



Department for
Communities and
Local Government

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Our Ref: APP/D2510/A/13/2200887
Your Ref: GT1

28 August 2014

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY PFR (LOUTH CANAL) LIMITED
AT LAND ADJACENT TO LOUTH CANAL, FEN LANE, NEAR TETNEY,
LINCOLNSHIRE
APPLICATION REF: N/133/00586/12**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC, who held a public local inquiry on 21-25 January, 29-30 January and 3 March 2014 into your client's appeal against a decision of East Lindsey District Council (the Council) to refuse planning permission for the erection, 25 year operation and subsequent decommissioning of three wind turbines up to 113.5m tall to the tip of a blade in a vertical position, control/substation building, installation of underground electrical cables, formation of access tracks and access from the A1031 Fen Lane, crane handstanding areas, meteorological monitoring mast, and a temporary construction/storage compound at Land adjacent to Louth Canal, Fen Lane, Near Tetney, Lincolnshire in accordance with application reference N/133/00586/12, dated 4 April 2012.
2. On 11 October 2013 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Procedural Matters

4. In reaching this position the Secretary of State has taken into account the submitted Environmental Statement (ES) (IR5), Supplementary Environmental Information (SEI) (IR6), Further Environmental Information (FEI) (IR7), and the replacement FEI photomontages provided (IR8). Overall the Secretary of State is satisfied that the ES, SEI, FEI and replacement FEI photomontages comply with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and that sufficient information has been provided for him to assess the environmental impact of the planning appeal. Furthermore he agrees with the Inspector (IR8) that no prejudice occurs from the provision of replacement FEI photomontages for the reasons she gives (IR8).
5. The Secretary of State notes that it was proposed at the pre-inquiry meeting that the control/ substation building be relocated and the Secretary of State notes that, in relation to this change, the necessary consultation took place such that those with an interest in the proposal have had an opportunity to comment on the revision (IR32). Like the Inspector (IR32) he has considered the appeal on the basis of the scheme showing the control/ substation sited as shown on the drawing titled Revised Infrastructure Layout with Microsited T1 and Amended Control / sub-station Building 232084 Figure 2 issue 100.

Policy considerations

6. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case, the development plan comprises the saved policies of the East Lindsey Local Plan Alteration which was adopted in 1995 and amended in 1999. The Secretary of State considers that the development plan policies most relevant to the appeal are those identified by the Inspector at IR25. He notes that work has started on the East Lindsey Draft Core Strategy (IR27) and agrees with the Inspector that it cannot be afforded any significant degree of weight (IR467).
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the planning guidance; the National Policy Statements: Overarching National Policy Statement for Energy (EN-1); National Policy Statement for Renewable Energy Infrastructure (EN-3); and the Lincolnshire Wolds AONB Management Plan 2013 – 2018.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the proposals before him or their settings or any features of special architectural or historic interest which they may possess.

Main issues

10. The Secretary of State considers that the main issues in this case are those outlined by the Inspector at IR34 and whether the proposals are in accordance with the development plan.

Heritage assets

11. The Secretary of State has carefully considered the Inspector's reasoning and conclusions at IR400-418. For the reasons given at IR404-415 he agrees with the Inspector's conclusion at IR416 that there would be considerable harm to the significance of the Grade II listed Thoresby Warehouse which falls not far short of substantial harm, largely because of the erosion of the prominence of the building and its canal side way-marking function which would be seriously diminished by the proposed development. The Secretary of State agrees with the Inspector's comments about Tetney Church and like him notes that the ES and English Heritage do not set out any significant harm in respect of the setting of this listed building (IR417).
12. Overall the Secretary of State agrees with the Inspector that there would be harm to the designated heritage asset of Thoresby Warehouse and to the non-designated asset which is the Louth Navigation Canal (IR418). He also agrees that the harm to the latter is intensified because of the relationship to the Thoresby Warehouse (IR418). He considers that the harm to Thoresby Warehouse is not substantial but that it is a significant level of harm to which considerable importance and weight should be attached in the planning balance given the statutory duty established in section 66 of the LB Act. The Secretary of State agrees with the Inspector that the proposal would fail to accord with saved LP policy C2 for the reasons given (IR418). He deals at paragraph 21 below with the weight that he attaches to the LP in this case.

Landscape including the AONB

13. For the reasons given at IR419-428, the Secretary of State agrees with the Inspector's conclusions at IR429 that: the prevailing landscape character for LCA J1 would only be marginally altered and the scheme would not create a windfarm landscape; the impact on the landscape would be much more specific and would lead to a degree of conflict with LP policy C11; and that there would be some harm to the amenities of people living or working nearby, and thus conflict with LP policy A4. He also agrees that although the Framework attaches importance to the protection of AONBs and it merits greater weight than the policies referred to in this paragraph, the limited and localised harm arising from the proposal would not conflict to a material degree with the objective of protecting distinctive landscapes (IR429). Overall the Secretary of State, like the Inspector (IR429) does not attach significant weight to landscape harm in the overall planning balance.

Living conditions – Eastfield Farm and Windy Ridge

14. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR430-449. He shares the Inspector's view that, in respect of Eastfield Farm, the

significant harmful and oppressive visual impacts of the proposed development in combination with the Newton Marsh wind turbines is such that the property would become an unattractive and unpleasant place to live; and that despite the likely adherence to the noise level that would be set, and the general acceptability of that level, the noise that is likely to be heard on occasions would be likely to exacerbate the feeling of being oppressed because of the close proximity of the nearest wind turbine (IR444). He agrees with the Inspector's conclusion that the scheme would result in unacceptable living conditions for the occupier of Eastfield Farm (IR444). Turning to Windy Ridge, the Secretary of State agrees with the Inspector that whilst the proposed wind turbines might be glimpsed from a first floor room, any impact would be negligible (IR445) and that noise from the proposed turbines would not cause unacceptable impact (IR449).

15. Overall, the Secretary of State, like the Inspector, finds that there is conflict with LP policy A4 in terms of the occupiers of Eastfield Farm and he also agrees that the core planning principle at paragraph 17 of the Framework to seek a good standard of amenity for all occupiers would not arise here if the appeal was to be allowed (IR449).

Other matters

Reversibility

16. The Secretary of State agrees with the Inspector that the proposed 25 year period for the development would represent a significant part of a human life span and that given his conclusions in respect of living conditions, the adverse impacts over that period of time are such to outweigh the reversibility of the project (IR450).

Ecological and Ornithological Issues

17. For the reasons given at IR451-453, the Secretary of State agrees with the Inspector's conclusion that the proposed wind turbines would not cause material harm to local wildlife (IR454).

Ground Conditions, Flood Risk and Water Resources

18. The Secretary of State notes that it was agreed by the parties at the inquiry that general concerns raised about the implications of possible piling could be resolved by the use of appropriate conditions (IR455) and agrees with the Inspector that requirements in terms of the design of the trackway, access and compound arrangements which include flood barriers would need to be the subject of a condition to ensure the safe and effective use of the flood plain (IR456).

Other local concerns

19. The Secretary of State agrees with the Inspector's reasoning and conclusions on those other issues identified at IR457-462.

Benefits of the proposal

20. The Secretary of State notes that it is not disputed that the development could provide up to 7.5MW of installed renewable energy and this could generate up to 16.4 GWh of electricity per year which would provide for 3,680 households (IR463). He agrees with the Inspector (IR463) that this represents a significant benefit of the scheme and could make a noticeable contribution to national targets, although he observes that there is no legal commitment to obtain 30% of electricity from renewable resources by 2020. He also agrees that this renewable energy source would assist in changing reliance on fossil fuels and so contribute to security of supply, albeit with the limitations of the unpredictability of wind (IR464). The Secretary of State has taken into account the direct and indirect economic benefits to the local community put forward by the appellant which it values at circa £1.1m (IR465). However, having regard to the Inspector's reasoning at IR465 he agrees with her that the creation of income for the Environment Agency is not a matter which merits significant weight (IR465). He also agrees that the independently administered Community Benefit Fund is not a matter to which material weight should be attached (IR465). For the reasons given at IR466, the Secretary of State agrees with the Inspector that the net gains which might arise from the comprehensive habitat management plan beyond the mitigation of the harm that the development would cause would be a benefit which merits modest weight.

Planning policy

21. In respect of the LP, the Secretary of State shares that Inspector's view that it does not contain any policies relating to renewable energy development and does not reflect fully the policies of the Framework (IR467). Given that the LP lacks a renewable energy development policy, the Secretary of State has had full regard to Framework in this respect, including Framework paragraph 98, and in the circumstances of this case agrees with the Inspector (IR467) that the LP does not merit full weight.

22. The Secretary of State agrees with the Inspector that in this case the development plan is silent on certain matters (IR469). He further agrees that in this case Framework paragraph 14 advises that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole or specific policies in the Framework indicate that development should be restricted (IR469). He also considers that, in balancing considerations in this case, Framework paragraph 98 (IR470) and Framework paragraph 134 (IR471) are relevant, and he has also taken into account Framework paragraph 135 that indicates that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application (IR471).

The planning balance

23. The Secretary of State has had regard to the Inspector's planning balance at IR472 - 474. He agrees that the benefits of the development most significantly relate to the provision of energy from a sustainable and secure source and in

addition some benefits would be provided for the local economy and some modest benefits might arise to biodiversity (IR472). Against this, like the Inspector (IR473) he considers that there would be less than substantial harm to the significance of the Grade II listed Thoresby Warehouse and to the non-designated heritage asset, the Louth Canal. The Secretary of State attaches considerable importance and weight to the harm to Thoresby Warehouse given the duty set out in section 66 the LB Act. He agrees with the Inspector (IR473) that there would also be modest harm to the landscape at the local level, and there would be significant harm to living conditions at Eastfield Farm, where he has found at paragraph 14 above that unacceptable living conditions for the occupier would result.

24. The Secretary of State agrees with the Inspector (IR474) that, in respect of Framework paragraph 134, the harm to the setting of Thoresby Warehouse would not be outweighed by the benefits that would be produced by way of renewable energy production of the level proposed, and the associated economic benefits and modest habitat benefits. In respect of Framework paragraph 98 he also agrees that, balancing all the factors in this case, the proposed development is not and cannot be made acceptable and that paragraph 98 does not support the scheme (IR474).

25. Turning to Framework paragraph 14 the Secretary of State is of the view that the considerable harm that he has identified to the significance of the Grade II listed Thoresby Warehouse (paragraph 12 above), the unacceptable living conditions that would result for the occupier of Eastfield Farm (paragraph 14) and the landscape harm (albeit not a matter to which he has attached significant weight) (paragraph 13) are such that the totality of harms significantly and demonstrably outweigh the totality of the benefits. He agrees with the Inspector that, having regard to the duty set out in section 66 of the LB Act, the scheme would fail to preserve the setting of Thoresby Warehouse which it is desirable to preserve.

Conditions

26. The Secretary of State has considered the proposed conditions at Annex A to the IR, the Inspector's comments IR399, national policy set out in the Framework, and the planning guidance. He is satisfied that the proposed conditions meet the tests set out at paragraph 206 of the Framework, however he does not consider that they overcome his reasons for dismissing the appeal.

Overall Conclusions

27. The Secretary of State has identified a less than substantial but nonetheless considerable level of harm to the Grade II listed Thoresby Warehouse which, for the purposes of Framework paragraph 134, would not be outweighed by the benefits of proposals. The Secretary of State is also of the view in respect of section 66 of the LB Act that the scheme would fail to preserve the setting of Thoresby Warehouse. With regards to Framework paragraph 98 he concludes that the proposed scheme is not, and cannot be made, acceptable. Turning to Framework paragraph 14, the Secretary of State is of the view that the totality of the harms significantly and demonstrably outweigh the totality of the benefits.

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection, 25 year operation and subsequent decommissioning of three wind turbines up to 113.5m tall to the tip of a blade in a vertical position, control/substation building, installation of underground electrical cables, formation of access tracks and access from the A1031 Fen Lane, crane handstanding areas, meteorological monitoring mast, and a temporary construction/storage compound at Land adjacent to Louth Canal, Fen Lane, Near Tetney, Lincolnshire in accordance with application reference N/133/00586/12, dated 4 April 2012.

Right to challenge the decision

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

30. A copy of this letter has been sent to East Lindsey District Council and the Marsh Windfarm Action Group (MWAG).

Yours faithfully

James Henderson

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Mrs Zoë Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC

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

Date: 20 June 2014

TOWN AND COUNTRY PLANNING ACT (AS AMENDED)

APPEAL BY PFR (LOUTH CANAL) LIMITED

REGARDING THE ERECTION, 25 YEAR OPERATION AND SUBSEQUENT
DECOMMISSIONING OF THREE WIND TURBINES UP TO 113.5 M TALL TO TIP OF A
BLADE IN A VERTICAL POSITION, CONTROL/SUBSTATION BUILDING, INSTALLTION
OF UNDERGROUND CABLES, FORMATION OF ACCESS TRACKS AND ACCESS FROM
THE A1031 FEN LANE, CRANE HARDSTANDING AREAS, METEOROLOGICAL
MONIOTRING MAST, AND A TEMPORARY CONSTRUCTION/STORAGE COMPOUND

AT

LAND ADJACENT TO LOUTH CANAL, FEN LANE, NEAR TETNEY, LINCOLNSHIRE

Inquiry opened on 21 January 2014

Land adjacent to Louth Canal, Fen Lane, near Tetney, Lincolnshire

File Ref: APP/D2510/A/13/2200887

File Ref: APP/D2510/A/13/2200887

Land adjacent to Louth Canal, Fen Lane, Near Tetney, Lincolnshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by PFR (Louth Canal) Limited against the decision of East Lindsey District Council.
- The application Ref: N/133/00586/12, dated 4 April 2012, was refused by notice dated 23 April 2013.
- The development proposed is the erection, 25 year operation and subsequent decommissioning of three wind turbines up to 113.5m tall to the tip of a blade in a vertical position, control/substation building, installation of underground electrical cables, formation of access tracks and access from the A1031 Fen Lane, crane handstanding areas, meteorological monitoring mast, and a temporary construction/storage compound.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The national planning practice guidance (the planning guidance) was made 'live' on 6 March 2014, just after the close of the Inquiry. Opportunity to comment upon any implications arising from this guidance was given to the appellant, Council and Rule 6(6) party. Representations made as a result of that consultation are covered in the Report.

Preliminary Matters

2. A Pre-Inquiry Meeting (PIM)¹ was held on 2 October 2013 to assist in the efficient administration of the Inquiry.
3. Following that event, The Secretary of State (SoS) directed by letter dated 11 October 2013 that he shall determine this appeal. The reason for this is because the appeal involves a renewable energy development.
4. The Inquiry was held on 21-25 January 29-30 January and 3 March 2014. I undertook an unaccompanied site visit prior to opening the Inquiry to familiarise myself with the site and its surroundings. In addition an accompanied site visit was undertaken with representatives of the appellant, the Council and the Rule 6(6) Party, as well as residents/their representatives at individual properties, on 4 March 2014 (details shown on Plan C1). As agreed at the Inquiry, I also undertook site visits on an unaccompanied basis on the 5 March 2014 to view from driven routes, footpaths, viewpoints and heritage assets; this included all items set out on the plan and in the schedule which form Plan Bundle C2, albeit, as discussed at the Inquiry, the whole canal footpath route was not walked.
5. The development is Environmental Impact Assessment (EIA) development. The Environmental Statement (ES) was accompanied by a non-technical summary.
6. As a response to feedback at the application stage Supplementary Environmental Information (SEI) was submitted and consultants were commissioned to review the ES.

¹ A list of the abbreviations used in this decision is appended as the last page of this document

7. Further Environmental Information (FEI) was submitted following the PIM. The main requirement for this related to the need for further illustrative material relating to the impacts upon nearby listed buildings. That information was duly advertised.
8. At the start of the Inquiry I was made aware of an error regarding the height of the wind turbines shown on the FEI photomontages. Replacement photomontages were provided (INO22, INO37). Given the limited difference and that all those present at the Inquiry were given opportunity to comment I do not consider any prejudice occurs from this.
9. A number of key documents have been published since the Council made its determination. In particular the written ministerial statement (WMS) dated 6 June 2013 regarding local planning and onshore wind, the Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise prepared by the Institute of Acoustics (IoA GPG), the Planning Policy Guidance for Renewable and Low Carbon Energy (PPG R&LCE) and further information which was published regarding amplitude modulation and noise. The parties were aware of those documents which were considered as part of the Inquiry, although the PPG R&LCE was replaced by the planning guidance referred to in para 1 above.

The Site and Surroundings

10. The Appeal Site is located in the County of Lincolnshire in East Lindsey District, and is approximately 1.4km to the south of Tetney. Other villages in the area include Tetney Lock (2.3km from the site), North Cotes (1.5km from the site), Fulstow (2km from the site) and North Thoresby (approximately 3km from the site). The Appeal Site is defined by the Louth Canal and flood reservoir. It is surrounded by agricultural land and has public footpath No. 20 running through it with public footpath No. 343 running along the east side of the Louth Canal.
11. Existing vehicular access is via a Highway Authority maintainable track from the A1031, Fen Lane, which ends at the flood reservoir.
12. One of the three wind turbines would be located in the Environment Agency (EA) flood reservoir and the remaining two turbines would be on adjacent privately owned land.
13. The existing land use of the EA land primarily consists of flood relief for the Louth Canal during local flood events, along with some livestock grazing. The areas of privately-owned land are used for arable agricultural purposes.
14. The Louth Canal is located directly adjacent to the appeal site boundary and the fish hatchery associated with it is partially located within the site. A local wildlife site located within the drainage system, and designated for local biodiversity, is partly located within the appeal site boundary that forms part of the EA flood alleviation scheme.
15. Tetney Blow Wells Site of Special Scientific Interest (SSSI) is located 0.6km north-west of the appeal site. It is designated for its reed beds with base-rich fen and swamp vegetation associated with calcareous water of four large artesian springs. This site is managed by Anglian Water and is currently subject to a programme of tree removal. In the western section of the Blow Wells site there are no planned further clearance works. In the eastern section of the Blow

Wells two distinct areas are planned to be cleared, however, the existing Poplar trees located along the length of the boundary of this area will remain.

16. The Humber Estuary Special Area of Conservation (SAC), Ramsar, Special Protection Area (SPA) and SSSI are located approximately 3.4km north-east of the appeal site.
17. Remnant field boundaries and trees/shrubs lie within the EA reservoir. The landscape immediately surrounding the appeal site is of an open flat landscape with some hedgerows around the fence line and drainage channels. The appeal site and adjoining landscape contain land drains typical of Lincolnshire with standing water providing local habitats.
18. There are a few areas of built development in the area surrounding the appeal site, in what is predominantly a rural landscape.
19. In addition to farmland and farm complexes the wider area includes the listed Thoresby Bridge Warehouse; the Tetney Oil Terminal, approximately 1.8km north of the appeal site; the Newton Marsh Wastewater Treatment Works (WwTW), mast and copse and two wind turbines, approximately 2.8km north of the appeal site; the former RAF North Cotes, approximately 4km east of the appeal site; and the telecommunications mast at North Cotes, approximately 2km east of the nearest proposed turbine.
20. The appeal site lies within the coastal plain which lies between the North Sea/Humber Estuary and the Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB) which lies approximately 6km to the west and reaches a maximum elevation of approximately 168m AOD along its western edge approximately 20km from the appeal site.
21. The Lincolnshire Wolds was designated as an AONB in 1973 to preserve the natural character of the area. The area comprises a series of hills and steep valleys covering approximately 560 square kilometres and contains the highest ground in eastern England. Chalk hills and areas of sandstone and clay underlie this landscape with open valleys providing panoramic views across the surrounding landscape.
22. Locally designated Areas of Great Landscape Value (AGLV) extend further east than the AONB to approximately 5km of the appeal site. The AGLV area broadly follows the boundary of the AONB. The AGLV is designated in order to preserve and protect the distinctive character of the landscape.

The Reasons for Refusal

23. The reasons for refusal are: -

- (1) *The proposed development would have an adverse impact on the residential amenities of Eastfield Farm due to overbearing outlook and noise and in conjunction with the existing Newton Marsh wind farm and the proposed Bishopthorpe wind farm it would cause cumulative visual harm. This harm would be contrary to Policy A4 in the East Lindsey Local Plan Alteration 1999 and paragraph 9 of the National Planning Policy Framework and would outweigh the need for the development.*

- (2) *The proposed development, by reason of its siting, scale and moving parts, would have an adverse impact on the Grade II listed Thoresby Warehouse and its setting contrary to Policy C2 in the East Lindsey Local Plan Alteration 1999 and would outweigh the national need for the development. This reason for refusal would be in line with Paragraph 132 of the National Planning Policy Framework.*
- (3) *The proposed wind farm would, in conjunction with the existing wind farms at Newton Marsh, Conisholme, Mablethorpe and Croft and the proposed wind farms at Bishopthorpe, Gayton le Marsh and Orby, cause cumulative visual harm. It would also lead to the eastern flank of the Lincolnshire Wolds AONB being dominated by wind turbines which would be detrimental to the panoramic views for which it is partially designated thus being harmful to its character. This harm would outweigh the need for the development and would be contrary to Policies A4 and C11 in the East Lindsey Local Plan Alteration 1999 and Paragraphs 109, 114 and 115 in the National Planning Policy Framework.*

Planning Policy

24. The Development Plan consists of the East Lindsey Local Plan Alteration (September 1999), saved policies 21 September 2007 (the Local Plan). This plan was adopted in 1995 and amended in 1999.
25. Policies of the Local Plan identified as material to the appeal proposal and of assistance to the Inspector in this case are as follows:
- Policy A4 – Protection of General Amenities
 - Policy C2 – Development and Demolition affection a Listed Building
 - Policy C11 – Lincolnshire Wolds Area of Outstanding Natural Beauty and Areas of Great Landscape Value.
26. It is agreed that the Local Plan is a Local Plan to which paragraph 215 of the National Planning Policy Framework (the Framework) applies.
27. Work has started on the East Lindsey Draft Core Strategy. Relevant policies are Landscape (SP15), Heritage (SP7) and Renewable Energy (SP19). Given the early stage this plan has reached the parties do not accord it material weight.
28. The National Planning Policy Framework.
29. The National Policy Statements: Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Renewable Energy Infrastructure (EN-3).

Planning History

30. The planning history on this site consists of:
- Planning application reference: N/133/02082/10 - Environmental screening opinion with respect to the erection of a 70m meteorological mast for a 24 month period. It was decided that an EIA not required on 19 October 2010.

- Planning application reference: N/133/02030/10 – To site a temporary meteorological mast to a maximum height of 70m, supported by guy wires with a maximum diameter of 70m, for a period of up to 24 months. Approved 21 December 2010. The permission was implemented but the mast has since been removed.
- Planning application reference: N/133/02567/12 – To site a temporary meteorological mast to a maximum height of 70m, supported by guy wires with a maximum diameter of 70m for a period of 24 months. Application approved on 24 April 2013. The permission has not been implemented.
- The appeal proposal.

The Proposals

31. The scheme proposes the erection of three wind turbines up to 113.5m to blade tip. The precise model is not identified rather a candidate turbine has been used for noise calculation purposes.
32. The original position for the control/substation building was identified as an issue in terms of the setting of a grade II listed building. As a consequence, at the PIM it was proposed that this building be relocated. Provided this matter was subject to consultation it was agreed that, given it related to a minor part of the scheme, there would be no prejudice from considering the scheme with that alteration. The necessary consultation took place such that those with an interest in the proposal have had opportunity to comment on the revision. The appeal has therefore been considered on the basis of the scheme showing the control/substation sited as shown on the drawing titled Revised Infrastructure Layout with Microsited T1 and Amended Control /sub-station Building 232084 Figure 2 Issue 100.
33. The scheme also involves installation of underground electrical cables, formation of access tracks and access from the A1031 Fen Lane, crane handstanding areas, meteorological monitoring mast, and a temporary construction/storage compound.

The Main Issues

34. The main issues in this case are:
 - (a) The effect of the proposed development on nearby heritage assets, and in particular the setting and significance of Thoresby Warehouse (Grade II listed building). In addition there are other designated and non designated assets which require consideration, including the non designated heritage asset that is the Louth Navigation and its infrastructure, and the setting of the Church of St Peter & St Paul, Tetney (Grade I).
 - (b) The effect of the proposed development on the character and appearance of the surrounding area, having regard to views out from and towards the Lincolnshire Wolds Area of Outstanding Natural Beauty, including when considered cumulatively with existing and consented wind turbine sites in the vicinity.

- (c) The effect on the living conditions of the occupiers of Eastfield Farm and Windy Ridge having particular regard to visual impact, including cumulative visual impact, and noise.
- (d) The benefits of the proposed development and whether they are sufficient to outweigh any harms identified in respect of the first three main issues, and any other identified harms, so as to justify allowing the proposed development.

The Case for the Council

35. The Appeal comes at a time when there is an increasing pressure for wind farm development in a District that is already home to a high level of such development, operational, as well as recently consented and proposed. It also comes shortly after the Government has decided to issue guidance re-calibrating the scales that were previously firmly in favour of the need for renewable energy to take better account of environmental protections, both natural, and historic that have previously been overlooked.

Heritage Assets

36. S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LB&CA Act) imposes a general duty as respects listed buildings in exercise of planning functions. Subsection (1) provides: "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."
37. The correct interpretation of s.66 was explored in the recent case - Barnwell Manor Wind Energy Ltd (CD 8.10). The case was originally heard and determined by Justice Lang in the High Court and Judgment was given in March 2013 (CD8.1). In two key paragraphs of that Judgment, Justice Lang observed the addition of the word 'desirability' in s. 66 signals that 'preservation' of setting is to be treated as a desire or sought-after objective, to which the Inspector ought to accord 'special regard' which goes beyond mere assessment of harm (para 45); and at para 46, Justice Lang said that it was incorrect of the Inspector to treat the harm to the setting of the heritage asset and the wider benefits of the wind farm proposal as being of equal importance.
38. The Podington Judgment² followed in July 2013 (CD8.9) and a conflict arose as a result of those two judgments in that the latter judgment given by Justice Bedford declined to follow the earlier one in Barnwell Manor, determining that "Special regard may lead to the giving of special weight, but it does not necessarily do so" (para 40 of the judgment).
39. The Court of Appeal has now given an authoritative ruling on the correct interpretation of s.66 and the weight to be given to it by decision makers which supports the findings of Justice Lang in the earlier case.
40. It is useful to recite briefly the facts of the Barnwell Manor case. The action arose out of a planning appeal concerning a proposed wind farm development.

²Bedford Borough Council v SSCLG and Another

The Inspector on appeal had concluded that the wind farm would fall within and affect the setting of a wide range of heritage assets. The most important of those was Lyveden New Bield which is covered by a range of heritage designations (judgment para 4). The closest turbine to the heritage asset in that case was 1.3km from the boundary of the Registered Park, and 1.7km from the New Bield itself. At the time the planning appeal was determined, the Government's planning policies on the conservation of the historic environment were contained in PPS5. Policies HE9 and HE10 of that policy statement were of particular relevance.

41. It is worth dealing at some length with the judgment which settles a matter directly before this Inquiry in respect of the conflict between the two cases, and the correct approach for the decision maker to have regard to in respect of the application of s.66.
42. The Court of Appeal reviewed the earlier decision of Justice Lang on the three grounds before her that the Inspector had failed to: (i) Have special regard to the desirability of preserving the settings of listed buildings, including Lyveden New Bield; (ii) Correctly interpret and apply the policies in PPS5; and (iii) Give adequate reasons for his decision.
43. In the High Court, Justice Lang had concluded in respect of ground (i): 'In order to give effect to the statutory duty under section 66(1), a decision-maker should accord considerable importance and weight to the desirability of preserving.....the setting of listed buildings when weighing this factor in the balance with other 'material considerations' which have not been given this special statutory status. Thus, where the section 66(1) duty is in play, it is necessary to qualify Lord Hoffmann's statement in *Tesco Stores v Secretary of State for the Environment & Ors* [1995] 1 WLR 759, at 780F-H that the weight to be given to a material consideration was a question of planning judgement for the planning authority'.
44. Applying that interpretation of s.66(1) she concluded that: "...the inspector did not at any stage in the balancing exercise accord 'special weight', or considerable importance to 'the desirability of preserving the setting'. He treated the 'harm' to the setting and the wider benefit of the wind farm proposed as if those two factors were of equal importance. Indeed, he downplayed 'the desirability of preserving the setting' by adopting key principle (i) of PPS22 as a 'clear indication that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided' (paragraph 86). In so doing, he applied the policy without giving effect to the section 66(1) duty, which applies to all listed buildings, whether the 'harm' has been assessed as substantial or less than substantial."
45. The appellant in the Court of Appeal argued that: "Lang J had erred in concluding that section 66(1) required the inspector, when carrying out the balancing exercise, to give 'considerable weight' to the desirability of preserving the settings of the many listed buildings, including Lyveden New Bield. He submitted that section 66(1) did not require the decision-maker to give any particular weight to that factor. It required the decision-maker to ask the right question – would there be some harm to the setting of the listed building - and if the answer to that question was 'yes' – to refuse planning permission unless that harm was outweighed by the advantages of the proposed development. When carrying out that balancing exercise the weight to be given to the harm to the

setting of the listed building on the one hand and the advantages of the proposal on the other was entirely a matter of planning judgement for the decision-maker”.

46. The Judge in the Court of Appeal, Lord Justice Sullivan, then proceeded to discuss the proper interpretation of s.66 of the Act, and posed the question: “What was Parliament’s intention in imposing both the section 66 duty and the parallel duty under section 72(1) of the Listed Building act to pay ‘special attention...to the desirability of preserving or enhancing the character or appearance’ of conservation areas? It is common ground that, despite the slight difference in wording, the nature of the duty is the same under both enactments.”
47. In answering the question, the Court noted that: “It is also common ground that ‘preserving’ in both enactments means ‘doing no harm’ (see *South Lakeland District Council v Secretary of State for the Environment* [1992] 2AC 141, per Lord Bridge at page 150).
48. Lord Justice Sullivan queried “ Was it Parliament’s intention that the decision-maker should consider very carefully whether a proposed development would harm the setting of the listed building (or the character or appearance of the conservation area), and if the conclusion was that there would be some harm, then consider whether that harm was outweighed by the advantages of the proposal, giving that harm such weigh as the decision-maker thought appropriate; or was it Parliament’s intention that when deciding whether the harm to the setting of the listed building was outweighed by the advantages of the proposal the decision-maker should give particular weight to the desirability of avoiding such harm?”
49. At paragraphs 28 and 29 of the Judgment, Lord Justice Sullivan gave his decision on the main issue, but first carried out a short review of the relevant decisions on the subject with which he agreed. The salient points of those decisions for the purposes of this appeal are:
 - i) In the *The Bath Society v SoS for the Environment* [1991] 1 WLR 1303, Lord Justice Glidewell commented upon what is now section 72(1) of the LB&CA Act concerning conservation areas and the requirement to pay ‘special attention to the desirability of preserving or enhancing the character or appearance’ and said that: “ Since, however, it is a consideration to which special attention is to be paid as a matter of statutory duty, it must be regarded as having considerable importance and weight....As I have said, the conclusion that the development will neither enhance or preserve will be a consideration of considerable importance and weight. This does not necessarily mean that the application for permission must be refused, but it does in my view mean that the development should only be permitted if the decision-maker concludes that it carries some advantage or benefit which outweighs the failure to satisfy the section 72(1) test and such detriment as may inevitably follow from that.”
 - ii) Lord Justice Sullivan said at para 22: “In my view, Glidewell LJ’s judgement is authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give considerable importance and weight.”

iii) In *South Lakeland District Council v SoS for the Environment* [1992] 2 AC 141 the issue was whether the concept of 'preserving' in what is now section 72(1) meant 'positively preserving' or merely doing no harm. At page 146E-G of his speech (with which the other members of the House agreed) Lord Bridge described the statutory intention in these terms: "There is no dispute that the intention of section 72(1) is that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest. But if a development would not conflict with that objective, the special attention required to be paid to that objective will no longer stand in its way and the development will be permitted or refused in the application of ordinary planning criteria."

50. Having reviewed the authorities, Lord Justice Sullivan concluded: "It does not follow that if the harm to such heritage assets is found to be less than substantial, the balancing exercise referred to in policies HE9.4 and HE 10.1 should ignore the overarching statutory duty imposed by section 66 (1), which properly understood (see *Bath, South Somerset and Heatherington*) requires considerable weight to be given by decision-makers to the desirability of preserving the setting of all listed buildings, including Grade II listed buildings. That general duty applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance. If the harm to the setting of a Grade I listed building would be less than substantial that will plainly lessen the strength of the presumption against the grant of planning permission (so that a grant of permission would no longer have to be 'wholly exceptional'), but it does not follow that the 'strong presumption' against the grant of planning permission has been entirely removed. For these reasons, Lord Justice Sullivan agreed "with Lang J's conclusion that Parliament's intention in enacting section 66(1) was that decision-makers should give 'considerable importance and weight' to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise". Lord Justice Sullivan also agreed "with her conclusions that the inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission...".

51. In this case, it is accepted by the appellant's heritage witness that the development will result in harm to Thoresby Warehouse - the grade II listed heritage asset within 500 metres from the nearest turbine at the Louth Canal development. The harm to the Warehouse is at the heart of the Council's heritage objection. The appellant's heritage witness says: "In my opinion there will be a change within the setting of the warehouse, and I would describe this change as significant. It will cause a degree of harm to the setting of the listed building, and as a result of this there would be some harm to the significance of the warehouse during the life of the building." (Para 3.38 of his proof)

52. Accordingly, following the Barnwell Manor Judgment, even on the appellant's case, the result is harm to the warehouse, and the setting of the warehouse will not be enhanced or preserved which is a matter of considerable importance. Even if the appellant is right, and the harm is less than substantial, that does not amount to a less than substantial objection to the grant of planning permission. That of course does not mean that the appeal must be automatically refused, but it does mean that considerable weight attaches to the harm that has been identified even on the appellant's case, and the presumption against the grant of permission applies. That presumption applies with even greater force if the Council is right and it is accepted that the harm caused to the warehouse and its setting is substantial.
53. The Council's heritage witness states quite plainly that: "Setting is fundamental to the Council's cultural heritage objections. Setting is not a heritage asset, nor a heritage designation. Its importance lies in what it can contribute to the significance of the heritage asset." (Proof para 5.14)
54. There was criticism levelled at the Council by the appellant about the approach of the Council's heritage witness in his assessment of the impact of the development on Thoresby Warehouse. His approach is set out at para 5.15 of his proof. The appellant's heritage witness advanced the case in examination in chief that the Council's heritage witness had not dealt with the qualities of the building and hadn't got to the heart of the matter because he had not understood the impact of setting on the significance of the heritage asset.
55. With respect, such criticism is unfounded and entirely wrong. The setting of the Warehouse, the impact on it, and the impact that the proposed development will have on the significance of the Warehouse is fundamental to the Council's case and there can be no doubt as to what the Council's heritage witness's assessment and evidence concludes on that very matter. The Council's heritage witness followed English Heritage's guidance on The Setting of Heritage Assets 2011 (CD5.5). That document recommends at part 4.2 a broad approach to assessment undertaken as a series of steps that apply equally to more complex or more straightforward cases. The five steps of that approach outlined in that guidance are: Step 1: identify which heritage assets and their settings are affected; Step 2: assess whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s); Step 3: assess the effects of the proposed development, whether beneficial or harmful, on that significance; Step 4: explore ways of maximising enhancement and avoiding or minimising harm; Step 5: make and document the decision and monitor outcomes.
56. That was an entirely appropriate approach in circumstances where the case for the Council focused on the setting of the asset in question rather than physical harm to the building itself. The complaint, it seems is one of style rather than substance and should not be allowed to conceal the real issue before the Inquiry.
57. The Council's heritage witness, under the sub-heading "Thoresby Warehouse: Its significance & the contribution setting makes to its significance", identifies (i) Thoresby Warehouse is listed as being of special architectural or historic significance. (ii) The significance of the building is in part its scale, possibly seeking to impress while maximising capacity within the limits of the technology of the day, which combined with its appearance, gives it an aesthetic

- significance. The Council's heritage witness also commented in evidence that in terms of architectural interest, the warehouse is imposing in its scale but modest and functional in design. It was not intended for decorative effect, but is well constructed. It retains clear evidence of its original use and is a good example of an early C19 warehouse. (iii) It also has a social, economic and functional significance as a meeting place where trade and other business was concluded which in turn helped the development of the surrounding marsh farmland and villages.
58. In respect of the impact of the setting on the significance it is unclear how, in the Council's heritage witness's very thorough assessment, he has failed in that task. The Council's heritage witness identifies the relationship between the Warehouse and the Louth Navigation which opened in 1767 - that is the functional, historical significance of the building as he expanded on in evidence in chief, because a new era of the marshes' prosperity, meant warehousing was a lucrative and necessary facility. The Council's heritage witness cites two publications that he says help to explain the significance of the Thoresby Warehouse and the contribution its setting makes to its significance. The Council's heritage witness then carried out a careful assessment of the historical context that led to the need for the Warehouse - the poor transport links in the area which meant that in winter, little or nothing could be transported by road in 18th century Britain. The decline in trade around the town of Louth as a result of the poor transport links while at the same time there was surplus production of wool and grain in the area which led to the needs for the construction of the Louth Navigation Canal.
59. Finally, the Council's heritage witness explores the relationship between the canal with the surrounding land - the drainage of fields was assisted by the construction of the canal leading to an improvement of agricultural land which then also led to demand for storage warehouses. The Council's heritage witness discusses the setting of the warehouse as both the canal, and also the surrounding land, commenting that the warehouse was a response to the needs of the land and the local community and was built adjacent to the canal so as to provide a convenient means of transport. The Council's heritage witness is also clear that the setting of the warehouse is therefore more than just the canal; the farmland to the west of the Thoresby Warehouse is part of its setting and contributes very strongly to the significance of the listed building.
60. It is plain that the impact of the setting on the significance of the warehouse is not lost on the Council's heritage witness, and nor is the significance of the warehouse itself. In comparison to any evidence produced by the appellant, the Council's evidence is far more thorough and robust. In that respect it should be noted that the initial assessment undertaken for the purposes of the March 2012 ES which claimed there would be only negligible harm was fundamentally inadequate and wrong such that the appellant's heritage witness was commissioned to do the assessment again.
61. There are key elements about the warehouse, its significance and the relationship to the wider setting that the appellant has still failed to understand and assess. This is obvious from the appellant's heritage witness's proof. Accordingly, it lacks a full appreciation of the potential impact of the development on the warehouse than can only have led to him underestimating the harm.

62. The appellant's heritage witness in his proof does not recognise the same level of association between the warehouse with the land to the west (the appeal site) and the fact that the fields, drained and agriculturally improved because of the canal, are a fundamental part of its setting. He comments that "The canal is the most important component of the setting of the warehouse, and it is within this linear canal corridor that the historical connections of the warehouse are best appreciated." The appellant's heritage witness did however accept in cross examination that the setting of the warehouse extends to the adjacent agricultural land to the west; and, that views of the warehouse from the west are extensive and are particularly important.
63. The appellant's heritage witness has also failed to appreciate the presence of the non-designated heritage assets identified by the Council's heritage witness or to assess the potential effect of the development on them as required by the Framework at para 135. There is no dispute that the canal, sluice gates and associated drainage works are non-designated heritage assets, it is simply the case that the appellant's heritage witness hasn't considered them. The difficulty of that position was highlighted in the appellant's heritage witness's examination in chief when he was asked about the Louth Navigation and its significance. The appellant's heritage witness agreed that it was a non-designated heritage asset, but that he would not use the term significant in respect of it without having a better understanding of it. It is clear therefore that the focus of the appellant's heritage witness' assessment has been very narrow indeed.
64. Furthermore, the view of the appellant's heritage witness was coloured by an erroneous belief that English Heritage (EH) considered that the impact of the development on the warehouse was less than significant which he says is why they did not raise the matter in their consultation response.
65. The actual position however is very different. In an email dated 13 March 2013 from the Inspector of Historic Buildings and Areas for EH it is stated that "We did not comment on the impact of the proposed scheme on the grade II listed Thoresby Bridge Warehouse because we were consulted by the local planning authority on the impact on the setting of grade I and grade II* listed buildings and scheduled ancient monuments in accordance with Government Circular 01/01. The fact that we didn't comment does not mean that we considered that there was no impact on the setting of the warehouse."
66. The refusal of the appellant's heritage witness to accept the plain and straightforward meaning of the email is quite remarkable. The lack of comment by EH cannot and should not be taken to be agreement with the appellant that the scheme would cause less than substantial harm.
67. There was also some dispute over the dating of the Warehouse by the appellant's heritage witness, although the points seems to have been dropped in light of the further research of the Council's heritage witness which includes notes from the Senior Historic Environment Record Officer at the County Council and various maps. The Council's heritage witness also highlighted the date on the building showing clearly the letters 'TP' and the date of 1821. The Senior Historic Environment Record Officer at the County Council makes the point that it would be unusual for a utilitarian building such as this to be decorated with a date stone that was earlier than the construction, and that in respect of the tithe map which the appellant's heritage witness relies on, it was not the purpose of the

map to show buildings, but to show areas of land and who owned it so that tithes could be commuted to a rent charge.

68. The appellant's heritage witness also suggested in this evidence that the windows of the warehouse were bricked up shortly after the warehouse was built, but did not take issue in cross examination with the evidence presented by the Council's heritage witness demonstrating that that infill bricks were of a different type and quality to the main structure of the warehouse, and that he considered that process to have taken place as part of the process of installing grain silos in the 20th century.
69. The Document bundle also includes surveys taken of the warehouse in both 1992 and 2012. The earlier survey was part of a survey of all the listed heritage assets in the District undertaken by an army of volunteers. At that time the building was noted as being used and in fair condition. In 2012 a further survey was done which indicated the building was at a low risk level, being in partial use and still in a fair condition. The survey also notes that the building was capable of beneficial reuse. Furthermore, the photographs presented of the warehouse in that bundle from April 2011 to September 2012 demonstrate that the building is being cared for - someone has taken the time to paint the windows. This is not an abandoned or derelict building, but a building that is capable of beneficial reuse, and one that is being actively cared for by its owners.
70. The appellant's heritage witness also expressed concern in his proof that the warehouse is suffering from water ingress through the roof and that the upper floors are beginning to fail. There is a criticism of the Council that they are focusing too much on preserving the setting of the building at the risk of losing the entire fabric of the building over the next 25 years. The criticism might be warranted if this was a scheme that sought to preserve and enhance the warehouse, and the Council were standing in its way. However, the scheme doesn't achieve that at all. Rather a number of points arise.
71. Firstly that, as demonstrated by INQ7 and the example of Austen Fen Warehouse, where buildings are at risk, the Council will act. In the case of that warehouse, a grant was awarded which allowed a number of restorative works to take place. The outcome of that work is presented in the images and shows a vast improvement on the situation in 1993.
72. Secondly, far from assisting in finding a beneficial use for the warehouse, the wind farm is likely to damage the prospects of securing one. There are examples of warehouses, such as those at the head of canal which now form part of a larger complex of canal side buildings that have been sympathetically converted. The presence of a wind farm, in very close proximity is likely to harm investment in the warehouse, not promote it.
73. Accordingly, any similar sympathetic conversion at Thoresby is unlikely to take place while there are three turbines in the immediate vicinity, with the associated visual impact, potential shadow flicker and noise implications. It should be noted that they are very much closer to the warehouse than Eastfield Farm at Outholme Lane, and would all be visible from a great number of windows on the west facing side of the building. The distance of 500m is one that the appellant's heritage witness confirms in the Heritage Assessment would, in many cases, be unacceptable because of the sensitivity of the heritage asset. It is, however, his view that the industrial nature of the warehouse makes it resistant to change. In

the Council's view residential use, however, or many other potential uses for that matter, would not share that industrial character even if it did exist. Moreover, despite that, and the involvement of the appellant's heritage witness with wind farm development, no evidence has been produced to demonstrate that such close proximity has ever been considered appropriate elsewhere.

The Sub-station

74. The position of the sub-station was amended and moved in late 2013 in an attempt to try and reduce the harm to the setting of Thoresby Warehouse. The Council's heritage witness recalls the conversation that was had on the matter with the appellant's heritage witness in May 2013, at which time it was also considered that T3 might be moved. During that conversation, the Council's heritage witness went no further than to acknowledge that amendments to the scheme such as repositioning might reduce the level of harm, but that he could not judge the matter properly in the absence of further details. Subsequently, the position of the sub-station was revised, but T3 was not.
75. In his evidence in chief the appellant's heritage witness agreed that the re-positioning in respect of the sub-station away from the Warehouse was a "significant improvement" in relative terms. It is clear that to be a significant improvement, this relatively small structure (in relation to the scale of the wind turbines) must have had a substantial adverse impact on the warehouse in the first place to the extent that the re-positioning of it away from the warehouse is 'significant'.
76. Plainly then, if the presence of the sub-station can cause such a substantial degree of harm, it must follow that the close presence of a wind turbine must also have a very significant and substantial impact. If the appellant's heritage witness is right that the industrial nature of the building that he identifies is capable of absorbing the turbine, then the sub-station should have been of little consequence. However, the acceptance by the appellant that there was a need to move it is undoubtedly acceptance of the adverse impact of such structures in the setting of the listed warehouse.

The Other Warehouses

77. The Council's heritage witness explores in his proof the relationship between Thoresby Warehouse and the other warehouses that sit alongside the Louth Navigation. The Council's heritage witness describes this special significance in that Thoresby Warehouse is the only warehouse to still stand out on its own as a landmark sign-posting the route of the Louth Navigation in views from the west and the north-west; the very views into which the proposed wind turbines will intrude. He then goes on to consider the other warehouses, observing those at Tetney Lock, where the setting has been much altered; the warehouse at Fire Beacon Bridge, which is now much lower and smaller than the original building and which is impaired visually by the Covenham Reservoir; the grade II warehouse at Austen Fen which the Council's heritage witness says would probably also have been visible from Thoresby Warehouse, highlighting the route of the Louth Navigation until the building of Covenham Reservoir, and which he also comments is now visually dominated by the wind turbines at Conisholme.
78. The Council's heritage witness describes the two listed warehouses at the head of the canal (para 7.35), which cannot be seen over the marshland, and which now

form part of a larger complex of canal side buildings, concluding that Thoresby Warehouse is the *"last surviving warehouse sign-posting the route of Louth Navigation that can be fully experienced from principal and well used vantage points"*. Further, the Council's heritage witness says that: *"This is probably the last but most prominent place in the marshes where the contribution the Louth Navigation has made to the physical, economic, cultural legacy of the marshes can be appreciated"*. When cross examined on the point, the appellant's heritage witness admitted it was not something he had specifically considered in his own assessment.

79. Again, this is not a relationship or a significance that the appellant's heritage witness has explored in his evidence, despite recognising that the Warehouse has a signposting function. Nor did the appellant's heritage witness consider the comparative rarity of the building despite accepting in cross examination that rarity could be an element of significance in certain circumstances. Certainly that is expressed in the EH Planning Policy Statement 5: Planning for the Historic Environment Practice Guide which provides useful guidance for understanding setting and its contribution to significance and also gives the example of the modest fisherman's cottage, listed precisely because it is a rare, unaltered survival of a particular type of dwelling and any changes could potentially jeopardise its significance. That is the case here: the appellant's heritage witness accepted in cross examination that the warehouse is substantially intact as matters presently stand and that it retains a significant proportion of its original fabric. In terms of completeness the warehouse remains legible for its original use as a warehouse.
80. Moreover, it is readily identifiable as a warehouse and its special historical significance remains intact. The evidence that the warehouse is the last surviving example of its kind was not challenged, and if it is right that harm to heritage assets should be avoided, there can be no dispute that even greater weight should attach to securing that protection where the asset in question is the last one - rarity is therefore an important material consideration and one to which significant weight should be given in the overall balancing exercise.
81. Dealing further then with the impact of the proposed development the EH guidance, under the heading *Assessing the Effect of the Proposed Development*, gives a non-exhaustive list of potential attributes of a development which might help in assessing the impact of them; a number of those factors are relevant here and provide a useful framework for assessing the extent of the harm caused.
82. Firstly, it considers proximity to the asset: in this regard, the turbines are in very close proximity with no significant intervening structures. The Council's heritage witness makes the point that at present there are few detractors to the western setting where the warehouse and canal can be experienced for the most part in the relative quiet and seclusion of the open, flat, agricultural fields of the marshes.
83. It goes on to consider the extent of the development: it is right that there are only three turbines. It is also right that they are relatively slender upright structures and thus benefit from visual permeability. However, when further factors such as 'prominence, dominance, or conspicuousness' are considered, it is plain that this is not a development which would melt into the landscape.

Rather, the structures would be visually dominant, overpowering the warehouse and its association with the canal, and severing the connection between the heritage asset and the land to the west.

84. In terms of the scale of the wind turbines, they would dwarf the warehouse, and the modern architectural style and design of the development is at odds with the warehouse and the surrounding character generally, which is agricultural and where the most obvious structure is the listed warehouse. As the appellant's heritage witness accepted in cross examination, the turbines would be 10 times larger than the warehouse. The presence of the turbines, the Council's heritage witness concludes, would accordingly, substantially harm the way in which the warehouse is experienced.
85. The wind turbines will undoubtedly change the character of the immediate area. As the Council's heritage witness points out, the development would introduce an industrial-like character, the height of the turbines, the noise they make and the rotation of the blades and the shadow they cast being in stark contrast to the way they are currently experienced. The Council's heritage witness also draws parallels between the recent Grove Farm Appeal Decision (CD 8.8) which addressed the impact of a wind farm proposal on the Nottingham and Beeston canal - an undesignated heritage asset - and noted the stark contrast between the size of the proposal and the human scale of the canal side features as is the case here. Further, the introduction of movement in the rotating blades is both a detracting and a distracting feature.
86. In terms of the long distance views of the Warehouse from the west and north west, the Heritage Assessment acknowledges that *"it is clear that there is an extensive area within which the historic building can be appreciated"*. The appellant has produced a viewpoint from the roadside to the west, Fig 11 of the FEI (CD1.7), which demonstrates the ability to observe the warehouse over long distances as well as the current lack of visual interference. In that context, the relationship of the warehouse with the surrounding agricultural land is perceived, whereas it is not until the warehouse is seen at close quarters, that the canal is readily visible, and that particular relationship is understood. The appellant's heritage witness accepted that in those views from the west. The turbines would be a visual distraction; they would draw the eye away from the warehouse; and, insofar as the appellant's heritage witness comments that the warehouse has industrial features, and that the Canal itself which forms part of the setting is engineered, he accepted that wind farm development was a different kind of industrial development and that the setting of the warehouse was not currently an industrial landscape.
87. It is right that there is drainage board machinery in close proximity to the warehouse, but it is the evidence of the heritage witness on behalf of the Council that it doesn't affect the way the building is experienced. It certainly doesn't in longer distance views, and when walking close to the building, along the canal, the warehouse remains a dominating and impressive feature. That would not be the case if the appeal proposal is permitted. The turbines would be a constant presence in walks along the canal and instead of the warehouse, the wind farm would be the dominant feature and would completely eliminate the relationship of the warehouse with its setting.

88. Taking all the factors into consideration - the nature, scale and proximity of the development and placing it against an extremely robust assessment of the significance of the warehouse, and the contribution the setting makes to its significance, the heritage witness for the Council reaches his conclusion that "in my opinion the height, proximity, siting and appearance of the proposed turbines and the rotation of the blades will substantially harm the setting of Thoresby Warehouse. This in turn will substantially harm its future viability and conservation".
89. The Council's heritage witness also notes the substantial harm that would be caused to the way in which the building is experienced and it is harm that he says goes right to the heart of the historic relationship between the Louth Navigation Canal and Thoresby Warehouse and the reason why the Secretary of State considered the warehouse to be worthy of designation as a listed building and why it is important enough to justify special protection.
90. It is submitted that the conclusion reached by the Council's heritage witness, based on his extensive and robust research and assessment is to be preferred to that of the appellant's heritage witness who has demonstrably failed to appreciate a number of significant points.

Policy C2

91. Local Plan Policy C2 is cited in the reason for refusal and concerns development affecting listed buildings. It is a permissive policy that says permission will be given for development only where its form, scale proportions, materials, siting, boundary treatment and associated landscaping preserves or enhances the special architectural or historic interest, viability or long term use of the listed building. All of those matters are reflected in the Framework and the extant guidance and are important material considerations when considering the impact of the proposed wind farm on the heritage asset.
92. Further, the conservation of heritage assets and their maintenance is part of the wider environmental and sustainability agenda promoted by the Framework alongside, of course, the generation of renewable energy. The Framework goes on to set out under part 12 'Conserving and enhancing the historic environment', the approach to the assessment of heritage assets. Para 131 reaffirms the desirability of sustaining and enhancing the significance of heritage assets as part of new development making a positive contribution to local character and distinctiveness. It is accepted that the proposals are not capable of sustaining i.e. not causing harm to, or enhancing the warehouse, and nor do they make a positive contribution to local character and distinctiveness.
93. Para 132 reaffirms the need to give great weight to the conservation of heritage assets, and sets out that as heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. The substantial harms that the Council's heritage witness considers would be caused should be exceptional according to that Policy. Para 133 reaffirms that position in saying where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.

94. It is submitted that the need for renewable energy in this matter, while a weighty material consideration, does not outweigh the harm and neither is it necessary to cause substantial harm to achieve it. Para 5.1.18 of EN1 provides further illuminating guidance on the matter: “when considering applications for development affecting the setting of a designated heritage asset, the IPC should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the IPC should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval”.
95. In this matter, there is nothing in the scheme which is designed to preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. Nor has the appellant advocated a positive case that the substantial harm is necessary to achieve the benefit of the scheme. In short, the scheme is for a relatively small level of renewable electricity generation, and the harm far outweighs the benefits.
96. It is the appellant’s case that the development would lead to less than substantial harm. Even if that is the case, it is clear that the development would not preserve or enhance the setting of the warehouse in any way, and in light of the Barnwell Manor Judgment explored above, that represents a substantial objection to the grant of planning permission. It is a matter of considerable importance and weight to be weighed against the public benefits of the proposal.
97. In addition to the impact on Thoresby Warehouse, the impact on those non-designated heritage assets identified by the Council’s heritage witness should be taken into account. They are dealt with at para 135 of the Framework, and weigh against the proposal.
98. Accordingly, on this issue, the Council’s evidence is to be preferred. Substantial harm has been identified, and significant weight should be given to the harm and the conflict with the development plan and national policy.

Residential Amenity – Eastfield Farm

99. Reason for refusal two concerns the impact on only one property, Eastfield Farm. The assessment has been carried out carefully and conservatively. However, an unacceptable impact on just one dwelling is nevertheless an impact that would render the development unacceptable. Broadly, it is the Council’s case that the appellant’s assessment of the likely impact on residential amenity on the occupier(s) of Eastfield Farm is both too narrow, and arrives at an inappropriate conclusion that fails to appreciate the realities of the way in which the property is enjoyed.
100. It is not disputed that the relevant test to be applied is that developed by Inspector Lavender in the North Devon (Enifer Downs) wind farm inquiry where the Inspector usefully set out how the issue of residential amenity should be dealt with when dealing with wind farm planning applications/appeals: “Separation distance is not, in itself, a decisive factor in judging policy compliance or the associated standards of environmental quality, but it provides a broad context for consideration of amenity impacts...noise, light flicker and visual intrusion are in my estimation three factors with greatest potential to

affect local amenity. Each warrants careful examination...Paragraph 39 of the PPS22 Companion Guide³ affirms that the planning system exists to regulate the development and use of land in the public interest. In most cases the outlook from a private property is a private interest, not a public one, and the public at large may attach very different value judgements to the visual and other qualities of wind turbines than those who face living close to them. Equally people can pass through a diverse variety of environments when going about their daily lives, whether by car or when using the local rights of way network, and I find nothing generally objectionable in turbines being part of that wider experience. However, when turbines are present in such a number, size and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is every likelihood that the property concerned would come to be widely regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. It is not in the public interest to create such living conditions where they did not exist before."

101. Further useful guidance can be taken from the recent (October 2013) nearby SoS Appeal Decision at Farmland East of the Village of Sutton St Edmund APP/D0515/A/12/2181777; APP/A2525/A/2184954 ("The Cross Drove Decision") (CD8.5) where one of the main issues was impact on the residential amenity of a number of different properties. In that Decision, the SoS determined that for three properties, "the overwhelming visual effect would be so severe as to make these dwellings unattractive places to live, which is not in the public interest. In his view the proposals are unacceptable in this respect and are in clear conflict with a core planning principle, as set out in paragraph 17 of the Framework, which seeks a good standard of amenity for all existing and future occupants of land and building".
102. Turning then to Eastfield Farm, the starting point, as the appellant's landscape witness accepted in cross examination is the conclusion in the ES that the High sensitivity of the receptor in conjunction with the High magnitude of change is judged to result in a Major Adverse Effect (CD 1.2 Chapter 9 LVIA Table 9.17 V1).
103. That same table notes: (i) There are currently clear views across the flat agricultural landscape towards the proposed development; (ii) While there are already some vertical structures such as the telegraph poles, as discrete vertical elements these have a limited contribution to the magnitude of change; (iii) There is an absence of any intervening features offering screening; and (iv) There are also existing distant views of Conisholme Fen Wind Farm.
104. It is interesting to note that the ES recognises there are distant views of Conisholme Wind Farm which is some distance south of the Louth Canal site. It is interesting because the property also experiences views of the turbines at Newton Marsh to the north east and if the proposal is to go ahead, there can be little doubt that wind farm development will play a constant and overbearing role in the occupant's day to day life from in and around her property to the extent that she will not be able to escape wind farm development.

³ Planning for Renewable Energy: A Companion Guide to PPS22 (now superseded)

105. Further as part of the context for the assessment, it is important to take into account the Framework and in particular paragraph 17 which outlines the core planning principles, and seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy A4 has a similar aim.
106. The appellant's landscape witness has not taken either policy into account in his evidence in arriving at the conclusion that the wind farm will have an acceptable impact on residential amenity. In fact, the appellant's landscape witness has not considered any policy at all in his proof of evidence, and so has not reached a fully informed conclusion. It is a surprising omission that can't but undermine the evidence he has presented to the Inquiry.
107. Returning then to the Cross Drove decision, the Inspector dealt with a number of different dwellings and groups of dwellings, which might be affected by the turbines. In respect of three properties in that case, all 690-695m to nearest turbine, it was considered that the overwhelming visual effect of the turbines would be so severe as to make the dwellings an unattractive place to live which is not in the public interest.
108. The decision is helpful in providing an outline of the sorts of concerns that the Inspector took into account and with which the SoS agreed. Firstly, the Inspector noted that the impact on individuals living in any particular dwelling varies depending on factors including the possible layout of furniture relative to windows in rooms, dwelling orientation, the location of outside recreation space and the availability, type and location of any screening. The Inspector, when considering one property noted the views from within the house, the main living areas, and the bedroom, and that *"The house has other rooms facing west and a large garden to the rear from most of which the turbines would not be readily visible, but on progressing further to the west into the manège, T2 would loom well above the ridge of the roof"*. Overall, the Inspector considered that *"the occupants would suffer an overwhelming adverse impact on their outlook and their day to day lives that could not be adequately mitigated"*. (iii) In respect of another property, the Inspector concluded that: *"The most significant factor at St Malo is that from day to day, inside and around the outside of the dwelling, it would be hard to avoid a view of turbines, at least one which would be relatively close. There would be no relief on the patio or in the garden, which extends even closer... The entrance to the property would be dominated by T6. Overall I consider that the spread, and proximity of turbines would make this property an unattractive place to live."* (iv) Turning then to the final property, the Inspector again considered that the turbines would make the dwelling an unattractive place in which to live, noting that; *"There are very few locations on the grassed relaxation areas where turbines would not be oppressively near and sunshine could be enjoyed at the same time"*.
109. The phrase 'day to day lives' suggests some consideration of not just what people do and where they sit at those times of the day when they are in the house, but the broader experience of living at a property. Furthermore, the Inspector clearly notes the experience of residents both inside and outside their properties.
110. Conversely, the approach taken by the appellant's landscape witness is to largely ignore the realities of day to day life at a property that is attached to a

substantial amount of land, and is therefore likely to attract occupants who want to spend as much time outdoors as they do indoors.

111. The appellant's landscape witness, however, while acknowledging that outside areas count in the assessment of the impacts of wind turbine development, restricts his consideration to ornamental gardens and the main private approach. This allows him to draw very tight boundaries around the property which he no doubt perceives to be a more defensible case than the wider recreational area.
112. Further, the appellant's landscape witness suggests the factors to be taken into account and how the assessment of those affects should be considered. The Council do not seek to suggest that those elements of the assessment are not valid or important, but what the formulaic assessment of the appellant's landscape witness achieves is a restrictive approach, that fails to consider the more qualitative considerations that apply to the whole of the property, and the reality of living there. Further, despite visiting the property it is clear that the appellant's landscape witness did not take the opportunity to speak to the occupant and explore those issues. The appellant's landscape witness admitted in cross examination that he hadn't explored the factual realities of the day to day life of the occupier in his proof.
113. On the basis of his assessment, the appellant's landscape witness therefore concludes that while the property does have some available views towards the site of the proposed development, its occupant has sought to prioritise visual enclosure and shelter. That is demonstrably incorrect and the representations of the occupant of Eastfield Farm are particularly telling and should be given substantial weight.
114. With regard to the evidence of the appellant's landscape witness, the occupier of Eastfield Farm comments that in reaching his view "He is only concentrating on the house and what he considers the small south facing garden. I did not buy this property to hibernate inside. I have an advanced dressage horse which I ride in the all weather arena and graze in the fields to the south and east of the property, and hack down the lane. I have two dogs who I walk twice daily further down the lane and round the reservoir footpath. As soon as I go across to the stables, go into the field or go down the lane, the impact of the turbines will be overbearing. The hedge around my property is approx. 1.8m high. This is an old hedge has been maintained at this height to date as it need (sic) to be a decent height before I have it 'layed' in order to preserve it and thicken it from the bottom - this will reduce the height to approx. 1m which will open up the view from the garden to the turbines."
115. There is no reason to disbelieve that is how the occupier spends her days or what any other person who might want to purchase the property might wish to use the land for. Further, there is no reason to suspect that the occupier will not do with her hedge what she says she will, and when she does, the conservatory, which is elevated above the front garden, will have an even clearer view to the turbines. The hedge will therefore provide no meaningful screening of the development at that stage. Furthermore, throughout the winter, the hedge is of course a great deal sparser than the photomontages produced by the appellant's landscape witness in his appendices to his proof and which were taken in the summer indicate. The appellant's landscape witness could have gone back in the winter to ensure his assessment was correct, but he did not.

116. Further, the appellant's landscape witness dismisses the views out of the first floor windows to a large extent because there are only oblique views of the Newton Marsh turbines and they are not picture windows. That rather misses the point that one of the features of windows is that people inside buildings tend to look out of them, regardless of the size. The test is not whether the turbines will be unpleasantly overwhelming and unavoidable presence in main views from a house or garden where the windows are large. The windows in both the conservatory and bedroom represent main views out of the property, and it cannot be doubted that if the occupier chooses to look out of them, she will immediately see the array, and feel the presence of nearby turbines - closer than any of the turbines in the Cross Drove Appeal.
117. Moreover looking out of the window is one of the first things people will do in the morning, perhaps to check the weather. The fact that they have to be 'consciously looked through' does not detract from the fact that when they are looked through, the view is one of nearby wind turbine development. That is indeed what any resident of Eastfield Farm will see if they choose to look out of the window, not only at the south facing front of the house, but also on the east facing side where a Newton Marsh turbine is visible. The effect will be enhanced further as soon as any occupant of Eastfield Farm steps outside.
118. In respect of the outside areas, there is no basis in fact or law whatsoever for excluding the paddock and stable areas which are part and parcel of the property and intimately associated with the occupation of the dwelling house. Particularly, when the appellant's landscape witness accepted that he placed weight on areas used on a frequent basis, which on the occupier's evidence, they are. Indeed, the appellant's landscape witness accepted in cross examination that he had drawn the boundaries of his assessment narrowly and that his whole approach to the assessment was not based on any policy that he could point to that supported it. The appellant's landscape witness also confirmed he was not asking the Inspector to adopt a new test - but that the restraints he has applied were merely to inform his own judgment. The test is still whether the development will be an unpleasantly overwhelming and unavoidable presence in main views from a house or garden.
119. What is plain, however, is that those constraints are inconsistent with the SoS approach, as expounded in the Cross Drove Decision. Specifically, where the Inspector had regard to the occupant's use of the large garden and manège as a material consideration to which weight was given. There is no good reason why the same principle should not apply here or why the area should be excluded. It is also clear that those areas to the side and rear of the property are not screened at all and as such, the nearby turbines will loom over them in an oppressive way.
120. Furthermore, there is good reason to take into account as a material consideration, the road towards Eastfield Farm. That road goes from the Thoresby Road A1031, and after it passes Outholme Farm, the only place to go is Eastfield Farm because thereafter, the road is not suitable for motor vehicles. Accordingly anyone driving along it will do so only with the intention of visiting Eastfield Farm. Whilst not a private road, it has no other purpose than to serve the dwelling for the entire length of that road, (usually taken slowly because of the condition of the road), the turbines would be a constant feature on the approach to the dwelling. Again, the Inspector in the Cross Drove decision at

seemed to have regard to the approach of dwellings as a material consideration to which weight should be given. In this instance, the resident of Eastfield Farm would approach the dwelling with a wind farm to the right and left, and also in the distance. It would feel like driving into the middle of a large windfarm, and the impact would undoubtedly be overbearing.

121. Accordingly, in this case, private and public interests coincide in such a way that the outlook from a dwelling would be so harmed as to be generally regarded as unacceptable. The experience of living in a dwelling isn't confined to what can be seen from certain angles in a room. It is the experience of the place. In that respect the appellant's landscape witness, and the appellant's planning witness present an entirely sterile view of the occupier of Eastfield Farm's experience and any future resident for that matter. Indeed, the amount of land surrounding the house is an attraction of the property and in excluding those areas from his assessment the appellant's landscape witness makes an incomplete analysis that cannot be relied on.
122. Further and importantly, insofar as the reversibility of the scheme is considered, the Council relies upon the comments, again in the Cross Drove decision that "Although the permission would be for 25 years after which a new planning application would have to be made, that is a long period in a human timescale, amounting to one generation. It would not be right to give this factor a great deal of weight where the impact on living conditions is a main concern."

The AONB and Cumulative Visual Harm

123. The context for this reason for refusal is the scale of wind farm development that has already taken place in the District. In addition, there is concern about the number of developments that are in scoping, or in planning, albeit the Council does not rely on those schemes for the cumulative harm it has identified to materialise.
124. In East Lindsey there are operational wind farms at: Conisholme (20 turbines); Mablethorpe (16 turbines); and Croft (2 turbines). There are 2 operational tall turbines: one at Ulceby; and, one at Yarburgh (The Limes). In addition, 2 turbines have been erected at Tetney (Newton Marsh), but are not yet operational because of difficulties in grid connection. Further, there are 135 operational turbines off-shore at Skegness.
125. A number of wind farms are also the subject of planning applications at Croft (6 turbines), Bishopthorpe (8 turbines), Grainthorpe (2 turbines), with a further one at planning Inquiry at Orby (9 turbines), and 1 at Gayton le Marsh (8 turbines), which was recently allowed at appeal.
126. The Council's planning and landscape witness makes the point in his proof that "All the built turbines (apart from the one at Ulceby), proposed on-shore wind farms and most of the individual turbines proposed are shown to be located within the coastal strip between the Wolds AONB and the North Sea, are within national landscape character area 42 and within local LCA J1 - Tetney Lock to Skegness Coastal Outmarsh. In addition to the above list there are several other wind farms within this LCA that have been the subject of scoping opinions." He attaches a plan (at his Appendix 4) showing the locations of the different turbines.

127. As a further part of the context, it is right to note that the Council engaged its own consultants to carry out a review of the appellant's landscape and visual assessments, but it is also right to record that those consultant's (FPCR) were not called upon to carry out an independent assessment - they were merely completing an appraisal of the methodology and a review of the completed assessment.

Landscape Evidence Base

128. A common concern expressed in many of the landscape documents before the Inquiry, relating to the District, is the visual impact of wind farms. That is testament both to the level of renewable energy development this District has seen over the past decade, and the high visibility of it over the landscape. It is a particular feature of the landscape in East Lindsey that is both open and vast, but as a corollary, any tall development is highly visible over long distances.

129. In respect of the Lincolnshire Wolds AONB - National Character Area (NCA) Profile 43 on the Lincolnshire Wolds, at page 6, makes the point that the Wolds are situated on the highest land in Lincolnshire, giving long views and strong visual links with the adjacent NCAs. Under the heading 'Landscape change' the document records that beyond the AONB wind farms have been constructed that can be seen from the AONB, and visually impact on the landscape character. It goes on to record that: "The visual impact of expanding renewable energy development is one of the biggest pressures on the NCA because of the impact on the long, rural undisturbed views which are characteristic of the area." Plainly therefore, it is not saying that wind farm development is a positive force for change. Rather, under the heading 'Landscape opportunities' it seeks to protect the expansive views which wind farm development will inevitably interrupt and, indeed, have already done so.

130. The point is reiterated in the Council's own Landscape Character Assessment of July 2009, published at a time when there were far fewer consented developments that there are now. Page 8 of that document recorded that; "Views of the landscape across the District were mentioned frequently as a highly valued characteristic the landscape...Frequent mention was made at the tranquillity of the area, the quiet roads with wide verges and wildflowers and the view enjoyed particularly whilst travelling along the rolling roads in the Wolds."

131. Not only are they a 'highly valued characteristic' but the 'excellent views from the chalk escarpment' are one of the reasons for the designation of the area in the first place as set out by the Council's landscape witness in his Appendix 2.

132. The LCA also recognises that a common concern expressed by communities and stakeholders was 'the visual effects of existing and planned onshore wind farms. This was evidenced from a number of comments received about them'.

133. CD6.6 is the AONB Management Plan 2013-2018 which recognises that there has been an increase in applications for wind turbine development both in and adjacent to the AONB, and goes on to say that the Management Plan recognised that the Lincolnshire Wolds AONB is especially vulnerable to cumulative impacts from medium-large scale developments that lie close in proximity to the boundary, and therefore have the potential to impact on the panoramic views both from and to the Lincolnshire Wolds from the neighbouring Lincolnshire Coast and Marshes (to the east).

134. The appellant's landscape witness was taken back to that paragraph in re-examination and asked whether the Louth Canal Wind Farm is 'medium-large scale development', he responded it is not. The Council disagrees - the erection of three turbines, all over 110m, is surely large scale development.
135. Policy 7 in the AONB Management Plan further expresses the concern about the impact of wind farm development by setting a general presumption against wind energy schemes in any location which could cause significant and demonstrably detrimental effects upon the natural beauty and intrinsic character of the AONB. In view of the Framework's highly protective stance in respect of AONB (such as para 115⁴) that policy plainly accords with the aims of Framework. Although it is not part of the Development Plan, weight should be given to the aims and objectives of the Management Plan, and what the AONB Joint Advisory Committee are seeking to achieve and the harm they are guarding against.

Recent Representations

136. The letter from Lincolnshire Wolds Countryside Service (LWCS) dated 17 January 2014 is said to confirm the view of the LWCS, and also the staffing unit for the Lincolnshire Wolds AONB partnership in respect of the proposed appeal. After apologising for the constraints that have meant an earlier response was difficult, the letter makes the broader point that the Lincolnshire Wolds Joint Advisory Committee has concerns "with the general proliferation of wind energy schemes, both within and adjacent to the Lincolnshire Wolds AONB", but it also makes a site specific objection.
137. The following points should be noted: Firstly, having reviewed the proposal, the LWCS confirm that the Louth Canal scheme would introduce a detrimental intrusion to the long views from the eastern flank of the AONB. These views are highly prized and recognised as a key component of the nationally protected Lincolnshire Wolds landscape. Secondly, the letter points out that "the general low height of the topography of the Wolds and its very extensive outward views, both to the east and west, make the protected landscape particularly sensitive and vulnerable to wind energy development. These developments by their very nature, typically introduce significant vertical and moving elements into the landscape. This is clearly apparent with the existing wind turbine development in operation in East Lindsey, including the wind farms at Conisholme Fen and Mablethorpe". Thirdly, the letter concludes that "on balance, and after careful consideration, we confirm our agreement with East Lindsey District Council's original decision to refuse the planning application for three large wind turbines at Louth Canal", citing their concerns about further visual intrusion and cumulative impacts into the open sweeping views that characterise the coastal grazing marshes of East Lindsey.
138. Accordingly, the letter plainly comprises a scheme specific objection, as eventually accepted by the appellant's landscape witness in cross examination. Further, the LWCS are a well-informed body with no motive other than the protection of the AONB, as the appellant's landscape witness accepted in cross examination. The LWCS observes that views out of the Wolds are recognised as

⁴ Also in EN-1 at para 5.9.12

a key component of the nationally designated landscape and, as such, the Wolds are particularly sensitive and vulnerable to wind farm development.

139. A letter from Lincolnshire County Council (LCC) was also received on the 17 January 2014 which expresses strong support for the position of the Council in defence of the appeal. LCC recognise in their letter that they have a duty of care through the Countryside and Rights of Way Act to protect and enhance the Lincolnshire Wolds AONB and they say they have adopted the AONB Management Plan 2013-2018 (CD6.8).
140. The letter then makes the following point: "The cumulative impact of the growing number of operational, consented and proposed wind farms in the eastern part of the County, including the off shore wind turbines at Skegness, are creating an unacceptably adverse harmful and industrialising form of development which is becoming all pervasive in the landscape, the flatter landscapes in Lincolnshire make them far more susceptible to the cumulative impact of these increasing numbers of wind turbines".
141. The 'flatter landscape' point is one that comes not only through this letter, but also the LWCS letter and reflects the recent PPG R&LCE⁵ as the appellant's landscape witness agreed in cross examination. That Guidance (para 15) says that the impact of wind farm development can be as great in predominantly flat landscapes as in hilly or mountainous areas. Indeed, where expansive views are a valued feature of the landscape, and it is the flatness of landscape that allows for those views, that observation must apply with even greater force.
142. The letter also comments that the off shore turbines in particular have greatly magnified the cumulative impact of on shore turbines, and that as a result, the areas between the coast and the AONB are even more important. The appellant's landscape witness also said that he would give some weight to the observation, but in cross examination, he admitted that he hadn't considered the impact of the off shore turbines and the effects identified by LCC which form a key part of the LCC objection.
143. The letter goes on to expand on the issue of off shore turbines, which it says have become a defining feature on the coast line and the intervening land between the coast and the Lincolnshire Wolds ANOB. Consequently, the letter concludes, that the AONB is now more vulnerable to the harmful impacts of wind farm development particularly those views from the eastern flanks of the AONB, which are an important element of the value of the AONB because they are going to be dominated by views of wind turbines in place of the previous expansive, sweeping views described in the AONB Management Plan.
144. Again, the representations echo the themes within the LWCS letter that, the views out from the eastern flank of the AONB are a defining and valuable feature of the Wolds, and the AONB is vulnerable to further wind farm development.
145. Those views were also expressed to the Inquiry by a number of members of the public who gave evidence of the impact of wind farm development on the

⁵ This guidance has been cancelled since the Inquiry sat but the advice is repeated in the planning guidance (paragraph ref ID5-007-20140306)

eastern flank of the AONB, and the potential for further harm occasioned by the Louth Canal development as well as other schemes now coming forward.

146. The appellant's landscape witness, in concluding that there will not be an unacceptable impact on the AONB, relies on the following: That there is a landscape buffer of the Middle Marsh landscape character area between the appeal site and the AONB; the site is some distance away from the AONB; it will be seen in the context of existing turbines at Newton Marsh; and, he adopts the Inspector's conclusion in the Carlton Grange Decision (para 63 of CD8.6) about the scale of the landscape and the 'huge' amount of development that would be required to change that.
147. With respect, the appellant's landscape witness's observations miss a number of key points. First, that the size of the turbines means that they are highly visible, whether there is a landscape buffer or not. It is right to note that Louth Canal site sits almost directly on the boundary to local LCA I1 and is closer to the AONB than any other wind farm. Turbines are highly visible over long distances – the appellant's landscape witness accepted they can have significant adverse visual effects at distances of over 7km - the nearest turbine would be about 6.3km away from the AONB and so distance alone cannot be an overriding factor.
148. Furthermore, the Louth Canal wind farm, from many views, is positioned in a gap between existing wind farm development. The appellant's landscape witness accepted in cross examination that was right and that it would largely be perceived as a single project. While that might avoid undesirable stacking of turbine development, it is unfortunate, because as the appellant's landscape witness acknowledged in cross examination, gaps - breathing spaces in development are preferable. The proposal therefore, as the Council's landscape witness comments in his proof, further reduces the gaps in wind farm development, and interrupts the highly valued views for those walking and travelling through the AONB, and also for those travelling more widely through the District.
149. In terms of cumulative harm, it is the Council's case that the other schemes in planning and scoping don't need to come forward for the harm identified to materialise. The appellant's landscape witness accepted that was the Council's case. The evidence of the Council's landscape witness is that the scheme alone, because of its position in a gap that presently provides breathing space between developments is enough to tip the balance to the District becoming a wind farm landscape. While the Council's landscape witness is not a landscape architect, he does have over 40 years experience as a planning professional, and is more than capable of making a judgment on the matter. Further, his evidence on such matters has, in the past, been preferred over that of professional landscape witnesses such as in the Anderby Creek Inquiry (APP/D2150/A/10/2130539) where the appeal was dismissed after the Inspector concluded that the cumulative impact of the development "would detract substantially from the qualities of the coastal landscape" and, in that instance, that the appellant had underestimated the visual impact of the development.
150. Furthermore, in respect of the matter of whether East Lindsey was a landscape with wind farms in it, or whether it was becoming a wind farm landscape, the appellant's landscape witness accepted in cross examination that

there was 'an aspect of perception involved' in whether that tipping point had been reached. The point is not, therefore, one that is susceptible to the application of an entirely objective opinion.

151. What can be ascertained, however, and what is usefully demonstrated by appendix 6 of the appellant's landscape witness is that, for someone travelling the coastal road between Mablethorpe and Humberston, they will never be more than about 5 km away from an operational / consented wind farm if Louth Canal is allowed. The route is one where, at the moment, there is a more substantial break between Newton Marsh and Conisholme that represents the largest breathing space along that route. The impact is two fold: given the high visibility of wind turbines over long distances, people travelling along the route would rarely be without a view of at least one wind farm; and, given the short distances between wind farms and the speed at which that distance could be covered by car, the in-transition effect would be that people moved very quickly from one wind farm to the next meaning that the impacts felt by the wind farm development would be continuous for the length of the journey.
152. The appellant's landscape witness says in his proof that he has not 'undertaken a comprehensive and detailed assessment' of that Coastal route (para 5.28) and so his conclusion that the effect of Louth Canal on the route would only be 'negligible' is questionable. Further, this witness seems to rely on the fact that there is a long section - presumably that between Mablethorpe and Skegness where there are no wind farms. That fails to recognise that turbines are highly visible developments that can be seen over long distances, and north of Mablethorpe there is an almost constant wind farm presence. The overwhelming cumulative impact of wind farm development in this area would also be felt by those people who choose to travel the area on foot, whether walking along the Louth Canal from Louth to Tetney Lock, or along the eastern edge of the Wolds AONB.
153. Evidence was heard at the Inquiry as to the walks promoted by the Louth Navigation Trust, by both the Council's heritage witness, and by Mrs Belton, a local resident. The Trust has published two leaflets outlining walks that can be taken between Louth and Tetney Lock. The 'Two Sea Forts and a Canal Walk' goes north all the way to Humberston Fitties on the coast and then southwards again on an 11 km walk. The local resident's evidence and accompanying pictures are useful in demonstrating the high level, and pervading impact, of a number of wind farm developments which will be a constant presence on the walk whether going north or south - even those at some considerable distance, such as Mablethorpe. The appellant's landscape witness couldn't agree in cross examination that the wind farms would be a constant presence on the walk, but has not actually walked the route himself, so again little weight can be given to his view.
154. There can be no doubt that the development will have a major visual impact on the immediate area and local landscape. The ES (CD1.7) includes a great deal of viewpoints and properties where a significant or moderate adverse impact will be felt, even at distances of 5,467m at Horseshoe Point and coastal path public right of way (Table 9.17 p.173). The fact that the landscape is 'flat' - the fact that there are presently large open wide views, all lend to the impact of turbines being visible over a significant distance. The appellant's landscape witness didn't disagree with Ms Belton's, a local resident, observations (INQ9)

that Mablethorpe turbines could be seen at a distance of 18km. As the appellant's landscape witness accepted in cross examination, wind turbines can have significant adverse visual effects at distances of over 7km and with a general absence of tall structures within the immediate area of Louth Canal, as he also accepted, the turbines will be and alien feature that will attract the attention of people moving through the landscape; in essence they can't be missed.

155. In terms of the cumulative harm to the local LCA J1, what both the appellant's landscape witness and the ES erroneously do is to say that the sensitivity of the landscape area is low, and rely heavily on existing industrial influences to attempt to prove the point.
156. The summary of operational effects on national landscape character areas is noted in chapter 9 of the ES (the Landscape and Visual Impact Assessment (LVIA) at table 9.15). The FPCR assessment says that the table assumes that the Lincolnshire Coast and Marshes National Character area is low landscape sensitivity. FPCR do not support this view saying that whilst as a wider landscape area it does include some detracting elements, it also includes some features of intrinsic interest - most notable is the visual relationship with the rising land of the Wolds to the west. This contrasts with the flat landscape of the marshes and provides a distinctive character. Further, the ES itself acknowledges that local LCA J1 in which the development is proposed is considered to have an overall landscape character sensitivity of Medium to High (ES para 9.5.47).
157. In respect of the existing industrial influences, the appellant's landscape witness, in his proof of evidence, relies on the Newton Marsh decision APP/D2510/A/08/2090543 (CD8.5). When cross-examined, however, the appellant's landscape witness made the following concessions: he accepted that the comment at para 5.25 of his proof was inaccurate on the basis that a decision that concludes development is acceptable in one part of the LCA doesn't necessarily apply to the whole LCA. That is plainly correct, the same character area will share many of the same characteristics, but there will be places where development is acceptable and places it is unacceptable. It is a matter of judging each case on its merits; he conceded it was wrong to say the sensitivity of the LCA was low and revised it to 'low to medium' despite the Landscape Character Assessment at CD6.7 placing the LCA sensitivity at 'moderate to high but lower in areas influenced by localised industrial and urban areas'.
158. Furthermore, in respect of that decision, the site was demonstrably different. Para 12 of the decision described the surroundings, beginning by noting the turbines would sit within the sewage treatment works and that a very short distance away are the Tetney Oil Tanks.
159. Importantly, at para 26 the Inspector said: "Moreover this is not a quiet or secluded spot. It is a working agricultural landscape accommodating, amongst other things, traffic evident on the main road, the bulk of the oil tanks, the equipment of the sewage plant, the sprawling muddle around the old airfield, the canal and engineered drainage ditches as well as the raised straight tracks traversing the flat fields. The moving rotors would be seen, but I doubt they would be inherently damaging in such a context".

160. That is not the same context as that of the Louth Canal scheme. A great deal of evidence has been given to the Inquiry about the tranquillity of the appeal site, for example, local resident Anne Winslow describes the appeal site as a “beautiful location of open spaces, peace and tranquillity” and Janet Dixon, who is, a keen walker and described the landscape in the area of the appeal site as a “tranquil scene”. Ms Parker’s evidence is similar. Moreover, this is important in the way in which the footpaths around it are enjoyed for recreational purposes. The appellant’s landscape witness eventually agreed that the same industrialising influences are not present on the appeal site.
161. The oil tanks and wind farm development is visible, but at present, they do not have an overbearing impact, and in no way industrialise the site. Furthermore, the oil tanks when viewed from any distance, such as from in the AONB, are below the horizon line and as such, do not contribute to the cumulative effects of wind farm development or de-sensitise the area.
162. In conclusion on this reason for refusal, the Louth Canal development is likely to cause significant cumulative harm. It is located in what is presently a breathing space between wind farm developments and is an area which is demonstrably more sensitive to change than elsewhere in the District. The effect of the development will be that people travelling through the District either by car or on foot will rarely be without a view of a wind farm. Furthermore, the proximity to the AONB means the site will interfere with panoramic views from the AONB, and harm that highly protected area, contrary to policy C11 and the Framework - both of which should be afforded significant weight.

The Overall Balance

163. There can be no dispute that there is strong national policy support for the production of renewable energy. Nor can it be disputed that the contribution the appeal proposal could make towards the production of renewable energy is a significant benefit to weigh in the planning balance.
164. Furthermore, it is accepted that the development plan is silent on renewable energy policy. Accordingly the matter falls squarely within the second part of ‘decision taking’ in paragraph 14 of the Framework that unless material considerations indicate otherwise, where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
165. The specific policies referred to are cited at footnote 9, which is not exhaustive, but points to, for example, those policies relating to sites protected under the Birds and Habitats Directives and/or designated as SSSI; land designated as Green Belt, Local Green Space, and AONB, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets and locations at risk of flooding or coastal erosion.
166. In essence therefore, there is a balance to be arrived at between the benefits of the scheme and any harm that might arise as a result of it. It is very firmly the Council’s view that the balance weighs against the appeal proposals. The harm identified is the substantial harm to the grade II listed warehouse and its setting which sits to the east of the appeal site some 500 metres away from the

nearest turbine; the residential property at Eastfield Farm, some 600 metres to the north of the appeal site and the cumulative landscape and visual harm to the landscape area, as well as the AONB which is to the west.

167. The Council identifies conflict between the proposal and the Development Plan, as well as policies in the Framework. The impact of the development cannot be made acceptable and as such the appeal should not be allowed as per para 98 of the Framework.
168. A further material consideration in this appeal, was the advice of the PPG R&LCE which has been incorporated into the planning guidance. Bearing in mind that this is a government that has sought to streamline planning policy guidance, it cannot be assumed further guidance was issued lightly⁶.
169. The planning guidance makes explicit reference to the need for renewable or low carbon energy not automatically overriding environmental protections. As the Council's planning witness commented both in his written and oral evidence, this can be seen as re-setting the scales in the light of decisions such as at Carlton Grange where the Inspector commented that "Because of the urgent need for more installed RE to meet the 2020 targets, the bar of acceptability must be set low enough for sufficient schemes to be permitted".
170. That is not the thrust of the planning guidance which stresses what ought to be a straightforward and obvious point. The inclusion of that assertion in the guidance suggests that there was a need to remind people concerned with wind farm development that, as well as the need for renewable energy, there are a number of other valid and important concerns. The appellant's planning witness having initially agreed with that paragraph from the Carlton Grange decision resiled from the suggestion that the bar of acceptability should be set 'low'. Instead it is the appellant's case that the bar of acceptability should be set at an appropriate level.
171. Importantly, the guidance includes advice that: cumulative impacts require particular attention, especially the increasing impact that wind turbines and large scale solar farms can have on landscape and local amenity as the number of turbines and solar arrays in an area increases; local topography is an important factor in assessing whether wind turbines and large scale solar farms could have a damaging effect on landscape and recognise that the impact can be as great in predominately flat landscapes as in hilly or mountainous areas; great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting; proposals in National Parks and AONBs, and in areas close to them where there could be an adverse impact on the protected area, will need careful consideration and, protecting local amenity is an important consideration which should be given proper weight in planning decisions.
172. The appellant's landscape witness initially commented during evidence in chief that the guidance is 'nothing new'. Plainly that is not correct - there has been a clear shift in attitude towards planning policy and guidance envisioned by the

⁶The Council's planning and landscape witness addresses the guidance from para 7.45 of his proof noting that the guidance was issued partly in response to concerns being voiced by many about onshore wind and its impact on landscape.

Framework which commented that it was “replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning”.

173. Eventually, he accepted that the guidance might be a response to inadequate landscapes assessments that presume flat landscape can accommodate wind development. The appellant’s planning witness also accepted in cross examination that the July 2013 guidance (CD 4.13)⁷ was a helpful reminder of things to be taken into account, and talked of a better balance being struck with communities ‘suffering impacts’ of wind farm development. He also accepted that the document was an acceptance that not all parties in the industry have always engaged with relevant stakeholders as they should have.

Local Plan Policies

174. It is wrong to simply say the local plan is out of date. It is accepted that the plan is silent on renewable energy. There was a previous policy ENV1 Renewable Energy Generation which can be seen to be deleted on page 29 of the Local Plan Document (CD2.1) but that no longer exists, undoubtedly overtaken at some stage by the now revoked regional targets.

175. However, the absence of a policy relating to renewable energy does not deprive other development control policies of their force and applicability. Indeed the Framework is quite clear about how extant policies are to be read.

176. The policies should be assessed against para 215 of the Framework. It has never been a para 214 plan because it was adopted prior to 2004. Thus, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. Furthermore, para 211 is clear that for the purposes of decision-taking, the policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the Framework.

177. The appellant’s planning witness agreed in cross examination that just because the policies were old that did not make them out of date. He also agreed that it is important to look at the aims of the policy as well as the wording when considering to what extent they comply with the Framework.

178. It goes without saying, and is agreed between all the parties, that the policies in the Framework should be given full weight as an up to date expression of government policy insofar as they are relevant to this appeal. Accordingly, it is necessary to consider that consistency of the three local plan policies relied on by the Council with the Framework.

179. Policy A4 - The aims of the policy are to prevent unacceptable harm to the amenity of people living or working close to a proposed development. It cannot seriously be suggested that is not a valid aim of planning control, or that the aim conflicts with the thrust of the Framework. The appellant’s planning witness agreed that as a principle of good planning, the protection of amenity remains an important consideration and that the Framework seeks to prevent unacceptable harm to residential amenity.

⁷ Now replaced by the planning guidance

180. Indeed, it is a core planning principle (the Framework para 17) that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. In some respects that policy could be said to go further than the Local Plan Policy which sets the bar at 'unacceptable' meaning the Framework demands a higher standard.
181. It is clear therefore that the policy is compliant with the Framework. Local amenity is also considered to be important in the latest planning guidance. The use of the term 'proper weight' might well suggest that is not what has been given to those concerns in the past.
182. Further, local appeal decisions which came after the introduction of the Framework have supported Policy A4 as being consistent with its the objectives. Accordingly, the policy attracts significant weight as does the conflict identified with it.
183. In the Station Road Alford Appeal Decision (APP/D2510/A/12/2179547), dated 18 April 2013, after the introduction of the Framework, the Inspector said: "Policies A4 and A5, are consistent with the objectives of the National Planning Policy Framework (the Framework) to secure sustainable development of high quality design that established a strong sense of place and provides a good standard of amenity for all existing and future occupiers of land and buildings. These policies can therefore be afforded full weight."
184. Further, in The Quarry, Ugate, Louth Appeal Decision (APP/D2510/A/2186215), dated 13 March 2013, Policy A4 was at issue and the Inspector referring to the Local Plan said "Although now of some age, all of the four non-housing Policies that the Council referred to in its decision, reflect the thrust of similar Policy in the Framework. I should therefore give them significant weight."
185. Policy C2 - Again, it is a policy that shares fundamental aims with the Framework as explored earlier in these submissions. The appellant's planning witness accepted that the Framework strives to protect and enhance the significance of heritage assets and so great weight should be given to the harm identified - whether substantial as the Council say or less than substantial.
186. In the 13A North Street, Horncastle (APP/D2510/E/12/2173915 & APP/D2510/A/12/2173917) Appeal Decision, dated December 2012, the issue (in Appeal A) was "whether the proposal would preserve the listed building and any features of special architectural or historic interest it possesses." Policy C2 was at issue and the Inspector referred to the Framework and did not identify a conflict, considering that the proposals in that matter were contrary to the objective of Local Plan Policy C2 and Part 12 of the Framework, thereby considering the two together but not in conflict. Thus, whilst Policy C2 is acknowledged to be more restrictive in some respects than the corresponding part of the Framework the aims of the policies are not in conflict and so weight can be attributed to the policy and to the conflict identified by the Council.
187. AONB – Policy C11 -The policy states (briefly) that the Council will protect the natural beauty of the Lincolnshire Wolds AONB by not permitting development that would harm the landscape features, character, role or significance of the area. That applies to development both within the AONB and development outside it that would have an impact on it. The appellant's planning witness

accepts there is a technical breach of the Policy C11 (proof para 6.69) because Policy C11 does not permit there to be any harm to the AONB. However, it is the appellant's case the harm is not significant. The Framework does, however, as the appellant's planning witness accepted, offer a high level of protection to the AONB and it is one of the designations mentioned specifically at para 14 as a specific policy in the Framework which indicates development should be restricted.

188. In terms of the consistency of Policy C11 with the Framework, in the Cottage Farm, Skendleby Appeal Decision (APP/D2510/A/12/2178955) the main issue was considered to be the effect of the proposed development on the character and appearance of the Lincolnshire Wolds AONB. The Inspector said: "Specific policy towards the protection of the AONB is set out in LP Policy C11. The strict application of policy in AONBs which have the highest level of protection in relation to landscape and scenic beauty has been reinforced by paragraph 115 of the National Planning Policy Framework (NPPF). This consideration attracted great weight". Accordingly, any harm to the AONB should be given significant weight given the protection afforded by both Policy C11 and Framework which are consistent and can be read together.

189. The Framework's consideration of sustainable development sets out three dimensions - the economic, social and environmental elements which should be sought jointly and simultaneously through the planning system. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. It goes on to say the Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date local plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

190. As explained above, there is a balancing exercise to be undertaken, as set out in para 14 and it is necessary to go through that exercise for a development to get its badge of sustainability. It is a process that should be undertaken carefully to ensure all material matters are taken into consideration.

191. In his evidence the appellant's planning witness advances the proposition that wind energy schemes should be regarded as sustainable development for the purposes of the Framework (para 5.12). He is bolstered no doubt by the reference in the Carlton Grange Decision at para 41 to "inherent sustainability". However, the Inspector there does not say that there is no need for a balancing exercise to be undertaken. He expressly recognised that in saying; "The NPPF's presumption in favour of sustainable development makes particular sense in this regard. However, that is not to say that anything goes. Schemes which would cause significant and demonstrable harm should not be permitted, but those which can be accepted should be approved as soon as possible irrespective of whether a particular region or district has done its bit in meeting any targets set out in the relevant development plan".

192. The proper analysis in cases where the development plan is silent as to the need for renewable energy is that the scheme should be viewed in the context of the presumption of sustainable development, not automatically as sustainable development in the first place as that disregards an important process. Further;

there is no reference to inherent sustainability in the Framework; the Framework regards that some development should be considered in the context of the presumption of sustainable development but that is not the same as saying something is inherently sustainable; if it were correct that viewing something in the context of sustainable development meant that it were automatically sustainable development, then no housing scheme or wind farm on the appellant's case could ever be refused because it would be sustainable. The conclusion is irrational, and plainly not what the Framework intended to convey. Para 98 explicitly recognises that applications should be approved only where their impacts can be made acceptable.

193. The emerging Core Strategy is not a reason for refusing the proposal. However, policy SP19 'Renewable Energy' (beginning on page 108) reaffirms the commitment to protecting the AONB (para 3); and that it is important that wind turbines through accumulation and intervisibility, do not come to dominate the landscape of the District, which is an important economic, tourist, cultural and biodiversity resource.
194. Policy SP19 also states that proposals will only be supported where their individual and cumulative impact is considered to be acceptable in relation to residential amenity, landscape qualities and character, and the significance, (including the setting) of heritage assets. The policy demonstrates again, that the consideration of renewable energy projects requires a balance to be struck with harm to a number of different interests which echo's the policies in the Framework.

Benefits

195. The appellant's planning witness accepted in cross examination that harm had been identified in the ES in respect of all three concerns of the local authority i.e. residential amenity, the cumulative visual impacts, and the harm to Thoresby Warehouse. That level of harm then has to be identified and placed against the benefits.
196. Plainly there is a need to deliver renewable energy and the development, in contributing 7.5 MW of installed capacity, is beneficial in that respect. It is not denied that there is national policy support for renewable energy.
197. The appellant's planning witness explores in detail The UK Renewable Energy Roadmap 2013 (CD4.9) recording that it is significant that the first technology highlighted is on-shore wind. That document recognises that the June 2013 guidance is aimed at ensuring communities have a greater say over and stake in on-shore wind projects. The document also highlights a number of other technologies such as biomass and solar PV: it does not favour one, or support one form of renewable energy over another.
198. That context has been considered by the Council's planning witness in his evidence and was also explored in the report to committee which did not shy away from the benefits of renewable energy. Despite that, much was made in cross examination of the Council's planning witness that the report failed to refer to and take into consideration certain matters. First, the report is to be read fairly and as a whole. Secondly, it is addressed to an informed readership who are cognisant of both the local plan as well as the Framework on which they have had training. What the appellant has sought to do is criticise the minutiae of the

report. For example, it was said the report doesn't highlight the language of the Framework - that the presumption in favour of sustainable development, should be seen as a golden thread running through both plan-making and decision-taking. It doesn't recite those words exactly - but it does say that sustainable development as cited by the Framework is at the heart of the planning system and one way to achieve this is by moving to a low carbon future.

199. A number of other criticisms were made: that the report failed to acknowledge the benefit of security of energy supply (but see para 8.5)⁸; that the report failed to acknowledge the proposed ecological enhancements (but see para 8.44); that significant harm had not been identified (but see paras 8.23, 8.33 and 8.59); and, that the reason for refusal in respect of cumulative harm relies on Bishopthorpe wind farm coming forward, however, see again para 8.33.
200. Furthermore, the very strong support for renewable energy was noted throughout, but was not considered to overcome the significant harm that had been identified. The criticisms are therefore more about form than substance, and serve only to detract from the real debate as to whether or not the harm, which all are agreed occurs to some degree or another, can be overcome.
201. In terms of Ecological Mitigation, the ecological impact of the proposal is not a reason for refusal and it recognised that where the proposals leads to ecological enhancement rather than simply mitigation, that is a benefit. However, it is the historic environmental and the broader landscape concerns that constitute the reasons for refusal.
202. The appellant's planning witness agreed that, based on appeal decisions to date, the community benefit package that the developer was offering in this case could not be taken into account in the planning balance. Although the appellant's planning witness disagrees that community benefits should be disregarded, as a result of the recent Appeal Decision APP/Z0923/A/13/2191361 (December 2013), asking the Secretary of State to take them into account would be asking him to arrive at an inconsistent decision in respect of this scheme. Any decision that did would constitute an error of law. Whilst the appellant asserts that the decision is subject to appeal (though no evidence is provided) until such time as that appeal is heard and determined, the decision stands.
203. The Inspector in the Weddicar case dealt with the matter as follows:
"Community Benefits – As part of the claimed benefits of the development the Appellant Company and some interested supporters rely on the completed S106 planning obligation agreement with the Council which provides for an initial £50,000 contribution to a Community Foundation to be used for training purposes to tackle poverty and disadvantage in the area (148(g&h), 159(iv), 169-170). These benefits also featured strongly in the listed benefits in the Officer Report which recommended to the Council's Planning Panel that planning permission be granted. Community benefits of this kind on a voluntary basis are encouraged by the Government. The Ministerial Statement dated 6 June 2013 from Edward Davey (Secretary of State for Energy and Climate Change) suggested an increase in the recommended payments from £1,000/MW of installed capacity per year to £5,000/MW/year for the lifetime of the wind farm. The likely top up payments included in the Obligation may vary. The appellants

⁸ Committee Report 18 April 2013 CD 1.4

suggest that they could lift the annual payments at this site from £2,500/MW to £6,000/MW although the calculation method has not been submitted in evidence [93(g)]. However, even if the payments would accord with the Minister's recent recommendation, it does not follow that the S106 Obligation payments accord with the CIL Regulations test or the Framework. In particular the community benefits on offer are not a requirement of planning policy and they would not be directly related to the development. Those benefitting from the training would be unlikely to be trained or employed to work on this development. I therefore consider that these benefits should not be taken into account in the planning balance".

204. The SoS (para 22 of the decision letter) agreed in the following way: "The Secretary of State notes that the proposal is accompanied by a planning obligation which will provide for community benefit payments including an initial £50,00 contribution to support apprenticeships (IR176). Having had regard to the Inspector's comments at IR177-176 and at IR237-238, the Secretary of State agrees with the Inspector that the community benefits on offer are not a requirement of planning policy and that they would not be directly related to the development (IR238). The Secretary of State concludes that the contributions do not meet the tests set out at Regulation 122 of the Community Infrastructure Levy Regulations at paragraph 204 of the Framework and, like the Inspector, he has not taken account of them in the planning balance (IR238)".

205. In any event, there is no guarantee the funding promised will come forward. There is no agreement in place to pay the money, and as such, even if it were lawfully considered a benefit of the scheme, it is not one that could be claimed here.

Conclusion

206. The Council's planning witness confirmed that within the District alone, there was presently 54.8MW of installed capacity from operational and consented wind farms (Conisholme 16MW; Mablethorpe 10.8MW; The Limes, Alvingham 0.5MW, Gayton-le-Marsh 20MW; Poachers 0.3MW; Newton Marsh 4.6MW; Croft 2.6MW). That is just wind farms and just East Lindsey. He also made the point that in 2006, 54 MW was the capacity for the whole of the Midlands. Whilst it is accepted that an application for permission in respect of wind farm development does not have to prove need, it cannot be said that this District is not doing its bit for renewable energy generation.

207. The Council in considering the application has taken into account the benefits of the scheme, of which the main one is the production of renewable energy. The Council has also, however, identified serious and demonstrable harm to residential amenity, the historic environment and in respect of the cumulative impacts that would arise from the development. Those harms are real and considerable and cannot be overcome, even if the development is only for 25 years - it is a long time in the life of a resident whose amenity is unacceptably affected, and a generation of harm impacting on the nationally designated AONB and listed heritage asset. Accordingly for all the reasons herein, the adverse impacts of permitting the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the development plan and the policies in the Framework taken as a whole and as such, the Council respectfully asks that the appeal be dismissed.

The Case for MWAG

Introduction and Local Residents

208. The Marsh Windfarm Action Group (MWAG) is a local organisation formed to represent the views of objectors in the surrounding communities affected by this proposal. From its experience this represents the views of many within the local population who are concerned about the proposed construction of large wind turbine generators in the neighbourhood, and specifically with respect to the impact on the local landscape amenities, the amenity of local residents and the recreational enjoyment of the countryside.
209. In principle, MWAG supports government policy for the generation of electricity from appropriately sited renewable resources and accepts the desirability of increasing power generation from a range of technologies. MWAG also welcomes more research and development on efficient technologies, that have less of a cumulative visual landscape character impacts in sensitive rural locations. Each application has to be determined on its individual merits, and MWAG believes that the specific and cumulative impacts of this project would be unacceptably adverse to acknowledged interests.
210. MWAG supports the evidence of the Council, its efforts to distinguish wind power proposals that are unacceptable, both individually and cumulatively, so as to protect the characteristic views across the Outmarsh from both the naturalistic coast and the Lincolnshire Wolds AONB landscapes. The area's special value is clearly recognised by the many local communities and by visitors and has been over the generations. The Council's refusal was supported by an unprecedented number of objection letters submitted by 1,340 local residents within the vulnerable rural communities in close proximity to, and surrounding the Louth Canal site. All of the impacted Parish Councils have also unanimously objected.
211. The appellant's opening statement, claims "that a large number of residents from the locality have written to the Council confirming their support for the wind farm" and the appellant's planning witness repeated this in cross examination. MWAG acknowledge that the records show that approximately 680 letters were sent to the Council in support of the scheme. However an analysis of these reveals that only 120 were from the impacted rural communities, against 1,340 objections, which is a relatively small number in comparison. The remaining letters of support were canvassed from within the urban setting of Louth Town and, from the majority of addresses given, these residents would not experience the daily impacts caused by these large scale turbines from their properties. This is unlike the situation for the majority who have objected, as, if approved, they would have no choice in the matter. They would have to live and conduct their daily activities travelling through the local countryside, whilst being over shadowed by yet more large scale industrial wind turbines.
212. The appellant has not adequately considered the recently published PPG R&LCE now forming part of the Government's new planning guidance, and applied the principles set out, but appears to have chosen to consistently ignore this relevant policy advice. The document also clearly states that local communities' concerns regarding planning matters should be considered in that it seeks that "the planning concerns raised by local communities are given proper weight in planning decisions on onshore renewable energy".

213. MWAG contests the appellant's overall conclusion within SEI October 2012 which sets out that the Louth Canal Wind Energy Development generally adds an incremental contribution to the overall cumulative effect, except for receptors and locations closest to the Louth Canal development, where effects are similar to those predicted to arise from the Louth Canal Development in isolation. Where significant landscape and visual effects are predicted to arise from the Louth Canal Wind Energy Development, the cumulative impact is also expected to be significant locally from areas of Tetney Lock to Skegness Coastal Outmarsh LCA, viewpoints 5, 6 and 7 (all within 6km of the Louth Canal Wind Energy Development), seven residential receptors within 1.5km, four footpaths in the immediate vicinity and four limited areas of residential settlements within 7km. It is judged that the majority of significant cumulative effects would arise as a result of successive views in combination with Newton Marsh (Consented) and / or Conisholme (Operational) and The Limes, Alvingham (Operational). Further development is planned with a greater degree of uncertainty of coming to fruition, however, if it were all to be consented and built, significant cumulative effects would arise. The Louth Canal Wind Energy Development's contribution to this is not significant with the exception of four residential properties (two moderate and two major adverse cumulative effects) and four footpaths within 500m of the proposal footprint (major adverse). In other instances, the Louth Canal Wind Energy Development generally adds an incremental contribution to the overall cumulative effect. MWAG maintains that the combined cumulative impacts are greater and not limited to four residential properties and four footpaths only within 500m of the proposal footprint.
214. MWAG considers that, as at the PIM, the main topic areas to be addressed are: Heritage Assets, Landscape and Visual Impacts, Residential Amenity (Visual Impacts); the benefits of the scheme and the planning balance and that there may be issues to be addressed in terms of noise; tranquillity, highway safety; health concerns/physical risks; impacts on recreational activities; tourism and the local economy; ecology and ornithological matters. With the limited resources available, MWAG considers it has presented credible material evidence in its evidence put to the inquiry, along with the personal, wide ranging evidence submitted by local residents, set against the background of the topics identified.
215. The Inquiry heard from a broad range of local residents within the local affected communities. These submissions were well prepared, reasoned, heartfelt presentations of salient material and valid evidence, covering the wide ranging negative impacts this proposal would cause. The Inquiry also heard a limited number of representations in support of the scheme, one of whom is not independent and with others who would not be personally impacted by the proposal. The two residents who would be most impacted, Mrs Davina Parker of Eastfield Farm, the nearest property, and Mr and Mrs Bates at Windy Ridge, spoke of their fears for the continuation of their family business, providing a tranquil setting in the heart of the Lincolnshire countryside, catering for holiday makers who enjoy touring with their caravans and having recreational holidays. This business, along with many others, is promoting the area by encouraging recreational visitors, which contribute much needed revenue into the local economy.

Collaboration of Parish Councils and Localism

216. The evidence for the collaboration of Parish Councils endorses the Council's grounds for refusal. At the well-attended Ludborough meeting the public expressed the view that, because of the escalating number of wind farm applications in the East Lindsey area, they had a sense of being overwhelmed and that the community's voices needed to be articulated to a wider audience. The public further suggested that collaboration be set up by the local parishes in order to represent the wider views of parishes regarding wind farms in the East Lindsey marsh area which would in fact demonstrate the Government's commitment to localism agenda in action.
217. Following the Ludborough public meeting the Collaboration of Local Parishes was established and to date this comprises: Conisholme; Fulstow; Holton le Clay; Humberston; Ludborough; North Cotes; North Thoresby; Tetney; Utterby; Covenham; Yarburgh; North Somercotes; and, Marshchapel. This can now be updated to include Saltfleetby & Legbourne, parishes close to the recently approved (but heavily contested) Gayton le Marsh wind farm due to be constructed by the end of 2014.
218. The Collaboration of Local Parish Councils have also noted at its meetings the terms of the very recent Written Ministerial Statement in which the SoS has confirmed his intention, to, for an initial period of 6 months, recover a selection of renewable energy appeals, as he has now done in the case of this appeal, so that proper weight is given to landscape, heritage and local amenity in the determination of wind turbine (and solar farm) applications. Indeed, the introduction to the Ministerial Statement, referring to the new guidance, states "My Department published new planning practice guidance in the summer to help ensure the planning concerns raised by local communities are given proper weight in planning decisions on onshore renewable energy".
219. This statement, as well as the intentions of the SoS to recover a selection of appeals for scrutiny, is very much welcomed by the Collaboration of Local Parish Councils. The Inspector is respectfully requested to have considerable regard to the clear messages being sent out by the Minister.
220. The Collaboration of Local Parish Councils are further concerned about the location of the Louth Canal Turbines, and referring to SEI Figures November 2012, Fig. 9.10, Residential Settlement Plan, clearly shows that the Louth Canal Site is not remote or in uninhabited, isolated countryside, but is in fact central to all of the surrounding communities represented by the Collaboration of Local Parish Councils, with all of these Parishes within a 5km radius. MWAG again asserts that the local community, is unequivocal in stating in the planning balance that the visual landscape character and residential amenity harm caused, will significantly outweigh any potential benefits accrued from the generation of a limited capacity of renewable energy.

Ornithology

221. MWAG maintains that, although the appellant has provided explanations concerning the confusion arising from the methodology recorded in the Barn Owl survey, there remains a difference between the number of species recorded by MWAG and those recorded by the appellant as contained within the ornithological surveys provided in the ES.

222. MWAG seeks to reflect the voice of local people who have expressed their concern that the proposed development should not harm the much appreciated bird activity experienced over a considerable period of time, in and around the site, and that any potential harm should be mitigated. The submission by Ms C Belton highlights this concern and many others from within the local communities have voiced their concerns on potential ornithological impacts, arising from the construction and operation of 3 large scale wind turbines, in this sensitive natural setting frequented by a large number of vulnerable bird species. These concerns particularly refer to various species of swans, barn owls and golden plover. MWAG is aware that proper due process is required to be applied in the conservation of protected species and their habitats. MWAG understand that the appellant considers they have complied with the requirements set out in the relevant guidance of Natural England and other consultees and likewise accepts that the Inspector will ultimately judge the full submitted evidence, when writing her recommendation to the SoS concerning this matter.

Landscape and Visual Impacts

223. MWAG acknowledges the general acceptance and principle that there is a need for professional expertise, particularly in the case of a large scale wind farm proposal that will by its very nature, subject the surrounding landscape character to change over the flat marsh landscape character area, the coast, and the sensitive landscape of the AONB. The vast majority of large scale wind farm proposals are indeed sited in rural countryside, across the country, so much so that the role of landscape consultant, MWAG suggests, is one of the key component parts in any wind farm planning application.

224. Given the crucial contribution the appellant's landscape witness made during the inception of the planning application and the Inquiry, MWAG was concerned by a number of assertions/responses he made during cross examination. The appellant's landscape witness appeared not to accept that the countryside is particularly tranquil and did assert that the Tetney oil storage tanks and the Anglian Water Sewerage Works some distance away seemed to devalue the tranquil setting of the site. He seemed to suggest that the Tetney oil storage tanks caused noise which is not the case.

225. It is common knowledge that photomontages play a fundamental role within any wind farm planning application to provide as realistic as possible, representative visualisations, of how any proposal would appear. They demonstrate how potentially turbines may be absorbed into the landscape and help to assess potential visual and character impacts on the landscape.

226. When generally assessing photomontages local communities across the country find them unrepresentative and lacking credibility. Unfortunately the Louth Canal photomontages are no exception to this rule. MWAG consider that this is a serious issue when planners and Inspectors rely heavily on developer's assertions that their photomontages provide a true representation of the potential impacts on the landscape. All the photomontages submitted by the appellant were produced prior to the construction of the Newton Marsh turbines. The undeniable reality of these turbines now in situ when compared against the appellant's photomontages confirms the weaknesses in relying on such photomontages and undermines the basis of the appellant's visual evidence.

227. Photomontages are produced, during the various stages through which planning applications proceed, to inform all parties and consultees, this includes planning officers, statutory consultees, including District and Parish Councillors, residents (receptors) within local communities. It was with great surprise that the appellant's landscape witness appeared to down play this key tool as being of little relevance, asserting that they are part of a suite of information to assess impacts, and that he prefers just to rely on wire frames. Through this exchange MWAG and members of the community got the distinct impression that the witness was more concerned with professional status and that he was determined to fit and present the proposed scheme into acceptable visual and landscape character model, rather than consider it in an objective and open mind.
228. The question that is left is how in a technical and professional world are consultees, and lay people, to assess impacts on the natural landscape in a format that is at least broadly understandable, if we do not have access to photomontages and are only presented with technical wire frame drawings.
229. MWAG is aware of the closing submissions in the Gayton Le Marsh Inquiry⁹ where it was argued that the concerns of local 'receptors' about the threat to the intrinsic value of their environment must be set aside to achieve over-riding Government targets for renewable energy. Recent Government policy announcements have clearly stated that the balance has shifted and that this approach should not take precedence. The planning guidance states cumulative impacts are amongst the issues to be considered. Moreover, local topography is an important factor assessing whether wind turbines could have a damaging effect on landscape and the Government recognises that the impacts can be as great in predominately flat landscapes as in hilly or mountainous areas. Yet again, this calls into question the appellant's assessments and assertions.
230. During the Inquiry the appellant's advocate, landscape, and heritage witnesses, continued to assert that the PPG R&LCE, a recently published Government document (July 2013) by the SoS for DCLG, effectively added no new emphasis to the assessment of LVIA assessments. The PPG R&LCE is now incorporated into the practice guide so includes important considerations. MWAG and the Council's position is that this new guidance is relevant and the policy clearly indicates that the concerns of local communities and threats to the intrinsic value of the environment are being set below that of the need for renewable energy. In addition it reaffirms that local topography is an important factor and that impacts can be as great in predominantly flat landscapes as in hilly and mountainous areas. MWAG supports the position that the Council's witnesses have taken and considers that the Government's recent guidance, is a relevant matter to be considered in the planning balance.
231. During cross examination the matter of cumulative landscape effects was discussed and again the appellant's landscape witness asserted that there was disagreement between the appellant and Council's landscape witness. The subject of 'breathing spaces' was raised with regard to the impacts of the three turbines at the Louth Canal site. The appellant's landscape witness consistently asserted that, in his considered opinion, the landscape classification was that of

⁹ January 2013

one with infrequent turbines and that flat landscapes were less sensitive, and that the local landscape was not entirely natural, but engineered by activity. The witness seemed unconcerned at the suggestion that there was a long chain of turbines being established, when pressed on this point, he appeared to suggest that in fact breathing spaces ideally should be avoided, the appellant's landscape witness even suggested it would "be better to add to consented turbines, a smaller gap would be more desirable". MWAG considers this may reflect what is sought at seeking to do at Bishopthorpe Farm. MWAG is extremely concerned that this assertion was made at this appeal, as it seemed to be prejudging and providing a steer to the approach required, concerning the forthcoming Bishopthorpe Farm appeal.

232. There have been further developments regarding the wind turbine planning applications in the area surrounding the appeal site. In addition to the Bishopthorpe Farm appeal being lodged against the Council for non-determination, the Damwells Farm planning application, between Ludborough and North Thoresby has been submitted, but not yet validated. Energie Kontor have held a second round of exhibitions, concerning their proposal on land north of Fulstow for 7 x 115m turbines, on land immediately to the south of the A1031 which will potentially form a cluster of 10 turbines, as they would effectively be in close proximity to the 3 appeal turbines. Is this the true meaning behind this appellant's landscape witness assertion, that breathing space should be avoided?
233. It is notable that in cross examination the appellant's witness was asked whether when assessing the potential visual cumulative impacts and landscape character impacts he had walked any lengths of the Louth Canal, the broad response was that he had not. Again this underlines MWAG's conclusions that the appellant has not fully assessed all the landscape and visual impacts, either as a single scheme or cumulatively.
234. MWAG and people of the receptor-communities expressed concern prior to the opening of the Inquiry that there appeared to have been a failure by all consultees, including LWCS, the Council, North East Lincolnshire Council and Natural England, to appreciate the cumulative landscape and visual impacts on the AONB hinterland and adjacent AGLV.
235. MWAG is encouraged that the LWCS has now submitted a letter of objection to this proposal. The Council through the proofs of their landscape witness and his subsequent robust defence of his evidence, has somewhat redressed the balance. MWAG was concerned to hear the appellant's landscape witness assert, in terms of the cumulative impacts arising from this proposal, that the eastern long panoramic views could be potentially sacrificed as there are still better views from the AONB high escarpments from the western aspects of the Wolds. However, there is nothing to demonstrate the current position regarding these westerly views. Moreover, MWAG contest that this comment appears perverse, unprofessional and suggests a lack of appreciation of the value and significance of this key character of the Lincolnshire Wolds AONB designation. MWAG is fully aware that there are numerous planning proposals for large scale wind turbines, which if approved would significantly impact on the westerly views, even shortly before the Inquiry three more planning applications were submitted into West Lindsey District Council (WLDC) planning. Additionally, WLDC recently refused an application for 8 x 125m turbines on land at Hemswell Cliff. Thus, taking the wider cumulative impacts on the long panoramic views to and from the

Lincolnshire Wolds AONB, there is a significant threat from large scale wind turbines from the North, South, East and West.

236. MWAG maintain its position that the appellant was not aware of the significant view point, gained from the Wanderlust Way in the AONB, and that the full scale photomontage presented at the Inquiry is relevant and accurately represents the true significant cumulative impact 'coming down the tracks', if all proposals are consented. It was argued at the appeal that these may not happen, but in just the few weeks before the Inquiry the other developers have demonstrated their intentions to proceed as quickly as possible.
237. Not content with denigrating the big skies and wide open spaces of this Marsh landscape these impacts are now seriously impacting on one of the key characteristics of the AONB, enshrined in its designation. This threat is even highlighted by Natural England in their published Lincolnshire Wolds NCA 43. MWAG asserts most strongly that if all the schemes currently in planning are approved this key aspect the Lincolnshire Wolds AONB designation will be significantly undermined and there is a serious and credible threat that if the AONB is stripped of this key characteristic, the Lincolnshire Wolds statutory AONB designation will be eventually challenged, as it will be of little value, effectively amounting to nothing more than a worthless historical document, reflecting a bygone age.
238. MWAG considers that the landscape and visual impacts of the proposal have not been adequately demonstrated in the ES and are significantly greater than stated; that the selection of the appeal site is fundamentally flawed. Rather than being located in an isolated location with minimal impacts, it is in fact located central to all of the impacted Marsh Communities. Not only this, the site is located in close proximity to the A1031 (see Fig 11b FEI addendum Dec 2013 and MWAG/5 appendix 2) with significant local visible impacts, particularly on the grade II Listed Warehouse. This road serves as the only main arterial road through the marsh countryside, north and south, linking the local communities together.
239. In addition to this, the highly visible site is central to all the key significant sensitive view points, i.e. from the north and south when walking towards the turbines on the Louth Canal, from the south from the elevated expansive views gained from Covenham Reservoir Bank (viewpoint 5). To the west from the stunning panoramic view gained from the 'Wanderlust Way Walk' (MWAG/5 appendix 4) within the AONB and to the east from 'Horseshoe Point' (viewpoint 7). Furthermore, local recreational walkers and tourist visitors would have to pass through an over bearing industrialised large scale turbine site, mid-way along the popular publicised walks, 'Two Walks and a Canal' and 'To the Sea with LNT'.
240. There has been a lack of assessment of Humber Gateway offshore Wind farm. This should not be ignored in the cumulative visual impact assessment, as the appellant has tried to do.
241. The local communities consider that the appellant has not carefully considered site selection with a view to minimising impacts but, to the contrary, have selected a site that would create major impacts from all directions and in all aspects. The assessment of impacts by MWAG should be taken into account in conjunction with the evidence provided by the Council. The application is

therefore contrary to policy as determined by the local planning authority, and should continue to be refused planning permission.

Heritage Assets

242. MWAG has growing concern on the historical cultural impacts. There are also wider negative landscape character impacts, relating to the relationship between the open low lying marsh countryside and the numerous 'listed' historic churches which over the centuries have held a valued prominent cultural heritage presence over the tranquil pastoral character of the landscape. Mr G Roberts' detailed and relevant submission to the Inquiry, should be carefully considered in this regard. MWAG can identify no reasonable evidence that demonstrates the appellant has assessed these impacts sufficiently.

Noise

243. At the time of the application and until quite late into the appeal process MWAG did not have the resources or expertise available to provide noise evidence. Close to the evidence submission deadline, MWAG was able to instruct a noise expert to professionally evaluate the appellant's Noise Impact Assessment. It became apparent that there was a noise case to be put before the Inquiry and it is on this basis his evidence has been submitted. This is relevant as both MWAG and the Council consider that adverse visual impacts on local properties are sufficient grounds for refusal, added to this any adverse noise impacts on these local properties need to be weighed in the planning balance in terms of all the adverse residential amenity impacts affecting the properties identified.

244. MWAG's noise witness concludes that the appellant has not rigorously followed the procedures required by ETSU and the IoA GPG. At every point where professional judgement is required, and indeed at some where it is not, judgement has invariably been exercised in favour of maximum power generation and at the cost of adequate protection of residents from wind farm noise.

245. There are five serious flaws in the assessment: inappropriate choice of the ETSU lower fixed limit; unusual and unnecessary proximity of two microphones to vegetation; exaggerated setback distances to two near neighbours (i.e. distances between turbines and homes); non-compliant sourcing of turbine noise emission data and use of data that had been declared obsolete by the turbine manufacturer prior to the publication of the appellant's noise impact assessment; neglect of ISO 9613-2 prediction uncertainty.

246. MWAG's assessment of noise has been limited to daytime noise at the most impacted neighbouring homes; daytime noise levels are usually closer to the limit than are night time noise levels. MWAG's noise witness demonstrates that the noise levels to which the nearest homes would be exposed are well in excess of the maximum limits permitted by ETSU.

247. The noise assessment procedure is to define the ETSU limit; do background noise surveys at several homes; process resulting data to define permitted turbine noise levels at each home; acquire turbine emission noise data; predict attenuation of turbine noise from each turbine to each home; compare the data and to determine whether proposal is compliant.

248. There are concerns about each one of these operations. The ETSU lower fixed limit has been used. This is a matter of planning balance rather than acoustics; larger wind farms are permitted by ETSU to expose neighbouring homes to more noise than would be permitted from a small wind farm. The notion behind this is a balance between generating green electricity and harming residents.
249. The noise from the proposed three turbine 6 MW installed power wind farm would affect nine homes to a degree that requires a turbine noise prediction at each home; it is therefore decisively a small wind farm and a candidate for the 35 dB(A) limit. The applicant's consultant, considered that 36 dB(A) was a more appropriate limit. Balancing electrical energy generation against harm to residents must always be subjective, but MWAG's noise witness considers this application of the harm/generation balance is unusual. MWAG's witness has drawn attention to a recently dismissed appeal in Scotland (Carron Valley, ref. no. 13/00001/REF) where PFR, the present appellant, proposed a large 15 turbine 45 MW wind farm, also with nine noise affected homes. The noise impact assessment, which was reviewed by the same consultant proposed the minimum 35 dB(A). Scottish planning legislation may differ from English planning legislation but ETSU and the IoA GPG have been endorsed without caveat by both countries.
250. ETSU states that it is the energy (kilowatt hours) that is relevant to the planning balance, not the turbine power (megawatts). When considering the planning balance between generation of green electricity and harm to local residents. Account should therefore be taken of the wind regime; the proposed site is at sea level, sheltered from the prevailing winds by the Wolds in the near distance, by the Pennines in the middle distance and by the Welsh mountains in the far distance. This is largely responsible for the tranquillity of the area and casts doubt on the suitability of the site.
251. It is necessary to measure background noise, and its variation with wind speed, as ETSU limits the amount by which the turbine noise should be allowed to exceed the background noise at any given wind speed. The four week background noise surveys unfortunately had atypical wind directions, the northeast winds predominating over the normally prevailing southwest winds.

Eastfield Farm

252. The Eastfield Farm survey data was compromised by a microphone position which contravened the requirements of ETSU and the IoA GPG, by virtue of its unusual and unnecessary proximity to a hedge to its north. The usual minimum separation sought is 4m, and this is indeed the distance claimed by the developer's acoustic consultant in a letter of 7 February 2013 to the Council. The appellant's own photographs however (figs 1 and 2 in appendix 8.2 of the ES) indicate, from shadow evidence, a separation distance of scarcely 2m. There was an expanse of open lawn that available, well away from vegetation noise.
253. The noise from the hedge would have inflated the background noise measurement, and this was exacerbated by the atypical preponderance of wind from the north east compass quarter. By filtering out this quarter it was possible to obtain a representative background noise curve from which to derive and ETSU daytime limit curve, which was 0.5dB lower than the appellant's curve at the critical wind speeds around 5 to 6m/s.

254. The IoA GPG (3.1.22) requires filtering of wind direction where necessary: "Directional analysis of prevailing background noise levels may be necessary in specific circumstances, where a wind farm is located upwind of a receptor but a significant contributor to the background noise environment is downwind of the receptor in the same wind conditions".
255. The appellant's noise witness, in his second rebuttal proof misrepresents the MWAG evidence; MWAG does not consider data should be filtered based on prevailing wind direction. It is coincidental that the atypical noise which required exclusion came from wind from the north east quarter, which happens to be opposite the south west quarter of the prevailing wind. It is not, however, immaterial; as the wind/noise scenario under discussion is the prevailing one, it is the one that Windy Ridge will be exposed to most of the time.
256. Parties agreed during cross-examination that homes will receive the maximum noise level not just when they are precisely downwind of a turbine, but at all angles up to $\pm 80^\circ$ of the downwind direction. Furthermore, a prevailing south westerly wind is not of course precisely from the southwest direction, but from anywhere between south and west. The above comments on Windy Ridge therefore apply also to Eastfield Farm and to Thoresby Farm and Thoresby Warehouse.
257. The reason that wind from the north east sector was such a significant contributor was that for most of the survey time the wind happened to be from that quarter; the normally prevailing south west wind simply did not prevail during the survey. The reason that directional analysis, followed by exclusion of the north east sector, is necessary here is that the background noise measurement (and thus the permitted turbine noise level) would otherwise be inflated by the higher background noise levels associated with wind from the north or the north east quarters.
258. The only difference between the MWAG directional analysis and that of the appellant is that the north east quarter (north to east) is excluded whereas the applicant excluded the north to north east eighth of the compass rose, as there was no relevant data to exclude from the north west to north direction (see wind directions plot appendix 3 of the appellant's ES). The reason for the difference between MWAG and the appellant is the proposal by the appellant's noise witness in his second rebuttal that the noise source is the "oil terminal installation to the north of the site".
259. MWAG is very confident that the excess background noise associated with winds from the north east quarter were generated by the hedge at 2 metres distance, not the static oils storage tanks, which make no significant noise when nearby, which are at 2km distance from Eastfield Farm.

Windy Ridge

260. The Windy Ridge survey data was irrecoverably compromised by a microphone position that was all but embedded in vegetation, and under 2m from it as the appellant's own photograph again clearly shows (fig. 9 in appendix 8.2 of the ES). A glance at the noise plots (figs 5 and 6 of appendix 8.4 of the ES) show a chaotic spread of data points not at all characteristic of a quiet rural environment, and very different from the Eastfield Farm plots. As Windy Ridge is close to Eastfield Farm, on similar terrain and at the same altitude (sea level) the

Eastfield Farm background noise curve can be used as a proxy to determine the ETSU daytime limit curve for Windy Ridge. This was 3.6 dB lower than the appellant's curve at the critical wind speeds around 5 to 6 m/s where turbine noise would exceed the ETSU limit.

Thoresby Bridge Farm and Thoresby Bridge Warehouse

261. It was not possible to obtain the noise data from the Thoresby Bridge Farm survey, so it cannot be appraised. The background noise level was unusually high; a site visit suggested this may have been due to a large number of farm birds of several different species. The derived ETSU noise limit curve is therefore not suitable for use as a proxy at any other homes.
262. Thoresby Warehouse, a grade II listed building, is not currently inhabited, so it was not assessed for noise by the appellant. It is however a heritage asset, which, it seems, is only likely to escape decay and eventual destruction by conversion to residential accommodation.

Source of Turbine Noise Data

263. It is accepted in the IoA GPG (4.1.6) that final choice of turbine is the subject of commercial negotiation. In this case the turbine noise data for a preferred turbine has been used for immission noise prediction. A planning condition is therefore usual and necessary to prevent the erection of a turbine that is noisier than the candidate turbine. It is not however acceptable that, as the appellant's evidence has suggested, such a condition be used to justify any exceedance of correctly derived ETSU noise limits or any shortcomings in their derivation.
264. To predict how much turbine noise there will be at homes neighbouring a wind farm it is necessary to know how much noise the turbines emit, and to know how reliable this data is; the IoA GPG gives detailed guidance for this.
265. The appellant used obsolete data (18 October 2005) from the manufacturer General Electric (GE) of the proposed turbine. MWAG's noise witness has used the current data (19 April 2010), which includes a clause stating that the document used by the appellant was obsolete. Thus, the current data was available to appellant two years before the date of its noise impact assessment.
266. The appellant has not correctly followed the procedure in the IoA GPG (4.3.6): "If no data on uncertainty or test reports are available for the turbine then a factor of +2 dB should be added." The appellant's noise witness correctly states that +2 dB was added. However "*data on uncertainty*" and "*test reports*" were available, both were appended to the appellant's planning application document "Chapter 4 – Noise addendum" and so should have been, in MWAG's view, used. MWAG's noise witness used these data correctly; they yield a noise level 0.7 dB higher than that of the appellant at the critical wind speeds around 6 m/s, simply because the uncertainty at 6 m/s was given an accurate value, 2.7 dB, derived from three separate independent test measurements, rather than a casual 2 dB across all wind speeds.
267. The next step is to predict the attenuation of the turbine noise between the turbine and the assessed homes. The IoA GPG endorses the international standard ISO 9613-2 for this purpose. There are two concerns with the appellant's noise prediction: setback distances and prediction uncertainties.

268. Setback distances - The distances from turbines of Eastfield Farm and Windy Ridge were both slightly exaggerated by the appellant. At Eastfield Farm the appellant appears to have excluded the south facing front garden of the property from its amenity area as described in ETSU. This made a difference of 12 metres, with consequent under-prediction of the noise level there by 0.15 dB. This would be negligible had a reasonable noise margin been designed into the project; but it has not.
269. At Windy Ridge the appellant has excluded much of the garden, including a small fishing lake, from the amenity area. This made a difference of 34 metres, with consequent under-prediction of the noise level there by 0.5 dB. The ETSU definition of amenity area is "those areas of the property which are frequently used for relaxation or activities for which a quiet environment is highly desirable" (ETSU page 45). MWAG and its noise witness consider that relaxing in a south facing garden and pond fishing fits that description rather well.
270. Uncertainties - Section 9 of ISO 9613-2 includes (in table 5) a statement of uncertainty of ± 3 dB for its noise predictions. The appellant's noise witness incorrectly states that the IoA GPG does not endorse this clause. IoA GPG (4.1.4) endorses the ISO 9613-2: "...the ISO 9613-2 standard in particular, which is widely used in the UK, can be applied to obtain realistic predictions of noise from on-shore wind turbines during worst case propagation conditions (i.e. sound speed gradients due to downwind conditions or temperature inversions), but only provided that the appropriate choice of input parameters and correction factors are made. In particular, the use of "soft-ground" factor should be avoided, and the full theoretical effects of terrain screening will usually not be achieved."
271. The two exceptions to the endorsement referred to in the last sentence above, the "soft ground" factor and terrain screening, would, if not excluded, cause under-prediction of noise; their exclusion therefore increases the protection of wind farm neighbours. There are no other exclusions; the IoA GPG does not list the parts of the standard it does endorse presumably because it endorses the entire standard, apart from the two exceptions stated above. The appellant's noise witness states in his rebuttal proof of evidence (para 26) that: "...the source sound power levels used in the ES incorporate a margin to account for these (uncertainties on the turbine emission levels), although this is not a requirement of ISO 9613-2."
272. This betrays a surprising lack of understanding. Of course it is not a requirement of ISO 9613-2 to "incorporate a margin" to account for "uncertainties on the turbine emission levels". The title of ISO 9613-2 is "The Attenuation of Sound during Propagation Outdoors" and that is all it is concerned with. It is not concerned with the source or the receiver of the sound and was certainly not written for wind turbines. It is important to grasp that there are separate and independent uncertainties associated (a) with the turbine noise data and (b) with the attenuation prediction.
273. It should be noted, however, that the two separate uncertainties should not simply be added together. The turbine noise data with the uncertainty specified by the IoA GPG has a 95% confidence level, which means a 5% chance that it will be exceeded by any given turbine. Assuming the same 95% confidence level applies to the ± 3 dB attenuation uncertainty, the chances of both turbine noise data being under-stated and attenuation being over-predicted are not 5%, but

0.25%; the combined confidence level would then be an excessive 99.75%. To maintain the 95% confidence intention of the IoA GPG the uncertainties must be combined as the root of the sum of squares. Thus at 6 m/s where the turbine noise uncertainty is ± 2.7 dB and the attenuation uncertainty is ± 3 dB the combined uncertainty is: $U_c = \sqrt{(3^2 + 2.7^2)} = 4.0$. Thus combining the 3dB prediction uncertainty with the 2.7 dB turbine noise emission uncertainty only increases the total uncertainty by 1.3 dB.

MWAG Noise Conclusions

274. MWAG's noise witness has calculated the true noise immission levels that pertain at the nearest neighbours as far as possible with the incomplete data available, and finds that there are three homes, Eastfield Farm, Windy Ridge and Outholme Farm, where ETSU immission noise level limits are exceeded by 1.2dB, 2.5dB and 3.2dB respectively.
275. The owners of Windy Ridge run a small retirement business which comprises a licensed caravan site on the south west side of their property, thus close to turbine number 1. The present attraction of the site is its tranquillity, which would be seriously threatened by the noise from the three turbines. The higher ETSU night time noise limits, which assume the protection of bricks and mortar, should not be applied to persons sleeping under canvas. Caravan awnings and rising canvas top camper vans offer no sound attenuation, and caravans themselves attenuate far less than conventional building materials.
276. Immission noise at the listed building Thoresby Warehouse would exceed the ETSU daytime noise limit by over 4 dB. This, combined with the harm to visual amenity there (which MWAG's noise witness acknowledges he not qualified to assess), would be more than enough to rule out conversion to residential use. Even without correction of any of the errors in the appellant's noise impact assessment the daytime noise level at Thoresby Warehouse would still be 1dB in excess of the ETSU limit.
277. The appeal should therefore fail on grounds of non-compliance with ETSU noise limits and on grounds of the inadequacy of its noise impact assessment.
278. MWAG still maintain there are considerable concerns remaining regarding the construction of the turbines, particularly the need to pile drive the turbine foundations and associated infrastructure in this sensitive flood plain location. However, subject to the satisfactory implementation of the agreed conditions, those concerns could be resolved.

MWAG Overall Conclusion

279. MWAG submits that in the planning balance the harm arising from this proposed development outweighs the benefits, in terms of visual, landscape character, cumulative impacts, unacceptable impacts on residential and recreational amenity, both local to the natural environment gained from the unspoilt nature of the site and the wider impacts on the surrounding communities.
280. MWAG considers that the position before this Inquiry, is that throughout the whole length of the marsh landscape character areas, there is a uniform concerted drive by a succession of developers, from the northern boundary of East Lindsey District Council jurisdiction, at the Bishopthorpe Farm Application

(now at appeal) north of the 2 constructed turbines at Newton Marsh near Tetney Lock, down to the southern area at Bank House Farm, Croft, through an incremental approach, to denigrate this low lying predominantly flat sensitive landscape into an wind turbine landscape, with impacts arising along its entire length, both on-shore and off-shore. Sequentially each developer is seeking to present their application in its own best possible light, with consistent assertions that the impacts of each proposal are minimal, local and merely limited to, for example an inconsequential distance of between 500m (as at this appeal) and 1.6 km. The appellant's landscape witness at this Louth Canal appeal even went so far as to state that 'breathing spaces' should be avoided, it was better just to extend the existing and when approved, consented schemes.

281. MWAG concludes that as the benefits do not outweigh the harms the appeal should not succeed.

The Case for the Appellant

The Need for Renewable Energy

282. As the appellant's planning witness explained and as accepted by the Council's planning witness, there is widespread recognition that increasing the use of renewable energy sources will contribute towards targets established to reduce emissions of greenhouse gases. The setting of targets for renewable energy production forms a very important part of the UK's response to the threats posed by climate change. National energy policy and national planning policy all provide a positive framework of encouragement for renewable energy projects. Wind power, together with other renewable forms of energy, is seen as an essential element of the strategies of the UK Government and European Union in tackling climate change. Given the extreme weather conditions experienced by the UK in the weeks before the Inquiry, the need to address climate change has become even more apparent.

283. Legally binding targets have been set which the UK must meet. The UK Renewable Energy Strategy confirms that the UK is expected to deliver 30% of its electricity generation from renewable sources by 2020. Unfortunately progress has been very slow and the latest available figures (DUKES 2012) confirm that only 11.3% of UK electricity comes from renewables. Given the length of time it takes to plan and deliver renewable generation projects, a step change in implementation of renewables, including onshore wind, has to take place now if the UK is to have any chance of meeting its legal obligations.

284. Some progress has been made in the East Midlands. As the Council's planning witness set out in his proof of evidence, at January 2013 there was 447MW of onshore wind built and/or consented¹⁰. Even if there has been more progress since then, there is still a long way to go before the capacity figure of 776MW, as set out in the Faber Maunsell report (CD4.15), is reached. As accepted by the Council's planning witness, this report is still an important material planning consideration, notwithstanding the revocation of the Regional Spatial Strategy. This point is also confirmed by the Gayton appeal decision (paragraph 9 of CD8.6).

¹⁰ Consented is used throughout to mean with permission or with consent

285. Furthermore, the Faber Maunsell report confirms (CD4.15 page 2), that it will be necessary to go beyond the highest predicted levels of installed capacity described in the report, if the East Midlands is to have any chance of delivering more than 15% of its electricity needs from renewables. Bearing in mind that the UK target is now to deliver 30% by 2020, it shows how far there is to go.
286. The Council's planning witness accepted that East Lindsey has to do its bit to contribute to meeting the UK targets for generation of electricity from renewable sources. Although there are a number of turbines built and/or consented in the District, the total number of turbines is relatively low, given the size and rural nature of the District. Furthermore, there are only two existing wind farms (Conisholme and Mablethorpe) and one consented (Gayton le Marsh). The other projects are all single or two turbine clusters.
287. Furthermore and importantly, it is clear that what little progress has been made has been despite the Council rather than because of the Council. Since 2009 (this being the date of the Faber Maunsell report) the Council has only granted planning permission for two single turbine projects, these being Ulceby and The Limes, with a total installed capacity of less than 1MW (as advised by the Council's planning witness in cross examination on Day 5). All other projects have been refused planning permission by the Council and have only progressed thanks to the determination of the developers to press ahead with appeals. This clearly shows that East Lindsey is not doing its bit to promote renewable generation in its locality. In reality, the Council has ignored the clear advice as set out in the Faber Maunsell report and the call for action set out in national energy policy.
288. It is acknowledged that there are other wind generation projects located in East Lindsey that are currently going through the planning system. However, as the Council's planning witness accepted (in cross examination), it is very unlikely that all of these projects will be consented. Indeed, this witness put the figure at no more than 30% being allowed. Nor is there any evidence as to the pros and cons of those projects. What is clear is that a significant amount of time and effort is needed to get wind generation projects approved and implemented, especially in East Lindsey.
289. The Louth Canal wind farm project has been promoted and developed for many years and now is ready to proceed. It would contribute at least 7.5MW towards the national targets and would add significantly to the amount of installed capacity in East Lindsey. As both the appellant's and the Council's planning witnesses state, the national and regional need for renewable generation is a powerful material consideration in favour of the proposal. The need case for this project is therefore clear and unequivocal.

The Planning Policy

290. The Development Plan comprises the East Lindsey Local Plan. The policies within the Plan were first drafted in 1991, adopted in 1995, altered in 1997 and adopted again in 1999. Although some policies were saved in 2007, there has been no alteration to the Plan for almost 15 years. As the appellant's planning witness points out and as the Council's planning witness accepted, the Local Plan does not contain any policies relating to renewable energy generation. Nor does the Local Plan make any reference to the need to tackle climate change.

291. Although the Council's planning witness and their advocate made a valiant attempt to defend the Local Plan, the truth of the matter is that it is clearly out of date and at odds with national planning and energy policy, both of which emphasise the need to combat climate change by, amongst other things, promoting renewable generation such as on-shore wind.
292. In particular, it is clear that in the context of considering a renewable energy generation project, the Local Plan is, in many ways, inconsistent with the Framework. Although the Council's planning witness was taken to a number of appeal decisions to support his assertion that the Local Plan accords with the Framework, it was noticeable that none of the decisions related to renewable energy generation.
293. Even more noticeable was the fact that the Council's planning witness chose to ignore the highly relevant Gayton le Marsh decision, which (paragraph 80 of CD8.6) clearly states that the Local Plan is out of date and inconsistent with the Framework. That decision was made 12 months ago, so it is a truism that given the passage of time the Local Plan can only be more out of date and more inconsistent with the Framework than it was in at the beginning of 2013. This seriously calls into doubt the weight that should be given to the policies contained in the Local Plan, as referred to in the Council's reasons for refusal.
294. Although the Council's planning witness tried to cling on to the Local Plan, he did accept that the correct approach for the Inspector and the SoS to adopt in this case was the one set out towards the end of para 14 of the Framework i.e. grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. This accords with the approach of the Inspector on the Gayton le Marsh appeal (para 82).
295. This was an important concession by the Council's planning witness, as the Framework clearly states that this approach applies "where the development plan is absent, silent or relevant policies are out of date". This demonstrates that in truth the Council's planning witness agrees with the appellant's planning witness, that the Local Plan is out of date in the context of this appeal.
296. Furthermore, the Council's planning witness accepted that paragraph 14 of the Framework introduces a presumption in favour of sustainable development and that this presumption in favour was a "golden thread" that runs through decision-taking. He also accepted (during cross examination) that this presumption in favour should apply to this project. This accords with the views set out by the appellant's planning witness and the Inspector in the Gayton le Marsh appeal (paras 41-43 and 81 of CD8.6) and is an important factor to take into account in the determination of this appeal.
297. It is unfortunate that the report of officers in this case did not follow the approach now accepted by the Council's planning witness. There is no mention of paragraph 14 of the Framework in the report, no mention of the presumption in favour of sustainable development and no mention of the significantly and demonstrably test, as set out in that paragraph. Nor is there any mention in the reasons for refusal. Although the Council's planning witness suggested that these matters were "inherent" in the report, there is no evidence to support the view that the officers who drafted the report and the members who made the decision had any regard to this highly relevant and material paragraph in the

Framework. This fundamentally calls into question the decision-making process undertaken by the Council in this case.

298. The Council's planning witness made a number of references to the PPG R&LCE (CD4.13). He suggested that this document, now replaced by the planning guidance, "reset the scales" or recalibrated the balancing exercise required for projects such as this. This is simply wrong. As the appellant's landscape and planning witnesses explained in chief, the PPG R&LCE did not introduce anything new into the decision-making process. Moreover, the recently launched planning guidance which supersedes the PPG R&LCE does not either. The planning guidance does highlight a number of factors that should be taken into account. The appellant's landscape witness accepted that the PPG R&LCE, and thus the practice guidance, is a useful reminder for practitioners. However, it is clear that in this case the appellant and those advising the appellant have taken all those factors into account when planning, promoting and assessing this project.
299. More importantly, nothing contained in the planning guidance amends or alters anything set out in the Framework, including the presumption in favour of sustainable development. Nor does it change national energy policy or the international legal commitments which mean that the UK has to urgently reduce CO₂ emissions by significant levels. Nor does it change the fact that the UK is still a long way off meeting the targets that it has set itself for renewable energy generation. Nor does it alter the reality that climate change is happening, a fact that has been clearly demonstrated in recent weeks by the adverse weather conditions affecting the UK.
300. In summary, the Council's planning witness's reliance on the planning guidance to support the Council's reasons for refusal is misplaced and unfounded.

Heritage Assets

301. The Council's second reason for refusal makes reference to the adverse impact that the proposed wind farm would have on the Grade II listed Thoresby Warehouse and its setting. Although the Council's heritage witness tried to justify this reason for refusal, it is clear that his approach to assessing the impact on this heritage asset is fundamentally flawed, for a number of reasons.
302. First, his assessment focuses on and emphasises the rarity of (in his view) the Warehouse. Although this may be a factor to take into account when designating a heritage asset, for the reasons explained by the appellant's heritage witness it is not relevant when assessing the level of effect of a specific proposal on a specific asset. Indeed, the Council's heritage witness accepted that there was no policy or guidance that supported his reliance on rarity in this context.
303. Second, the majority of his evidence relates to the effect of the proposed wind farm on the non-designated Louth Canal, rather than the Warehouse. Although the appellant's heritage witness accepts that the Canal forms part of the setting of the Warehouse, it is important to note that at no stage prior to the receipt of the Council's heritage witness evidence, was there any suggestion from the Council that the effects on the Canal were significant. There is certainly no mention of such effects in the officers' report, the reasons for refusal or the Council's statement of case. Accordingly, although the Council's heritage witness

may have some concerns about effects on the Canal, such concerns cannot form any part of the Council's case on this appeal.

304. Third and most importantly, although the Council's heritage witness accepted that the correct approach, as set out in paragraphs 132 to 134 of the Framework, is to assess the effect that the proposed development would have on the significance of the Warehouse as a heritage asset, at no stage in his written or oral evidence in chief did he do this. He did assess the effect of the wind farm on the setting of the Warehouse (e.g. see para 7.36 of his proof and elsewhere¹¹) but he stops at this point. He never assessed the effect of the wind farm on the significance of the heritage asset in question.
305. Although the Council's advocate tried to correct this error during re-examination of this witness, he still did not explain his position clearly. As the appellant's heritage witness explained in chief, it is not correct to assume that adverse effects to the setting of a heritage asset automatically translate into adverse effects to the significance of the heritage asset. Accordingly, this fundamental flaw in the Council's heritage witness assessment remains.
306. Fourthly, although the Council's heritage witness concludes (see paragraph 7.70 of his proof) that the wind farm would substantially harm the setting of the Warehouse, it would appear that he has either misunderstood the meaning of "substantial harm", or he has over-estimated the level of harm that would result if the development were to proceed.
307. In relation to the first point, in paragraph 2.16 onwards in his proof of evidence, the appellant's heritage witness describes how the Podington judgment explains the meaning of "substantial harm", as referred to in paragraph 132 of the Framework. The judge states that "One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced".
308. Substantial harm is a high test and an important consideration will be whether the adverse impact seriously affects a key element of a listed building's special or architectural interest. It is the degree of harm rather than the scale of the development that is to be assessed.
309. It is clear from the Podington case and the planning guidance that in order to constitute substantial harm to the significance of a heritage asset, the level of harm from the proposed development has to be so extreme that the heritage asset in question would no longer be worthy of listing.
310. Although the Council's heritage witness made reference to the draft planning guidance in his written evidence, he confirmed that he was unaware of the Podington judgment. He did say in chief that the development would "drain away the significance of the setting", but this is a repeat of his earlier mistake of assessing the impact on the setting, rather than the impact on the significance of the asset itself. Furthermore, nowhere in his evidence, whether written or oral, did he come to the conclusion that the level of harm was so high that it would render the Warehouse no longer worthy of listing. This confirms that he has

¹¹ Document LPA1

misapplied the test of substantial harm and/or set the bar for “substantial harm” too low.

311. It is also clear that the Council’s heritage witness has over-estimated the level of harm that would occur to the setting of the warehouse, if the development were to proceed. This was demonstrated by the review of the photos that he produced in his Appendix A, which he said (in chief) represented the best locations to appreciate the warehouse and its setting. In the vast majority of cases, the turbines would not be present in those views. Even where the turbines would be seen, they would not interrupt or interfere with the views of the Warehouse.
312. Accordingly, it is clear from the evidence of the Council’s heritage witness that, even if the development were to proceed, there would be many places from where the warehouse and its setting could be appreciated. Contrary to what the Council’s heritage witness suggests in his evidence, no views would be “lost” or harmed to any significant degree.
313. Fifthly, the Council’s heritage witness suggests that the proposed wind farm would prevent the residential conversion of the warehouse, thus harming the prospects for its conservation. This is a completely new argument, which does not feature anywhere other than in his proof of evidence. It was not raised in his consultee reports, not in the officers’ report, not in the reasons for refusal and not in the Council’s statement of case.
314. In addition, there is no basis whatsoever for his argument. There are no plans or proposals for any such conversion, no assessment of the viability of conversion and no structural report or assessment. Furthermore, the Council’s heritage witness has not produced any evidence to substantiate his assertion that the presence of the wind farm would deter anyone from undertaking residential conversion of the warehouse. In particular, the appellant’s noise witness confirmed that noise limits at the warehouse would be ETSU compliant. And although the turbines would be visible in views looking west from the Warehouse, such views are oblique and in the context of a large open landscape. In addition, as the appellant’s heritage witness noted, such conversion could itself cause serious harm to the significance of the heritage asset.
315. Sixthly, the Council’s heritage witness completely ignored the fact that the proposed development would be reversible and would not have any long term effect on the warehouse. This is notwithstanding his own reference to English Heritage’s “Wind Energy and the Historic Environment” (CD5.2) which clearly states on page 9 that the reversibility of wind energy development is “an important feature”. This is confirmed by paragraph 2.7.17 of EN-3, the National Policy Statement for Renewable Energy Infrastructure (CD2.6) which states that the time-limited nature of wind farms is likely to be an important consideration when assessing impacts such as landscape and visual effects and potential effects on the settings of heritage assets.
316. Finally, the Council’s heritage witness’s lack of knowledge of the Podington case calls into question his interpretation of the test set out in s.66 of the LB&CA Act, which he based on the judgment set out in the Barnwell case. As the appellant’s heritage witness explains at paragraphs 2.1 to 2.4 of his proof of evidence, the judge in the Podington case declined to follow the interpretation of s.66 as set out in the Barnwell case.

317. Since the close of the Inquiry, the Court of Appeal's judgment on Barnwell has been handed down. The first point to note is that nothing in that judgment alters what was said in the Podington judgment in respect of the level at which substantial harm operates. Accordingly, it is submitted that the Council's heritage witness has still mis-applied the test of substantial harm, by setting the bar too low.
318. Secondly, it is clear from the judgment that the decision-maker is still required to undertake a balancing exercise, in order to weigh any harm that may occur to a heritage asset against the benefit that would arise from the proposed development. In Paragraph 29 of his judgment, Lord Justice Sullivan states, "For these reasons, I agree with Lang J's conclusion that Parliament's intention in enacting section 66(1) was that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise."
319. The appellant's heritage witness confirms at paragraph 2.4 of his proof of evidence¹² that when preparing his evidence for this Inquiry, he has given special weight and considerable importance to the duties set out in s.66. Furthermore, it is clear that when undertaking the balancing exercise, the appellant's planning witness has had full regard to the evidence presented by their heritage witness. Accordingly, the appellant's approach to the assessment of effects on heritage assets in this case is fully in line with the Court of Appeal's judgment in Barnwell.
320. In summary, although the Council's heritage witness has presented lots of useful and interesting facts about the locality, the warehouse and the Louth Canal in particular, there are a number of serious errors, mistakes and omissions in the assessment that he has presented to the Inquiry. This mirrors a similar number of errors, mistakes and omissions set out in the officers' report and the Council's decision on this issue.
321. In contrast, the written and oral evidence of the appellant's heritage witness is clear, methodical, precise and measured. He has accepted that there would be some harm to the significance of the warehouse and its setting. However, he confirmed when giving his evidence in chief that it was his view, unquestionably, that the warehouse would still be worthy of designation as a Grade II listed building, even if the Louth Canal wind farm were to be constructed. Furthermore, the turbines would not vitiate the significance of the warehouse. Nor would they cause the significance of the warehouse to be largely drained away or substantially eroded. In addition, any harm that did occur would be entirely reversed when the wind farm is decommissioned.
322. On this basis, it is the appellant's heritage witness's professional view that any harm that may arise to the significance of the warehouse would be less than substantial. Given the problems identified with the evidence put forward by the Council's heritage witness, it is submitted that the appellant's heritage witness's evidence on this matter should carry greater weight and be preferred to the views of the Council's witness on heritage.
323. In addition, the appellant's heritage witness's assessment is supported by the lack of objection from EH. Although the Council sought to argue that no weight

¹² Document APP1

can be given to this lack of objection, for the reasons set out in paragraphs 3.36 and 3.37 of the appellant's heritage witness's proof and as he explained during cross-examination, the lack of objection from EH is important. As he stated to the Council's advocate, EH clearly visited the site and will have been aware of the warehouse. As the Government's advisors on heritage matters, if they had had any concerns in relation to the warehouse, they would not have overlooked it.

324. The appellant's heritage witness also provides a summary of the effect that the proposed development would have on the significance of other heritage assets in the locality, as described in detail in the application documentation and his proof of evidence. In all cases he comes to the conclusion that any harm that may occur to the significance of such assets would comprise less than substantial harm. This view is supported by the Council, the Council's heritage witness and EH.

Landscape and Visual effects (excluding residential amenity)

325. The Council's third reason for refusal states that the proposed wind farm, in conjunction with existing and proposed wind farms would cause cumulative visual harm and would harm the character of the Lincolnshire Wolds AONB.

326. Helpfully, the Council's landscape witness (the same witness as for planning matters) accepted a number of points that clarify the Council's position on this issue. First, he accepted that all wind farm development is likely to give rise to some significant landscape and visual effects and as a result, the prospect of such significant effects occurring does not make a proposed wind farm automatically unacceptable. After all, if this were the case, no wind farm development would occur.

327. Second, the Council's landscape witness confirmed that the Council did not object to the Louth Canal wind farm proposal on an individual basis. Rather, its concerns relate to cumulative landscape and visual effects. This means that from a landscape and visual point of view (ignoring residential amenity), the Council regard the proposal as acceptable.

328. Thirdly, the Council's landscape witness accepted that when considering cumulative effects, the correct approach was to regard cumulative effects from all existing and consented wind generation projects (49 turbines in total in the whole of ELDC) as acceptable, because by definition, previous decision-makers must have found such effects to be acceptable in order to approve the projects in question. This is important, as it sets the baseline against which the additional landscape effects of this project need to be assessed.

329. It is also clear from the officers' report, the reasons for refusal and the Council's statement of case, that the Council's objection on cumulative grounds is wholly dependent on the future approval of wind farm projects that are in the planning pipeline. In other words, the cumulative effects are unacceptable because other projects may get consent in the future.

330. This position is adopted by the Council's landscape witness, as demonstrated by the frequent references to the future in his proof of evidence. For example, "If all the applications in planning are approved...." (paragraph 7.14); "If all

proposed wind farms were approved..." (paragraph 7.17); "...further turbine proposals for this same area are in the planning system" (paragraph 8.6).

331. Such a reliance on future projects, which may or may not come forward and which may or may not get consent (note the same witness makes reference to only 30% securing consent), to support a reason to object to this proposal is wholly erroneous and without justification. The Council (and its witness) should have judged this project on its own merits, taking into account the acceptable baseline of consented projects, rather than raising the spectre of large numbers of turbines coming forward.
332. Not only does such an approach do a dis-service to the appellant, it also leads to unnecessary confusion and concern for and objection from local communities and residents. Given the approach adopted by the Council in this case, it is not surprising that locals are concerned. This is reflected in the representations submitted by MWAG and local residents prior to and during the inquiry, all of whom focus to a significant degree on impacts associated with projects that are not yet consented and in many cases not even the subject of a live planning application. Such mis-representation and scaremongering is unfortunate.
333. With this in mind, it is not surprising that during the Inquiry the Council's landscape witness tried to distance himself from reliance on these future and uncertain projects. During cross-examination he stated that in his view the construction of the three additional turbines at Louth Canal would tip the balance from a position of acceptable cumulative landscape and visual effects (i.e. from the baseline of consented projects) to a position that was unacceptable from a landscape and visual point of view. In other words, 49 turbines are acceptable but 52 turbines would be unacceptable.
334. Unfortunately for the Council's landscape witness, such a proposition is simply not credible, for a number of reasons. First, nowhere in his evidence does this witness set out or explain the methodology that he has applied when undertaking his assessment of cumulative landscape and visual effects. This is not just a nice to have; the lack of any methodology fundamentally calls into question his assessment on this topic. Although the Council's landscape witness is clearly an experienced planning consultant, he is not a qualified landscape architect, a point made clear by his lack of any obvious methodology.
335. Secondly, the Council's landscape witness's position (and that of the Council) is not supported by the views of the specialist landscape consultants (FPCR), who the Council employed to specifically advise them on the landscape and visual effects of the proposed development, as set out in the application documentation. The Council's landscape witness accepted that FPCR are specialists on such matters and described them in chief as a nationally recognised consultancy.
336. As the appellant's landscape witness explains in paragraph 2.2 of his proof, FPCR advised the Council that the conclusions of the LVIA, as set out in the ES and the SEI were fair, including the assessment of cumulative landscape and visual effects. Furthermore, FPCR concluded that the landscape character of the Louth Canal location is such that wind turbines could be more readily accommodated here than within many other types of landscape. They also found that the assessment of effects on the AONB was fair.

337. Thirdly, the Council's landscape witness's assessment is based on a number of assertions that do not stand up to scrutiny:
- i) The landscape character area in which the site is located (J1) is already a landscape with wind farms
 - ii) The area around the site is "tranquil"
 - iii) The sensitivity of the landscape around the site is medium to high
 - iv) There is already a "long chain" of turbines down the length of ELDC
 - v) The three turbines at Louth Canal will fill the last gap in this chain
 - vi) The wind farm would dominate views from the AONB.
338. For the reasons given by the appellant's landscape witness in chief, all of these assertions are wrong. The area in which the site is located is not subject to any national or local landscape designation. Nor is it particularly tranquil. As the Inspector stated in the Newton Marsh decision (CD8.4 para 26) this is not a quiet or secluded spot. It is essentially a working agricultural landscape accommodating a number of detractors. In reality, it is an area of large scale, open fields and huge skies. On this basis, it is clear that the sensitivity of this local landscape character area to wind energy development is relatively low, as stated by the appellant's landscape witness at 5.25 of his proof.
339. Furthermore, there are many locations in the District that don't currently have views of wind turbines now and this would not change if the three turbines at Louth Canal were constructed. There is no "long chain" of turbines along the length of the District. There may be if all the projects in planning and in scoping were consented, but that is not the test that should be applied in this case. Nor would the Louth Canal turbine fill an important gap or block up any "breathing space", as suggested by the Council's landscape witness.
340. In respect of the AONB, it is accepted that the turbines at Louth Canal would be visible from the AONB, as would other turbines that have been consented. However, as the appellant's landscape witness explains in paragraph 5.33 onwards of his proof¹³, given the buffering effect of the intervening local landscape I1, together with the huge scale and panoramic nature of the available views to the east and the limited effect of adding just three turbines at such a distance from the AONB, the effect on the character and value of the AONB would be acceptable. Furthermore, as the appellant's landscape witness explained in chief and as accepted by the Council's landscape witness, there are many views available from the AONB in directions other than to the east. None of these views would be affected by the proposed wind farm.
341. If the Council's view is correct and the three turbines at Louth Canal represent a tipping point for cumulative landscape and visual effects, the inevitable outcome is to impose a moratorium on the development of any further wind farms in East Lindsey. Although the Council's landscape witness tried to deny this, he did so by reference to the possibility of allowing smaller, individual turbines. Such schemes are very different to the commercial scale projects of three or more turbines that are a common feature in a wide range of landscapes throughout the UK.
342. In reality the position of the Council's landscape witness is clear, as is the position of the Council who have only approved two single turbine projects since

¹³ Document APP4

2009; they don't want any more wind farms in their area. They have had enough and their message is that developers should go elsewhere. This reflects the views of MWAG and many of the third parties who spoke at the Inquiry. Unfortunately, such a position is not justifiable, given the relatively low level of wind generation development that has taken place in the District to date. Nor does it accord with the Framework or national energy policy.

343. In contrast, the appellant's landscape witness has presented a clear, detailed and methodical assessment of the individual and cumulative landscape and visual effects of the proposed wind farm. His evidence, both written and oral, demonstrates that significant cumulative visual harm would not occur, whether local, wider or sequential and whether in views from or of the AONB, and that no cumulative harm to the landscape character or value of the AONB would be specifically attributable to the introduction of the proposed three turbines at Louth Canal.
344. Furthermore, the appellant's landscape witness confirmed that in his view the tipping point has not been reached in East Lindsey. Nor would the three turbines at Louth Canal push the District over the tipping point. Nor would the three turbines, if constructed, result in the creation of a wind farm landscape in this part of the District or wider afield.
345. It is important to note that the Council did not criticise the methodology employed by the appellant's landscape witness in preparing his evidence for the inquiry. This is not surprising, given the experience that he has in this field and the rigour that he employed during the preparation and presentation of his evidence. With this in mind and in light of the lack of a comparable methodology from the Council's landscape witness, it is submitted that the appellant's landscape witness's evidence on this issue is to be preferred.

Residential Visual Amenity - Eastfield Farm

346. The wording of the first reason for refusal is clear; it relies on the effects on the residential amenity of Eastfield Farm due to the overbearing outlook in combination with noise from the proposed wind farm. Not one or the other; both. This reflects the position set out in the officers' report (see CD1.4, para 8.114 page 72).
347. In light of the fact that the Council has now withdrawn any concerns in relation to noise at Eastfield Farm, this reason for refusal is compromised. If the Council's current position in relation to noise had been explained to Members at the time of the Committee meeting, we have no idea whether the Members would have still refused the application for this reason.
348. Although the Council's planning (and landscape) witness suggested this was a minor change to the Council's position, which did not warrant referring the matter back to the Council's reasons for refusal, such a proposition is not justifiable, especially bearing in mind the significant change to this reason for refusal.
349. Furthermore, the first reason for refusal also refers to the combined visual effects on the residential amenity of Eastfield Farm associated with the Newton Marsh and Bishopthorpe wind farms. And the Council's landscape witness (para

7.33) states that there would be “close views” of both wind farms. This is wrong for a number of reasons.

350. First, neither wind farm would be close. Newton Marsh is 2.8km away, at its closest. Bishopthorpe, if constructed, would be 3.2km away at its closest. It became clear during cross-examination that the Council’s landscape witness had no idea of the actual distance between these proposals and Eastfield Farm. This is not just a minor error; it highlights a lack of accuracy and methodology in his assessment process. Such an error seriously calls into question the whole of his evidence on this issue.
351. Secondly, as the appellant’s landscape witness explains in detail, any view of these proposals from Eastfield Farm would be very limited, given the oblique nature of the views and the intervening screening between the property and the site of these projects (para 4.12 of his proof and the photomontages at Appendix 5).
352. Thirdly and most importantly, Bishopthorpe has not yet been consented. Accordingly, there is no excuse for including the possible cumulative effects from such a project in this reason for refusal, as there is no certainty that the Bishopthorpe project will proceed and therefore no certainty that the alleged cumulative effects would arise.
353. In light of these points, it is submitted that there is no basis for the Council to conclude that cumulative visual effects would result in visual harm to Eastfield Farm.
354. The appellant’s landscape witness provides a very thorough, detailed and methodical assessment of the visual effects of the Louth Canal wind farm on the residential amenity of Eastfield Farm. In paragraph 4.16 of his proof he describes the range of factors that need to be taken into account when carrying out such an assessment. The Council sought to criticise the appellant’s landscape witness for such a detailed assessment but in reality the appellant’s landscape witness should be commended on his approach. It is the Council’s landscape witness’s and his “finger in the air” approach to assessment that is lacking.
355. The appellant’s landscape witness concludes at paragraph 4.34 of his proof that given the distances to the proposed turbines, the field of view that would be occupied to the left of centre of available views, the prevailing south westerly wind direction (which would mean that the turbines would not be face-on for the majority of the time), the screening by vegetation in and round the front garden would combine to mitigate the degree to which the proposed wind farm would be prominent within any available views from Eastfield Farm. In addition, the simple, large scale landscape would have the ability to successfully accommodate the appearance and scale of the proposed turbines (paragraph 4.39). Furthermore, the compositional arrangement of the turbines within the views from the property would be simple, clear and balanced (paragraph 4.40).
356. In light of the appellant’s landscape witness’s fair and well-reasoned assessment, he concludes that the proposed wind farm, whether in isolation or in combination with other wind farms, would not be visually overbearing. Nor would it mean that Eastfield Farm would become widely regarded as an unattractive and thus unsatisfactory place in which to live.

357. The Council's landscape witness tried to prop up the Council's case on this issue by relying not on the effect of the wind farm on views from Eastfield Farm itself, but rather by taking into account visual effect on receptors in the locality of the property. He made the bold assertion, in chief, that the sole reason for living in this property was to "get out and experience the landscape, in the round".

358. The Council's landscape witness has no basis whatsoever for making this assertion. Furthermore, as the appellant's landscape witness explained, this is completely the wrong approach to an assessment of residential amenity and certainly forms no part of the Lavender-style test that needs to be applied in these cases. Such an approach smacks of desperation and once again undermines the Council's landscape witness's conclusions on this issue.

Issues raised by MWAG and Third Parties

359. Evidence on a number of issues has been presented by the local action group, MWAG and third parties. In particular, they raised a variety of concerns in relation to the ES and SEI submitted in support of the application.

360. One area of concern related to the LVIA contained in those documents and in particular the photomontages submitted as part of the ES/SEI. However, as was clear from the cross-examination of MWAG's advocate and general witness, many of his criticisms of the photomontages were not accurate. Just to take one example, the oil tanks were clearly visible in many of the photomontages, where he said they were not. Furthermore, as the appellant's landscape witness explained, photomontages were just one tool used when carrying out a landscape assessment. In reality, it was the detailed fieldwork that was the most important part of the assessment process.

361. In addition, as has already been noted, FPCR came to the view that the conclusions of the LVIA, as set out in the ES and the SEI were fair, including the assessment of cumulative landscape and visual effects. MWAG's advocate and general witness accepted that the view of these expert landscape consultants should be given significant weight in the determination of this appeal.

362. Unfortunately, the view of MWAG and many third parties in relation to landscape and visual effects has been coloured by the same mistake made by the Council; they have assumed that all the wind turbines in the planning system and many that are not even at application stage, will go ahead. For the reasons already stated, that is not the test that should be applied in respect of this application. This case requires an assessment of the effect of allowing the construction of three turbines and no more. On this basis, many of the objections raised are not justifiable.

363. In addition, it is clear that many of the photomontages produced by MWAG are not accurate. In particular, it would appear that they over-estimate the size of the turbines from the viewpoint used for the montage. This will have inevitably added to the concern of local residents, who will have assumed that the images were correct.

364. MWAG, through the evidence of their noise witness, also raised concerns about the noise assessment undertaken by the appellant's noise witness, particularly in relation to Eastfield Farm. Although MWAG's noise witness put

forward a number of technical arguments in relation to the noise assessment, all his points were rebutted in detail by the appellant's noise witness.

Notwithstanding the matters raised by MWAG's noise witness, the appellant's noise witness clearly explained why it was his professional view that ETSU-R-97 derived noise criteria applicable to both daytime and night-time periods would be achieved at all residential dwellings in the vicinity of the proposed wind farm and at all wind speeds, including Eastfield Farm. This view has been endorsed by the Council's Environmental Health Officer and the independent expert acoustic consultants, Cole Jarmen, who reviewed the noise assessment, set out in the ES on behalf of the Council (CD6.10).

365. Given the experience of the appellant's noise witness, the Council's EHO and Cole Jarmen, together with the detailed response that the appellant's noise witness gave to all points raised by MWAG's noise witness, it is submitted that there is no basis to consider noise as a reason for refusal in this case.
366. MWAG, submitted written evidence in relation to construction effects and flood-risk. However, during the inquiry MWAG (via their advocate) confirmed that these concerns could be addressed by the imposition of suitable conditions. Accordingly, such matters are not a reason to prevent this development from going ahead.
367. MWAG and a number of third parties raised concerns in relation to the ornithological assessment contained in the ES and SEI submitted in support of the application. In summary, they felt that the assessment had not properly recorded the number of species in the area.
368. The first point to note is that a thorough and detailed assessment was included in the ES/SEI. This assessment and the conclusions set out in it were accepted by the Council, Natural England, the Royal Society for the Protection of Birds (RSPB) and the Lincolnshire Wildlife Trust. If any of these bodies had felt that the assessment was lacking or did not accurately record the position on the ground, they would have said so and would have asked for more survey work. Indeed, more survey work was requested. This was undertaken and submitted as SEI.
369. Secondly, if any of these bodies had concerns about the effect of the proposed wind farm on birds, they would have objected. The fact that they have not objected carries a great deal of weight, especially bearing in mind that both Natural England and RSPB require a thorough and detailed assessment of all potential environmental effects, before they are willing to confirm their lack of objection to any wind generation project.
370. Thirdly, MWAG (and third parties) have not presented any evidence that suggests that there would be any adverse effects on ornithological interests; they just state that more birds were present in the locality at the time of their members' observations than were present during the bird surveys referred to in the ES/SEI. Even if this is correct, it does not mean that the wind farm would adversely affect any of these species.
371. Finally, ARUP have submitted a number of detailed technical notes to the Inquiry, which address the points raised by MWAG and confirm that in their professional view, the ornithological assessment previously undertaken on behalf of the appellant is valid and accurate.

372. Although a number of other issues have been raised, including potential impacts on tourism, these have all been dealt with in detail in the written evidence of the appellant's planning witness.

373. In summary, none of the concerns raised by MWAG or third parties suggest that there would be any unacceptable environmental effects associated with the construction of three turbines at Louth Canal.

The Benefits of the Scheme

374. The appellant's planning witness describes in his proof (paragraph 6.72 onwards) the benefits that would arise if this development were to go ahead. These include the following:

- i) The provision of up to 7.5MW of installed renewable generation, which is significant given the shortfall in UK targets for such generation;
- ii) The generation of 16.4GWh of electricity per annum, equivalent to the amount of electricity used annually by approximately 3,680 average households;
- iii) The displacement of approximately 7,060 tonnes per annum of CO₂ emissions that would otherwise be generated from burning fossil fuels;
- iv) A contribution to the security of energy supply by diversifying the UK's energy supply and lessening dependence on the importation of fossil fuels;
- v) Direct and indirect economic benefits to the local community to a value of circa £1.1m, together with wider economic benefits for UK plc;
- vi) The creation of income for the Environment Agency, as one of the landowners of the site;
- vii) A comprehensive habitat management plan, that will mitigate effects associated with the proposed development, as well as provide enhancement designed to provide net gains in biodiversity in the locality of the site;
- viii) The payment of up to £37,500 per annum for 25 years to an independently administered Community Benefit Fund.

375. Although the Council's planning witness noted that significant weight should be given to the contribution that this project would make to the increase in renewable generation and the reduction of CO₂ emissions, he failed (until prompted to do so) to give any weight to a number of the other benefits associated with this development, including the contribution to security of supply and ecological benefits. These benefits were also omitted from the officers' report.

376. The Council's planning witness rejected the suggestion that there would be any local economic benefits from the construction and operation of the proposed wind farm. This is clearly wrong, for the reasons given by the appellant's planning witness during his examination in chief. The Council's planning witness did accept, when pressed, that there would be economic benefits for UK plc.

377. Planning is all about undertaking a balancing exercise; weighing up any adverse impacts from the proposed development against the benefits that would arise if the development were to proceed. The same applies in this case. And if some benefits are ignored or overlooked, as has been the case here (by both the Council and its planning witness), the balancing exercise will be flawed.

378. The same applies to the position adopted by MWAG and many of the third party objectors. They have just looked at what they perceive to be the adverse impacts of the wind farm. There is virtually no recognition from anyone

objecting to the application, that there were some benefits that need to be weighed in the balance.

379. In contrast, there is a lot of support from third parties, many of whom have considered both sides of the argument. They recognise that there would be some adverse effects but that the benefits associated with the development outweigh the limited harm. Much of this support is from local residents, as was clear from those who spoke at the inquiry in support of the wind farm. It is submitted that this more balanced approach from supporters should carry significant weight in the determination of this appeal.

Assessment against the Development Plan

380. Although it is the appellant's case that the Development Plan is out of date and therefore the policies contained within it should be given little weight in the determination of this appeal, it is important to note the mistaken way in which the Council have applied the Local Plan policies in this case.

381. The Council's planning witness agreed that when preparing an officer's report, a planning officer has to consider and apply the relevant Development Plan policies carefully and accurately. He also accepted that a refusal notice has to accurately record the reasons given by members for deciding to refuse permission and the policies relied upon to justify that refusal.

382. Despite this, it is clear from the officers' report in this case, the refusal notice and the evidence of the Council's planning witness that the Council has not applied the Local Plan policies carefully or accurately. To cite one example, the first reason for refusal states that the project is contrary to Policy A4 of the Local Plan, due to adverse impact on residential amenity. But the test set out in Policy A4 is whether there is "unacceptable harm", not just adverse impact. This shows that the wrong test has been applied. Also, the Council's planning witness accepted that the scheme was not contrary to any of the factors listed in Policy A4.

383. The Council's planning witness suggested that such "micro-management" of the decision-making process is unnecessary and unreasonable. However the appellant considers that it is vitally important for local planning authorities and those representing them to do their job properly. Any failure to apply the relevant planning policies properly or accurately fundamentally undermines the decisions made by such bodies or the view of those representing them. That is the case in this instance.

384. In contrast, although the appellant's planning witness gives little weight to the relevant policies contained within the Local Plan for the reasons that he explains in his evidence, he has applied the policies properly and carefully. He concludes that there is no conflict with Policies A4 or C2. Whilst there may be some conflict with Policy C11, any harm caused to the AONB would be very limited for the reasons set out in detail by the appellant's landscape witness.

The Framework

385. Although the Council's planning witness also accepted that the policies within the Framework have to be applied carefully and accurately, the Council has again misapplied the policies to which it refers and relies upon in the reasons for refusal.

386. The first reason for refusal states that the proposed development is contrary to paragraph 9 of the Framework. That paragraph does not set out a development control policy. Rather, it describes what is meant by sustainable development. And for the reasons that have already been explained, this project does involve sustainable development.
387. The second reason for refusal states that the proposed development is not “in line” with paragraph 132 of the Framework due to the adverse impact on the warehouse. But that is not the test set out in paragraph 132. It is not even the correct paragraph to refer to when considering the tests that should be applied. The correct paragraphs are paragraphs 133 and 134. And neither of these paragraphs refers to “adverse impact” as the test to be applied.
388. The third reason for refusal states that the proposed development is contrary to paragraphs 109, 114 and 115 of the Framework. Again, this is erroneous. Paragraph 109 describes the planning system, Paragraph 114 sets out guidance for local planning authorities and paragraph 115 describes the weight that should be given to certain matters. But none set out development control policies. Even if they did, the Council have not explained on what basis the proposed development is “contrary” to these paragraphs.
389. The Council’s planning witness would presumably state that such an approach is again unnecessary micromanagement, but the same answer applies; it is important to apply the guidance set out in the Framework carefully and accurately, when determining planning applications and appeals.
390. As has already been stated and as accepted by the Council’s planning and landscape witness, the correct approach to the determination of this appeal is the one set out in paragraph 14 of the Framework. Firstly, there is a presumption in favour of this project, as it comprises sustainable development. Secondly, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
391. Although the appellant accepts that some adverse effects would occur if the development were to proceed, it is the appellant’s case that such adverse effects are very limited in their scale, extent and duration. In contrast, the environmental and social benefits are significant in their scale, extent and duration.
392. On this basis, it is clear that any adverse impacts of the proposed wind farm would not significantly and demonstrably outweigh the benefits of the development proceeding. Accordingly, the appellant requests that this appeal should be allowed and planning permission granted, subject to the imposition of suitable conditions, as discussed at the Inquiry.

Written Representations

393. At the application stage there was a vast response with around 2000 letters. The Council’s report records a total of 1094 letters of objection, a petition of objection containing 8 signatures, and 681 letters in support. Five additional letters were reported to the planning committee. MWAG has assessed this as 680 in support and 1,340 objections.

394. In broad terms the letters of objection relate to inadequacy of information; landscape impacts including to the AGLV and AONB and cumulative impact; harm to tranquillity and dark skies; visual impact; harm to living conditions/amenities; harm to repopulation; policy conflicts; impacts on designated and non-designate heritage assets; loss of agricultural land; traffic impacts; impact on ecology, including fishing grounds, and protected designated ecological sites; impact on public rights of way; harm to horses; flood risk; vibrations; shadow flicker; noise; TV reception; impact on tourist facilities and tourism; health issues; precedent; failure dangers; conflict with aircraft; impact on property prices; inefficient use of resources including subsidies; other renewable technologies are better; localism and the need to take account of views of those who are genuinely local.
395. Again in broad terms, the letters of support cover the following points: landscape harm is outweighed by the need to prevent climate change; wind turbines are visually pleasing and would improve the landscape; the area is not beautiful but is farmed with associated buildings; wind doesn't run out; on-shore wind is a cheap technology; surety of supply with reduced reliance on imports; increasing support for this type of technology; small land take and agriculture can go on around it; better, cheaper and cleaner, than other fuel sources; obligations to produce 30% electricity from renewables by 2020; reduction of 7062 tonnes CO₂/year; power for 3680 homes; it would show the area supports the Kyoto protocol.
396. The issues raised by correspondence are set out comprehensively in the Council's committee report¹⁴.
397. The written representations made as part of the notification process consist of 2 letters of objection and 9 letters of support for the proposals. In addition the Ministry of Defence confirmed it does not object.
398. Following the consultation on the revised location for the substation/control building and the FEI documentation there were four responses. EH stated no change to its previous position; one response objected in general terms whilst two responses offered support for the scheme.

Conditions

399. Whilst the recommendation is that this appeal be dismissed, conditions are attached in a schedule at Annex A for the SoS to consider. Those conditions were discussed with all parties at the Inquiry. They have been slightly modified where necessary to meet the tests set out in the Framework. The reasons for those conditions are set out with them in the interests of clarity.

Inspector's Conclusions – reference to paragraphs earlier in this report are noted in [] brackets

Heritage Assets

400. As identified in the ES there would be 7 listed buildings within 2km of the proposed wind turbines, with a further 24 listed buildings with 5km. Prior to the

¹⁴ The Committee Report is located in the Questionnaire Folder

Inquiry FEI was submitted to show the effects on the nearest churches, Ivy Cottage, North Cotes and Thoresby Warehouse. [8]

401. S.66 of the LB&CA Act establishes the duty that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. [36]
402. The Framework advises that the setting is the surrounding in which an asset is experienced, and may therefore be more extensive than its curtilage. It is widely accepted that setting embraces all of the surroundings from which a heritage asset can be experienced or that can be viewed when looking out from the asset.
403. The planning guidance advises that as the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets and that, depending on its scale, design and prominence, a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.

Thoresby Warehouse

404. The nearest listed building, and the one most significantly affected by the appeal scheme, is the Thoresby Warehouse which is listed grade II (FEI Fig 11a and 11b). The list description sets out basic information in respect of that building, although it erroneously refers to the initials TH set within the gable brickwork when, in fact, they are TP. [67]
405. The Council Witness has undertaken further background research in response to the appellant's case and provided extracts of further cartographical and related evidence. It is no longer disputed that the building is highly likely to date from 1821 as set into the brickwork. As such the building is not contemporary with the canal's construction although its location and purpose as a warehouse are clearly linked to the waterway. The significance of the building is derived from its age, traditional method of construction, historic materials and its historic role and function linked to its site alongside the canal. In this regard its significance relates to the economic development of the area and it also has a social function as a place of exchange and a route marker. [67]
406. It is not disputed that the Louth Navigation Canal, which the parties agree is a non designated historic asset, is clearly interrelated with the listed building and forms part of its setting¹⁵. In that regard it has a role in the historic interest of the warehouse and so contributes to the significance of the warehouse as a listed building.
407. The canal, and particularly the banks that enclose it, are seen for a long distance with the warehouse when walking through the flat landscape along the canal-side trails. The historic relationship between the canal and warehouse is

¹⁵ Although harm to this non-designated asset was not raised in the reasons for refusal it has been drawn to my attention and requires consideration.

readily apparent because of the juxtaposition of the building and watercourse. The relationship of the surrounding land to the warehouse and watercourse is less immediate, although it is logical that farming produce from surrounding land could have been stored in warehouses such as this prior to being transported via the canal. Moreover, the drainage works associated with, and encouraged by, the canal development would have had an impact on the surrounding land making it more practical for agricultural use. This undisputed relationship between the land, canal and warehouse is one to which I afford some weight on the basis of the Council's evidence. I also accept that it is likely that materials and goods from the wider area would have been transported by canal via the warehouse and collected from that point, making it a focus for business in the area. Thus, the setting is important as it links directly to the function of the building and the importance the building derives from its visual prominence. [57-58, 87, 303]

408. On this latter point, both heritage witnesses acknowledge that Thoresby Warehouse acts as a way marker for the canal and I found this to be so when walking along the canal footpath from either direction. Despite being a relatively modest building, particularly by modern standards, in this low and flat landscape, the warehouse is a significant feature on the route and will have been so since it was first constructed around 1821. Moreover, it acts as a feature of the road route seen from either direction marking the canal when seen from other approaches. I appreciate that the road route which exists now may not be the same as that originally, but it has been a main thoroughfare for many years. As such, the warehouse has had a way marking and signposting function for a considerable time. This historic role is of some significance in the local area. [77, 86]
409. The proposed wind turbines would be slender structures around which the surrounding land, and nearby buildings, could be seen. Furthermore they would have a definite industrial architectural form, making them clearly distinct from historic buildings. However, their presence, with the nearest being some 500m from Thoresby Warehouse, would be a significant one, particularly with rotational movement of the blades and the overall size and scale of the structures. As such, I do not attach much weight to the permeability or structural form of the group of turbines as a factor that mitigates the impact on the heritage asset. [73, 83, 84]
410. There will be places from which the warehouse could be seen without the proposed wind turbines. However, this does not mean that they would not harm the setting of this heritage asset; rather it is simply the case that in certain views they would not be visually intrusive. [312]
411. The rarity of the warehouse, in that it remains intact and in a largely undisturbed setting, is such that it acts as a way marker and feature of the canal route was discussed at some length. Whilst rarity of the building does not alter the impact of any development upon its setting, and so does not heighten harm to that building, it seems to me only logical that where rareness is at issue, it should be more important to protect a rare building within its rare setting than a building and setting which can be found in a commonplace situation. Of course rarity may well be a factor in assessing the level of listing that is bestowed upon a listed building and I note that this building is listed grade II. Despite being the lowest grade of listed building, it is reasonable to consider whether there is

anything of particular importance in terms this building and its setting in relation to this canal network in the sense that is it a remaining feature of its type. In this regard I saw similar warehouses on this route had been much altered. Moreover, the fact that this is the remaining location on this canal where a largely intact historic warehouse can be seen in a relatively unaltered setting was not disputed. This factor adds to the importance of the protection of the building and increases its significance. [78-79, 302]

412. Whilst the proposed development would not harm the listed building's fabric, I have no doubt that it would adversely impact upon the setting of the listed building. The wind turbines would be significantly taller structures than the warehouse. The warehouse when built would have been an imposing and dominant structure with primacy in scale. Moreover, it remains the tallest significant built feature when seen from the road and from the canal. Thus, the scale of the turbines would dominate the warehouse and devalue its current visual status afforded by its height. Furthermore, the contrasting, and conflicting, modern materials and rotational movement of the turbines would draw the eye away from the warehouse which, as a consequence, would lose its visual significance and way marking role. There would also be a visual conflict in that the current setting is of low lying, level, land of drained fields such that the strong vertical emphasis of three turbines would be a particularly uncharacteristic addition to the immediate surroundings. The harm to that setting, by detracting from the presence of the building as a key feature in the landscape, which has clear a way-making function for the canal and which links the canal to the surrounding land, would harm the significance of this designated heritage asset.
413. The Council and MWAG express concern that the proposed wind turbines would alter the potential for alternative viable uses for the warehouse, expressing concern that it would blight the building in terms of visual impact and noise disturbance. [71-73]
414. I am mindful that there are no current proposals for the building either in existing or alternative use. I am also mindful that some suggested uses might well be wholly unacceptable for this building because of its listed status, structural form and historic interest. Nor would it be appropriate to prejudge what might be acceptable here in terms of its relatively isolated rural location. That said, there is no doubt that proximity to such large wind turbines with the scope for possible noise issues might have some impact upon the long term future of this listed building. However, at most this should only carry very little weight given that there is no evidence that the building is likely to be put any alternative use in the near future. [313-314]
415. I have noted the appellant's view that EH are not concerned about the impact on this heritage asset. However, evidence suggests that EH simply undertook its required role, was thus not obliged to comment, given that the building is grade II listed, and chose not to do so.. Whilst the appellant may find this surprising I do not share that view; rather it seems a pragmatic approach has been taken by EH in terms of its responsibilities and use of resources. [323]
416. In terms of this heritage asset I conclude that, as the building would not be harmed and that as there would be some remaining views where the warehouse could be seen without the proposed wind turbines, any harm would not be so

high as to undermine the statutory listing or substantially harm the building's setting. Nonetheless, there would be considerable harm to the significance of the building which falls not far short of substantial harm, largely because of the erosion of the prominence of the building and its canal side way-marking function which would be seriously diminished by the proposed development. [89, 310-311]

Tetney Church

417. The church of St Peter and St Paul at Tetney relates clearly to that settlement (FEI figure 5a and 5b¹⁶). The appeal site is to the south-east and so not directly aligned with views from the church. It could be seen from the churchyard but, given vegetative growth, there would be limited visual impact from the proposed wind turbines when within that area. There would be occasions where the church tower could be seen in views that included the proposed wind turbines, but these would not be designed views or ones in which the importance of this modest church would be materially reduced. The main visual references for this building and its setting link to its role within the settlement and as a marker for the settlement so that the distant turbines would not be materially harmful. I note that the ES and EH do not set out any significant harm in respect of the setting of this listed building. [242, 324]

Conclusions on Heritage Assets

418. Having had regard to all the evidence before me I conclude that there would be harm to the designated heritage asset which is Thoresby Warehouse and the non-designated asset which is the Louth Navigation Canal. The harm to the latter is intensified because of the relationship to the Thoresby Warehouse. Although the harm is not substantial harm, it is a significant level of harm to which considerable importance and weight should be attached in the planning balance given the statutory duty established in s.66 of the LB&CA Act. Additionally the proposal would fail to accord with Policy C2 of the Local Plan in that it states planning permission will be given which affects the setting of a listed building only where its form, scale, proportions, materials and siting, (amongst other things) preserves or enhances the special architectural or historic interests, viability or long term use of the listed building. [91, 94-96]

Landscape including the AONB

419. The site is located within a flat landscape of drained fields, with occasional tree groups. This area is designated NCA 42 and LCA J1 Tetney Lock to Skegness Coastal Outmarsh. The higher land of the Lincolnshire Wolds, with its AONB, is situated to the west of the appeal site and the coastal plains to the east. As such, there is no doubt that the proposed wind turbines would be seen over a considerable distance, as I found during both accompanied and unaccompanied site visits. The recent planning guidance has reinforced the fact that the impact of wind turbines can be as great in predominantly flat landscapes as in hilly or mountainous areas.

420. The Council accepts that, in isolation, given the scale of the landscape, the proposed wind turbine group could be accommodated without harm to the

¹⁶ Doc INQ37

landscape's character. However, the Council's key concern relates to the cumulative landscape impacts. All but one of the wind farms and taller wind turbines in the District are located within NCA 42 and LCA J1; and, it is acknowledged in the ES that LCA J1 has an overall landscape character sensitivity of Medium to High. MWAG and many local residents do not take that stance but consider that the scheme in isolation would harm the landscape and would be worsened by the cumulative effects. [126,327]

421. Assessing the impact of existing wind turbines should include existing and consented off-shore wind turbines as, in clear visibility, they undoubtedly add to the accumulation of built structures seen when travelling through the District and from some vantage points, particularly views from higher land and views back from the coast.
422. I am mindful that many of the schemes identified by MWAG in their panoramic photomontage (MWAG 5 Fig 3) do not have planning permission and so I have not considered those schemes in coming to my assessment. I appreciate that, in addition to existing and consented on-shore wind schemes, further off-shore turbines are currently under construction. However, in undertaking journeys through the District by car, taking in views as requested, I saw that the wind farms and single larger wind turbines, were generally well spaced and/or screened or orientated so that the perception is not of travelling between wind farm groups or through a wind farm landscape. [236, 328-331,339, 344, 362]
423. There are some locations where there would be significant visual intrusion but these do not relate to sequential views on main travelling routes. Rather, they relate to certain particular vantage points. In terms of distant views, from the Wanderlust Way Walk I saw the expansive landscape spread out before me providing views to the North Sea. Although, where present, wind turbines were a noticeable feature because of their rotational movement and colour, overall they had a limited visual impact on the panorama, which remains as an attractive, predominately rural, scene. I consider that three additional turbines at the distance proposed would only result in a modest alteration to that scene and, as such, I consider that views out from the AONB as a whole would only be marginally changed by this proposal. [236, 340]
424. Additionally some views back towards the rising land of the AONB (e.g. viewpoint 03 from North Cotes) would be impinged upon by the proposed wind turbines and, thus, some modest degree of harm would arise to its setting. The AONB Management Plan seeks to resist wind energy schemes which would cause significant and demonstrable harm to the natural beauty of the AONB. Here the harm would not be significant, nonetheless there would be harm and conservation of the landscape of AONBs is a matter which the Framework affords great weight. Local Plan Policy C11 seeks, amongst other things, to protect the natural beauty of the AONB by not permitting development which would harm the landscape features and distinctive character of the area. In harming panoramic views out, and the dominating presence of the rising Wolds when viewed towards them at certain points, would be at odds with that aim albeit the harm would be modest in the context of the AONB as a whole. The appellant also accepts that there would be some conflict with Policy C11. That said, despite the policy conflict, the weight in the planning balance is reduced because of the marginal nature of the harm identified. [129, 133-148, 235, 340]

425. Another vantage point to which I was taken was The Fitties which is an interesting Conservation Area of seaside chalets. It has an old-fashioned air and in parts it is eccentric giving an overall attractive and strangely cohesive development. At the far end of the Fitties, there is a lake/wetland area (viewpoint 06¹⁷). From this lake/wetland there are views towards a number of existing wind turbines which appear out of scale because of their size. The proposed development would add to that number. Whilst it would not feel wholly dominated the wind turbine presence here would be significant. This is partly due to wind turbines being seen from the lowest of land close to the sea, beyond a small lake/wetland area. The consequent likely appearance of wind turbines encircling part of the lake/wetland area would detract from the character of this location and viewpoint, although it would have negligible effect upon the setting of the Conservation Area which would be preserved.
426. The more specific impact would be at closer proximity. However, it is inevitable that this will be the case particularly for on-shore wind development. That said, it is here, rather than in wider landscape views, that cumulative impact or 'breathing space' between turbines would be more of an issue. In particular it is the relationship between the appeal scheme and the non-operational but constructed wind turbines at Newton Marsh which is most significant. Newton Marsh has different circumstances to the appeal site, given its location adjacent to the Tetney Oil Terminal storage tanks. However, in terms of the relationship between the two I agree with the appellant's landscape witness that it would be better in landscape terms for this site and the proposed number of turbines if there were a lesser gap between the appeal site and those other wind turbines. This is because the combination of the Newton Marsh and appeal site is neither sufficiently distant to provide clear visual breaks from all directions, nor near enough to form a visually cohesive group. For instance it would almost appear as a group from Covenham Reservoir (viewpoint 05¹⁸) yet would be seen as a distinct and separate group from Horse Shoe Point viewpoint (07). The consequence is that the appearance of a straggling group formed by the existing and proposed scheme would be likely to prevail. [154]
427. In contrast the large wind farm at Conisholme is sufficiently separate to be readily identified as a single wind farm. However, the areas from which the Newton Marsh wind turbines and the proposed wind turbines would be seen together is relatively limited, albeit they include views from the Louth Canal route, which is publicised as a tourist attraction, and the public footpaths in this vicinity all of which are enjoyed at a slower pace, resulting in the visual impact being of greater significance. [239]
428. I understand that local residents consider that the site is tranquil. Whilst the canal side route and general location is pleasant, the appeal site is one where a main traffic route passes, agricultural activity and regulation of water takes

¹⁷ note the viewpoint photographs do not show the wind turbines which can currently be seen; the cumulative wireframe is more helpful in that I could easily see the Conisholme turbines and the Newton Marsh turbines but what this does not show are the off-shore turbines

¹⁸ note the existing turbines are not shown in the viewpoint or photomontage, nor are they for viewpoint 07

place. As such, it is not a particularly tranquil area and thus I do not attach weight to that view. [159-160]

429. In conclusion, the prevailing landscape character for LCA J1 would only be marginally altered, and the scheme would not create a windfarm landscape. Although the impact on the landscape would be much more specific, and there would be a degree of conflict with Policy C11, the plan is dated and it is without current renewable energy policies. Similarly, whilst there would be some harm to the amenities of people living or working nearby, and thus some conflict with Policy A4, the dated nature of the plan and absence of renewable energy policies again limits the weight to be applied. Although the Framework, attaches importance to the protection of AONB's, and it merits greater weight than the policies referred to above, the limited and localised harm arising from the proposal would not conflict to a material degree with the objective of protecting distinctive landscapes. Thus, I do not attach significant weight to landscape harm in the overall planning balance.

Living Conditions - Eastfield Farm and Windy Ridge

430. Eastfield Farm is a detached dwelling, no longer operating as a farmstead but used for private equestrian purposes. The house is accessed along a straight, rutted, road. From this road the immobile wind turbines of Newton Marsh can be seen. The proposed wind turbines would be clearly visible when travelling along this track; viewpoint 01 is taken from the track near to the dwelling. As a consequence of their proximity, with T1 at some 660m from the house (620m if the blades are angled towards the dwelling), and the relationship to the Newton Marsh wind turbines to the opposite side of the track, albeit some 2.8km away, it would feel, particularly close to the house, as being within an area dominated by wind turbines. [120,350]

431. Within the house the visual impact of the Newton Marsh wind turbines is negligible; an occupier would need to make a conscious effort to stand in particular spots/corners to be able to see them. In contrast, the proposed wind turbines would be visible from the front south-facing windows and conservatory. At present the Conisholme turbines can be seen from the first floor windows albeit their distance means they do not have a dominating effect. [116, 351]

432. In the case of the appeal wind turbines the fruit trees within the front garden and the existing hedge would provide a degree of screening. That screening would reduce the overall effect of the proposed turbines when seen from within the front garden and the ground floor rooms including the conservatory, but not the front facing bedrooms. Moreover, in winter months I saw that it was more open to views out than when the photomontage pictures were taken. However, the occupier has indicated an intention to reduce the height of the hedge to lay it. Having this in mind and noting the lack of any other significant screening in this direction, views being over essentially flat fields, it is likely that there would be significant views to the proposed wind turbines from ground floor rooms as well as those at first floor. The fact that the prevailing wind direction would make it likely that the blades would not be seen face-on for much of the time does not significantly change that impact. Whilst the siting of the turbines might appear balanced in its spacing from this location, it would occupy a wide angle of view and that would be harmful. [103, 355]

433. It seems unreasonable to me that the occupier should be expected to retain her hedge in its current state so as to provide the primary source of screening and, in any event, that screening would not limit views from the first floor.
434. In terms of the rest of the property, wind turbines would become a feature that would be seen when walking around the external areas. This is likely to be a regular and frequent occurrence for an occupier who keeps horses and uses the manège in exercising them. I have no doubt that the presence would become an unacceptably dominating feature of life for the occupier of the property, which would detract from day to day life, particularly given that the nearest proposed wind turbine would be some 660m away. [99]
435. The fact that walks or riding out from the property would, almost inevitably, result in seeing the appeal turbines and those at Newton Marsh would further detract from living conditions. Again, whilst wind turbines at Conisholme could be seen, the distance to that group and other wind turbines is such that I would not attach material weight that factor. [104,109-115, 118]
436. The proposed Bishopthorpe wind farm, which would be some 3.2km away from Eastfield Farm, forms part of the reason for refusal. However, that scheme does not have planning permission and there is nothing before me to establish the likelihood of planning permission being granted. Moreover, given the distance of that scheme and its orientation, it is unlikely that it would have any material impact at Eastfield Farm. Thus, I do not attach weight to the effects of that scheme here. [352]
437. Turning to the matter of noise I am aware that acoustic consultants prepared the assessment, which was then independently assessed, and that the Council did not find against the scheme in this regard. However, the objectors make some valid points which I will turn to in due course. [364]
438. The appellant has agreed a threshold of 36dB with the Council, a level above the standard 35dB level used as an acceptable threshold to avoid the need for background noise assessment and used as the lowest level generally sought in the range of acceptability. Whilst MWAG disagrees with that approach, the appeal scheme would provide a moderate level of energy production, at some 7.5MW. The appellant claims that the increase above 35dB relates to only one property (Eastfield Farm), based on their calculated sound contours. In this regard it must be a balanced judgement between energy generation, the numbers of properties affected and precise threshold set. However, I note that this is not reflected in the sound condition sought and that Eastfield Farm is the property most likely to be open to visual impacts. [249]
439. It would appear that the monitoring equipment was sited closer to the hedge than advised in ETSU. Whilst noise is attributed by the appellant to the Tetney Oil Storage site, rather than to the rustling of the hedge, I have evidence that the Oil Storage facility does not create material levels of noise. Thus, having particular regard to the uncharacteristic direction of the wind during the monitoring period, it is likely that proximity of the monitoring equipment to the hedge affected the reliability of the overall results. It is also notable that this part of the garden would be 'shielded' from the wind farm by the house itself which makes this location an unusual and unrepresentative choice for monitoring despite the Council's apparent acceptance of that general position and of the siting in terms of its proximity to the hedge. [252, 258-259].

440. Firstly, it appears that the domestic front garden area has not been included in the area which should be assessed for noise. ETSU provides for amenity to be protected to those areas of the property which are frequently used for relaxation or activities for which a quiet environment is highly desirable. In this regard, and in respect of Windy Ridge too, whilst the acoustic evidence may have been considered acceptable to the appellants and have been reviewed by consultants and the Council who found no areas of concern, I am somewhat surprised at the disregard of amenity areas from noise calculations. Although the occupier has other garden areas, this south facing garden which, despite being the front garden, is private because of the dwelling's isolated location and should have been included in any assessment. MWAG has calculated that difference as adding 0.15dB at the boundary and hence makes a marginal difference. [268]
441. I also share the concerns of the MWAG noise witness that the appellant chose to undertake the noise assessments based on old data for the proposed candidate turbine, rather than more recent actual test report for the candidate proposed, data to which they clearly had access. However, it appears the earlier data was not significantly different. Whether or not the use of the more recent test report data or the approach to uncertainty in the modelling increase the level of noise predicted, which MWAG calculates that it does at critical wind speeds, albeit marginally, this cannot be seen as the best practice when more appropriate data is available.
442. I appreciate that the IoA GPG, which was issued after the application had been compiled, provided greater clarity on the use of data than ETSU. The IOA GPG sanctions the use of tested sound power levels in noise propagation modelling when declared sound power levels or warranted or specified manufacturer data is absent (para 4.3.6). However, it still seems illogical not to have used the most up-to-date information. Nor can the lack of adherence to ISO 9613-2 in terms of uncertainty for noise predictions be seen as best practice. However, I am satisfied that the appellant's consultant has been conservative in the calculation approach. Moreover, MWAG indicate a worse case of some 1.2dB higher noise level for this property than that predicted. [263-266]
443. Overall, I consider that given the conservative nature of predictions, the modest difference suggested by MWAG, the likelihood of the actual turbines being different to the candidate turbines and, noting the range of sound power outputs for wind turbines which would fit the parameters for those to be used at this site (set out in the second Rebuttal Proof of the appellant's acoustic witness – Table 1 – INQ40), I am satisfied that noise conditions could be complied with.
444. In respect of Eastfield Farm, I consider that the significant harmful and oppressive visual impacts of the proposed development in combination with the Newton Marsh wind turbines is such that the property would become an unattractive and unpleasant place to live. Despite the likely adherence to the noise level set, and the general acceptability of that level, the noise that is likely to be heard on occasions, would be likely to exacerbate the feeling of being oppressed because of the close proximity of the nearest wind turbine. I conclude that the scheme would result in unacceptable living conditions for the occupier of Eastfield Farm.

Windy Ridge

445. Windy Ridge is also a detached property, located between Thoresby Bridge and Tetney oil tanks and adjacent to the canal. The house is enclosed by significant levels of planting, so that whilst the proposed wind turbines might be glimpsed from a first floor room any impact would be negligible. The Newton Marsh wind turbines are not a significant feature from this property either.
446. Turning to the issue of noise, again MWAG raises concerns about the noise monitoring position in terms of proximity to trees and shrubs. However, given the nature of the garden here, it seems unlikely that a position could be found that would not be affected by such vegetation. That being the case I am not convinced that the microphone location was unreasonable. [260]
447. However, the property also includes a fishing lake and small touring caravan site, which have not been thoroughly considered by the appellant in terms of noise impacts. This area is nearer to the proposed wind turbines than the dwelling. As noted for Eastfield Farm, ETSU provides for some amenity areas to be protected. It seems to me that the fishing lake is such a place both for the occupiers and for the visitors to the site who have come to relax in a rural environment. I appreciate that such visitors have the option of deciding to leave unlike the residential occupiers. However, this has implications for the occupiers' livelihood, and for the tourism facility it provides, albeit this is likely to have a very limited impact on the local economy given the size of the site. [269]
448. MWAG calculates that including this area would add 0.5dB to the noise predicted for the curtilage. I have also noted the other inaccuracies set out by MWAG. Whether or not the latter should apply, the curtilage distance used is a more significant consideration given this has implications for the touring caravan site. Night-time noise levels are set higher to allow for the additional sound attenuation of walls which would not apply to those within caravans, or areas covered by awnings. However, the predicted night time noise levels (as set out in the Errata Document INQ41) are only marginally above the 35dB threshold. As such, I am satisfied that the proposal would not result in a significant noise impact for the caravan site during the night-time period. [260, 275]

Conclusion on Living Conditions

449. I consider that the proposal would result in unacceptable living conditions for the occupier(s) of Eastfield Farm but that noise from the proposed wind turbines would not cause unacceptable disturbance at Windy Ridge. Thus, in terms of the occupiers of Eastfield Farm I find conflict with Local Plan Policy A4 which sets out that development which unacceptably harms the general amenities for people living or working nearby will not be permitted. Moreover, I am mindful that the Framework, as a core planning principle set out at para 17, seeks a good standard of amenity for all occupiers, a situation which would not arise were the appeal to be allowed. [105]

Other Matters

Reversibility

450. The development is proposed for a 25 year period. Whilst that period is comparatively short in the lifetime of the landscape and the surrounding heritage assets it would represent a significant part of a human life span. Given the

conclusions in respect of living conditions, the adverse impacts over that period of time are such to outweigh the reversibility of the project. [122,315]

Ecological and Ornithological Issues

451. Local residents and MWAG express particular concern about the impact of the proposed development on wildlife and particularly birds using this area. Assessments were undertaken in the ES and these were supplemented by SEI.
452. The evidence indicates that there would be no material harm to populations or their habitat from this proposal. As a consequence Natural England, RSPB and the Lincolnshire Wildlife Trust do not object to the scheme and it has not been an issue for the Council in this appeal.
453. One area did, however, remain a matter of concern for the Council, that of the control over the land to be used as mitigation. The appellant was able to produce evidence that the land is subject of discussion between themselves and Mark Casswell at Eastfield House Farm (INQ57). Whilst the Council considers that the land could only be made available through a s.106 Agreement or Unilateral Undertaking, the appellant has not taken this approach but seeks to rely on a condition. As such it seems that there is a reasonable likelihood that an agreement could be entered into within the time limit of the scheme as so a Grampian style condition could be imposed as indicated in the planning guidance¹⁹.
454. Although I understand local concern for the area, the evidence before me is such that I do not consider that the proposed wind turbines would cause material harm to local wildlife. [221-222, 367-371]

Ground Conditions, Flood Risk and Water Resources

455. General concerns were raised by MWAG and interested parties about the implications of possible piling to support the proposed turbines. It was agreed by the parties at the Inquiry that the concerns in this regard could be resolved by the use of appropriate conditions which are set out in the attached schedule. [366]
456. Whilst the site includes flood plain, the Environment Agency does not object to the proposal. There are, however, requirements in terms of the design of the trackway, access and compound arrangements which include flood barriers. Those matters would need to be the subject of a condition to ensure the safe and effective use of the flood plain. [278]

Other Local Concerns

457. Many of the local concerns, including those raised in letters, could be dealt with by conditions. In particular conditions could be imposed to deal with shadow flicker, TV interference, ice throw, limitations on working hours, and traffic routing/highway access improvements. Dark skies could be protected by

¹⁹ Ref ID: 21a-009-20140306

conditions restricting the illumination used, including that for aircraft safety. There are no other substantiated concerns regarding aircraft safety. Micro-siting conditions could be controlled to avoid any over-sailing of public rights of way.

458. There would be negligible loss of agricultural land and it is highly unlikely that turbines would cause danger through failure.
459. There is no substantiated evidence that harm would arise to health of people living in the locality as a result of the proposed development. Nor is there any evidence of disturbance to horses or distraction to drivers causing accidents. Increases in traffic levels during development are an inevitability of the development process and development cannot normally be resisted on those grounds, moreover any disturbance would be relatively short lived.
460. Repopulation of the area would not be prevented by a scheme that would generally have localised effects. There is no substantiated evidence that the proposal would harm the local tourist economy. [372]
461. Property value is not a matter which is normally dealt with in dealing with planning applications.
462. Each application needs to be considered on its own merits having regard to the circumstances at the time and I do not consider that the appeal scheme would set a precedent for further similar development.

Benefits of the Proposal

463. In terms of benefits it is not disputed that the development could provide up to 7.5MW of installed renewable energy. This could generate up to 16.4GWh of electricity per year which could provide for some 3680 households. This represents a significant benefit of the scheme and could make a noticeable contribution to national targets which are challenging – the DUKES 2012 figures provided by the appellant that only 11.3% of UK electricity comes from renewables were not disputed and make the 30% by 2020 a significant task. In terms of CO₂ this represents a displacement of approximately 7,060 tonnes per annum. [163, 282-289, 374-377]
464. This renewable energy source would assist in changing reliance on fossil fuels and so contribute to security of supply, albeit with the limitations of the unpredictability of wind.
465. The appellant also notes the direct and indirect economic benefits to the local community which they value at circa £1.1m as well as the creation of income for the Environment Agency, as one of the landowners of the site. Whilst the latter is a public agency I do not attach significant weight to this point, as contributions to that organisation's finances is not a matter to which I can attach weight. Similarly the payment of up to £37,500 per annum for 25 years to an independently administered Community Benefit Fund is not a matter directly controlled through the planning permission or required to make the scheme acceptable. Rather, it relates to a separate offer. The sum offered would not directly help those most greatly affected or resolve the harms caused. As such, it is not a matter to which I consider material weight should be attached. [202-205]

466. A comprehensive habitat management plan has been proposed. The element which mitigates the effects of the proposed development would simply be a response to harm the development would cause. The net gains which might arise beyond that would be a benefit, however, there is little to quantify those benefits and thus I accord them only modest weight. [201]

Planning Policy

467. I am mindful that the Local Plan is old. Nonetheless, there will be circumstances where individual policies are of relevance. However, in this case I cannot attach full weight to the Local Plan because it does not contain any policies relating to renewable energy development and so it does not fully reflect the policies of the Framework. Moreover, the emerging plan has not yet been subject to examination and so cannot be afforded any significant degree of weight. However, the Framework and the LB&CA Act provide clear guidance for the issues in this case. [174-182, 290-297, 380-384]

468. I have found varying degrees of conflict with the Framework with modest landscape harm and harm to living conditions. In other respects the Framework offers some support for the proposal and it identifies where the balances must be made. [385-390]

469. In this case, the development plan is silent on certain matters and so the relevant policies are out-of-date. As such the Framework at para 14 advises that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or specific policies in the Framework indicate development should be restricted (which includes reference to AONBs). [164]

470. That balance is not dissimilar to the balancing exercise identified in the Framework at para 98, which seeks the approval of renewable energy projects if its impacts are or can be made acceptable unless material considerations indicate otherwise.

471. A balancing exercise is also established at para 134 in respect of listed buildings which sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal; the effect on non-designated heritage assets should be taken into account having regard to the scale of the harm. Moreover, the statutory duty under s.66 makes clear that special regard has to be paid to the desirability of preserving the setting of listed buildings.

The Planning Balance

472. I have set out the benefits of the development which most significantly relate to the provision of energy from a sustainable and secure source. In addition some benefits would be provided for the local economy and some modest benefits might arise to biodiversity.

473. Against those benefits there would be harm, albeit not substantial harm, to the significance of Thoresby Warehouse, a grade II listed building and the non-designated heritage asset, the Louth Canal. This is a matter to which I attach considerable importance and weight given the duty set out in s.66. There would

also be some modest harm to the landscape at a local level and there would be significant harm to the living conditions of Eastfield Farm.

474. Taking the para 134 test first I find the harm to the setting of Thoresby Warehouse would not be outweighed by the benefits that would be produced by way of renewable energy production of the level proposed and the associated economic benefits and modest habitat benefits. Moreover, balancing all of the factors before me, I conclude that the proposed development is not and cannot be made acceptable; thus I do not consider para 98 supports the scheme. Turning to the test set out at para 14 the adverse impacts in terms of the considerable harm to the setting of Thoresby Warehouse and the lesser harm to the Louth Navigation Canal; the considerable harm to living conditions of the occupiers of Eastfield Farm; and, the modest harm to the landscape mean that the totality of the harms significantly and demonstrably outweigh the totality of the benefits. Having regard to the duty set out in s.66 duty, the scheme would fail to preserve the setting of Thoresby Warehouse which it is desirable to preserve. I therefore recommend that the appeal be dismissed.

Formal Recommendation

File Ref: APP/D2510/A/13/2200887

475. I recommend that the appeal be dismissed.

Zoë Hill

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Thea Osmund-Smith of Counsel	No 5 Chambers
Instructed by	Ms Charlotte Lockwood Lawyer for Legal Services Lincolnshire on behalf of East Lindsey District Council
She called	
Mr Robert Walker Dip Land Admin Dip TP DipConstudies (York) MRTPI IHBC	Senior Conservation and Design Officer, Planning and Built Environment, East Lindsey District Council
Mr David Loveday BSc(Hons) MRTPI	Interim Planning Officer, Planning and Built Environment, East Lindsey District Council
Mrs Caroline Currie BSc(Hons) DipAcoustics and Noise Control MCIEH AMIOA	Environmental Health Officer, East Lindsey District Council

FOR THE APPELLANT:

Mr Richard Glover	Squire Saunders UK LLP PFR (Louth Canal) Limited
He called	
Dr Jonathan Edis BA MA PhD MIFA IHBC	Heritage Collective LLP
Mr Phillip Black CMLI	RSK Group
Dr Andrew Bullmore BSc PhD	Hoare Lee Acoustics
Mr Paul Bedwell BA(Hons) DipTRP MRTPI	Spawforths

FOR THE RULE 6(6) PARTY:

Mr Melvin Grosvenor	
Acting of behalf of	Marsh Windfarm Action Group (MWAG)
Who gave evidence as	
Mr Melvin Grosvenor	Chairman of MWAG
He called	
Cllr John Loomes	Local Resident and Ludborough Parish Councillor
Mr Mark Ess	Local Resident
Dr John Yelland MA DPhil(Oxon) M1stP FIET MIOA	Independent Consultant (Acoustics)

INTERESTED PERSONS:

Mrs Davina Parker	Local Resident
Ms Christina Belton	Local Resident
Mr S Bates	Local Resident
Jill Lingard	Local Resident
Mr Andrew McClaren	Local Resident
Janet Dixon	Local Resident
Cllr Graham Lane MSc	Parish Councillor
Anne Winslow	Local Resident
Mr Patrick Butt	Local Resident
Cllr Roger Lukehurst	Parish Councillor
James Pocklington	Supporter
Mr George Davy	Local Resident
Julie Wilkins	Local Resident
Mr Greg Roberts	Interested Party

LOCAL PLANNING AUTHORITY DOCUMENTS

- LPA1 Proof of Evidence of Mr Robert Walker (Cultural Heritage)
- LPA2 Summary Proof of Evidence of Mr Robert Walker (Cultural Heritage)
- LPA3 Appendices to Proof of Evidence of Mr Robert Walker (Cultural Heritage)
- LPA4 Proof of Evidence of Mr David Loveday (Landscape and Planning)
- LPA5 Summary Proof of Evidence of Mr David Loveday (Landscape)
- LPA6 Summary Proof of Evidence of Mr David Loveday (Planning)
- LPA7 Appendices to Proof of Evidence of Mr David Loveday (Landscape and Planning)

For main additional LPA Documents submitted at the Inquiry see: INQ6-8; INQ13; and, INQ56

APPELLANT'S DOCUMENTS

- APP1 Proof of Evidence of Dr Jonathan Edis (Heritage)
- APP2 Summary Proof of Evidence of Dr Jonathan Edis (Heritage)
- APP3 Appendices to Proof of Evidence of Dr Jonathan Edis (Heritage)
- APP4 Proof of Evidence of Mr Phillip Black (Landscape and Visual)
- APP5 Summary Proof of Evidence of Mr Phillip Black (Landscape and Visual)
- APP6 Appendices to Proof of Evidence of Mr Phillip Black (Landscape and Visual)
- APP7 Proof of Evidence of Dr Andrew Bullmore (Noise)
- APP8 Summary Proof of Evidence of Dr Andrew Bullmore (Noise)
- APP9 Appendices to Proof of Evidence of Dr Andrew Bullmore (Noise)
- APP10 Proof of Evidence of Mr Paul Bedwell (Planning)
- APP11 Summary Proof of Evidence of Mr Paul Bedwell (Planning)
- APP12 Appendices to Proof of Evidence of Mr Paul Bedwell (Planning)

For main additional Appellant's Documents submitted at the Inquiry see: INQ9-12; INQ16; INQ38; INQ40-41; INQ46; and, INQ58

RULE 6(6) (MWAG) DOCUMENTS

- MWAG1 Introduction by Melvin Grosvenor
- MWAG2 Introductory Evidence of Mark Ess
- MWAG3 Proof of Evidence of John Loomes with attached Appendices
- MWAG4 Proof of Evidence of Richard Lorand and Mark ESS on Ornithological Issues with attached Appendices
- MWAG5 Proof of Evidence of Melvin Grosvenor and Mark ESS on Landscape and visual Impacts with attached Appendices
- MWAG6 Proof of Evidence by Dr John Yelland (Noise) with attached Appendices
- MWAG7 Proof of Evidence of Mark Ess on Construction and Site Location Impacts
- MWAG8 Appendices to Proof of Evidence of Mark Ess on Construction and Site Location Impacts

* Note Documents MWAG1-6 are bound in one folder

For main additional MWAG Documents submitted at the Inquiry see:
INQ14-15; INQ18-20; INQ34-35; INQ39; INQ48-49; INQ52; and, INQ55

CORE DOCUMENTS

CD1 Application Documents

- 1.1 Planning Application – All documents previously provided
- 1.2 Environmental Statement – All documents previously provided
- 1.3 Supplementary Environmental Information – All documents previously provided
- 1.4 Report of East Lindsey District Council Planning Committee meeting of the 14 March 2013 and Report of 18 April 2013
- 1.5 Refusal of planning permission dated 23 April 2013
- 1.6 Consultee Responses
- 1.7 Further Environmental Information November 2013

CD2 Planning Policy Documents

- 2.1 East Lindsey Local Plan Alteration 1999 saved policies September 2007
- 2.2 East Lindsey Draft Core Strategy December 2013
- 2.3 National Planning Policy Framework 2012
- 2.4 Planning for a Sustainable Future: Planning White Paper dated May 2007
- 2.5 National Planning Statement (NPS) EN-1, 'Overarching National Policy Statement for Energy' 2011
- 2.6 National Planning Statement (NPS) EN-3, 'National Policy Statement for Renewable Energy Infrastructure' 2011

CD3 Legislation

- 3.1 Climate Change Act (2008)
- 3.2 Town and Country Planning Act (Environmental Impact Assessment) (England and Wales) Regulations 1999
- 3.3 Town and Country Planning Act (Environmental Impact Assessment) (England and Wales) Regulations 2011
- 3.4 Planning (Listed Buildings and Conservation Areas) Act 1990

CD4 Climate Change and Renewable Energy Documents

- 4.1 The UK Climate Change Programme (2006)
- 4.2 The Energy White Paper 2007: Meeting the Energy Challenge (2007)
- 4.3 The UK Renewable Energy Strategy (July 2009)
- 4.4 The UK Low Carbon Transition Plan: National Strategy for Climate and Energy (July 2009)
- 4.5 Annual Energy Statement (October 2013)
- 4.6 Energy Bill 2012-2013 (November 2012)
- 4.7 Planning our Electric Future: a White Paper for Secure, Affordable and Low-Carbon Electricity (July 2011)
- 4.8 UK Renewable Energy Roadmap (July 2011)
- 4.9 UK Renewable Energy Roadmap Update 2013 (November

- 2013)
- 4.10 Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998)
- 4.11 Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (June 2009)
- 4.12 Stern Review on the Economics of Climate Change (October 2006)
- 4.13 DCLG Planning Practice Guidance for Renewable and Low Carbon Energy July 2013
- 4.14 The Secretary of State for Communities and Local Government Written Ministerial Statement: Local Planning and Onshore Wind 6 June 2013
- 4.15 Report by Messrs Faber Maunsell for the East Midlands Regional Assembly June 2009
- 4.16 The Nottingham Declaration
- 4.17 A Community Commitment: The Benefits of Onshore Wind (Feb 2011)
- 4.18 The Energy White Paper 2003
- 4.19 Energy Review of 2006
- 4.20 UK Renewable Energy Roadmap Update 2012
- CD5 Cultural Heritage**
- 5.1 Number no longer used
- 5.2 Wind Energy and the Historic Environment, English Heritage 2005
- 5.3 Climate Change and the Historic Environment, English Heritage 2008
- 5.4 Conservation Principles Policies and Guidance for the Sustainable Management of the Historic Environment, English Heritage 2008
- 5.5 PPS5: Planning for the Historic Environment Practice Guide English Heritage 2010
- 5.6 The Setting of Heritage Assets English Heritage 2011
- 5.7 DCLG Circular 01/01: Arrangements for handling heritage applications – notification and directions by the Secretary of State January 2001
- 5.8 Additional Photomontages as requested by the Inspector at the PIM
- 5.9 National Planning Practice Guidance – Conserving and enhancing the Historic Environment
- 5.10 Heritage Collective Heritage Assessment Louth Canal Fen Lane (added to Core Documents during the Inquiry)
- CD6 Landscape and Visual**
- 6.1 Guidelines for Landscape and Visual Impact Assessment, Second Edition, Landscape Institute and IEMA, 2002. - Book to be available at Inquiry
- 6.2 Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape Institute and IEMA, 2013. – Book to be available at Inquiry
- 6.3 NCA 42: Lincolnshire Coast & Marshes – character area profile legacy document Natural England (undated)
- 6.4 NCA 42: Lincolnshire Coast & Marshes Key Facts & Data, Natural England, c.2012.

- 6.5 Number no longer used
- 6.6 NCA43: National Character Area Profile: Lincolnshire Wolds, Natural England, 2013.
- 6.7 East Lindsey District Landscape Character Assessment, ELDC, July 2009.
- 6.8 Lincolnshire Wolds AONB Management Plan 2013 – 2018, incorporating relevant aspects of the Landscape Character Assessment of the Lincolnshire Wolds, Countryside Commission, 1993.
- 6.9 Lincolnshire Wolds AONB fixed point photography list, potential points for monitoring, received 22.08.13.
- 6.10 Appraisal of the Landscape and Visual Assessment Provided as part of the Environmental Statement, FPCR, August 2012.
- 6.11 Response to the Supplementary Environmental Information (Landscape and Visual), FPCR, January 2013.
- CD7 Noise**
- 7.1 Noise Policy Statement for England (NPSE) (2010)
- 7.2 Number not used (provided at 4.13)
- 7.3 The Assessment and Rating of Wind Farm Noise ETSU-R-97 (1996)
- 7.4 The Institute of Acoustics 'A Good Practice Guide to the Application of ETSU-R97 for the Assessment and Rating of Wind Turbine Noise' (2013)
- 7.5 BS 5228 'Code of practice for noise and vibration control on construction and open sites' (2009)
- CD8 Court of Appeal and High Court Decisions, Planning Appeals and Planning Application Decisions**
- 8.1 East Northamptonshire District Council v Secretary of State for Communities and Local Government [2013] EWHC 473 (Admin)
- 8.2 Anderby Creek - Appeal Ref: APP/D2510/A/10/2130539
- 8.3 Enifer Downs – Appeal Ref: APP/X2220/A/08/2071880
- 8.4 Newton Marsh – Appeal Ref: APP/D2510/A/08/2090543
- 8.5 Cross Drove – Appeal Ref: APP/D0515/A/12/2181777 (Inspector's report and SoS decision)
- 8.6 Land at Carlton Grange – Appeal Ref: APP/D2510/A/12/2176754
- 8.7 Southoe - Appeal Ref: APP/H0520/A/12/2188648
- 8.8 Grove Farm - Appeal Ref: APP/J3015/A/12/2186704
- 8.9 Bedford Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 2847 (Admin)
- 8.10 Barnwell Manor Wind Energy Ltd -v- East Northants DC & Other [2014] EWCA Civ 137 (added to Core Documents during the Inquiry)

DOCUMENTS SUBMITTED AT THE INQUIRY

- INQ1 Appearances on Behalf of the Council

- INQ2 List of Speakers for the Interested Parties Evening Session and note of those wishing to speak at the Inquiry
- INQ3 Letter from Lincolnshire County Council dated 17 January 2014
- INQ4 Letter from the Lincolnshire Wolds Countryside Service (AONB staffing unit) dated 17 January 2014
- INQ5 Statement of Chris Belton (local resident) entitled A Trip Down the Louth Canal
- INQ6 Addendum to Proof of Robert Walker (Bundle of Documents and Plans starting with Notes supplied by Mark Bennet Senior HER Officer LCC)
- INQ7 Addendum to Proof of Robert Walker (Bundle of Documents and Photos starting with ELDC BAR survey of Thoresby Warehouse 1992)
- INQ8 Two Photos of Brickwork at Thoresby Warehouse
- INQ9 ARUP Technical Note – Response to Ornithological Issues
- INQ10 ARUP Technical Note – Response to MWAG/7 Construction & Site Location Impacts
- INQ11 Rebuttal Proof to the Evidence of Dr John Yelland
- INQ12 Opening Statement on behalf of Pfr (Louth Canal) Limited
- INQ13 Opening Statement on behalf of East Lindsey District Council
- INQ14 Opening Statement on behalf of MWAG
- INQ15 Summary Proof of Evidence of Dr John Yelland
- INQ16 Note in Response to ARUP Technical Note on Ornithological Issues submitted by MWAG
- INQ17 Statement of Mrs Davina Parker
- INQ18 The Mail on Sunday Extract referred to in MWAG Proof MWAG/1
- INQ19 Extract Mr Hardy Statement referred to in MWAG Proof
- INQ20 Walking the Wanderlust Way (MWAG)
- INQ21 Personal Statement of Mr John Loomes
- INQ22 Revised FEI Photomontages (height corrected)
- INQ23 Personal Statement of Mr & Mrs S Bates
- INQ24 Personal Statement of Jill Lingard
- INQ25 Personal Statement of Mr Andrew McLaren (with appendix)
- INQ26 Personal Statement of Janet Dixon
- INQ27 Statement of Cllr Graham Lane MSc (with appendix)
- INQ28 Personal Statement of Anne Winslow
- INQ29 Personal Statement of Mr Patrick Butt, also on behalf of Mr H Butt (with 5 sheets of appended photographs)
- INQ30 Statement of Cllr Roger Lukehurst (with appendix)
- INQ31 Speaking Note for Personal Statement of James Pocklington
- INQ32 Personal Statement of Mr George Davy
- INQ33 Personal Statement of Julie Wilkins
- INQ34 MWAG note regarding Personal Statement of Andrew McLaren
- INQ35 MWAG/6 Response to Rebuttal by Dr Bullmore
- INQ36 Letter from Andrew McLaren regarding evening session note
- INQ37 Bundle of Replacement Photomontage sheets appendix 4a-4e and 5a-5g
- INQ38 Note in response to ARUP Technical Note 2 – Ornithological Issues by MWAG

- INQ39 Clarification of ETSU procedure – Dr Yelland
- INQ40 Second Rebuttal Evidence of Dr Bullmore
- INQ41 Errata on Noise by Dr Bullmore
- INQ42 Bundle of SoS and Appeal Decisions submitted by the LPA
Refs: APP/Z0923/A/13/2191361;
APP/D2510/A/12/2178955; APP/D2510/E/12/2173915 &
2173917; APP/D2510/A/12/2186215;
APP/D2510/A/12/2179547
- INQ43 Personal Statement of Mr Greg Roberts with Appendices
including appeal Decision APP/D0840/A/13/2190707
- INQ44 Statement of Cllr Tony Bridges (Tetney and North Cotes –
District; Louth Rural North –County)
- INQ45 Statement of Cllr Cheryl Warwick (Saltfleet Parish Council)
- INQ46 Appellant’s Note in Response to Ornithological issues
- INQ47 Suggested condition regarding connection to the National
Grid
- INQ48 Further information regarding birds MWAG
- INQ49 Technical Note regarding Photomontages submitted by
MWAG
- INQ50 SoS Decision Weddicar Rigg Wind Farm
APP/Z0923/A/13/2191361
- INQ51 Submission of Lindsay Johnson
- INQ52 MWAG Ornithological Conclusion with TIN069 attached
- INQ53 Suggested Planning Conditions (Revised)
- INQ54 Statement from Richard Skelton Master Mariner
- INQ55 MWAG Closing Statement
- INQ56 LPA Closing Statement
- INQ57 Statement Regarding the Habitat Proposal
- INQ58 Appellant’s Closing Statement

PLANS

- A1- The Application Plans
- A18 A1 - Figure 1.2 – Development Site Boundary and Drawing 1
- A2 – Drawing 2 - Site Infrastructure Layout
- A3 – Drawing 3 - Structure of a Typical Wind Turbine
- A4 – Drawing 4 - Typical External Transformer Housing
- A5 – Drawing 5 - Typical Cable Trench Detail
- A6 – Drawing 6 - Typical Control/Substation Building
- A7 - Drawing 6a - Typical Substation Layout including Foundations
and Eaves Detail
- A8 - Drawing 6b - Substation Floor Plans
- A9 - Drawing 6c - Typical Security Fencing for Control/Substation
- A10 - Drawing 7 - Typical Turbine Foundation
- A11 - Drawing 8 - Typical Crane Hardstanding
- A12 - Drawing 9 - Typical Site Track Design Details
- A13 - Drawing 10 Issue P3- Outline Access Design into Flood
Storage Area
- A14 - Drawing 10a - Existing Embankment for Flood Storage Area
- A15 - Drawing 11 - Typical Culvert
- A16 - Drawing 12 - Typical Temporary Construction Compound

- A17 – Drawing 13 - Typical Permanent Met Mast
A18 - Drawing 14 – Site Access from A1031
(contained in the yellow plan folder)
- B1 The Revised Application Plan - Revised Infrastructure Layout with
Microsited T1 and Amended Control /sub-station Building 232084
Figure 2 issue 100 (contained in the yellow plan folder)
- C1 Plan for the Accompanied Site Visit
- C2 Bundle with Plans for the Unaccompanied Site Visit

Annex A - Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

(Reason: For the avoidance of doubt and to provide certainty)
- 2) This planning permission is for a period not exceeding 25 years from the date that electricity is exported from any of the wind turbines to the electricity grid. Within 3 months of the permanent cessation of electricity generation at the site, a scheme for the site de-commissioning including removal of the turbines and any ancillary equipment and structures down to one metre below ground level and land restoration as well as a programme for the works shall be submitted to the local planning authority for its written approval. The scheme shall be implemented as approved.

(Reason: To clarify the permission and allow for reassessment within a suitable time-frame for the development proposed)
- 3) Written confirmation of the date of first exportation of electricity shall be provided to the Local Planning Authority by the operator within one month of the first exportation date.

(Reason: To clarify the date of commencement for the purposes of monitoring and enforcing other conditions in the permission)
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing 1 (application plans)- Planning application boundary
 - Figure 4.1 of the ES - Site infrastructure layout (with the exception of turbine T1 and the substation)
 - Drawing 14 (application plans) – Site Access from A1031
 - Figure 3.1 of SEI – Re-location of Turbine 1
 - Figure 2, Issue 100 of FEI - revised layout plan for revised substation
(Reason: For the avoidance of doubt and in the interests of proper planning)
- 5) If any wind turbine hereby permitted fails to or ceases to export electricity to the grid for a continuous period of 12 months a scheme shall be submitted to and agreed in writing by the Local Planning Authority within 3 months of the end of that 12 month period for the repair or removal of that turbine unless otherwise agreed in writing by the Local Planning Authority.

The scheme shall either include a programme of remedial works where repairs to the relevant turbine are required or a programme for the removal of the relevant turbine and associated above ground works approved under this permission and the removal of the turbine foundation to a depth of at least 1 metre below finished ground level and for site restoration measures following the removal of the relevant turbine. The scheme shall be implemented in accordance with the approved details and timetable.

(Reason: In the interests of the visual amenities of the area and to ensure the harm to those amenities is justified by the benefit of producing renewable energy)

- 6) Notwithstanding the details submitted with the planning application, and prior to the erection of any wind turbine or meteorological mast hereby permitted, full details and specifications of the wind turbine model and meteorological mast to be erected on the site shall be submitted to and approved in writing by the Local Planning Authority. The overall height of the wind turbines selected shall not exceed 110.5m to the tip of the blades except for the turbine to be located within the flood reservoir which shall not exceed 113.5m to the tip of the blades, all as measured from natural ground level immediately adjacent to the turbine base. The development shall be carried out in accordance with the approved details.

(Reason: In the interests of clarifying the permission and to ensure that the approved details are acceptable having regard to amenity considerations)

- 7) Notwithstanding the details submitted with the planning application, the colour and finish of the wind turbine towers, nacelles and blades shall be semi-matt and light grey.

(Reason: In the interests of visual amenity)

- 8) Prior to the erection of the transformer units on site details of the transformer units including elevations, colour and finish shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

(Reason: In the interests of visual amenity)

- 9) The turbines, hardstandings, substation and access tracks shall be sited in the positions shown on the submitted plan reference Figure 2, Issue 100 of FEI. These positions may be varied by up to 20 metres subject to prior written approval from the Local Planning Authority providing the following criteria are satisfied:

- a) All development, including turbine oversail, is to be within the application red line boundary;
- b) The turbines shall not be located within 50 metres of a flood bank;
- c) A 50m buffer will be maintained around any feature of foraging / commuting interest to bats (trees, hedges) into which no part of the turbine shall intrude;
- d) Compliance with the noise conditions set out below;
- e) T1 shall not be positioned closer to Eastfield Farm on Outholme Lane;
- f) No turbine shall be located within the North Cotes Airfield Safeguarding Area; and,

g) No turbine shall oversail a public right of way.

A plan showing the final position of the turbines, hardstandings, substation and access tracks shall be submitted to the Local Planning Authority within one month of the date of first exportation of electricity.

(Reason: To allow micro-siting of the development subject to necessary controls in the interests of proper planning)

10) The blades of all turbines shall rotate in the same direction.

(Reason: In the interest of visual amenity)

11) Notwithstanding the details submitted and prior to the commencement of the construction of the development hereby permitted, details of the external appearance, dimensions, layout and external materials of the substation, its fencing shall be submitted to and approved in writing by the Local Planning Authority. The substation and any associated car parking shall be constructed in accordance with the approved details.

(Reason: In the interests of visual amenity)

12) All electrical cabling between the individual turbines and between the turbines and the on-site electricity substation shall be installed underground.

(Reason: In the interests of visual amenity)

13) Prior to the commencement of the development hereby permitted a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Traffic Management Plan shall include the following details:

- Proposals for the routing of abnormal loads from the M18 motorway to site;
- Scheduling and timing of abnormal load movements;
- Details of temporary signage;
- Details of escorts for abnormal loads;
- Details of kerb re-alignment and temporary removal of the central splitter island and lighting column at the A16 Louth Road/B1201 High Street priority junction (North Thoresby), including method statement for the re-alignment works;
- Details of the temporary removal and replacement of highway infrastructure/street furniture, the reinstatement of any signs, verges or other items displaced by construction traffic;
- Details of temporary parking restrictions;
- Details of routes for HGV traffic; and,
- Details of before and after construction road condition auditing from the A16 to the application site and details and timetable for repairing any damage identified.

The scheme shall be implemented in accordance with the approved details.

(Reason: In the interests of highway safety and the free flow of traffic)

14) Prior to the commencement of the development hereby permitted details of the improvements to be made to the junction of the vehicular access with Fen Lane (A1031) based on the detail shown on the submitted plan, Figure

14, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

(Reason: In the interests of highway safety and the free flow of traffic)

- 15) Notwithstanding the submitted details, prior to the commencement of the development hereby permitted, details of the alterations and extensions to be made to the existing track from the A1031 to the turbines, sub-station and flood reservoir shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

(Reason: In the interests of highway safety and the visual amenity of the area)

- 16) Prior to the commencement of the development hereby permitted details of parking, turning, loading and unloading areas (temporary and permanent) within the application site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

(Reason: In the interests of highway safety and the free flow of traffic)

- 17) Prior to the commencement of the development hereby permitted and notwithstanding the details submitted in the planning application, details of all temporary construction works, temporary welfare facilities, construction compound and temporary engineering operations together with remedial measures for restoration following construction shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

(Reason: In the interests of the amenity of the area)

- 18) The delivery of any construction materials or equipment for the construction of the development, other than turbine blades, nacelles or towers, shall be restricted to the hours of 07:30-19:00 hours on Monday to Friday inclusive and 08:00-13:00 on Saturdays with no such deliveries on a Sunday or Public Holiday. Exceptions for work outside these hours may be carried out with the prior written approval of the Local Planning Authority.

(Reason: In the interests of the living conditions of nearby residents)

- 19) Prior to the erection of any of the wind turbines hereby permitted a baseline television reception study shall be carried out to a radius of 5 kilometres of the application site and a report shall be submitted to the Local Planning Authority. Any adverse effects on TV reception notified to the Local Planning Authority or the applicant within the 5km radius within 12 months of the turbines becoming operational shall be investigated by the applicant and any adverse effects shall be rectified to the satisfaction of the Local Planning Authority.

(Reason: In the interests of the living conditions of nearby residents)

- 20) With the exception of aviation obstruction lighting the wind turbines hereby permitted shall not be illuminated unless otherwise agreed in writing by the Local Planning Authority.

(Reason: To protect the countryside and dark skies from unnecessary illumination)

- 21) Prior to the erection of the first wind turbine, a scheme for the installation of Ministry of Defence accredited infra-red lighting to be installed on the turbines (in a location to be approved) shall be submitted to and approved in writing by the Local Planning Authority. The turbines shall be erected with the approved lighting installed and the lighting shall remain operational throughout the lifetime of the development.

(Reason: To provide for aviation safety and protect dark skies from unnecessary illumination)

- 22) No development shall commence on site until a Habitat Management Plan (HMP) has been submitted for the written approval of the Local Planning Authority. This HMP shall include the following elements:

- Method statement for vegetation clearance,
 - Scheme of replacement planting and restoration of construction compounds,
 - Details of a grazing regime within the local wildlife site (LWS),
 - Details of all enhancement works and the extent and type of new hedgerow planting and other replacement/enhancement planting,
 - Details of maintenance and management regimes including for hedgerows, ditches, area between new hedgerow and ditch and the Tetney Flood LWS.
 - Scheme for specific habitat management and monitoring for golden plover, in line with the principles set out in Chapter 7 of the SEI, October 2012.
 - Details of Construction EMP and appropriate working practices
 - Details of pre-construction mammal surveys (otter, water vole, badger).
- The HMP shall be implemented as approved and thereafter, the content of the HMP shall be implemented for the duration of the wind farm.

(Reason: In the interests of ecology)

- 23) Prior to the commencement of the development hereby permitted a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following elements:

- confirm the contractor's legal responsibilities,
- Arrangements for monitoring environmental effects, Standard practice measures to ensure construction carried out appropriately with regard to effects on ecology receptors such as habitats and species and on surface water,
- Arrangements for liaison with statutory authorities and plans in the event of an emergency,
- Method statements for the works, on site storage of materials and the handling of materials,

- Measures to deal with dust during construction,
- On site storage of materials,
- Waste management on site,
- Construction lighting, and
- Details of temporary signage for walkers/cyclists and temporary footpaths during construction.

The development shall be implemented in accordance with the approved details.

(Reason: in the interests of the living conditions of nearby occupiers, highway safety and ecology)

- 24) The development hereby permitted shall accord with the Flood Risk Assessment in Appendix 13.3 of the Environmental Statement March 2012 and its Addenda, 14th May 2012 and 21st May 2012 including the following mitigation measures detailed within unless otherwise agreed in writing by the Local Planning Authority: 1. Cut and fill alterations within the flood storage area to be in accordance with the volumes calculated in the FRA Addendum 2 dated 21st May 2012; 2. Finished floor level of the sub-station to be set no lower than 3.68m Above Ordnance Datum; 3. The minimum height of any water sensitive equipment within Turbine T1 shall be no lower than 3.68m Above Ordnance Datum; 4. The plinth level of Turbine 1 T1 shall be set no lower than 3.68m Above Ordnance Datum.

(Reason: For the proper management of flood risk)

- 25) No construction works shall commence until an intrusive investigation has been carried out to verify site specific ground conditions and design parameters and to verify the assumptions made regarding the potential contamination of the site and the resultant report has been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the recommendations of the approved report.

(Reason: To prevent contamination)

- 26) Prior to the commencement of development hereby permitted a surface water drainage strategy shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

(Reason: To ensure acceptable surface water drainage)

- 27) No construction material associated with the construction of the development hereby permitted shall be stored within the flood storage reservoir.

(Reason: For the proper management of flood risk)

- 28) Prior to the commencement of development hereby permitted details of the new access point to the flood reservoir, based on the principles of Figure 4.10 submitted with the planning application, and timescales for its construction shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

(Reason: For the proper management of flood risk)

- 29) Prior to the commencement of the development hereby permitted and notwithstanding the details submitted with the application, details of the proposed culverts shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

(Reason: In the interests of acceptable drainage of the site)

- 30) Prior to the commencement of the development hereby permitted details of the foundation designs for the turbines shall be submitted to and approved in writing by the Local Planning Authority. No piling or other penetrative foundation methods shall be carried out unless a method statement for such works is otherwise agreed in writing with the Local Planning Authority following demonstration of no resultant unacceptable risk to groundwater. The development shall be implemented in accordance with the approved details.

(Reason: To prevent contamination of groundwater)

- 31) The turbines hereby permitted shall not be erected until evidence has been provided to the Local Planning Authority that a grid connection agreement has been entered into in relation to the proposed development.

(Reason: To prevent visual harm arising without the benefits of provision of renewable energy)

- 32) No turbine hereby permitted shall be erected until a scheme for the detection of blade icing and avoidance of ice throw from the turbines has been submitted in writing to and approved by the Local Planning Authority. The approved scheme shall be implemented as approved.

(Reason: In the interests of safety for users of nearby public rights of way)

- 33) No turbine hereby permitted shall be erected until a scheme for the avoidance of shadow flicker effect for dwellings within 10 rotor diameters of any turbine in the development has been submitted in writing to and approved by the Local Planning Authority. The approved scheme shall be implemented in the event that a complaint is made to the Local Planning Authority as approved.

(Reason: In the interests of the living conditions of nearby neighbours)

- 34) The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition) shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to this condition at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

a) The wind farm operator shall continuously log power production, wind speed and wind direction all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request within 14 days of receipt in writing of such a request.

b) Within 21 days from receipt of a written request from the Local Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling the wind farm operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions including wind direction and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

c) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise having regard to the written request of the Local Planning Authority under paragraph (b) and such others as the independent consultant considers likely to result in a breach of the noise limits.

d) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.

e) The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c) unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation

used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

f) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (c) above unless the time limit has been extended in writing by the Local Planning Authority.

Table 1 – Between 07:00 and 23:00 – Noise limits expressed in dB $L_{A90,10 \text{ minute}}$ as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Bridge Farm Thoresby Bridge	39.1	39.1	39.1	39.4	40.5	42.5	45.8	50.6	57.3	57.3	57.3	57.3
Windy Ridge	36.0	36.0	36.0	36.0	36.4	40.1	44.9	50.3	56.1	57.6	57.6	57.6
Eastfield Farm	36.0	36.0	36.0	36.0	36.0	36.5	40.3	45.5	52.4	54.3	54.3	54.3
Outholme Farm	36.0	36.0	36.0	36.0	36.0	36.5	40.3	45.5	52.4	54.3	54.3	54.3
Cockerline Cottage	36.0	36.0	36.0	36.0	36.0	36.5	40.3	45.5	52.4	54.3	54.3	54.3
1 and 2 Rose Cottages	39.1	39.1	39.1	39.4	40.5	42.5	45.8	50.6	57.3	57.3	57.3	57.3
Ings Cottage	39.1	39.1	39.1	39.4	40.5	42.5	45.8	50.6	57.3	57.3	57.3	57.3
Ivy Cottage	39.1	39.1	39.1	39.4	40.5	42.5	45.8	50.6	57.3	57.3	57.3	57.3
Rose Cottage	39.1	39.1	39.1	39.4	40.5	42.5	45.8	50.6	57.3	57.3	57.3	57.3

Table 2 – Between 23:00 and 07:00 – Noise limits expressed in dB $L_{A90,10}$ -minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Bridge Farm, Thoresby Bridge	43.0	43.0	43.0	43.0	43.0	43.0	43.0	47.3	47.3	47.3	47.3	47.3
Windy Ridge	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Eastfield Farm	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Outholme Farm	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Cockerline Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
1 and 2 Rose Cottages	43.0	43.0	43.0	43.0	43.0	43.0	43.0	47.3	47.3	47.3	47.3	47.3
Ings Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	47.3	47.3	47.3	47.3	47.3
Ivy Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	47.3	47.3	47.3	47.3	47.3
Rose Cottage	43.0	43.0	43.0	43.0	43.0	43.0	43.0	47.3	47.3	47.3	47.3	47.3

Table 3: Coordinate locations of the properties listed in Tables 1 and 2.

Property	Easting	Northing
Bridge Farm, Thoresby Bridge	533542	399803
Windy Ridge	533193	400726
Eastfield Farm	532350	400421

Property	Easting	Northing
Outholme Farm	532055	400250
Cockerline Cottage	531886	399588
1 and 2 Rose Cottages	533712	399754
Ings Cottage	533885	399919
Ivy and Rose Cottages	533627	399761

Note:

For the purposes of this condition a “dwelling” is a building within Use Class C3 & C4 of the Town and Country Planning (Use Classes) Order 1987 which lawfully exists or had planning permission at the date of this consent.

Guidance Notes for Noise Conditions

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled “The Assessment and Rating of Noise from Wind Farms” (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

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

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

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

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

(d) To enable compliance with the conditions to be evaluated the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10-minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2 such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter.

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

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

Guidance Note 2

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

(b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the

occurrence of rainfall in each 10-minute period concurrent with the measurement periods set out in Guidance Note 1.

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

Guidance Note 3

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

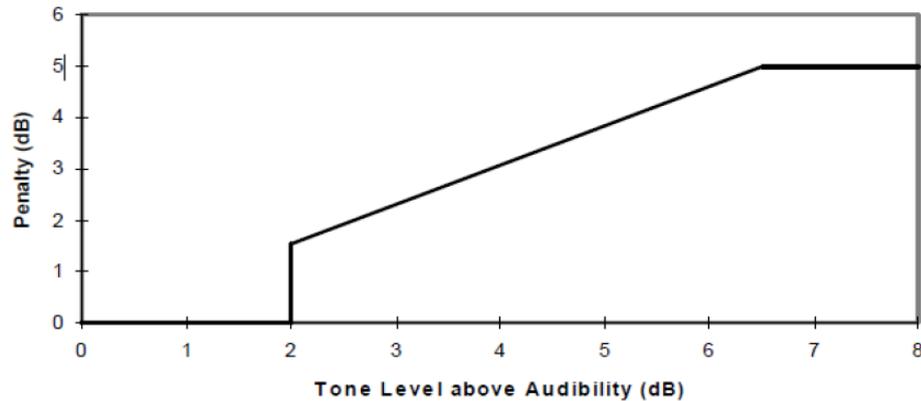
(b) For each 10-minute interval for which $L_{A90,10 \text{ minute}}$ data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals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

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

(d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. For samples for which the tones were below the audibility criterion or no tone was identified a value of zero audibility shall be used.

(e) A least squares, "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

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

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

(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (d) of the noise condition the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

(e) Repeating the steps in Guidance Note 2 with the wind farm switched off and determining the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

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

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

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

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

(Reason: In the interests of the living conditions of nearby occupiers)

List of Abbreviations

AGLV	Areas of Great Landscape Value
AONB	Area of Outstanding Natural Beauty
EA	Environment Agency
EH	English Heritage
EIA	Environmental Impact Assessment
ES	Environmental Statement
FEI	Further Environmental Information
IoA GPG	Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise prepared by the Institute of Acoustics
LCA	Landscape Character Area
LCC	Lincolnshire County Council
LB&CA Act	Planning (Listed Buildings and Conservation Areas) Act 1990
LVIA	Landscape and Visual Impact Assessment
LWCS	Lincolnshire Wolds Countryside Service
NCA	National Character Area
PIM	Pre-Inquiry Meeting
PPG R&LCE	Planning Policy Guidance for Renewable and Low Carbon Energy
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SEI	Supplementary Environmental Information
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SoS	Secretary of State
WLDC	West Lindsey District Council
WwTW	Wastewater Treatment Works
WMS	Written Ministerial statement



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.