be the case that those who have established encouraging and enabling policies have done so without a clear awareness that in doing so as part and parcel of tackling climate change, this will give rise to significant landscape change and with it, visual change which will give rise to perceptions of visual and landscape harm for a proportion of the local and wider community. Were the term 'protect' to mean that all landscape must be protected against change or impact then no wind farm could ever come forward in the open countryside without offending against such a principle. This cannot be right.

4.16 It is also the case that landscape and visual effects are only one consideration to be taken into account in assessing planning applications. Effects may be deemed significant and even harmful but they do not have to be rendered harmless to be acceptable. Natural England has never objected to the proposed development on the basis of landscape impacts.

Landscape character

4.17 In her own words, Ms Ahern described the area as having a subtle rural character. The appeal site is located in the western portion of the Undulating Claylands Landscape Type (6a Tove Catchment Area Landscape Character Areas), which extends to the north east from Brackley in South Northamptonshire. This was designated by the Landscape Character Assessment (2003), which assessed landscape character types (LCT) and LCAs. The immediate landscape consists of pasture land made up of medium sized fields with hedgerows and scattered trees

- There would be no significant landscape character effect at the regional scale
- At the local level, the Renewable Energy SPD highlights that the appeal site is an unconstrained area of landscape

- The local landscape is not 'natural' or 'wild' in the sense that it has remained untouched by the hand of mankind. It has been a working farming landscape throughout history and remains so today. Whilst elements of time-depth are clearly evident, it is not a particularly 'timeless' landscape in character
- Theoretical effects would be relatively limited in extent on the ground and would occur within a local landscape type which is not small scale or unique, far less rare. Identification of a "wind farm landscape" and "Theoretical Local Landscape with Wind Farm" is both helpful and a widely used analytical technique. Ms Ahern appeared to struggle with the concept whilst Ms Farmer was much more conversant with it and happy to employ it. Mr. Ranatunga attempts to soften the impact of struggling with the concept in paragraph 17 of his Closing Submissions
- It is not correct to suggest that Mr. Stevenson has employed a theoretical technique without reference to conditions on the ground; as set out in his evidence, he absolutely has undertaken "ground truthing" to provide his considered view
- The "wind farm landscape", that is, the area in which the wind turbine would be the dominant landscape characteristic would extend to about 800 m from the closest turbine and Ms Farmer suggested that at a geographical extent of 800-900, she agreed that Mr. Stevenson's view was "there or thereabouts"
- The geographical extent of the landscape sub-type is agreed between Mr. Stevenson and Ms Farmer to the South, East and West of the proposed development. The only substantive disagreement was over the extent of the landscape sub-type to the North. Mr. Stevenson's view is that the villages of Greatworth, Helmdon and Sulgrave are sufficiently strong and individual in character to contrast markedly with the surrounding landscape. Their character would be substantially unaffected when considered in the round. Considering the landscape to the North of Sulgrave, east of Helmdon and west of Greatworth, there is a palpable sense of separation from the wind farm. The same is experienced in the vicinity of Viewpoint 6. The montages for Viewpoint 8 and 9 demonstrate that although a significant visual effect may rise when viewing solely in the direction of the wind farm, it is clear that the location is not characterized by the turbines although viewers may consider that there is an effect on the amenity they may enjoy
- Local character effects would be local rather than widespread: long term as opposed to permanent; fully reversible and depending on persuasion, positively regarded by some, of no account for others and adverse for the remainder
- The Undulating Claylands in the Tove Catchment Area bear the characteristics which render it less rather than more sensitive to wind farm development. Putting it the other way round, the attributes of the host landscape are more rather than less able to satisfactorily accommodate the proposed development
- The appeal site lies in a local landscape of Medium-Large Scale
- Ms Ahern suggested that the appeal site falls into two distinct local character areas; higher sensitivity in the Helmdon Valleys (A3) and medium high sensitivity to on the Greatworth Interfluves (B1). Whilst the appeal site lies on the gentle southern slope of the valley side, in terms of wider perceptions, it is read as an exposed open plateau.

There is no doubt that four of the turbines would be embedded in the interfluve within LCA B1. On the ground, T5 would be located in a fieldscape much more closely associated with the attributes of LCA B1 than with the tighter, more intimate and sheltered landscape adjacent the stream in LCA A3. As will be evident on the site visit, all of the turbines, including T5 would be sited on what is a simpler and less sensitive part of the local landscape

- LCA B1 is of medium sensitivity in terms of rarity, medium-low in terms of designated scenic quality, low in terms of cultural associations but high in terms of amenity and recreation. Every one of the fourteen criteria bar three used by Ms Ahern would be medium or lower sensitivity and yet her overall grading of sensitivity is Medium-High which Mr. Stevenson says is too high; of the three criteria, two are visual and one is a value criterion
- In perceptual terms, the appeal site is not especially tranquil with road noise evident to varying degrees, Tanks A Lot when it is operating and development such as the anaerobic digestor. Written evidence from Tanks a Lot is that post the grant of planning permission, noisy tank based activity is increasing. Whist the future potential route of HS2 has not altered the assessment of any consultant on behalf of the Appellant, it is too strong to suggest that the potential impacts of HS2 "cannot be a material consideration" as suggested in paragraph 25 of Mr. Ranatunga's Closing Submissions; they can and it would be up to the decision maker to apply whatever weight he thinks fit to them, very low though that is likely to be at this stage
- All of the landscape character elements set out by Ms Ahern for LCAs A3 and B1 would remain. The wind turbines would be additive in nature but would not physically take anything of note away. The underlying characteristics of the landscape are strong enough to persist whilst the wind farm is present and in 25 years time, they can be removed, thus preserving choices for the next generation
- No nationally, regionally or locally designated landscape resources would be significantly affected
- It was the professional opinion of the Planning Officer that the impact of the proposed development on the landscape did not give rise to harm which would justify the refusal of planning permission, only that in their opinion they did not possess "all the necessary information, proper assessment, viewpoints…identified"

Visual amenity

- Viewpoints were agreed with the Council to be reasonably representative and no Regulation 19 request for further views was ever received. All visualisations provided by the Appellant are accurate and compliant with SNH guidance
- All parties accept that there is a sufficiency of environmental information before this inquiry upon which a lawful decision can be made
- Significant visual effects would extend out to a theoretical distance of about 4-5 km in open and reasonably unconstrained views. Any such effects would be of local concern only

- Neither the Council nor HSGWAG have concentrated as much on impacts on general visual amenity as opposed to landscape character impacts. There is virtually no mention of general visual amenity considerations in the Closing Submissions of Mr. Honey. Mr. Ranatunga places weight on those public viewpoints within a geographical extent of up to 4 km from the appeal site. As will be seen from the site visit, these would not be unacceptable

Visual component of residential amenity

4.18 The separation between what is a private interest and what should be protected in the public interest is tolerably clear; it has been the subject of particular focus in wind farm cases since the decision at Enifer Downs in April 2009. It is acknowledged that the approach adumbrated by Inspector Lavender, articulated in its fullest form at Carland Cross should not be regarded as a mechanistic 'test' and has no status in terms of being part of statutory documentation or planning policy or guidance; however, it is most welcome to adopt a logical, transparent and objective approach and was recognised by the High Court in the Spring Farm Ridge challenge as a wholly suitable way of determining a policy compliance threshold. It is also the case that residential amenity is made up of at least three strands (1) visual component (2) noise and (3) shadow flicker.

4.19 As was pointed out at Burnt House Farm there can be no substitute for site visits to individual properties so that any likely impacts can be judged in the particular and unique circumstances of each. Nevertheless, it is helpful to consider the factors and thresholds of acceptability which have guided decision-makers in other cases:

- No individual has the right to a particular view but there comes a point when, by virtue of the proximity, size and scale of a given development, a residential property would be rendered so unattractive a place to live that planning permission should be refused. The public interest is engaged because it would not be right in a civil society to force persons to live in a property, which, viewed objectively, the majority of citizens would consider to be "unattractive"
- The test is concerned with an assessment of living conditions as they would pertain with the wind farm built, irrespective of the starting point. Ms Ahern expressly said that she was not applying any threshold test at all but rather asked herself a relative question of whether any property would be "substantially less attractive" with the wind farm present. For the reasons explored in cross examination and set out by Inspector Lavender at Carland Cross, to ask such a relative question is not the point
- At Burnt House Farm, the Secretary of State found it useful to pose the question whether "would the proposal affect the outlook of these residents to such an extent i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?" This approach is also the one adopted by the Secretary of State in the Treading Wind Farm case and is by now, very much a settled threshold test. Criticisms of the public test which are made by Mr. Ranatunga in paragraph 49 of his Closing Submissions are exactly the same as

those dismissed by the High Court in the Spring Farm Ridge legal challenge to which he does not refer which is very odd omission

- The test of what would be unacceptably unattractive in the public interest should be an objective test, albeit that judgement is required in its application in the circumstances of a particular case
- There needs to be a degree of harm over and above an identified substantial adverse effect on a private interest to take a case into the category of refusal in the public interest. This was expressly endorsed by the Secretary of State in paragraph 10 of his decision letter at Burnt House Farm dated 6 July 2011. Changing the outlook from a property is not sufficient. Indeed, even a fundamental change in outlook is not necessarily unacceptable as was the case at Beech Tree Farm, Goveton
- The visual component of residential amenity should be assessed "in the round" taking into account factors such as distance from the turbines, the orientation, size and layout of the dwelling, internal circulation, division between primary and secondary rooms, garden and other amenity space, arc of view occupied by the wind farm, views through the turbines and the availability of screening
- Each case has to be decided on its own merits but other appeal cases provide a useful benchmarking exercise. Granting permission here would be entirely in line with such decisions
- Elements of the proposed development would be visible from a number of nearby individual residential properties as well as properties within the settlement of Greatworth and other settlements in the vicinity, including Helmdon and Stuchbury. However, there would be no unacceptable effects on the visual component of residential amenity whether in the case of any individual dwelling, groups of dwellings or settlements
- The only property alleged to fail the public interest test by both the Council and HSGWFAG is Stuchbury Hall Farm. To this, the Appellant would also urge consideration to be given to the proposed barn conversion albeit that less weight should be accorded to it given that it may or may not ever be constructed. In the way in which Mr. Honey puts paragraph 206 of his Closing Submissions, Stuchbury Hall Farm is very much a "control" property; if the impacts are acceptable here then they will be acceptable at any other dwelling. That is the necessary corollary of his submission
- Impacts on the other individual residential properties listed by the Council as (1) Grange Farm and by HSGWAG as (1) Grange Farm (2) Astral Row/Helmdon Road, Greatworth and (3) Manor Barn, No. 66 and Manor Farm, Church Street, Helmdon fall are acknowledged to fall below the public interest threshold; such impacts remain material considerations and should be added to the planning balance but are not potentially knock-out blows, even on the cases of the Council and HSGWAG respectively
- It is not necessary to repeat the detail of the detailed Residential Amenity Survey here but the content is specifically incorporated into these Closing Submissions. Whilst the closest turbine to Stuchbury Hall Farm would be about 800 m, this would be T5 which would not be visible from the main (i.e. front) elevation or from the rear elevations or from the garden area from which the scheme has been considered). Care has to be exercised in this regard when reading paragraph 52 of

Mr. Ranatunga's Closing Submissions. Inspector Lavender was expressly stating that the "up to about 800 m" general threshold was in a situation where the full height and full spread of 120 m turbines in a wind farm could be seen with no screening; he was not dealing with turbines which cannot be seen from a property. The three relevant turbines which would be potentially visible in winter would be 1,110m, 910 m and 948 m respectively, well outside that "rule of thumb" distance of up to 800m as described

- Bearing in mind that (1) the orientation of the principal elevation faces east (2) the southern elevation is less important in terms of views from the house (3) the rear elevation faces west and (4) the rear amenity area has substantial treescape that would provide substantial filtering in winter and screening in summer, the property would remain an attractive place when judged objectively with the wind farm in place.

- Given the scale of the development, spacing of the turbines, distances involved, orientation of the property and amenity space and openness of view, the effects on outlook for the occupiers of Stuchbury Hall Farm would not mean the property becomes widely regarded as an unattractive place in which to live. It will remain a property with a very high degree of amenity, in which the vast majority of people would clamour to live, even with some wind turbines visible

- Whilst there was no legal impediment stopping the Tims family from cutting down trees to the South of the proposed extension, they did so in full knowledge that the planning appeal was being redetermined and that there is the clear possibility of planning permission being granted again. The Appellant has at no stage questioned the integrity of the Tims family and no case has been put to this extent. However, what the Appellant does rightly say is that they can be classified as "authors of their own misfortune". The trees were apparently healthy and shown on the planning application drawings to be retained and the Tims family have clearly made the choice that with the wind farm present, they would prefer to have an open view to the South than have mature trees in place. So be it. They could have waited to see the outcome of this planning appeal had they wanted to

- Reference has been made to the appeal decision at Brightenber, Craven District which analysed in detail in the Appellant's evidence and is a case in which Mr. Bell has had direct personal involvement. He is in an excellent position to make a comparative assessment. This has been seen a high water mark case in which a wind farm scheme which was otherwise acceptable was refused planning permission because of likely effects on a single dwelling. The situation there was fundamentally different to the situation which would pertain at Stuchbury Hall Farm including stand off distance, orientation of the dwelling, arc of view, availability of screening, view from rooms, views from outdoor amenity space, visibility during arrival and shadow cast. One particular concern of the Inspector was that the turbines at Brightenber were situated to the north of the property and would cast shadows in the morning when the early rising farmer was out and about. This would not occur at Stuchbury Hall Farm.

- The Tims family indicated that they had recently purchased and started to farm land near Helmdon. This would mean that during the agricultural working day, there would be respite from the turbines and they would not be all pervasive both at home and in the farmer's field

4.20 In short, there would be no unacceptable effects on the visual component of residential amenity whether in the case of any individual dwelling, groups of dwellings or settlements. At no individual residential property would the turbines be visually overbearing, overwhelming or oppressive. Given the scale of the development, spacing of the turbines, distances involved, orientation of properties and amenity space and openness of view, any effects on outlook would not cross the public interest line here at Spring Farm Ridge.

(5) Public Rights of Way

4.21 In view of the wording of paragraph 15.4 of the Statement of Common Ground, it came as a surprise to read the evidence of Mr. Hall. The starting point, when considering the impacts of the proposed development on the PROW network, especially the relationship between AN10 and T3, is the position agreed at the previous inquiry and with T3 at the co-ordinates approved by Inspector Fieldhouse. In addition, the Appellant is seeking to secure the implementation of a permissive footpath strategy by way of planning condition in the same form as approved at the last inquiry.

4.22 Even on the Council's case, impacts on Public Rights of Way are not a reason for refusal. Mr. Hall was quite clear that the Council does not run any case based on (1) physical obstruction or (2) actual harm to equestrian users, cyclists or walking. This is because wind turbines are a safe form of technology, a point which is specifically accepted in paragraph 64 of Mr. Ranatunga's Closing Submissions and there has been no recorded accident involving a member of the public whilst a wind farm has been operating normally anywhere in the United Kingdom.

4.23 The highest that the Council puts its case is that local people have a perception that harm would result. Whilst fear of harm can be a material planning consideration, such a fear has to (1) relate to a matter which is itself a material consideration (2) are objectively justified or (3) if the fact that they exist, even if baseless, may have land use consequences. In policy terms, they should be based on reasonable and robust evidence, a point which is made in paragraph 5.12 of EN-1 in relation to socio-economic matters. In this case, it is fear based upon speculation and flamed by objection to the wind farm itself. The Appellant accepts that perception of harm to safety and any consequential impact upon enjoyment of local rights of way can constitute a material consideration in law but the weight to be attached to it is extremely low.

4.24 Mr Hall's principal objection was based on the fact that Turbine 3 would oversail the corrected line of Footpath AN10 by a small amount. There is no absolute requirement to avoid oversailing at all but in order to remove an objection from the Council the Appellant would suggest (1) micro-siting by condition and (2) creation of a permissive footpath.

4.25 Mr. Honey makes the point in paragraphs 99 ad 100 of his Closing Submissions that the PROW network is well used; this isn't the point. Neither the Council nor HSGWAG can point to any robust evidence regarding deterrence rates such as where existing operational wind farms are close to public rights of way and directed by, alongside or through equivalent "wind farm landscape" zones of characterisation. Even if it is

right that for a section of the population, they will not enjoy the route as much, that does not mean that they will not use the route. This spectrum of response has been identified by numerous Inspectors and the Secretary of State up and down the country. People will continue to enjoy the variety of walks in the local area with or without the wind farm. It simply isn't credible to think otherwise.

Equestrian activity

4.26 There are two discernible strands to the equestrian related objections:

- Horse and rider safety
- Loss of amenity and potential sterilisation of riding routes

Horse and rider safety

4.27 The starting point is that there is nothing in law, regulation or policy guidance which requires even a separation distance of 200m between a turbine and any bridleway.

4.28 The distance of 200 m appears to have originated with the 200 yard distance stand off in the Turnpike Act of 1822. There is no clear rationale for the increased distances now sought as a starting point by the British Horse Society for either local riding routes or national routes. However, this guidance has to be read carefully. The 4 x tip height separation distance for national trails and 3 x tip height distance for other bridleways are just that, a starting point. The guidance indicates that 200m would normally be the minimum but trickles down even further to suggest alternative routes, mitigation measures and even simple payment of money to improve other routes in the area. Accordingly, the proposed development does comply with the British Horse Society guidance.

4.29 A very high percentage of operational wind farms are in rural locations in which horse riding can and does take place; there is no reliable empirical evidence to demonstrate that commercial wind turbines are unsafe for horses and riders. The Scottish BHS Advice Note which is more recent in substance than the British Horse Society guidance (only reprinted in February 2013 to update references to the NPPF) is very positive in tone, recognising that horse riding and wind turbines can happily and safely co-exist. It also provides very practical advice regarding habituation and riding with a wind farm buddy horse on a first trip.

4.30 Turbines start very slowly and gradually pick up speed and are unlikely to frighten all but the most highly strung horses. If there was a tangible and unacceptable risk of horses being frightened by turbines, with likelihood of injury to them, their riders and third parties, it seems inevitable that it would have been addressed in national planning policy guidance a long time ago. It is certain that it would have been made available to wind farm inquires up and down the country. There is nothing so special about the concentration of horse activity here in this part of South Northamptonshire nor the nature of local horse related businesses to warrant a different decision being reached.

4.31 Good horsemanship requires riders to be alert to potential dangers and when choosing where to ride, to recognise their own abilities and the sensitivities of their mounts and it is unrealistic for riders to expect all risks to be excluded from anywhere they may choose to ride. To do otherwise would effectively exclude turbines – and indeed many agricultural and other activities - from large swathes of rural England.

4.32 Whilst it does not accept the need for such a condition, in the event that the decision maker thought it Circular 11/95 compliant, the Appellant has been prepared to offer a scheme of horse familiarisation days for riders.

Loss of amenity and potential sterilisation of riding routes

4.33 Mr. Muston goes so far as to state that the proposed development would have the effect of "sterilising the rights of way network in the locality". This is hysterical. There is no credible evidence whatever regarding the degree to which, if any, wind turbines deter horse riders from using the BOAT or any other proximate bridleway or riding routes let alone sterilising the routes.

4.34 As the ZTVs show, the turbines would be visible to horses and riders for considerable distances; there would be no element of surprise or the turbines "popping up" from behind vegetation or built development at any point.

5. Further material considerations

5.1 In paragraph 16.1 of the Statement of Common Ground it is agreed between the Appellant and the Council that there are no objections to the proposed development in relation to any of the following issues that would be sufficient on their own to justify withholding planning permission

- Impact on local business diversification
- Archaeology
- Cultural heritage tourism
- Ecology
- Noise including infrasound, low frequency noise, amplitude modulation, the effects of wind shear and overall noise impacts during construction, operation and decommissioning
- Cumulative impacts of any kind
- Shadow flicker
- Impacts on radar or aviation interests
- The public safety of any motorists on the highway
- Ice throw
- The proposed access and the impact of development on the local highway network
- Loss of agricultural land
- Hydrology and hydrogeology, including flood risk and surface run off from the site during construction and operation
- Contamination
- The effects of electro-magnetic interference and telecommunications including wireless broadband.

- Human rights under Article 8 and Article 1 of the First Protocol to the ECHR and the Human Rights Act 1998, including diminution in the value of residential property

Impacts on the local highway network

5.2 As was confirmed, there is no technical objection from the County Highways Authority. Very helpfully it was confirmed on 23rd October 2013 that the County Highways Authority is aware of all the updated accident data submitted to this inquiry by Colin Wootton which post-dated the Red Route Study of September 2012 and it has not changed its position. County Councillor Gonzalez De Savage simply appeared in a political capacity. South Northamptonshire District Council has itself considered the evidence, including the consultation responses and Red Route Survey and decided not to object to the scheme on this basis.

5.3 Neither Spatial Planning Advice Note SP12/09 nor the updated DfT Circular 02/2013 directly applies to a secondary road such as the B4525. However, the Appellant has no difficulty in accepting that the general principles set out in those documents are relevant. WSP has provided a written statement on highway safety concerns which, notwithstanding the criticisms from Mr. Honey is robust. In short, there is no justifiable reason for refusing permission. There is no dispute that the road has an accident record but the technical appraisal is clear that given the nature of the road, good visibility of the turbines along the road and nature of the driving tasks close to the appeal site, the proposed wind farm would not present a safety risk. There are numerous examples throughout the United Kingdom of wind farms safely operating very close to roads of all categories and levels of danger.

5.4 A further point which has emerged during the inquiry is that a speed reduction scheme on the B4525 is being mooted. Slowing traffic on the road will only make the road safer notwithstanding that it would not be required to allow the proposed development to proceed safely.

Noise

5.5 The Council does not object to the proposed development on the basis of noise impacts, subject to the imposition of suitable conditions. Mr. Ranatunga indicated that the Council had a "watching brief" and the Council would hear HSGWAG's case before finally deciding its position. It has not sought to add a noise impact case and the Appellant has clearly properly assumed that Council members, properly advised by professional officers are content that noise impacts from the proposed development would be acceptable. It must also be the case that the Council does not believe that there is any noise related harm which might serve to magnify any harm to the visual component of residential amenity at Stuchbury Hall Farm of the type identified by Inspector Jackson at Treading Wind Farm. This is precisely because, like the Appellant, it equates compliance with ETSU-R-97 with no additional harm to go into the planning balance.

5.6 Mr. Davis on behalf of HSGWAG accepts that the noise assessment undertaken by the Appellant was compliant with ETSU-R-97 in all respects and that predicted wind turbine immission levels using a candidate turbine will meet the ETSU-R-97 derived noise limits under all conditions and at all locations for both quiet daytime and night-time periods. In short, no criticism whatever is made of the ETSU-R-97 assessment.

5.7 The assessment was carried out in accordance with the IoA Bulletin Article and the recently published Good Practice Guide and demonstrates that predicted wind turbine immission levels, using a candidate, meet the ETSU-R-97 derived noise limits under all conditions and at all locations for both quiet daytime and night-time periods. Because downwind propagation conditions are assumed, the use of warranted sound power levels coupled with a ground absorption factor of 0.5 produces a realistic worst case.

5.8 Mr. Davis dropped any argument regarding provision of technical data. So far as directional filtering is concerned, he "did not want to take the point any further". The Appellant assumes that this retreat was on account of the detailed explanation as to why it was not required provided by Mr. Arnott in paragraph 5.11 of his Proof of Evidence. He highlights a possible shortcoming in the noise predictions due to topographical variations between the appeal site and properties in Helmdon and at Stuchbury Hall Farm. Mr. Davis accepted that the IOG GPG terrain correction is not triggered; he considers that some form of effect may be likely but in cross-examination accepted that whilst it would be low, there was no way of quantifying it.

Planning policy on noise

5.9 The Noise Policy Statement sets out broad high level aspirations. Page 3 refers to its 'vision' as "Promoting good health...within the context of Government policy on sustainable development". This leads to the NPPF and the NPS documents, in particular the technology specific EN-3. Paragraph 123 (first bullet point) of the NPPF is not engaged because the proposed development would comply with ETSU-R-97 derived levels and would not give rise to significant adverse effects. Paragraph 123 (second bullet point) is engaged and satisfied because the application of ETSU-R-97 has minimised noise effects, not to a minimal level but to an acceptable level. Appropriate planning conditions can be imposed.

5.10 In short, to use the Noise Policy Statement in a determinative approach would be a wrong approach. Indeed, it would be an approach that would be inconsistent with the NPPF and NPS policy provisions.

5.11 HSGWAG's case seems to boil down to a proposition that it is for an Inspector to decide what can constitute a material consideration in any given case and he can look to guidance, standards and materials other than ETSU-R-97 to inform his decision. This is an uncontroversial statement of principle, subject however to the legal requirement to provide clear reasoning to support any conclusion.

5.12 Government guidance has consistently incorporated ETSU-R-97 as the approved methodology for assessing the impact of noise from wind turbines.

5.13 The National Policy Statement for England was written in March 2010 and provides high level aspirations for all types of development, all of which are laudable. However, a specific point made is that what may or may not be a Significant Observed Adverse Effect Level on health or amenity will vary between types of development and noise source. Written with the National Policy Statement on Noise expressly in mind, the NPPF specifically incorporates the guidance contained within EN-1 and EN-3. General guidance on noise is contained within EN-1.

5.14 General guidance on noise from energy schemes is given in section 5 of National Policy Statement EN-1. This refers to technology specific guidance for assessment of noise from on-shore wind energy schemes, which is provided in section 2.7 of EN-3. Paragraphs 2.7.57 and 2.7.58 of National Policy Statement EN-3 are perfectly clear that (1) ETSU-R-97 should be used and (2) providing that it is demonstrated that a particular scheme would comply with an ETSU-R-97 compliant assessment, a decision maker may well decide to give little weight or further still **no** weight to claimed impacts on amenity. In other words, the National Policy Statement provides clear guidance that a decision maker may completely ignore any changes in the background noise environment which occur below ETSU-R-97 limits.

5.15 Properly understood, there is no tension or conflict between any of these elements of policy; they were written to 'nest' inside each other. Compliance with ETSU-R-97 means that there would be no significant environmental effects in terms of the EIA Regulations 1999, no breach of Significant Observed Adverse Effect Levels within the meaning of the Noise Position Statement and no breach of Paragraph 17 of the NPPF.

5.16 As is the case with all government policy in the planning field, no matter how much a party may disagree with ETSU-R-97, it should be followed unless there are good reasons to depart from it. The position under Welsh and Scottish guidance is not relevant to this English decision albeit noting that the decision in Tegni Cymru Cyf v Welsh Ministers [2010] EWCA Civ 1635 simply said in the Welsh policy context, a decision maker is entitled to look beyond ETSU-R-97 compliance in a particular case if the evidence warrants it.

5.17 The Government's endorsement of ETSU-R-97 cannot and should not prevent consideration of the specific facts of an individual case, scientific information that points to a need to revise ETSU-R-97 either in light of the passage of time or evolving research or in relation to the site in question, or actual experience on the ground elsewhere. However, following the clearly stated guidance in paragraph 2.7.58 of EN-3, although it is open to a decision maker to look at factors beyond or contrary to ETSU-R-97, the Government is steering decision makers very much away from giving other factors weight in the planning judgement.

5.18 In the Spring Farm Ridge challenge itself, when this very point was raised on behalf of Mrs Ward, the High Court said that it was perhaps "unsurprising" that the Inspector had used ETSU-R-97 as the exclusive and sole criteria for determining the acceptability of noise impacts. On the facts of this case, the Appellant makes exactly the same point; it is open to and desirable for the Inspector and Secretary of State to consider any of the myriad points made by the HSGWAG but then decide, perfectly lawfully and rationally that ETSU-R-97 should be used for determining acceptability of impacts and as the basis for imposing a suitably worded condition.

Acceptable change in the background noise environment

5.19 The appellant readily accepts that there will be a change to the local noise environment, even where the actual turbine noise immissions are less than those levels permitted by ETSU-R-97. Noise immissions will, at times, inevitably exceed current prevailing background noise conditions. A rise above very low prevailing background levels to something which is still in absolute terms a very low background noise environment would not cause disturbance, result in an unacceptable level of amenity or result in breaches of development plan policy. There will be a change in the background noise environment, which should expressly be recognised by the decision maker. However, contrary to the clear misapprehension of both Inspector Jackson and the Secretary of State in the Treading Wind Farm decision, page 50 of ETSU-R-97 concludes that there is no evidence to suggest that rural dwellers are any more or less sensitive to noise impacts than others. Page 3 of ETSU-R-97 is in the background section and notes what was said in the Wilson Report. The actual guidance in the document is in Section 6. This is very important because it goes to the susceptibility of those who live in the countryside to withstand changes in the background noise environment. There is no significant noise harm which would serve to magnify the impact on the visual component of residential amenity at Stuchbury Hall Farm or any of the other identified residential properties.

5.20 However, great care has to be exercised so as not to invite a wolf in sheep's clothing into the decision making process; it would be a nonsense to find absolute limits acceptable within the endorsed rating and assessment ETSU-R-97 process, only to reintroduce a BS4142 style argument via the backdoor of an amenity argument. The very principles, purposes, methodology and shortcomings of BS4142 were known, understood and enshrined within ETSU-R-97 by its authors. It is not necessary to undertake the ETSU-R-97 process and add something to it; impacts on amenity have already been taken into account. Simple audibility is not the same thing as acceptable levels of noise impact commensurate with the need to facilitate renewable energy development. Change in itself doesn't matter; it would have to be change to a background noise environment which is unacceptable, which in the case here at Spring Farm Ridge it wouldn't be.

Other Amplitude Modulation

5.21 The Appellant submits that it is not possible, given the current state of play to construct a lawful condition to control OAM. Precisely because the causal mechanism is not known, it is not simply not possible to devise a scheme to predict and abate it. Any condition would likely dissolve in to a blunt tool requiring turbines to be switched off, at least every night which is neither proportionate nor workable. Particular reference should be made to the detailed discussions in the recent appeals at Woolley Hill (which dealt with the Den Brook variant condition) and Jacks Lane/Chiplow (which dealt with the Swinford variant condition) and the conclusions reached therein, all of which remain sound:

- In terms of Circular 11/95, because the likelihood of OAM itself cannot be predicted and there is nothing to suggest that the appeal site would be particularly prone to such tendencies, the imposition of a condition cannot be claimed to be necessary in the sense of mitigating foreseeable impacts. Similarly, asking the question "whether planning permission would have to be refused if the condition were not imposed", the answer would be 'no' because there is no evidence of demonstrable harm.
- It is not correct nor lawful, as Mr. Davis suggests to impose a condition now on the basis that at some unknown future date a mitigation solution might come along; there is no certainty that OAM will ever be understood sufficiently well such that an accurate predictive methodology could be constructed. It is simply not possible to conclude that there is a genuine likelihood that within the lifetime of the planning permission, a procedure for identifying, predicting and curing OAM, were it to occur on the appeal site, will be finalised.

5.22 In all the circumstances, Mr. Arnott was clear that an OAM condition would be (1) unnecessary (2) imprecise and (3) unreasonable and therefore outside Circular 11/95 and unlawful. The unquantifiable risk of OAM occurring at Spring Farm Ridge at levels which would be unacceptable and which might justify refusal of planning permission in the public interest does not lead to this conclusion. Moreover, whatever concerns there may be about the process, statutory nuisance and private nuisance remain methods of control which can and should be relied on.

6. Concluding remarks

6.1 Second time around and giving primacy to the adopted development plan as the law requires, planning permission should be granted again. The Appellant places no reliance on any part of the previous decision letter, reasoning or conclusions; it makes this submission solely on the basis of the evidence heard by this inquiry.

6.2 Below the level of statutory duties, in policy terms, the full force of paragraph 14 of the NPPF is engaged and the presumption in favour of sustainable development bites. Because the South Northamptonshire Local Plan is silent in relation to renewable energy, planning permission should be granted unless any adverse impact would significantly and demonstrably outweigh the benefits. Indeed, giving proper consideration to the level of harm alleged by the Council and HSGWAG as required by

the NPPG, the identified harm does not come close to passing this test. The Council continues to attempt to hold back the full force of facilitative policy by placing a disproportionate amount of weight on (1) local landscape and visual amenity concerns and a lesser weight on (2) impacts on cultural heritage assets and (3) impacts on public rights of way.

6.3 The unacceptable harm alleges would amount to:

- Significant landscape character and visual effects over a limited, localised geographical area
- Residential amenity effects in relation to (1) Stuchbury Hall Farm and also potentially (2) Grange Farm and by HSGWAG as (1) Stuchbury Hall Farm (2) Grange Farm (3) Astral Row/Helmdon Road, Greatworth (4) Manor Barn, No. 66 and Manor Farm, Church Street, Helmdon small number of identified properties only one of which, Stuchbury Hall Farm is considered to fail the public interest in that it would become widely regarded as an unattractive place in which to live
- Perception of harm to safety for users of the Public Rights of Way network
- Impacts on cultural heritage assets, none of which would represent "substantial harm" in the view of the Council

6.4 On the other side of the scales:

- The benefits of 10-15 MW of installed capacity which needs to be considered against a broad canvas of urgency of need. This supply of renewable energy would contribute to the 15% energy and 30% electricity targets referred to for 2020
- Reduction in CO2 and other greenhouse gas emissions in helping to mitigate climate change
- Contribution to diversity and security of energy supply
- Economic development stimulus to the local and national economy
- Direct employment opportunities
- Indirect and induced economic benefits (the multiplier effect recognised in the DECC report Onshore Wind Direct and Wider Economic Impacts of May 2012
- Retention of business rates
- The benefit of the development contributing to the attainment of emerging development plan policy to encourage sustainable development and renewable energy infrastructure
- Ecological enhancement measures and overall biodiversity gain

6.5 Yes, the proposed development would involve change. However, change in and of itself is not unacceptable. Change of this type and magnitude is an acknowledged impact of a policy of deployment of wind turbines in the English countryside. There is nothing so special or out of the ordinary, far less rare or unique here at Spring Farm Ridge to suggest that the likely significant environmental effects would be unacceptable in the public interest which the planning system is there to preserve.

6.6 In the evidence it has called, the Appellant has once again demonstrated that the environmental, economic and social impacts of the proposed development would be acceptable and that planning permission should be granted in the form in which it has been sought.

David R Hardy (Partner) **24th October 2013**

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