TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY BROADVIEW ENERGY DEVELOPMENTS LTD

SPRING FARM RIDGE, BETWEEN GREATWORTH AND HELMDON

APP/Z2830/A/11/2165035

CLOSING SUBMISSIONS
ON BEHALF OF HSGWAG

Introduction

1. The Helmdon Stuchbury and Greatworth windfarm action group (HSGWAG) has sought to supplement the case of South Northamptonshire Council (SNC) as local planning authority as appropriate. HSGWAG has sought in particular to give a more local perspective, to ensure that the local impacts and the importance of them are not lost. There are large areas of overlap between the cases of HSGWAG and SNC, although there are some differences. HSGWAG adopts SNC's submissions and evidence, save where they are inconsistent with its own submissions and evidence. HSGWAG has also addressed some of the reasons for refusal which SNC chose not to pursue at the inquiry, including on noise and highway safety. These are genuine issues which significantly weigh against the grant of planning permission in this case.

2. These submissions are only a summary of HSGWAG's case; reference should also be made to the proofs of evidence, appendices and rebuttal proofs submitted by the experts called by the group. Some submissions were made in HSGWAG's statement of case, including in particular on legal points. Those submissions should be treated as incorporated into these closing submissions where they are not expressly repeated below. Submissions on the relevance of the previous decision letter and the *Arun DC* case, and on the relevance of the community fund, have been made separately.[1]

[1] See ID19 and ID40.

3. As stated in the pre-inquiry meeting note, it will be necessary for a view to be formed on the adequacy of the environmental information at the end of this inquiry. Reference has been made to HS2 but it is common ground that HS2 is irrelevant for the purposes of the assessment of the implications of the appeal scheme,[2] because it is so remote it should not be taken to be part of the baseline for assessment or a cumulative effect.

Planning policy

4. This appeal must be determined on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004: the decision in this case will have to be made in accordance with the statutory development plan, unless material considerations indicate otherwise. As Mr Muston explained in his proof, it is necessary to look at the development plan as a whole and discern the overall thrust of the plan in relation to the appeal proposals. The overall picture is of a permissive plan, which allows development to take place except where the harm caused by doing so would be unacceptable.

Local policy

5. The statutory development plan is the SNC Local Plan. However, the Appellant argues that the second bullet point in the second part of paragraph 14 of the NPPF should be applied. This is not correct. First, there is a complete answer to this argument in paragraph 14 itself, because this is a case where "specific policies" in the NPPF "indicate development should be restricted". As footnote 9 states, such policies include those related to "designated heritage assets". Those restrictive policies are paragraphs 132 and 133 (and 139) of the NPPF.

6. Paragraph 134 of the NPPF does not "indicate development should be restricted" and so does not engage this exception.[3] Paragraph 135 relates to

[2] Agreed by both Mr Stevenson and Mr Arnott. See also eg JS para 8.7 and SA para 4.14.
[3] DB only said in XIC that para 134 of the NPPF has the potential to be restrictive (whatever that means).

non-designated heritage assets and so also does not engage this exception. That is why this appeal is different from that in Treading. At Treading, the cultural heritage impacts were limited and did not engage the restrictive policies on designated heritage assets (DL para 20). This appeal does.

7. Secondly and in any event the Local Plan is not silent or the relevant policies out-of-date.[4] This is explained in considerable detail in Mr Muston's proof of evidence. The Local Plan is not silent because there is not an obligation for it to contain a policy specifically on renewable energy and the absence of such a policy cannot be said to amount to 'silence'. It is not reasonable to expect a plan to contain specific policies on every type of development. That is why nowadays we have general and criteria-based policies in local plans on general land use topics. As Mr Muston explains, all the aspects of the development can be assessed in light of the policies in the Local Plan. Mr Muston considers both the Local Plan and the NPPF policies in detail, and then undertakes a comparison of the two (as well as the SPD). His conclusion is that the Local Plan policies are consistent with the NPPF and therefore should be regarded as being up-to-date and should be given full weight.

8. If there is a need to match the development up to a particular policy in the Local Plan then that can be done with policy EV31,[5] as Mr Muston explains in his proof (paras 4.8 and 4.37).

9. The Treading decision does not set a precedent which would affect this appeal in this particular respect, because the point was not argued in that appeal. It is recorded in the Inspector's Report that there was no dispute that the local plan there was silent (para 16). There is a dispute in this case and it needs to be addressed on its merits.[6] Moreover, in Treading, the three FLP policies were

[4] MM in XX made it clear that para 14 of the NPPF asks whether "relevant policies are out-of-date" meaning policies plural.
[5] Mr Bell lists EV31 as a relevant policy in his Table 3.1 (para 3.1.3). It is also listed in the Statement of Common Ground as one of the "most relevant" policies in the Local Plan (para 5.4).
[6] The Culworth Grounds Farm decision (CD6.25) should not be taken to have pre-determined the question of whether the Local Plan meshes with the NPPF in relation to renewable energy developments. It needs to be considered in the context of this case, not least because the two different technologies in two different locations will have materially different interactions with the Local Plan. Even then, in that decision the Local Plan was not set aside but its policies were simply given reduced weight (IR para 120, DL para 22).

inconsistent with the NPPF, and therefore out-of-date, whereas the policies in this case are consistent.[7] The SNC Local Plan policies are akin to those in the SHLP which were not criticised in the Treading decision (IR para 19).

10. It should be recalled that in the 12 July 2012 decision letter, Inspector Fieldhouse found that the Local Plan policies were consistent with the NPPF and also that in its statement of case the Appellant said that the development plan was compliant with the NPPF (para 10.1).

11. Even if the Local Plan is judged to be silent, or that relevant policies are out-of-date, that does not mean that all policies of the Local Plan must be set aside.[8] That would be inconsistent with the statutory duty in s70(2) of the Town and Country Planning Act 1990 which requires the Secretary of State to have regard to all the material provisions of the statutory development plan. Only policies which are judged individually to be out-of-date could legitimately be left out of account in the exercise in s38(6) of the Planning and Compulsory Purchase Act 2004. Moreover, to leave out of account all policies of the Local Plan would be inconsistent with the provisions of the NPPF itself. Paragraph 215 of the NPPF requires that due weight should be given to policies according to their degree of consistency with the NPPF. It would only be if all material policies of the Local Plan were judged to be out-of-date that no weight could be given to them in the s38(6) exercise in accordance with the NPPF.[9]

12. Moreover, if the Local Plan is held to be silent and out-of-date in relation to renewable energy development, it is not the case that the NPPF is the only relevant document to which regard could be had. Although the NPPF is adopted policy, it is national. The draft Core Strategy policy S11 is not yet adopted[10] but it is local. Both the NPPF and policy S11 have the status of 'other material considerations' in terms of s38(6). The appeal proposals can still be

[7] MM in RX. That is why the policies were not mentioned further in the Treading IR and DL after IR para 16.
[8] This proposition appears not to be in dispute. It was put to MM in XX by DH on 22.10.13 and also articulated by DB in XIC on the same day.
[9] As was the case with the FLP policies in the Treading decision.
[10] MM explained fully in XX and RX (in addition to his proof and rebuttal) why draft Core Strategy policy S11 was consistent with the NPPF, including particular because the wording made it clear that there was an allowance inherent in the policy, eg in the phrase "significant adverse impact".

tested against policy S11 without having to fall back only on policy in the NPPF and paragraph 14 in particular.[11] The thrust of Government policy is to the effect that locally-formulated policy is to be preferred generally. As in Treading (DL10), weight can be given to the draft Core Strategy policies given their progress through the examination process. The Core Strategy is significantly further advanced than it was at the time of the previous inquiry and the weight to be given to it has increased since then (see MM para 4.11).

13. Finally, even if paragraph 14 is to be applied in lieu of local policy, for the reasons given in HSGWAG's submissions and evidence this is a case where the adverse impacts of permitting this development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole,[12] as was the case at Treading.

National policy

14. In addition to paragraph 14, which has been considered above, the NPPF contains core planning principles in paragraph 17. Weighing in favour of the development is the encouragement given to renewable energy developments. On the other side, as far as this case is concerned, are the following principles:

    i. to secure a good standard of amenity for all existing occupants of land and buildings;[13]

    ii. to recognise the intrinsic character and beauty of the countryside;[14]

    iii. to conserve and enhance the natural environment;

[11] See MM paras 4.14-4.15.
[12] Which is the definition of sustainable development in the NPPF (see para 6).
[13] JS accepted in XX by AR that "good standard" meant more than just adequate or satisfactory.
[14] JS accepted in XX by AR that this was not dependent on designation.

iv. to conserve 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.

15. In more detail, the NPPF is supportive of renewable energy developments (eg para 93), subject to the caveat that the application should be approved only if the "impacts are (or can be made) acceptable" (para 98). This must apply to all the impacts taken collectively together. The ultimate question of whether the impacts are acceptable or not would fall to be judged by the Secretary of State.

16. Paragraph 109 of the NPPF requires that the "local environment" should be enhanced including by protecting "valued landscapes". The landscapes here are valued, as is explained in the evidence of Ms Farmer, and was accepted by Mr Stevenson.

17. Noise impacts are covered by the NPPF in paragraph 120 (effects on general amenity) and paragraph 123 which requires that decisions should aim to:

i. avoid noise from giving rise to significant adverse impacts on quality of life as a result of new development;

ii. mitigate and reduce to a minimum other adverse impacts on quality of life arising from noise from new development, including through the use of conditions;

iii. protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

18. By reference to the Noise Policy Statement for England (ID31), Mr Arnott said in answer to a question from the Inspector that the noise from the development would fall within the ambit of the second point. Mr Davis's evidence is consistent with the noise effects being above the level at which significant adverse effects on quality of life occur, ie within the first point. In terms of the

NPSE, it is not accepted that ETSU-derived noise limits represent SOAEL.[15] As was noted by the Inspector in questions, NPSE contains the precautionary principle which applies when there is scientific doubt. This is relevant to the noise position in this case, as is explained further below. A precautionary approach in relation to consideration of noise, and noise conditions, ought to be adopted in the circumstances of this case.

19. The evidence of the witnesses of HSGWAG and SNC, and the members of the public who addressed the inquiry, shows that the local environment here falls within the ambit of the last point in paragraph 123 of the NPPF.

20. NPPF policies on the historic environment are considered below.

21. The July 2013 planning practice guidance for renewable and low carbon energy ("PPG", CD2.5) explains that planning is important to ensure that renewable developments are permitted "in locations where the local environmental impact is acceptable" (para 3). Using the word "critically" to highlight this importance, the PPG says that "the potential impacts on the local environment" should be taken into account (para 8). Similarly, paragraph 15 states that "local topography is an important factor" and that "protecting local amenity is an important consideration".[16]

22. The focus in the PPG on "local environmental impact" is notable, as is the wording used to draw attention to the importance of this impact. This is illustrated in the Treading decision where, although there was no landscape case advanced by the local planning authorities, the Secretary of State said that he was nonetheless "sympathetic to the local concern" and gave weight to the local landscape impact (para 19). In this case, the local environmental impact is very far from being acceptable.

[15] As RD explained in answer to questions from the Inspector. He noted that NPSE does not contain any numerical values and also notes that the significant effect level would be different for different noise sources.

[16] Local amenity in this context would include residential amenity: MM in XIC. It has been applied in this way by the SoS in the Treading decision (para 15).

23. The Appellant has argued that the Written Ministerial Statement (WMS) of 6 June 2013 (CD2.3) and the PPG do not constitute a change and do not require decision-makers to do anything more or different.[17] Mr Bell wrongly says that the WMS has been "overtaken" by the PPG (para 4.4.2). He also says that the WMS and the PPG advocated no change (para 4.4.9) and repeats the point that "the PPG does not require the Appellant or decision-maker in this case to do anything more or different" (para 4.5.28).

24. The suggestion that business as usual should continue with renewable energy developments is untenable. The WMS made it clear that there was dissatisfaction with "current planning decisions on onshore wind" and that "action is needed to deliver the balance expected". The Secretary of State said in terms "we need to ensure that protecting the local environment is properly considered". In the Treading decision letter, the Secretary of State said that "the main intentions" of the PPG were described in the WMS (para 7).

25. In the subsequent Written Ministerial Statement in October 2013 (ID15) the Secretary of State made it clear that the PPG was published "to help ensure the planning concerns raised by local communities are given proper weight in planning decisions on onshore renewable energy". The approach by both the Secretary of State and the Inspector in the Treading decision to the WMS and the PPG was telling (see eg IR para 68). A clear change was signalled. It is entirely untenable to suggest that the PPG was nothing more than a stream-lining of guidance in accordance with the Taylor Review. The two written ministerial statements, let alone the other documents, show that is not the case.

26. Appeals, including this one, were recovered by the Secretary of State this month so he could give "particular scrutiny" to "the extent to which the new practice guidance is meeting the Government's intentions". There can be no clearer indication than this that the PPG was intended to bring about a change.[18]

[17] Opening, paras 4.2, 4.3.
[18] AB accepted in XX by AR that it was a fair reading of CD2.3 that the Government thought that things had gone wrong previously and that they need to change.

27. Despite this, Mr Stevenson commented in relation to the WMS that he always thought that the proper balance was taking place before.[19] This shows the difference in outlook between the Appellant's consultants and the Secretary of State. It is apparent that it is because of the attitude of developers like the Appellant that business as usual should continue, notwithstanding the June 2013 WMS and July 2013 PPG, that the Secretary of State has felt it necessary to recover a number of appeals, including this one.

28. It is disappointing that the Appellant felt the need to suggest repeatedly that the Secretary of State had acted unlawfully in reaching his decision in Treading, not least because the main point, about ETSU, was entirely misplaced.[20] To the extent that Mr Hardy suggested errors they were all matters which favoured the appellant in that case and therefore would have made absolutely no difference to the outcome. The decision would never in practice be quashed even if Mr Hardy was right with his allegations.

29. The importance of community engagement is highlighted in the NPPF (paras 188-189).[21] The objective is to secure improved outcomes. The WMS (CD2.3) drew attention to this and said that "early and meaningful engagement with local communities" should assist "in improving the quality of proposed onshore wind development". This is a case where there was no meaningful engagement with the local communities, as was said repeatedly during the public session,[22] leading no doubt in part to the poor quality of the development. There was in this case no real attempt to engage with the local community, as opposed simply to providing information. As the design process progressed it became increasingly evident that the site was too constrained to allow the re-positioning of turbines to meet the many concerns of local people and effective community engagement became impossible. This is both a material consideration weighing

[19] In XX by AR.
[20] DH put it to RD in XX that there was "a clear mistake" and that the SoS had got it "completely wrong" with that was said in the Treading IR at para 49. It was in fact an almost direct quote from ETSU.
[21] See also the DECC response to the Onshore Wind Call for Evidence (CD7.21) at 3.1.
[22] See in particular the statement from Roger Miles. MM said in RX that what was done did not meet para 3.1 of CD7.21.

against the grant of permission and a reason why the development is also unacceptable in pure land use planning terms.

30. As in the Treading decision, little weight should be attributed to the beta test web-based guidance resource (para 12).

Landscape impact

31. It is common ground with the Appellant that the local landscape is highly valued by the local community.[23] It must be remembered that Mr Stevenson rejected the suggestion that the local landscape was developed countryside[24] and said that it was predominantly rural, as Ms Farmer had described it.[25] And that Mr Stevenson accepted that the development would lessen the rural character of the countryside and the sense of tranquillity.[26]

32. From the regional LCA, the landscape has been described as a rural landscape retaining a tranquil and historic character, with only limited evidence of change and development from recent decades (CD8.12, p168). It goes on to say that the area has a strong agricultural character, where areas possess an empty and tranquil character (p171). This is a description which applies to the area around Greatworth, Sulgrave and Helmdon. From the county LCA (JS App 3), key characteristics include wide panoramic views, as well as historical aspects of the landscape (pp72-73). The description of this area includes reference to prominent church spires providing local landmarks and punctuating the horizon (p78).

33. The characteristics of the local landscape include:[27]

    i. sparse settlement patterns with limited modern development;

[23] JS in XIC.
[24] Despite what he said in his proof at para 4.5, 7th bullet.
[25] In XX by AR.
[26] In XX by AR.
[27] See CD8.12, p167, and JS App 3, pp72-73. As agreed with JS in XX.

ii. remote, rural and sometimes empty character;

iii. views across elevated areas; and

iv. churches providing local landmarks and punctuating the horizon.

34. Characteristics to be considered are not just taken from LCAs; they must be present in the surroundings but can also include characteristics not identified in LCAs (CD8.13, 5.16).

35. To consider landscape effects it is necessary to ask whether the addition of new elements will influence the character of the landscape (CD8.13, 5.35). It is necessary to take into account the degree to which perceptual aspects of the landscape are altered, for example whether tall structures alter open skylines (CD8.13, 5.49), and also the extent of effects (5.50). Mr Stevenson agreed that the extent of characterising effects is the extent where the wind farm is prominent and contributes to the perception of the landscape character.[28] It is not just based on visibility and turbines do not have to be visible all the time from a location to alter the perception of it.[29] Decreasing influence is not just about distance but also includes other factors such as elevation, topography and orientation of views.

36. In this case in particular, as Ms Ahern explained, it is important to understand how the local topography works. Ms Farmer's Appendix B map will be invaluable in that exercise. She explained in her evidence-in-chief the sequence of valleys and ridges, including the height and curve of the northern ridge of the Sulgrave valley. Although there is an intermediate ridge between Sulgrave and the appeal site, from Sulgrave and around the turbines would appear to be sited on that intermediate ridge, because perception is influenced by topography, making the effect on the landscape around Sulgrave greater.

[28] See also JS para 4.13.
[29] Agreed by JS in XX. See eg AF para 41.

37. In the landscape the ridges are quite narrow and form skylines, so that they are an important local feature.[30] They form the valley crest, skyline and backdrop in the local landscape. This is especially the case with the Helmdon valley and the other land to the north of the B4525.

38. It is important to bear this in mind when considering Mr Stevenson's description of the local landscape. He described in his oral evidence as a medium to large scale landscape which was exposed and elevated.[31] It will be obvious to anyone who does more than simply walk from the B4525 to the turbine site and back again that that description is not at all appropriate. Mr Stevenson's assessment of the sensitivity of the local landscape does not ring true when properly tested. That is why both Ms Ahern and Ms Farmer take a different view of the description and the sensitivity of the local landscape.

39. As Ms Ahern said in cross-examination, the local landscape sensitivity is what provides the variable in landscape impact from wind turbine development, and what makes some locations unacceptable, despite the general support for wind turbines in the planning system.

40. Mr Stevenson's evidence is that there would be landscape character effects "within a few kilometres" of the appeal site (paras 4.34, 4.37). Whilst Mr Stevenson said in his oral evidence that characterising effects would extend as far as the village of Sulgrave, he did not accept that they went further than Sulgrave, for example to Ms Farmer's Views 1 and 2.[32] However, in cross-examination, Mr Stevenson accepted that views out from this location are focussed towards the wind farm and that the four characteristics identified earlier were all engaged in this location (sparse settlement patterns with limited modern development; remote, rural and sometimes empty character; views across elevated areas; and, churches providing local landmarks and punctuating the horizon). Whilst Mr Stevenson accepted that the wind farm would

[30] KA XIC.
[31] This was drawn from JS's Table 4.2 in his proof. JS para 9.16 uses the phrase "open, wind-swept, reasonably exposed, medium-large scale" etc.
[32] JS said that reference to his re-run of View 2 in his App 12 was not necessary.

contribute to the perception of landscape character in this location, he said that it was not co-dominant. However, co-dominance is not a requirement even on Mr Stevenson's approach. He confirmed in his oral evidence that a contribution towards the perception of the character was enough.[33]

41. It is in any event clear from Ms Farmer's evidence, as it will be on the site visit, that the characterising effects extend north of Sulgrave. Ms Farmer explained in her evidence-in-chief that from Views 1 and 2 north of Sulgrave the turbines are prominent on the skyline and have a characterising effect, despite the distance, due to their scale and appearance on the skyline in relation to the small patterns in the landscape and its orientation southwards towards the turbines.

42. The whole of the Helmdon valley is within the wind farm landscape as the turbines characterise the valley. This was explained by Ms Farmer in examination-in-chief by reference to Views 9 and 10 (Greatworth), where the turbines would be dominant features in the landscape due to their close proximity and scale in relation to other landscape elements. At Supplementary View 4 (Grange Farm), Ms Farmer explained that similarly the scale and dominance of the turbines in the landscape meant that they would be dominant and defining features, making it a wind farm landscape.

43. Mr Stevenson accepted that the Helmdon valley was perceived in the real world as a single piece of landscape. It is artificial to use an 800m cut-off for the wind farm landscape within the Helmdon valley; the whole valley will be characterised by the turbines and become a wind farm landscape. At Stuchbury Hall Farm, for example, the 800m distance would be half way up the valley side. But the dominant, characterising effects would continue up the lane to the road junction. Even Mr Stevenson finally accepted that the effect would just fall short of the road. This would be more than 1km, rather than 800m. Characterising effects also reach as far as Helmdon itself, with for example the

[33] See also JS para 4.13.

position of Ms Farmer's Supplementary Views 5 and 6 being within the wind farm sub-type.[34] In other directions, such effects reached around 900m.[35]

44. It is necessary also to bear in mind (without in any way double-counting the impacts of the development) the strong links between landscape character on the one hand and cultural heritage and historic landscape character on the other (CD8.13, 5.7-5.9). Mr Stevenson accepted that the historic character of the landscape is relevant to landscape impact assessment. Drawing on the characteristics identified in the county-level LCA and HLCA,[36] the area around the appeal site has ridge and furrow, a deserted medieval village, a defended medieval site and the remains of the railway. The HLCA describes in particular the importance of Stuchbury in landscape terms, as well as other assets and relict landscapes. Historic landscape features make a real contribution to landscape character in the local landscape around the appeal site. The HLC strategy for this area includes the recommendation that inappropriate large-scale development in the open countryside should be avoided.

45. Mr Stevenson's highly unusual approach to historic landscape matters was demonstrated by his opinion that the wind turbines would have positive effects in terms of the historic landscape and that landscapes should only be preserved if they were representative of one particular period in history.[37] It is to be doubted whether these are opinions which would be shared by the Secretary of State. In any event, Mr Stevenson accepted that the landscape around Stuchbury Hall Farm was a relict landscape,[38] with ridge furrow and the deserted medieval village, and that there would be a direct character effect on that relic landscape from the development.

46. In relation to landscape effects more generally, it is telling that Mr Stevenson said in his oral evidence that for the Sulgrave valley one would "not lose sight of the character of that valley" and "not lose sight of the adjacent topography".

[34] AF said in XIC that from these viewpoints the turbines were prominent but not dominant in the landscape and had a characterising influence due to their proximity and scale.
[35] See Views 9 and 10 and Supplementary View 4.
[36] JS App 3 and 7.
[37] JS accepted that this was his personal opinion and there was no policy basis for it.
[38] Despite what was said in his proof at para 4.66.

That is setting the bar for recognising adverse effects far too high. Any reasonable person would recognise that serious adverse effects can occur which fall short of eradicating the character of the valley and its topography.

47. The scale and number of turbines cannot have anything other than a major impact on the landscape as it currently exists. The turbines would be conspicuously out-of-scale with, and dominate, the local landscape. They would be at odds with the landscape's present composition, especially the almost total absence of tall, man-made features. In particular, the pattern of valley and ridges which extends to the north of the appeal site is sensitive to the proposed development and cannot satisfactorily accommodate the proposed turbines. The effect may be confined only to the local landscape, but this is still an important consideration, as the PPG highlights. The quality of the local landscape around and between the villages of Helmdon, Greatworth and Sulgrave would be destroyed for a generation.

48. The landscape effects in this case would be contrary to various elements of Local Plan policy G3, policy EV1, policy EV31, draft Core Strategy policy S11, and the provisions of the NPPF and the SPD.

Cultural heritage

49. The first point to note is that the most recently stated position of English Heritage in relation to the appeal proposals is in the letter of 16 June 2011 (ID10). At that stage EH's "significant concerns" remained. Although EH asked to be consulted further, it was not.

National Planning Policy Framework on the historic environment

50. The NPPF contains the concepts of significance and substantial harm. Significance is defined as "the value of a heritage asset to this and future generations because of its heritage interest". The NPPF notes that "that interest

may be archaeological, architectural, artistic or historic" and confirms that "significance derives not only from a heritage asset's physical presence, but also from its setting".

51. It is clear that significance can be affected by a development affecting the setting of a heritage asset (see eg NPPF para 129). In relation to significance, the PPG draws attention to the impact of proposals on views important to the setting of heritage assets (para 15, CD2.5). It requires that "careful consideration" is given to the impacts of wind turbines on heritage assets (para 34).

52. The NPPF defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced.[39] The reference to "experienced" is an important one, as it shows that the experience of an asset is at the heart of the idea of setting. This is echoed in the reference to effects on "the ability to appreciate" significance. The effect on a setting can affect the ability to appreciate the significance of a heritage asset and therefore harm that significance. In this case there is little dispute about the contribution setting makes to the significance of the heritage assets, save in a few cases.

53. Setting contributes to significance through perceptual and associational attributes (CD10.1, p7), including quiet and tranquillity (p8). It is necessary to consider the way the heritage asset is appreciated and experienced (CD10.1, pp18-19). It is clear that a whole raft of setting factors which can make a contribution to significance[40] can be affected by wind farm development.[41] These factors are affected by the development in this case, to a greater or lesser extent in particular cases. It is notable that Mr Brown accepted that he had not factored into his assessment a number of matters which plainly are relevant in

[39] See also CD10.1.
[40] From CD10.1, p19: topography, landscape scale, openness, functional relationships, degree of change over time, surrounding landscape character, views, visual prominence, intervisibility, noise, tranquillity, cultural associations, traditions, etc. See also CD10.5, p8: visual dominance, vistas and sightlines, and unaltered settings.
[41] By (from CD10.1, p21): proximity, extent, position in relation to landform, position in relation to views, prominence, competition, distraction, scale, movement, change to surroundings, change to skyline, noise, change to general character, etc. These were accepted by AB in XX as relevant considerations and matters which may affect significance in this case.

this case.[42] These factors are engaged in relation to the Sulgrave castle ringwork or Stuchbury earthworks, for example.

54. The reference to this generation in relation to the value of heritage assets is important given to the duration of this development. It shows that harm for the 25 year duration cannot be dismissed on the basis that the effects on the significance of the heritage assets would be reversed in 25 years time, when a generation would already have been affected. Mr Brown said that an equal weight must be given to effects on this generation as for effects on future generations.[43]

55. As to substantial harm, the NPPF provides no definition. The recent *Bedford BC* case (ID3) confirmed that 'substantial' and 'serious' are synonymous (paras 21, 26) and that the "yardstick" to be applied for substantial harm is where significance is "very much reduced" (para 25). That judgment post-dated the proofs of evidence in this case, so it could not be referred to in terms by the experts. But Ms Farmer was clear that the threshold that she had applied was in line with that indicated by the Judge.[44]

56. It is important to remember in this case that both Ms Farmer and Mr Brown took the same approach to substantial harm. It cannot therefore be said that Ms Farmer took any more relaxed approach to the threshold than the Appellant has done in its evidence. The same approach was taken. Mr Brown agreed that his approach was to equate substantial harm to a major impact in ES terms (AB para 3.10), and that this was the same as the proxy cited by Ms Farmer in her proof (AF para 64). The words used by Ms Farmer to describe the threshold in her paragraph 64 were almost identical to the words used in the ES (p148, 8.6.2). Mr Brown accepted that effectively the same approach to the substantial harm threshold had been taken by both experts. He also confirmed that

[42] Sightlines, sound, light and unaltered settings.
[43] In XX by AR.
[44] Refer to the answers given by AF in XX on 11 October 2013 (Day 4) around midday. Ms Farmer was clear that she had approached the matter on the basis that there had to be substantial and serious impacts to significance, and that there was no difference between the "very much reduced" formulation and what she had applied.

notwithstanding *Bedford BC* he was not seeking to change from the methodology he had adopted in his proof on substantial harm.

57. The PPG notes that the siting of wind turbines within the setting of heritage assets "may cause substantial harm to the significance of the asset" (para 34). This is important clarification that the Secretary of State sees it as a distinct possibility that in terms of the NPPF wind turbines could cause substantial harm to the significance of a heritage asset through setting. It is notable that the PPG post-dates the hearing in the *Bedford BC* case[45] and is not referred to in the judgment. It is also notable that the Secretary of State was not represented in that case to put forward his own submissions on what his policy in the NPPF meant. The Secretary of State will no doubt give consideration in deciding this appeal to the extent to which the judgment in the *Bedford BC* case reflects his intended approach to wind turbines in the setting of heritage assets causing substantial harm to the significance of those assets in terms of the NPPF and the PPG.

58. Listed buildings are encompassed within the definition of designated heritage assets in the NPPF. Conservation areas are expressly protected by paragraph 133 as a designated heritage asset.[46] The substantial harm threshold therefore has to be applied to conservation areas.[47] Although not within the ambit of paragraph 132, Mr Muston's opinion is that substantial harm to a conservation area should only be allowed exceptionally. That must be right. It cannot be anticipated that the Secretary of State expects substantial harm to the character or appearance of conservation areas to be commonplace. That would not be consonant with the statutory duty which applies in conservation areas.

59. No argument has been made by the Appellant in this case that the tests in paragraph 133 of the NPPF would be met, if they were engaged as HSGWAG submits. Nor could such an argument succeed even if it was made. The harm in this case is not "necessary to achieve substantial public benefits that outweigh that harm". The benefits in this case are not substantial, even if they could be

[45] The hearing was on 26 July 2013 and the PPG was published on 29 July 2013 (see CD2.10).
[46] See eg NPPF para 138 which makes this clear. Accepted by AB in XX.
[47] Accepted by AB in XX.

described as public, but in any event it is not *necessary* that they be achieved by this development. The bullet point exceptions in paragraph 133 clearly could never apply in this case. If substantial harm is found to either Sulgrave Conservation Area or Stuchbury earthworks (via paragraph 139) then paragraph 133 directs that permission should be refused.

60. It was accepted by Mr Brown, and indeed by Mr Hardy in questions, that the requirement in paragraph 134 of the NPPF to weigh less than substantial harm against the benefits was to be discharged in the overall planning balance. Mr Brown said it was perfectly consistent with the NPPF to undertake the balance as part of the overall planning balance rather than as an inherent part of a policy. That is common ground.[48] What it means, however, is that Mr Bell's argument that the Local Plan policies are inconsistent with the NPPF because they do not include a balancing provision in the policies themselves is obviously wrong.[49] The policy does not have to have the balance written into it, because the balance is done subsequently, in the overall conclusions.

61. Paragraph 139 of the NPPF provides that "non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets". This applies in relation to Stuchbury earthworks, for the reasons given later. The effect of this is that the earthworks are treated for the purposes of the NPPF as if they were a scheduled monument, so that paragraphs 132 and 133 would apply, including in relation to the substantial harm tests.

62. It is clear in this case that the requirement in paragraph 129 of the NPPF to "avoid or minimise conflict" between heritage assets and development proposals has not been satisfied in this case. This applies to all heritage assets, regardless of designation. The "great weight" requirement in paragraph 132 applies in relation to all designated heritage assets (and those to be treated as designated heritage assets). And the requirement in paragraph 135 applies to all

[48] This proposition was also put to NA in XX by DH (the para 134 harm just goes into the planning balance).
[49] MM Reb para 4.

non-designated heritage assets. As to the PPG, it is notable that the Secretary of State advises that in relation to wind turbines and the historic environment, that this is a topic which requires "great care" and "careful consideration" (paras 15 and 34).

Sulgrave Conservation Area

63. As Mr Brown accepted, almost all the village of Sulgrave is in the Conservation Area (CA); the CA contains a collection of heritage assets which form a significant group and give the village an historic feel. He agreed that the assets in Sulgrave have a collective value as a group, where each gains from the others,[50] and said that the assets had congruent settings.[51]

64. The Sulgrave Conservation Area is well described in the CA appraisal (CD10.7).[52] This explains the village's origins around the church and the ringwork, with the bailey now Castle Green, the importance of views, and the role of the countryside in expressing the agricultural roots of the village. In particular, views are highlighted (at 4.6) as being of great importance to the ringwork and also to the understanding of the context and development of the village and its rural links, which were the foundations of the village. The notable views include those from the north of the village towards the appeal site (fig 40) as well as views out of the CA (fig 41) including at the ringwork. It was accepted by Mr Brown that key views from the main street, the ringwork and Castle Green would be affected by this development.

65. It is common ground that, as an agricultural settlement, Sulgrave has a functional relationship with the surrounding countryside (AB para 6.28). Mr Brown accepted that the setting of the village and the CA is the Sulgrave valley

[50] NA said in XX that there was an important group of three heritage assets at Sulgrave which also played a part in the CA.
[51] AB para 6.28 explains what in his view the setting contributes to the significance of the Sulgrave CA (eg topography, land use, functional relationship, views, etc).
[52] AB said that the Sulgrave CAA (CD10.7) was a perfectly valid document. He had quoted from and relied upon it. NA explained in XIC that the CAA had been through full public consultation and was approved by SNC at committee.

and surrounding countryside. He also accepted that in some views at least the church tower forms a landmark in the local countryside, which highlights the important role played by the church in rural life.[53] It was also common ground that the rural setting of the Sulgrave CA contributes to the significance of the CA[54]. This is echoed in the CAA, which refers to links back to rural beginnings, the agricultural roots of the village and a key to understanding Sulgrave. It was agreed by Mr Brown that the position of the ringwork (including Castle Green) and church were linked historically, forming a deliberate grouping which reflected medieval life. He accepted that appreciating the two together helps to understand that link.

66. At Sulgrave, the collection of heritage assets is particularly sensitive to this development, because of the visual dominance in the landscape of the castle and the church, and the importance of views out from the castle earthworks (see CD10.5, p8). In its letter dated 16 June 2011 (ID10), EH highlighted the impact on views from the north of Sulgrave on the setting of the church and the contribution the church tower made to the character of the CA. Mr Brown accepted that there could be effects where the turbines were prominent or conspicuous, even if they were not dominant (see CD10.1, p21).[55]

67. The effect on the setting of Sulgrave Conservation Area (and the listed church) is demonstrated by the views from the north of Sulgrave.[56] All the following was accepted or said by Mr Brown in cross-examination. The top of the Sulgrave valley forms the edge of the setting of the CA and the church. All five wind turbines would be seen on the skyline, with the broadest extent of the wind farm. The turbines would be prominent in the view, with moving blades, sitting behind the core of the village, taking-up a large part of the field of view, and

[53] NA described this in XIC as expressing the dominance of church and its role in the community by the presence of the church tower in the landscape as the dominating feature on the horizon.
[54] AB paras 6.28, 6.33; AF para 84.
[55] Mr Brown accepted that a wind turbine and a heritage asset would always be "identifiably different" (AB para 6.29) but that nonetheless a turbine could still cause substantial harm through effects on setting (see CD2.5, para 34). This point does not help the Appellant at all. Nor does the conclusion that the turbines would not "surround" the CA. The turbines are in any event arrayed along one side of the village and CA. AR dealt with AB in XX on the "confusion" point. On this and the other generic points in AB's proof see AF's Rebuttal paras 11-15.
[56] See Ms Farmer's Views 1, 2 and 3 and Supplementary View 1 (and Mr Stevenson's Appendix 12, View 2). Mr Brown also agreed that there would be views from other locations, such as the road north of Helmdon where Sulgrave and the wind farm would be seen together in the same view.

would often be back-lit. They would appear to be sitting above and behind the village. The turbines would detract from the church's prominence on the skyline and take the place of the church as the main landmark in local views. The turbines would detract from the extent to which the countryside surrounding Sulgrave was perceived as being rural and having an historic character. There would be no other elements of modern life so prominent in the view. The development would change the perception of the CA's surroundings and affect the appreciation of the historic essence of Sulgrave.

68. With so much agreed as common ground, it is simply untenable for the Appellant to maintain that the effect on the CA would only be moderate adverse. Overall, the turbines would appear to be hanging over the village, intruding into its rural setting and undermining the character of Sulgrave as a rural village. It would also affect the relatively timeless character of Sulgrave, the sense that it is buffered against modern life to a large degree. And it would affect the appearance of the scale of the landscape, in relation to which the position and size of the church and ringwork is important. The development would affect the importance of the appearance of the village in the landscape. Overall, the development would undermine the intact character and rural context of the village which contributes so much to the Conservation Area's significance.

Sulgrave Castle Hill ringwork

69. Sulgrave ringwork is both an important part of the Sulgrave CA and an important asset in its own right. Hillforts were located to take advantage of their prominent locations with commanding views (CD8.12, p169). The GLVIA notes that visitors to heritage assets where views of the surroundings are an important contributor to the experience are in the most susceptible class of visual receptors (CD8.13, 6.33). Mr Brown's position is that views out of the ringwork are of great importance to the significance of the monument (AB para 6.33). This is in part why the effects on the views from the ringwork affect the significance of the asset (and its role in the CA) so much.

70. The effect on the ringwork (and its role in the CA) is demonstrated by Ms Farmer's View 3. Again, all the following was accepted or said by Mr Brown in cross-examination. The ringwork occupies an important historical position, commanding views of the surrounding countryside.[57] It was deliberately positioned so that occupants could see out from there. Views out reflect a key function of the ringwork.[58] The elevated position and views out are part of the ringwork's significance.[59] Views out over the countryside help understanding and appreciation of the ringwork's historic role. Currently, beyond the houses, there is nothing in the views out of the ringwork save for a view of the surrounding, undeveloped countryside beyond the village. Turbines would appear on the skyline to the south / south-west of the ringwork. They would appear on the horizon, moving, and would be prominent and a distraction in views out from the ringwork. They would affect the perception of the ringwork having a dominating position in the landscape, although not take it away entirely. For the part of the ringwork with the clearest view out, it would no longer feel like the ringwork had a dominating or commanding position in the landscape around Sulgrave. This would affect perceptions of the role and function of the ringwork, albeit not alter their nature, and to a degree affect perceptions of tranquillity and timelessness of the wider countryside.

71. In response to a question from the Inspector, Mr Brown said that, from the ringwork, the views south were the direction in which it was now possible to get an appreciation of the way the ringwork was designed, with views out, and that that direction was now the only direction in which it was possible to gain that understanding.

[57] NA said in response to IQs that it was notable that as one climbed-up the ringwork one got a true sense of how elevated it was and the wider view, and a real sense of the command that the high gives you. NA also said that this would be diminished by a much higher and larger element in the landscape which would dominate it.
[58] AB also accepted in XX by AR that for ringworks and churches views were important considerations and that the command of height was important. He also agreed that visual dominance of assets was of particular relevance in this case.
[59] AB para 6.33.

72. Again, with so much agreed as common ground, it is untenable for Mr Brown to suggest that the development would not detract from the significance of the asset to any great extent.

Conclusion

73. Mr Brown accepted that it was not appropriate to take the heritage assets at Sulgrave alone and that it was necessary to stand back and consider the impact on all of them together. Given the congruent setting, and that each asset gains from the others, the impact on the Conservation Area is greater than the impact on each asset alone. Mr Brown was clearly correct to accept that the countryside surrounding Sulgrave would not be unaltered, as it would have within it the five wind turbines, and to accept that the development would affect perceptions about Sulgrave and its historic assets.

74. Given in particular the importance of views in and around Sulgrave for the significance of the heritage assets in the Conservation Area, Ms Farmer was clear in cross-examination that the effects on significance would be serious and would cross the line of substantial harm, albeit finely balanced (AF para 91).

Stuchbury earthworks / deserted medieval village and fishponds

75. Although undesignated, at least currently, Stuchbury earthworks are to be treated as a designated asset in NPPF terms pursuant to paragraph 139. Mr Brown accepted that Stuchbury was a site of archaeological interest.

76. Paragraph 139 poses the question whether the earthworks are "demonstrably of equivalent significance to scheduled monuments". It was agreed by Mr Brown that "demonstrably" meant that the significance had to be demonstrated to the satisfaction of the Inspector (and the Secretary of State). It is necessary to consider whether Stuchbury earthworks are an asset of equivalent significance to scheduled monuments generally.

77. Mr Brown also said that he did not disagree with EH's assessment that the earthworks were potentially of national significance (see AF App H). Nor did he disagree with Ms Farmer's description of the site in her proof.[60] He went as far as to accept that the earthworks have the potential to have significance equivalent to a scheduled monument. There is not therefore much between the parties on the NPPF paragraph 139 point. The only issue is whether the earthworks are, or are only potentially, of equivalent significance to scheduled monuments. For the reasons given in Ms Farmer's evidence, the earthworks are of equivalent significance to scheduled monuments.

78. In cross-examination Ms Farmer explained that the survey work from the 1980s showed that the site was of equivalent significance to a scheduled monument. She also said that the combination of a deserted medieval village with fishponds was important. She had earlier said that a search of EH records showed that there were only 13 scheduled deserted medieval villages with fishponds in England. Ms Farmer also said that the site was comparatively intact and ranks high up the short list of sites selected by EH for survey.[61] In this context it is clear that the earthworks at Stuchbury are of equivalent significance to scheduled monuments.

79. Although it is not necessary for the application of paragraph 139 that the designation of the asset be in prospect, it is in fact in this case. The EH letter of 2 October 2013 (ID2) confirms that EH is currently assessing Stuchbury for addition to the schedule of monuments.[62] As Ms Farmer explained, following a desk study, drawing on earlier work, Stuchbury is one of the first sites in the county to be assessed. After site survey work, an assessment will be prepared by EH for the Secretary of State. Mr Brown accepted that this shows that EH clearly think the earthworks have the potential for scheduling and are serious out the proposition.

[60] NA said in XX that she had not given a view on Stuchbury earthworks because it was an undesignated asset and SNC's concerns focussed on the designated assets it had identified.
[61] In RX.
[62] Stuchbury was also one of the undesignated assets which EH noted in its letter of 16 June 2011 (ID10).

80. The SPD confirms that sites need not be visually prominent to have a significant setting (CD4.1, para 11.27). The EH guidance explains that for buried remains they can often be appreciated in relation to their surroundings (CD10.1, p8). Mr Brown agreed that EH guidance was to the effect that limited visible presence means that setting could make the opposite of a limited contribution to significance. The setting, and what the setting contributes to the significance of the asset, is common ground between Ms Farmer and Mr Brown. As an example, Mr Brown explained in response to a question from the Inspector, that the agricultural land at Stuchbury Hall Farm makes a positive contribution to the significance of the asset there because it enables one to appreciate its significance. Indeed, the role of setting in the significance of the earthworks is high, because of the inherently subtle nature of the earthworks.[63]

81. Mr Brown agreed that the origins and function of the deserted medieval village at Stuchbury were linked to the sunken way, the valley hydrology and the valley topography; he also said it was a reasonable assumption that the origins and functions of the village were also linked to the remaining historic enclosure patterns. He accepted too that seeing those things in the surroundings of the earthworks helps a person to understand the site and its significance. And he agreed that the place feels more like a *deserted* medieval village because it is quiet and rural, which helps to appreciate the significance of the site. It was also common ground that views from the deserted medieval village were predominantly towards the appeal site, which had probably been part of the medieval village's open fields.

82. In terms of the effects of the development, all the following was agreed or said by Mr Brown in relation to Stuchbury earthworks. The earthworks would be within the wind farm landscape as defined by Mr Stevenson. There would be a row of turbines on the other side of the valley, with their bases at a similar elevation to the earthworks, across the arc of view in the predominant direction of views out, filling the view, very close to the earthworks, with moving blades, and at different heights. There would also be the noise effects – and also the

[63] AF para 113.

sight of the access track from parts of the earthworks site. The turbines would mean that it would feel a very different place to someone standing at the earthworks.

83. Ms Farmer explained in cross-examination the very great contribution to significance made by the setting of the earthworks at Stuchbury. She said that it does happen sometimes that an historic asset is very much dependent upon and supported by its setting, especially where very little of the asset is visible. In such cases, as for Stuchbury earthworks, the setting makes a very large contribution to significance, so said that effects on setting can make a very large difference to significance. She went on to explain that here the contribution the setting made to significance was to help understand the narrative of the landscape, to understand and appreciate the significance in relation to the settlement, farming and fish farming, and that the experience of that significance would be very much reduced as a result of the development.

84. These particular circumstances of Stuchbury earthworks in this particular setting, and the substantial impact from the development in this location, explain why the threshold of substantial harm is crossed. To use a phrase employed by Mr Hardy, Stuchbury earthworks is an asset where a large amount of the 'reservoir' of significance is to be found in the setting, as Ms Farmer explained.

85. Again, given how much of Ms Farmer's analysis has been agreed by Mr Brown, it is simply untenable to suggest that there would be only a slight adverse effect on the significance of Stuchbury earthworks. The feel of the topography and the quiet, rural character of the setting would be changed. Given how much this contributes to the significance of the site, this is a major impact.

Listed buildings

86. Listed buildings and their settings are particularly important, because the statutory duty in s66 of the Planning (Listed Buildings and Conservation Areas)

Act 1990 is engaged. Section 66 is an important consideration in this case, the provisions of which must be carefully applied in accordance with the relevant case-law.

87. The legal position on s66 was summarised in HSGWAG's Statement of Case at paragraph 35. Those submissions, which did not rely on the point in paragraphs 45 to 46 of the *East Northants* case, are entirely in accordance with the decision in the *Bedford BC* case. The statutory duty sounds in relation both to the rigour of the assessment and the importance or weight to be given to the issue in the overall decision. The effects on the setting of listed buildings must be treated as considerations of considerable importance and weight, with a very high priority, and given special attention and very close consideration.

88. Section 66 provides an additional and different duty to anything set out in the NPPF. As Mr Brown accepted, s66 does not refer to concepts of significance or substantial harm. He agreed that they arise from the NPPF which sits below s66.[64] Consideration of effects on the setting of listed buildings via the NPPF would not be adequate to discharge the statutory duty. Section 66 does not include reference to concepts such as significance and substantial harm which are found in the NPPF. The words in s66 must be applied without any gloss being added to them. It is notable in this respect that Mr Brown said in response to a question from the Inspector that whenever there was adverse impact on the setting of a listed building you would not be preserving it in s66 terms.[65]

Sulgrave

89. The setting of the key listed buildings in Sulgrave, including the church, has been considered above. For Sulgrave Manor, it was notable that Mr Brown accepted that the turbines would be part of the setting of Sulgrave Manor in the

[64] AB also said in IQs that there are two processes to go through with the NPPF and s66, and that s66 was in addition to considerations in the NPPF.
[65] AB para 4.01 also says that the weight to be given to the statutory duty s "greater than that given to other material considerations".

future, with the development, as the turbine blades would be visible, even if the land to the south does not currently play a role in the setting of the building.

Greatworth Church

90. As to Greatworth church,[66] the importance of views out from the churchyard is noted in the conservation area appraisal (CD10.8, p13). The CAA also explains Greatworth's origins as a rural village and the importance of views out to the countryside in contributing to the character of the area and acting as a reminder of the setting and rural heritage of the village. Mr Brown agreed that the church was an important part of that rural, village life.

91. Mr Brown accepted that the churchyard contains 22 listed headstones, and is the curtilage of the church, and that the church and churchyard formed a single heritage asset in effect even though parts were listed in their own right. He also accepted that the churchyard had cultural and spiritual aspects as well as historic aspects, that it was a quiet, rural location, not intruded upon by modern life, which is a place for quiet reflection and which contributes to the experience of visiting the church.[67] It was also agreed that the tranquillity of the churchyard adds to the appreciation of the church and churchyard, and that that contributes to the significance of the church.[68]

92. Mr Brown also said that it was a reasonable guess that the PROWs which leave the churchyard at the eastern end formed historic routes taken by parishioners from the outlying countryside in the parish. He agreed that AF View 11 reflected what would be seen when leaving the churchyard that way, after attending church. Mr Brown also accepted that from the eastern end of the churchyard (AF View 11) all wind turbines would be seen in a row, with part of all of five turbines visible, and with some at least of the blades unscreened. He

[66] AF explained in XX and RX why the words used in her proof (paras 64 and 122) meant that there was no issue about why Greatworth church did not cross the line of substantial harm.
[67] In his oral evidence to the inquiry, Nicholas Peart of Greatworth PC said that it was a valued location, as a quiet place for reflection at the best and worst of times.
[68] AF para 122 and AF Reb para 17.

accepted that the turbines would form a major element in the views out of the churchyard and would affect the perception of tranquillity at the church.[69]

Priory Farm, Helmdon

93. Priory Farm in Helmdon[70] was not separately addressed in either the ES or the FEI and was not covered in Mr Brown's written evidence. Despite that, all the following was accepted or said by Mr Brown. The farmhouse is functionally linked with the surrounding countryside. It is located somewhat apart from the village, within a rural context. Its principal elevation faces south, with views over the valley towards the appeal site. There is intact ridge and furrow, and field patterns, to the south, which reinforces the perceptions of the historic function of the farmhouse. This rural context contributes to the significance of the listed building. The turbines would be visible from the listed building and its curtilage, and also in views of the building from the road and its surroundings. The turbines would be seen in a row, moving, and would be prominent and distracting. They would contrast with the current rural, agricultural landscape, altering the character of the land to the south, and eating into the significance of the listed building because of the effects on its setting. The effect on the setting of Priory Farm would not be acceptable.[71]

Helmdon Viaduct

94. Helmdon Viaduct[72] was not assessed in either the ES or the FEI. Mr Brown accepted that the viaduct is a part of the local identity for Helmdon,[73] forming a local landmark and providing a sense of place, even though it does not rise above the valley sides. He agreed that because it sits across the valley it is visible from all around the valley and to the east. Whilst the character of the

[69] NA said in XX that the impact on Greatworth church was not acceptable.
[70] See AF View 7.
[71] AF para 101.
[72] Although Helmdon Viaduct is an undesignated asset it is not one which falls within the ambit of para 139 of the NPPF.
[73] In eg the logos of the school and parish council.

viaduct fits with the rural context, which would have been much the same when the viaduct was first built in the late 1800s, the same could not be said of the turbines. The landscape setting of the viaduct contributes to its significance.[74]

95. Mr Brown was right to accept that the perception of the surrounding countryside as agricultural land would be changed, given the insertion of five wind turbines into the countryside near to the viaduct. He also accepted that the turbines would be lined-up either in front of or behind the viaduct, save in views from the small area of land between the wind farm and the viaduct. It was also agreed that the turbines were quite close to the viaduct and would not fit within the valley topography. Mr Brown said that the turbines would have the effect of diminishing the appearance of the viaduct and would take over from the viaduct as the local landmark.

96. Again, given what has been agreed by Mr Brown it is simply untenable to suggest that the effect on Helmdon Viaduct would be neutral.

Other assets

97. There are various other heritage assets affected in this case. Merely because they are not addressed in these submissions should not be taken as an indication that the effects are unimportant or do not need to be addressed in the decision-making process. They are addressed in the evidence before the inquiry.

Conclusion

98. The heritage assets where there is a particularly significant effect are those where the contribution which the landscape setting makes to the significance of the heritage assets is large. For some of these assets, like the Sulgrave Conservation Area and Stuchbury earthworks, the contribution to significance made by the landscape setting is so great that the serious harm to the setting

[74] AF para 96 and AF Reb para 23.

would amount to substantial harm to the asset. For others, although less than substantial harm, the impact on the significance from the development would still be appreciable. The real-world effects on the historic environment are unacceptable and have not been minimised.

99. Overall, the impacts on heritage assets in this case would be contrary to Local Plan policies G3(I) and G3(J), EV11 and EV12, policies S11 and BN5 of the draft Core Strategy (CD4.8, p103), and the provisions of the NPPF (including paras 129, 132-135, 139) and the SPD. To permit the development would be inconsistent with the proper performance of the statutory duty in s66.

Local amenity and public rights of way

100. Paragraph 15 of the PPG states that "protecting local amenity is an important consideration". The PPG as a whole has a focus on "local environmental impact". EN1 recognises that rights of way are important recreational facilities in relation to which "appropriate mitigation measures to address adverse effects" should be taken (CD2.7, para 5.10.24).

101. In this case, the development would have a substantial and unacceptable impact on the amenity of the local countryside,[75] the local communities and the character of the settlements in which they live, arising from the visual and the noise impact of the turbines, including in particular in relation to nearby public rights of way. SNC has led the case on local amenity in relation to the public rights of way (PROWs) and HSGWAG adopts the evidence and submissions of SNC.

102. The PROWs here include locally promoted routes used for recreation.[76] Mr Hall described in his evidence how the amenity of the PROW network is important to the local area, forming a network of historical routes in the triangle between the three villages, and how that amenity would be affected by the

[75] Visual amenity is the overall pleasantness of the views of the surroundings enjoyed in a particular place (CD8.13, 2.20), accepted by JS in XX by AR.
[76] JS in XX by AR.

development. The PROWs are promoted because of the attractiveness of the countryside here, and most users of them are recreational walkers, using the paths in a circuit for enjoyment.[77] It is because the paths are being used as part of local walks, rather than longer distance routes, that the impacts of the development will be so great; in the local area they will be inescapable.[78]

103. Although Mr Stevenson accepted that his survey was very limited, it does show that the PROWs are well-used. The bridleway and BOAT form a particularly important part of the jigsaw of routes for horse riders, to enable them to get from the south to the north of the B4525.

104. Evidence on the use of the public rights of way is given by Roger Miles.[79] This ties-in with the evidence given by Richard Hall for SNC, but provides an additional, local perspective. As to horses, it is notable that both Robert Cross and Emma Deverall explained that horses in this location include a large proportion of 'high performance' horses (racehorses and hunters) which are highly strung and are replaced every few years. This sets this area apart from many others.

105. Where views are gained during activities which are associated with the experience and enjoyment of the landscape, such as recreational walking, this needs to be taken into account (CD8.13, 6.14). People using PROWs are within the group most susceptible to change (6.33). This in part explains why the visual impacts matter so much in this case, with a good network of paths in the local landscape around the appeal site.

106. The local landscape is a relatively tranquil one. Tranquillity is defined in the GLVIA as "a state of calm and quietude associated with peace" (CD8.13, p158). As Ms Farmer explains in her rebuttal proof, tranquillity is affected by more than just noise (para 40). Even Mr Stevenson said that at times the local

[77] R Hall XIC.
[78] See eg AF Reb para 38.
[79] In his original statement to the first inquiry and his additional comments document.

landscape would be perceived as tranquil.[80] The situation would be radically different with the development in place.

107. Noise levels for the PROWs were agreed with Mr Arnott, based on his Appendix 3 map.[81] These were all around 50dB and reached 54dB. Noise levels of about 50dB would be such that many people would probably find them annoying (CD6.32, para 30). In addition, Mr Arnott accepted that on all the PROWs there would also be a blade swish noise from individual turbine blades.[82] As Mr Davis explains, these are high noise levels for footpaths in a rural area like this which would severely detract from the pleasure of anybody using it, especially regular users (RD para 8.8). The result would be that people would choose not to use the PROWs (RD Reb para 20). In examination-in-chief Mr Arnott said that if someone did not like the experience of being so close to turbines on AN10 they would not use the path, and also that factors other than acoustic ones would also come into play. That is right. The turbines would dissuade people from walking in the Helmdon valley;[83] the use of the paths would be very greatly reduced.[84]

108. The effect of the development will be tantamount to sterilisation of the PROW network between the three villages of Helmdon, Sulgrave and Greatworth, for all but essential journeys, by removing essentially all the amenity value of the PROWs in that triangle, and especially the valley west of Helmdon. The area is one of rural tranquillity which has remained relatively undisturbed by noise and where natural and cultural interest is prized for its recreational and amenity value. That would be radically changed by the development.

109. Whilst the PROWs would still be passable, the enjoyment of walking them would be taken away. The peaceful tranquillity of the locality would be destroyed by the development. The PROWs are primarily used by local walkers

[80] In XX by AR.
[81] AN7: 49; AN9: 51; AN8: 49-50; AN10: 49-54; AN36: 48.
[82] See also RD para 8.7.
[83] AF para 167.
[84] MM para 7.4.

for relatively short walks. This means that there will be no escape from the sight and sound of the turbines.

110. This major effect on the amenity of the local landscape and its PROW network should be judged to be unacceptable. The impacts in this case would be contrary to various elements of Local Plan policy G3, policy EV1, and the provisions of the NPPF.

Residential amenity (living conditions)

Visual impacts

111. Visual impacts in relation to residential amenity and living conditions are important in this case. Those most susceptible to visual change include residents at home and communities where views contribute to the setting enjoyed by residents (CD8.13, 6.33); they are likely to experience views for far longer than people passing through an area (6.36).[85] This is precisely the case here.

112. The impacts on Stuchbury Hall Farm are greater than at any other single dwelling. In relation to Stuchbury Hall Farm, the following was accepted by Mr Stevenson for the Appellant. The farm is on the south facing valley slope, across from the appeal site. It includes a house, garden and farm holding. The main views from the house are over to the south side of the valley. The views from the garden are towards the appeal site. South facing windows look towards the appeal site, including the main living room on the ground floor, with French windows, and the upstairs bedroom. The outlook at the moment is entirely rural and agricultural. The visual effect at the farm has the highest possible rating in the ES. Parts at least of the turbines would be visible also from the drive, the Sulgrave/Helmdon road and the B4525, so that the turbines would be seen whenever someone leaves or arrives the farm. The farm will be within the wind farm landscape. The turbines would be aligned in a row on the

[85] Accepted by JS in XX in relation to the visual component of residential amenity.

opposite side of the valley. The farm's land is at a similar elevation to the wind turbine bases, so that, in views to the south,[86] a considerable part of the turbines would be visible, with the moving blades. You would probably see at least one turbine from most places on the farm. You could see up to four turbines at any one time. Different combinations would be visible in different locations, and turbines would come in and out of view as one moved around. Turbines would be seen from the garden, with in total three of the turbines visible, and places where two would be visible at once.[87]

113. The barn conversion would have a sun room with glazed windows facing out towards the appeal site, as Mr Stevenson accepted. The points made on behalf of the Appellant about the limited tree felling at Stuchbury Hall Farm and the planning permission for the barn conversion do it no credit at all. It is a complete non-point.[88] Moreover, questioning the integrity of the Tims family in this way shows the lengths to which the Appellant will go to promote it scheme against its immediate neighbours.

114. Ms Ahern's evidence was that at Stuchbury Hall Farm the turbines would form an overwhelming presence and would be at the Lavender threshold taken from the Carland Cross decision (CD6.5, para 23).[89] Ms Ahern's opinion was that the visual impact at Stuchbury Hall Farm reached the Lavender threshold.[90] Even Mr Stevenson went as far as to say that there would be a significant adverse effect on the amenity of the occupants of Stuchbury Hall Farm and that it would be a less pleasant place to live.[91]

115. In relation to Grange Farm,[92] the following was accepted by Mr Stevenson. The turbines would be at about 850m distance. For the two properties on the western side, there would be views of the turbines from the rear of their homes

[86] See eg AF Views 4-5, and Supp Views 2-3a.
[87] This last point was made by JS in XIC. See JS Rebuttal para 4.4.
[88] The trees were felled on 1 July 2013, well before the planning officer's assessment of the barn planning application in September 2013, and the grant of permission, and in any event the trees felled were not covered by the (general) note on the drawing. This is a complete red herring.
[89] In XX by DH.
[90] In RX.
[91] In XIC.
[92] Where JS said that AF Supp View 4 was a fair representation.

and the garden areas. Whereas at the moment there is a rural view beyond the properties they would see all or parts of all five turbines, including at least parts of the towers and also the rotating blades. They would be clearly visible. The turbines would appear to be different heights, with three clumped together and one either side, with overlapping moving blades. For these two homes, parts at least of turbines would be seen from the main ground floor rooms, upstairs bedrooms at the rear and the gardens/grounds.

116. Overall, for the western homes at Grange Farm, the turbines would dominate the skyline in views to the west, at close range, filling the central part of the field of view. Again the properties were given the highest possible rating of impact in the ES. The effects at Grange Farm would not be acceptable.[93]

117. In relation to Astral Row,[94] Greatworth, the following was accepted by Mr Stevenson. The houses face towards the appeal site and have their main outlook towards the wind farm. Currently there is a rural view over agricultural fields and Greatworth Hall parkland. The turbines would be some 850m away. All five turbines would be visible, with the moving blades. They would appear as if on the ridge but at different heights and much bigger than anything else in the landscape. The turbines would be visible from the front gardens, when leaving the houses, from the living rooms on the ground floor and from the main bedrooms upstairs. Views would be uninterrupted. Again, the impact was given the highest possible rating in ES terms.

118. In summary, at Astral Row, there would be a considerable adverse effect on the visual amenity and living conditions of the occupiers of these homes.[95]

119. In relation to Church Street, Helmdon,[96] the following was accepted by Mr Stevenson. The main views out of these properties are westwards, towards the appeal site. The current view is of a rural and still landscape with no intrusive elements. All the turbines would be visible, with one out on a limb and four

[93] AF para 158.
[94] See AF View 9.
[95] AF para 160; MM para 6.13.
[96] AF Supp Views 5-6.

clustered together, but at different heights and overlapping, with the moving blades visible. The turbines would appear in the middle of views west from the homes in this location.

120. For these homes, the presence of the turbines in the main views would feel intrusive and distracting for the occupants.

121. Mr Stevenson said in cross-examination that he had only applied the Lavender test and no other test in relation to visual amenity. The Lavender test is considered further below. But with the Appellant's formal acceptance that impacts below the Lavender threshold are relevant, it is clear that Mr Stevenson has not considered the impacts below that level. He said as much in cross-examination. Moreover, he has applied a version of the Lavender test which reflects neither Inspector Lavender's formulation nor that used most recently by the Secretary of State in the Treading decision.[97] Mr Stevenson's judgments on visual impact cannot therefore be accepted on any analysis.

Noise impacts

The position in relation to ETSU-R-97

122. As Mr Arnott confirmed, the new August 2013 ETSU assessment[98] added a second candidate turbine and removed data described as the dawn chorus. This new assessment replaces that in the ES and the FEI.[99]

123. Whilst Mr Hardy said on behalf of the Appellant on Day 1 of the inquiry that the Appellant did not contend that ETSU was the only consideration, and that the decision-maker was positively encouraged by the Appellant to consider impacts arising due to the change in the noise environment even if there was

[97] JS para 5.3, including "absence of alternative views" and "the public at large would more generally express such a sentiment".
[98] SA App 1.
[99] SA in XX.

compliance with ETSU,[100] this was not endorsed by the Appellant's expert. Mr Arnott disclosed his limited approach to noise when in cross-examination he said that the decision-maker should look to apply ETSU and that it would not be helpful to consider the change in the noise environment further. He also said that he had not looked at noise effects in this case further than the question of ETSU compliance, and commented that matters were simplified by using a standard such as ETSU.

124. Mr Arnott accepted the description of ETSU as "assessment guidance" (see CD2.7, 5.11.6) and that it was a methodology for defining noise limits. He also said that ETSU recognises that there may be additional factors which are not taken into account in ETSU.

125. ETSU (CD9.1) describes itself only as a framework for the measurement of wind farm noise which gives indicative noise levels thought to offer a reasonable degree of protection to wind farm neighbours without placing undue restrictions or burdens on wind farm developers (paras 1, 11; p43).

126. It was common ground with Mr Arnott that ETSU allows an increase in noise, and some adverse noise impacts, seeks to constrain rather than avoid adverse noise impacts, does not take into account the actual increase in noise provided it is within the ETSU 'cut off', and does not require noise increases to be minimised. He also said that it was a pass or fail method by reference to limits, rather than a method which involves consideration of impacts on the community.

127. ETSU reflects a compromise. As Mr Arnott explained, ETSU also has built within its noise limits a recognition of the benefits of wind farms, reflecting the benefits of renewables (CD9.1, p43).[101] To consider noise only in terms of ETSU, and then to take account of the benefits of the appeal development, would therefore lead to double-counting of the benefits.

[100] This was confirmed in statements put to RD in XX by DH. DH said that he would be positively inviting the Inspector to consider noise impacts by all possible alternative means to ETSU.
[101] SA said in XIC that the limits in ETSU had been decided in the winder interests of renewable energy.

128. It is also clear that ETSU is an upper limit beyond which it is not appropriate to go.[102] Mr Arnott accepted that the conditions reflected ETSU-derived noise limits and said that they provided an 'upper ceiling' for the operation of the wind farm. He agreed that they are limits which must not be breached, as it was put in the ES, and that the Institute of Acoustics Good Practice Guide[103] provided that if predicted noise levels did not comply with ETSU-derived limits the developer must go back and mitigate or refine the development (see CD9.12, p5). He agreed that he would not expect a development to be permitted if it breached ETSU limits. If ETSU is an absolute upper limit – another 'killer' level beyond which a scheme simply cannot go – then it must be the case that noise levels below the limit are material in land use planning terms.

129. Reference to noise effects beyond ETSU would be entirely in accordance with national policy. EN1 includes as a relevant factor the proximity of the development to quiet places and other areas that are particularly valued for their acoustic environment or landscape quality (CD2.7, para 5.11.3) and provides that an assessment should contain (para 5.11.4):

    i. a prediction of how the *noise environment* will change with the proposed development; and

    ii. an assessment of the *effect* of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas.

130. Neither of these things is covered by an ETSU assessment. They are considerations beyond ETSU. They will need to be considered in the decision on this appeal (although without any help from Mr Arnott's evidence).

131. EN1 makes it clear that "further guidance" for renewables is found in EN3 (para 5.11.6). The provisions of EN3 are in addition to and not in substitution for

[102] RD paras 7.1, 7.8.
[103] As RD said in XX, the IoA GPG endorses the ETSU procedure not the noise limits in ETSU.

those in EN1. This is put beyond doubt by EN3 itself which says that its provisions are "in addition" to those in Section 5.11 of EN1 (CD2.8, para 2.7.52) and which also says that noise impacts should be considered according to Section 5.11 of EN1 *and* ETSU (para 2.7.57). Mr Arnott accepted that EN1 Section 5.11 applies in addition and that both parts of the assessment must be done.

132. As to ETSU directly, EN3 only says that where compliance with ETSU derived noise limits is shown a decision-maker "may" conclude that "adverse noise impacts" should be given "little or no weight" (para 2.7.58).[104] This accepts that the "adverse noise impacts" are relevant, and only addresses the question of weight. As Mr Arnott accepted, the guidance goes only to weight, not relevance. It is clear that compliance with ETSU derived noise limits is not to be taken to be equivalent to there being no "adverse noise impacts". It is discretionary (ie "may") as Mr Arnott accepted and as a result recognises that even where there is ETSU compliance it is possible to give any amount of weight to "adverse noise impacts". Before the amount of weight can be ascribed, the matter of "adverse noise impacts" apart from ETSU compliance would of course have to be assessed by the decision-maker.

133. This approach accords with the NPPF which requires a decision-maker to consider whether there is a good standard of amenity (para 17) and general amenity (para 120), whether impacts are acceptable (para 98), and adverse impacts on quality of life and tranquillity (para 123). And it accords with the Local Plan which in policies G3(D) and G3(E) require that consideration is given to harm to the amenities of neighbouring properties and problems of noise. And policy S11 of the draft Core Strategy which speaks in terms of impacts on people and amenity (CD4.8, p51). It also accords with the SPD which requires a decision-maker to be satisfied that the living conditions of local residents would not be unreasonably affected (CD4.1, para 13.6). And it also accords with the approach taken in previous cases (eg CD6.33, para 45; CD6.34, para 23).

[104] SA said in XIC that the word "should" meant that it was not mandatory.

134. ETSU is not a method which considers the scale of noise effects, how much loss of amenity there would be, or what the effects on living conditions would be. Moreover, ETSU is not a methodology which seeks to mitigate and reduce to a minimum adverse impacts on quality of life arising from noise (NPPF para 123).

135. None of these policies are tied to or equate to simple consideration of ETSU compliance. It is this raft of national and local policy which means that it would not be right to conclude that ETSU compliance is the only measure to satisfy all the relevant policies. A conclusion that ETSU compliance would also satisfy the provisions of all these other policies would not be a reasonable conclusion given their terms, when what ETSU does and does not do is properly understood.[105]

136. In the Local Plan, policy G3(D) speaks in terms of harm to the amenities of neighbouring occupiers, and policy G3(E) speaks in terms of noise problems. Both these are real-world concepts linked to the actual effects of a development in terms of noise and amenity. Neither the Local Plan nor the NPPF expressly links these policies to ETSU. Mr Hardy has suggested that a direct link or equivalence is to be implied, so that ETSU compliance should be taken to satisfy these policies. That is not right.

137. Mr Arnott accepted that in the Treading decision, notwithstanding ETSU compliance, the Secretary of State had taken into account the deterioration in the noise environment, the extent to which the noise levels exceeded the background noise levels, and the impact on living conditions. He also agreed that in considering policy compliance the Secretary of State had gone beyond ETSU, and said that the Secretary of State had given considerable weight to the noise impacts irrespective of ETSU compliance. That approach is absolutely the right approach in light of the policy and guidance set out above.

[105] Notwithstanding what is said at para 85 of CD5.6.

138. Accordingly, for these reasons, it simply would not be lawful to confine consideration of noise effects simply to consideration of compliance with ETSU-derived noise limits.[106]

Real-world noise effects

139. It is necessary therefore to consider noise impacts apart from ETSU. This encompasses real-world noise effects on nearby occupiers. No other assessment approach as such is promoted by HSGWAG, although reference to other guidance to be able to 'benchmark' noise levels, to help understand what they would mean in the real world, is useful to an extent (see eg CD6.38, para 50). What is necessary is that consideration is given to real-world factors such as adverse noise impacts, how the noise environment will change, the effect of predicted changes in the noise environment on noise sensitive premises, whether there will be noise problems, and the effects on tranquillity, quality of life, amenity and living conditions, etc. All these are derived from the policy noted above. Even Mr Arnott said that considering the scale of the increases above background was "one way of looking at it".[107]

140. As to the local 'soundscape', despite what was trailed in his proof, Mr Arnott agreed the following:

    i. Agricultural noise is to be expected in a rural environment, will occur predominantly during the daytime and only exceptionally at night, will be intermittent, and occur only at most for a few days at a time.

    ii. Mr Tims's evidence on the use of the BOAT should be accepted,[108] and vehicles would only take a minute or two to pass through Stuchbury Hall Farm.

[106] Notwithstanding what was suggested in the High Court challenge to the first decision in this appeal.
[107] In RX.
[108] That the use was occasional, mostly at weekends, not at night, and some weeks not at all.

iii. Noise from Silverstone would be wind dependent and nothing he said was inconsistent with the evidence of local residents about how often it is heard (ie only once or twice a year and not at night).

iv. The EHO had said that the noise from Tanks a Lot was not significant.[109] Beyond that he could not say whether it operated in the evenings or at night, what activities there were, how often they occurred, or whether there had been any increase.[110]

141. Mr Stevenson has not relied on the presence of Tanks a Lot (para 8.7). The mysterious letter from Tanks a Lot (ID37) says that the number of car crushing events more than doubled in 2013 compared to 2012, and yet the evidence of the local residents is that they do not hear the operation.[111] Mr Tims said in his oral evidence that at Stuchbury Hall Farm they hear it very infrequently and only occasionally. This is all despite the increase that there has allegedly been in 2013. Similar evidence was given about the use of the BOAT by 4x4 vehicles and motorbikes.[112]

142. Mr Arnott's site visits had all been during the day and not at night. He said he had not considered the level of traffic noise at night from the B4525[113] and agreed that there would not be any other noise sources other than the wind in the leaves at night. The noise problems caused by the development in this case apply in particular at night.

143. In short, the attempt by Mr Arnott to characterise the local soundscape as a noisy one, especially at night, is bound to fail, as would be apparent from any proper visit to the area. The description in Mr Davis's rebuttal proof is far more accurate. He described it as a peaceful and tranquil area.

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[109] AF said in XX that on the one occasion she had been told that she could hear Tanks a Lot it sounded to her very much like agricultural machinery.
[110] SA said in XIC that he had no idea how many machines operated at Tanks a Lot. JS also said in XX by AR that he had not seen any evidence of an increase in activity at Tanks a Lot.
[111] See eg the statements from Bob Haynes, Roger Miles, Colin Wootton, Edward Tims, etc.
[112] See eg the statements from Roger Miles and Edward Tims.
[113] See RD Rebuttal para 6.

144. Mr Arnott accepted that the ES was right to describe the location as a rural one where existing background noise levels are relatively low (ES, p258, 12.5.2). That is clearly correct, as would be apparent from any visit to the appeal site and its surroundings. Mr Arnott described it in-chief as being quiet on a relative scale, with just normal rural sounds. Rather tellingly perhaps, Mr Arnott said that tranquillity from a noise perspective was not something to which he had ever given a great deal of weight, and commented that the appeal site is not tranquil like a remote moor. This is a quiet location, albeit with a reasonably large number of people living within 1km of the appeal site. For countryside in southern England it is tranquil.

145. It was noted by Mr Arnott in his proof that turbine noise has a distinctive character (para 5.3), and he said in cross-examination that it was therefore more distinguishable and identifiable from other rural sounds. This means that people would be very aware of the noise from the wind farm, with noise levels and character being such as to cause distraction, loss of concentration, and annoyance (RD para 8.3).

146. In this case, at Stuchbury Hall Farm, it was accepted by Mr Arnott that a MM92 turbine would be on the ETSU-derived limit during the day at between 5 and 7 m/s, and a V90 turbine would be between 1-2dB below the limit.

147. For a MM92 turbine there are also amounts below the ETSU-derived limit of only 3-4dB at certain windspeeds at Station Road (H2), Grange Farm (H3), Greatworth (H7), Manor Farm (H8), Stuchbury Manor Farm (H10) and Ash Vale (H11). At Spring Farm (H4), Bungalow Farm (H5) and Greatworth Hall (H6) the margin is around or below 1dB. This is minimal.[114] For the V90, margins are between 1.5dB and 2.8dB at four properties (RD para 6.23).

148. This is a case, like other previous appeals, where there is very little headroom between the predicted noise levels and the ETSU derived limits (see eg CD6.35, para 11.58). Being within 1-2dB of the ETSU derived limits has been described

[114] RD para 6.23.

as "uncomfortably tight" (CD6.36, para 82) and "a challenge" (CD6.37, para 331). The result here, as elsewhere, would be a significant potential for the noise limits to be exceeded (CD6.37, paras 331-333; CD6.38, para 44). Mr Davis said in his proof that he was not convinced that MM92 turbines would operate within ETSU-derived noise limits at four receptors (para 6.24).

149. The overall result would be a distinct possibility that the living conditions of residents would be unacceptably affected by noise (CD6.35, para 11.66). The lack of a reasonable safety cushion could also mean that noise conditions could well be brought into play with some frequency, a situation which it is not desirable to create (CD6.36, para 86; CD6.38, para 56). It is essential that planning permission is not granted unless there is reasonable certainty that the development would comply with noise conditions based on ETSU.[115]

150. This is another case where a slightly noisier turbine model, or a minor difference in actual sound power level, could make all the difference between the noise limits being met or not (see CD6.36, para 82), especially at Stuchbury Hall Farm and other close noise receptors. Mr Arnott said that he did not know whether there could in this case be a different model of turbine or a difference in actual sound power level. The result is that if the model fails to reflect reality by just a small amount, in the real world people would be exposed to levels of noise over ETSU-derived limits.

151. The Appellant only added the V90 as a candidate turbine when it was apparent that there was an issue with the test/validation status of the MM92, as Mr Hardy explained at the pre-inquiry meeting. Mr Arnott accepted that no condition was proposed preventing the installation of MM92 turbines. A candidate turbine is only appropriate for the purposes of an assessment such as this if it is representative of what will in practice be used, otherwise the noise assessment would be misleading.

152. The strength of Mr Arnott's objection to a condition limiting night-time noise to 40dB rather than 43dB was telling. Although he accepted that the assessment

[115] RD para 6.25.

predicted that the wind farm would be able to operate below 40dB, he wanted the 'headroom' up to 43dB. He said that the candidate turbines which had been assessed were simply examples and might not be what was used. He said that the uncertainty meant that the Appellant might need to operate up to 43dB. He also said that the noise profile of wind turbines can vary. This clearly demonstrates the uncertainty over whether the wind farm will in fact operate within the levels which have been predicted by the Appellant's assessment. As Mr Arnott's statements show, this cannot be assumed.

153. A considerable further risk, especially at Stuchbury Hall Farm, arises from the concave ground.[116] This is a recognised occurrence for turbine noise due to the potential for additional reflection paths (CD9.12, p21). Although the ground here is not such that the +3dB correction in the IoA Good Practice Guide needs to be added, the potential for noise increases below that level is common ground.

154. Research has identified that the modelling approach used in this case can "under-predict noise levels in some situations and should only be used with caution" (CD9.11, p8). Mr Arnott said that the point made in the research was a valid one, that it was not the first study to flag this as an issue, and that more work was required. He also said in-chief in relation to the IoA GPG correction that it was a continuum.

155. Mr Davis's evidence was that there was no reliable model for predicting noise effects over ground like that at the appeal site and that an increase of 1-2dB was possible. For Stuchbury Hall Farm in particular, Mr Davis said that the noise predictions had more uncertainty than he would like to see and that his best guess was that the noise could be 1-2dB higher. At locations down the valley, like Spring Farm, there is a different arrangement and there may be a smaller effect, less than at Stuchbury Hall Farm, but which added to the uncertainty.[117] By comparison to the research, the figure adopted by Mr Davis was

[116] See RD para 6.21.
[117] RD XIC.

conservative.[118] In cross-examination, and in re-examination, although Mr Davis said that the range was 0-3dB and there was uncertainty, he maintained that for Stuchbury Hall Farm 1-2dB was his best estimate.

156. Mr Arnott said that the model used was validated for flat ground or a steady slope and that it had a weakness in that it did not cope well with valleys. He said that no correction had been applied as the topography was not as 'difficult' as that identified in the IoA GPG. But he also said that the effect was progressive and that more work on the issue was required and that the GPG may be further refined in the future. He said that there was not a simple relationship between topography and noise. He said that although he had not looked at the contours towards Stuchbury Hall Farm, and could not put a number on it, he would accept 0-3dB.

157. For Stuchbury Hall Farm, which is already on or very close to the ETSU-derived noise limits, this is a very important issue.

158. Another issue at Stuchbury Hall Farm is the prevailing wind direction. As was noted in Treading, it is important in practice to consider properties which might be disproportionately affected given the wind direction (IR para 49). Given the dominant wind direction, Stuchbury Hall Farm would be disproportionately affected in the real-world compared to other properties.[119]

159. In his proof, Mr Arnott said that "south or west" was the "dominant wind direction" (para 5.13). Mr Arnott agreed that south-west was the main dominant wind direction.[120] It would be from that direction for 35% of the time and from the south to west quadrant for 45% of the time. Mr Arnott accepted that this was a significant proportion of the time. It does not matter whether the turbines are precisely to the south-west of Stuchbury Hall Farm as within a range of 80 degrees there is little or no reduction in noise (CD9.12, para 4.4.2).

[118] For example, for Site B2 (slight concave) with ISO 9613-2 (G=0.5) there was a difference of 2.4dB (CD9.11, p5), to which RD referred in XX.
[119] SA said in chief, in relation to directional filtering, that he was far more interested in what might happen over the longer term (in relation to where the wind was from the north for 5% of the time).
[120] See SA App 2 and DB App 10 Figure 1.

It was ultimately agreed by Mr Arnott that Stuchbury Hall Farm was within the zone of largest noise exposure from the turbines with the dominant wind direction.

160. Overall, as to levels above background, there was no challenge to Mr Davis's table on page 27 of his proof of evidence. The increase in turbine noise over background levels is an indication of audibility and intrusiveness of the noise and therefore of the impact from the noise.

161. The table shows exceedences above background during the day of more than 5dB at four properties. Mr Arnott said that increases over background of 3-5dB amounted to a moderate loss of amenity.

162. Mr Davis's table also shows exceedences above background during the night for V90 turbines of more than 10dB at 9 of the 11 properties – including figures up to 15 and 16 dB above background. As well as Stuchbury Hall Farm,[121] there will at Grange Farm for example be increases of around 9dB at night.[122]

163. Mr Arnott accepted that an increase of 10dB amounts to a doubling of loudness. Increases of 5dB have previously been noted by inspectors as concerns (CD6.35, p95). Exceedences above background of 8-10dB have been described before as sufficient to spoil the tranquillity enjoyed at rural homes (CD6.36, para 84) and the same would apply here.[123] A difference of 8 dB LA90 (or 10 dB LAeq) is the complaints likely level in BS4142 (CD9.13, p6).[124]

164. For Stuchbury Hall Farm at night, with window open, it was agreed by Mr Arnott that the noise level inside would reach or exceed 30dB.[125] This is the WHO level not to be exceeded if negative effects on sleep are to be avoided (RD App 4). It compares with a level of 20dB for a quiet bedroom, as set out in

[121] Even the Appellant's tables show that at Stuchbury Hall Farm at night, between 5-7 m/s, there would be increases of 7.1-8.8dB with V90 turbines and 8.6-10.1dB with MM92 turbines.
[122] For MM92 turbines, 8.7-9.1dB at 5-6 m/s.
[123] In XX SA said that this conclusion was reasonable.
[124] Accepted by SA in XX.
[125] With 10dB attenuation for bedroom with an open window, as Mr Arnott agreed was generally used (see CD9.9, p61, where it was measured).

the ES.[126] For Stuchbury Hall Farm (and three other properties) this would have the potential to be very annoying and therefore cause difficulty in going to sleep (RD para 8.12).

165. Overall, Mr Arnott accepted that depending on the wind direction the wind farm would be audible inside a bedroom at night, with the window open, for homes within 1km or more of the site. He also agreed that people should be able to have their window open at night.[127] This would, for some residents at least, annoying and distracting so as to cause difficulties in going to sleep (RD para 8.15).

166. As Mr Davis explained, this case is similar to but worse than that at Treading, where noise was a significant factor in the refusal of planning permission.[128] In this case, the noise levels, even for the V90, will exceed the existing background noise levels by substantial margins.

167. The operation of the wind farm will give rise to substantial and unacceptable noise impacts in terms of the effects on amenity and tranquillity due to the noise increases over the existing background noise levels and the proximity of noise levels to the ETSU-derived limits. In this case the noise situation counts very heavily against the development. It cannot safely be permitted.

Noise conditions

168. Text for additional and amended noise conditions has been provided. The underlying issues were rehearsed in oral evidence.

Night-time noise limits

[126] See RD paras 8.11-8.16.
[127] As was observed by the Inspector in Treading at para 50.
[128] RD said in XIC: the appeal site is worse than Treading on: the number of properties affected, the topography (Treading was flat whereas the appeal location is undulating), and excesses above background at night.

169. As Mr Davis explained in-chief, the use of the 43dB ETSU limit in the noise condition (Table 2) allows the Appellant more 'headroom' over that predicted than is warranted. He said that, where as here there was a significant excess of turbine noise above background, to allow 43dB when the predictions show that 40dB can be met would not be good practice. He referred to other cases where the approach of using the limit within which the turbines are predicted to operate had been used, rather than the maximum level ETSU would allow. This would of course give greater protection to residents.

170. Setting noise limits which ensure that the operational noise levels from the development do not exceed those in the assessment upon which the decision was taken would be entirely in accordance with the recommendation in EN3 (CD2.8, para 2.7.61) and the approach in EIA generally, where what is ultimately permitted should not have greater effects than have been assessed. If the development is going to be permitted to operate at 43dB at night, then it should be assessed as if those noise levels were going to be emitted, rather than the levels of below 40dB which have been predicted by the Appellant. It would not be proper to assess the development based on noise levels of below 40dB and then allow the Appellant to operate at up to 43dB.

171. Reference to figures in Mr Arnott's Appendix 1 illustrate what the effect could be at Stuchbury Hall Farm. If the full ETSU limit of 43dB was exploited then, instead of the predicted increases above background, the figures at 4m/s and 5m/s would be around 17dB. As every increase of 10dB is a doubling in noise, an increase of the order 17dB would represent a very substantial change in the noise environment, representing something approaching a four-fold increase in noise. Moreover, at Stuchbury Hall Farm there is the real possibility that a level of 43dB at night would allow the wind farm to generate higher noise levels at night than during the day, for example by operating in a higher noise mode at night, resulting in a step-change in noise during the night-time hours. Whilst Mr Arnott said in response to questions from the Inspector that he was not suggesting this operation, he also said that the opportunity to do so was "apparent". If the 43dB limit was used, it would be entirely possible for the

Appellant to operate in this way in practice. This would be entirely unacceptable.[129]

Amplitude modulation (AM)

172. Mr Davis explained in his evidence why AM was important and that ETSU did not make allowance for it.[130] It was accepted by Mr Arnott that AM was an unknown, that it was possible that it might happen in this case, and that it was likely that the noise would be more intrusive if AM occurred. He agreed that AM was not covered by the proposed noise conditions. And he accepted that the Inspector could impose an AM condition in this case. He said, however, that such a condition was unacceptable from the Appellant's point of view.

173. Mr Davis explained in his oral evidence-in-chief why the position on an AM condition had moved on recently. The RenewablesUK research project had been completed and was due to be presented in November. Mr Davis was of course previously involved in that project. He said that he anticipated that, following that publication, things would move forward quite quickly with AM, and that a test and means of mitigation should be formulated quite rapidly. He said that he was confident that this would be known in the early part of the planning permission period. In cross-examination Mr Davis maintained that there was reasonable certainty that a scheme will be developed in the near future.

174. In terms of Circular 11/95 (CD2.6), the need for an AM condition is made out. The justification for its imposition exists (para 15), as explained by Mr Davis,[131] and it would be expedient to enforce any lack of compliance with such a condition (para 16). It is a condition tailored to tackle a specific problem (para 17). This is enough to satisfy the test of necessity in terms of the Circular. Such a condition would also be undeniably relevant to planning and to this

[129] Even SA said in IQs that it would leave to noise levels within bedrooms in excess of the WHO guideline.
[130] RD para 7.7.
[131] RD paras 9.5-9.8.

development (para 14). It would be precise in terms of the framing of the condition, as the Circular seeks in the test of precision (para 30). The condition would be enforceable both in theory and in practice and would not contravene the Circular in this respect (paras 26-28). A condition on AM would no more duplicate the statutory nuisance regime than the other noise conditions proposed, or any noise conditions.[132] The proposed AM condition would not fall foul of the Circular in this respect (paras 21-23). As to reasonableness, the condition would not conflict with the Circular's provisions (paras 34-36) and would not be unreasonable in the *Wednesbury* sense. It would be lawful to impose such a condition, as it was in Swinford. When the proposed condition is properly considered alongside the provisions of the Circular, it is apparent that the condition could be imposed in accordance with the Circular.

175. Remedial treatment for AM has been possible in the past (CD9.4). And it must be remembered that if necessary as a last resort a turbine or turbines can be turned off in the site-specific circumstances in which AM occurs.[133]

176. Although an AM condition was rejected by Inspector Rose in March 2012 in the Woolley Hill decision (CD6.12), the question of necessity was described by him as "a matter of fine balance" (para 192) and his conclusion was that the "test of necessity has not been fully met" (para 193). This is hardly a stout rejection of the necessity for such a condition.

177. The condition considered in the Chiplow appeal decision (ID27) was not the same as that in Swinford, but was three iterations away from it. As Mr Arnott agreed, what was proposed there was not the same as in Swinford and included text which was not found in the Swinford condition. The other points made by the Inspector in paragraph 165 of that decision were either readily capable of being addressed (eg use of a consultant and data filtering) or were not questions which need to be answered at the time the condition was imposed, as Mr Arnott accepted (eg what the scheme is to be). It is commonplace to have conditions

[132] And RD explained in XX why the statutory nuisance regime was not a suitable alternative to the planning condition for dealing with AM.
[133] As SA noted in XIC.

imposed requiring schemes to be submitted in the future when the contents of the scheme are not known.

178. The AM condition imposed in Swinford was lawful and properly imposed. There is no problem with the condition's drafting. Without such a condition in this case there would be no protection against AM in the event of its occurrence. It ought to be imposed. Absent such a condition, the possibility of AM would have to be taken into account and counted against the development as an unmitigated effect which could arise.

Overall residential amenity (living conditions)

The so-called Lavender test

179. The so-called Lavender test is not a test and has no status in statute, policy or guidance.[134] The formulation was only ever advanced by Inspector Lavender as an example. In the Enifer Downs decision (CD6.8, para 66) it is subject to the caveats "in most cases" and "every likelihood". In the Carland Cross decision, upon which the Appellant's witnesses primarily relied, it was explicitly prefaced by the phrase "for example", with the words "every likelihood" again repeated (CD6.5, para 23). It is not a complete or exhaustive test of any sort, it is merely an example or illustration. Mr Stevenson accepted that it was an example and not an exhaustive statement. He also accepted that there was no special treatment for wind farms in relation to residential amenity.

180. As it is not complete, and only an example, it would in truth be wrong to adopt it even as only a "useful guide" (CD6.14, para 55) or a "general guide" (CD6.22, para 113). If that was done, it would be likely to mislead a decision-maker by leading him away from applying other relevant policy and considerations which are in significantly different terms.

[134] See eg CD6.4, IR229.

181. It would be wrong in law to apply the Lavender threshold as a lower threshold of relevancy for planning purposes, as was suggested in the Appellant's written and oral evidence, for the reasons given by Mr Muston in his evidence.[135] All real-world land use impacts of the development must be taken into account and weighed accordingly. No land use impact can legitimately be ignored in determining this appeal. The Inspector in the Treading decision was right to note that the impact on a view can be a material planning consideration (IR para 22).

182. HSGWAG would not however take issue with the point made by Mr Hardy in response to its opening, where the Lavender threshold is an upper threshold – a killer point as it was described.[136] Mr Hardy said that the Appellant's formal position was that if one property failed the Lavender test then it would kill the whole scheme, and that it was not contended that impacts below the Lavender threshold are irrelevant. Put in those terms – with the Lavender threshold as an absolute upper limit on acceptability of effects – that might well make sense.

183. This is how it appears to have been applied by the Secretary of State in the very recent Treading case, although the formulation used in the Treading decision by the Secretary of State was whether a dwelling would become an unattractive place to live.

184. The Lavender threshold cannot be used as a proxy for the tests on residential amenity set out in policy, first because they are in different terms and secondly because they are significantly lower thresholds, a breach of which would not in itself kill off the development as the Appellant says a breach of the Lavender threshold would. It has never been the case that the breach of one particular policy provision would be enough of itself to necessitate refusal. The Lavender threshold, as described by Mr Hardy, operates in an entirely different way from how any policy test would be applied pursuant to s38(6).

[135] DB said in XIC that impacts below the Lavender threshold were clearly not to be disregarded but ought to be taken into account in the planning balance.
[136] It was also put by DH in XX of KA that if the scheme fails the Lavender test then the scheme is dead, but impacts below that threshold go into the planning balance. And by DH in XX of AF as being that if a scheme fails the Lavender threshold then the scheme will fail whatever its benefits, even if only one property is affected, but that below that effects go into the planning balance.

185. The NPPF, for example, seeks to secure a good standard of amenity for all existing occupants of land and buildings (para 17) and to avoid or mitigate adverse impacts on quality of life (para 123). Paragraph 98 also asks whether the impacts are acceptable. The Local Plan asks whether there would be unacceptable harm to the amenities of neighbouring properties (policy G3(D)). These policies cannot reasonably be equated with whether a property is rendered an unacceptable place in which to live. They are thresholds formulated in materially different terms and which could be breached before the Lavender threshold is reached.

186. In the Treading decision it is clear that the Secretary of State applied considerations of harm to living conditions, amenity and acceptability of impacts, in addition to the "unattractive place to live" formulation (see eg DL paras 15, 26-27). This highlights that they are different and not equivalent considerations.

187. Although Mr Stevenson said that he accepted the position as it was put by Mr Hardy on Day 1, he went on to say that any impact on a property below the Lavender threshold was a purely private matter which would not be counted against the scheme and need not be considered further. That does not reflect the Appellant's position in this inquiry. It cannot be helpful when what the so-called Lavender test is and what is does is subject to such confusion.

188. As to Mr Stevenson's application of the Lavender test, he had added to it additional elements which are not found in Inspector Lavender's text.[137] He also applied it using a different formulation than used by the Secretary of State in the most recent Treading decision.[138]

189. Overall, the Lavender formulation is inconsistent with the core planning principle in paragraph 17 of the NPPF that planning decisions should "secure a good standard of amenity for all existing occupants of land and buildings". A

[137] JS para 5.3. JS said in XX that he was adding his own interpretation to the Lavender test.
[138] Where the Secretary of State did not use the "widely regarded" phrase, which Mr Stevenson said was important.

good standard of amenity, as Mr Stevenson accepted,[139] means more than just adequate or satisfactory. The Lavender threshold is about the lowest standard imaginable, very far away from reflecting a 'good' standard. Nor does the Lavender formulation tie-in with the statement in the PPG that "protecting local amenity is an important consideration".

Conclusion on residential amenity (living conditions)

190. When considering the effects on residential amenity or living conditions, it is necessary to assess together the visual and the noise impacts considered above. Moreover, it was accepted by Mr Stevenson that because amenity meant the sense of pleasantness of a place, which was based on more than what is sensed at any particular point in time, it was necessary to consider effects not just when someone is at home but also when they are out in the local area, travelling to and from home, walking, etc.

191. It must also be the case that where the impact on living conditions is a concern it would not be right to give a great deal of weight to the fact that the permission would be for 25 years (Treading DL, para 27), because that is a long period on a human timescale (IR para 72).

192. For Stuchbury Hall Farm in particular, the low safety margin for ETSU compliance, the dominant wind direction, the concave ground, and the large increases over background noise levels at night, amount to a serious noise problem. To this must be added the very substantial visual impact on the house and the holding. The statement from Edward Tims illustrates what a great impact the development would have on life at Stuchbury Hall Farm.[140]

193. If the Lavender test falls to be applied, as a 'killer' threshold, then Mr Muston was clear in his evidence, taking both visual and noise impacts together, then the effects on Stuchbury Hall Farm pass that threshold and the property would

[139] In XX by AR.
[140] See also MM paras 6.2-6.8.

be an unattractive place to live. The scheme should therefore be killed off for this reason alone.

194. The statement from Natalie Atkins explains in some detail the layout and operation of the homes at Grange Farm and underscores how the development will affect living conditions there. The effects at the three identified locations other than Stuchbury Hall Farm may be lower, and may not cross the Lavender threshold (if that falls to be applied), but they are real effects which breach planning policy. Mr Muston said in cross-examination that the overall impact at Grange Fram was not far below the Lavender threshold.

195. Overall, the development would have a substantial and unacceptable impact on the living conditions of the occupants of a number of nearby residential properties, arising from the visual and the noise impact of the turbines. The amenity of local residents would be substantially affected by this development, because of its visual impact in combination with the increase in noise levels arising from the operation of the wind farm. Taking the visual impacts and noise effects of the development together – as they will be suffered by local residents – the detrimental effect of the development on amenity and the living conditions of nearby residents is so great that permission should be refused for this reason alone. The effect on Stuchbury Hall Farm by itself is enough to mean that the appeal should be refused. The effects on the living conditions at other properties also need to be counted against the scheme in relation to planning policy.[141]

196. The impacts on residential amenity in this case would be contrary to various elements of Local Plan policy G3, including G3(D) and G3(E), policy S11 of the draft Core Strategy, and the provisions of the NPPF and the SPD.

Highway safety

[141] MM explained in IQs that the four properties highlighted were all ones where more than just a view was in issue and that they were all ones where the effect of the development would be overbearing so that the impacts were properly to be taken into account.

197. Detailed guidance on driver distraction is given in the SPD, drawing on the Highways Agency advice note (CD4.1, paras 17.14 on). The SPD correctly notes that drivers who are distracted have difficulty controlling their speed, and distance from the vehicle in front, and their lane position can vary drastically. The distraction puts additional demands on drivers, reducing their driving standard, meaning that drivers are more likely to fail to anticipate hazards such that accidents can occur.

198. The Highways Agency advice is that wind farms should not be located where motorists need to pay particular attention to the driving task. The B4525 either side of the appeal site is a location in which motorists need to pay particular attention to the driving task. This is demonstrated by the Red Route study,[142] the accident data, the evidence of local residents and indeed by a site visit. The evidence given in particular by Colin Wootton,[143] Veronica Ward[144] and Bob Haynes deserves careful consideration. As it was put by Richard Fonge, the B4525 is an inherently dangerous road, with bends, double bends, dips, rises and short straights, as well as dangerous crossroads. In particular it is the direct evidence of frequent near misses on the B4525 which needs to be added to the accident statistics to get a true picture of the risks inherent in this road. Beyond that, evidence is given on this topic by Mr Muston as a planner, as set out in his proof and rebuttal.

199. The highway authority, Northamptonshire County Council, is objecting to this development on highway safety grounds. That is clear from the email[145] to the Planning Inspectorate and from the oral evidence of Cllr Gonzalez de Savage.[146] That objection may be one originating with councillors – the leader and the planning cabinet member – rather than one based on a technical objection from highways officers, but it is an objection on highway safety grounds by NCC corporately. This is a significant change from the last inquiry when there was no such objection, a matter to which the previous inspector gave weight in

[142] See MM Rebuttal.
[143] Appendix 4 and supplementary comments on highways.
[144] ID38.
[145] ID22.
[146] He agreed in XX that there was no formal technical objection from the County highways department, but said that he represented the County Council.

favour of the Appellant. That position is reversed. NCC states in terms that it shares the concerns about the potential for driver distraction and that the B4525 "is not a route where any encouragement should be permitted in terms of distractions to road users". This is because of the speed of vehicles, the number of junctions and the record of accidents. The proposed speed limit of 50mph will not overcome this, as it does not touch upon the physical characteristics of the road and, when it is clear that the current national speed limit is frequently exceeded, there can be no confidence that the reduction in limit to 50mph would change things in the real world.

200. There is an existing highway safety issue on the B4525, as illustrated by the red route study by NCC and by the evidence from local residents. Mr Muston has considered the position as a planner and concluded that in his opinion there would be unacceptable and material harm to highway safety. This is a significant factor weighing against the grant of permission, in relation to both construction and operation of the development.

Benefits

201. There is no dispute in this case about energy policy. Mr Muston accepts the summary of the position appended to the SOCG and says that the current energy policy is an important material consideration in this case (para 4.51). He accepts that there is an urgent need for renewables and that this should be afforded great weight (para 9.1).[147]

202. Whilst it is accepted that under paragraph 98 of the NPPF the Appellant should not be required "to demonstrate the overall need for renewable or low carbon energy", part of the exercise in assessing the planning balance in any case is assessing the weight to be given to the benefits arising from the particular wind farm scheme.

[147] We should note Mr Bell's evidence that the national pipeline to 2020 is reasonably healthy (para 5.5.9), although it is accepted that there is no there is no lessening in the drive to increase onshore wind capacity (Treading IR para 69) and the urgent need remains (IR para 67).

203. As it was put recently in the case of *Bayliss v SSCLG* [2013] EWHC 1612 (Admin) (CD5.9), an inspector is "required to balance overall benefits and overall detriment, which in turn required him to assess the extent of benefit" (para 32). Moreover, paragraph 38 of the PPG confirms that the likely output of wind turbines can be particularly useful information in considering whether permission should be granted. And EN1 (CD2.7) also provides that the weight to be attributed to need in any particular case should be proportionate to the extent of the development's actual contribution (para 3.2.3).

204. In this case, despite the scale of its impact, the scheme will generate only relatively modest amounts of renewable electricity.[148] Moreover, the benefits claimed are inherently uncertain as the installed capacity of the development could range between 10 MW and 15 MW. It is much more likely that the installed capacity would be 10 MW (ie 2 MW turbines) than 15 MW (ie 3 MW turbines). To ensure that the benefits are not improperly over-stated the bottom of the range should be assumed.

205. The Appellant's new report[149] shows that the CO2 to be saved as a result of the development is less than half what was said by the Appellant at the time of the application and the previous inquiry. Whilst the impacts of the development have not reduced, the benefits in terms of CO2 savings are now said by the Appellant to be very much less than was previously said to be the case in absolute terms. Whilst this may be something which applies generally to calculations done today, it is undeniable that 200,000 tonnes odd of CO2 which was said to be saved at the time of the last inquiry is no longer said to be saved.

206. Mr Hardy asked some members of the public what this community was going to do to contribute to the need for renewable energy resources. In so doing he appeared to overlook the anaerobic digester plant very close to the appeal site,

[148] See Mr Muston's evidence. Capacity factor is referred to in the PPG at para 38 but is inherently difficult to deal with, as DB said in XIC. For the V90 turbine the capacity factor of the development would be no better than the 5 year average taken from DUKES, which of course includes considerably older turbines, as explained by DC in RX.
[149] DB App 10.

constructed since the time of the last appeal,[150] which is to be used for generating electricity. This community is doing its bit for renewable energy.

Conclusions

207. The planning policy context cannot be avoided or sidelined in this case as the Appellant seeks. That policy must be applied to the appeal proposals. When that is done, the proposals fail.

208. The development would have a substantial and unacceptable impact on the character and amenity of the highly sensitive local landscape, the settings of a number of important historic assets, and the historic character of settlements and of the local landscape. The overall effect of the development on landscape character and amenity, and the historic landscape, including on the setting of heritage assets, is such that planning permission cannot be granted.

209. The impacts all coincide at Stuchbury Hall Farm, where so many planning interests are represented, because it is such a special place. Each interest is relevant and important and the impact on each must be taken into account. Each interest suffers very considerably as a result of the development. The landscape character and the amenity of the local landscape in this special location in the Helmdon valley would be destroyed for a generation. The setting and the significance of the deserted medieval village and fishponds would suffer in a similar way. The visual impacts would be suffered on the PROWs by the public and at the house and farm by the Tims family. Those impacts would be at their most acute at Stuchbury Hall Farm. To this there must be added the noise effects, again at their most serious here. The effects on the living conditions would make the farm an unacceptable place to live. The concentrated, focussed impacts at this one, special part of the local landscape in the Helmdon valley are enough to mean that this appeal must be rejected.

[150] See the statement of Veronica Ward.

210. Whilst strong, policy support for renewable electricity development is subject to limits or caveats. Renewable electricity developments are not to be permitted at any price. Some schemes should be refused permission. Where a scheme crosses the line set out in policy, or fails to comply with the caveats, it does not have the support of policy and does not deserve it. This scheme is one of those. Mr Bell makes it clear that the need in Government policy is a need not for any and all developments but only those which are acceptable in planning terms (para 5.5.1).

211. The interests of renewable electricity generation are not to be elevated above other planning interests. There is no overriding presumption in favour of renewables. The development of renewable electricity resources is one aspect of sustainable development which sits alongside, and equal to, others.

212. In terms of the NPPF, this is a case where the impacts of the appeal development are not, and cannot be made, acceptable, such that permission should be refused. Overall, the balance in this case is struck firmly in favour of refusal. The proposal would be contrary to the development plan and other policy including the NPPF. It would cause very significant harm. It cannot be allowed. Pursuant to s38(6), it must be refused permission.

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