

## SCHEDULE A: Applications with Recommendation

14/0124

Item No: 02

Date of Committee: 16/05/2014

**Appn Ref No:**  
14/0124

**Applicant:**  
Mr Paul Holder

**Parish:**  
Dalston

**Agent:**

**Ward:**  
Dalston

**Location:** Dalston Hall Caravan Park, Dalston, Carlisle, CA5 7JX

**Proposal:** Change Of Use Of Golf Practice Range/Course To Provide Extension To Existing Caravan Park To Form 16no. Additional Stances For Holiday Use (Revised Application)

**Date of Receipt:**  
18/02/2014

**Statutory Expiry Date**  
15/04/2014

**26 Week Determination**

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### REPORT

**Case Officer:** Barbara Percival

#### 1. Recommendation

1.1 It is recommended that this application is approved with conditions.

#### 2. Main Issues

- 2.1 Whether the principle of development is acceptable
- 2.2 Impact of the proposal on living conditions of neighbouring residents
- 2.3 Impact of the proposal on Grade II\* Listed Building including landscape character.
- 2.4 Impact of the proposal on Ancient Monument
- 2.5 Method of disposal of foul water
- 2.6 Impact of the proposal on highway safety
- 2.7 Benefits of the application
- 2.8 Other Matters

#### 3. Application Details

##### The Site

3.1 Dalston Hall Caravan Park is located 60-80 metres to the north-east of

Dalston Hall Hotel on the eastern side of the B5299 Carlisle to Dalston road, approximately 1.6 km south west of the entrance. The access road also serves Dalston Hall Hotel, Dalston Hall Golf Club (in the applicant's ownership) and Holly Lodge located at the entrance of the access road. A belt of sporadic trees runs along the north western boundary with an area of more extensive planting to the north east. Two further groups of trees lie to the south of the site. Immediately adjacent to the current application site there is a parcel of land the subject of an extant planning permission for the creation of 9no. static caravan pitches.

## **The Proposal**

- 3.2 This application seeks Full Planning Permission for the change of use of part of a golf practice range/course to provide an additional 16no. stances/pitches for static caravans. The intention is for the access to the site to be via the existing drive which has its junction with the B5299 Carlisle to Dalston Road.
- 3.3 The submitted layout plan shows the intention for the existing trees (including Scots Pine, Douglas Fir, Larch and Spruce) to be augmented by additional planting.
- 3.4 The application is accompanied by a Design and Access Statement, and a Tree Survey.

## **4. Summary of Representations**

- 4.1 This application has been advertised by the direct notification of three neighbouring properties and the posting of a Site Notice. In response, two representations of objection and twelve representations of support have been received together with a Petition of support containing sixteen signatories.
- 4.2 The representations of objection identifies the following issues:
  - 1. the access road is in urgent need of repair and should be repaired by the caravan site due to the increase in traffic which has developed over the last 10 years.
  - 2. increase in traffic past residential property.
  - 3. contrary to Policy EC15 and LE12 of the Local Plan.
  - 4. significant adverse impact on the adjacent Grade II\* Listed Building and its setting.
  - 5. negative impact upon adjacent business.
  - 6. validity of petition in support.
  - 7. insufficient weight given to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 4.3 The representations of support outlines the following issues:
1. residents of the park use local shops and public houses.
  2. good for local businesses.
  3. additional caravans would bring additional revenue into the village and surrounding area.
  4. the occupiers of the caravans use existing veterinary services for their pets.
  5. caravan site provides 5 star facilities.
  6. since staying at Dalston Hall Caravan Park have purchased vehicles from local dealers.
- 4.4 The petition has been signed by local businesses in and around Dalston which accompanied the application and has been recorded as such. The comments include:
1. Good for the community and area.
  2. If this brings more people into the community. This is good all round.
  3. Superb and good for local businesses.
  4. Likely to be beneficial for local businesses.
  5. Generates valuable income for the local economy.
- 4.5 The Local Ward Councillor requested that the application be considered by the Development Control Committee. The issues cited in his letters centre on:
1. impact of the proposal on the Grade II\* Listed Building.
  2. a plan which illustrates the growth of the caravan park and its relationship with Dalston Hall.

## **5. Summary of Consultation Responses**

Cumbria County Council - (Econ. Dir. Highways & Transportation): - the proposal will not have a material affect on existing highway conditions, therefore, there are no objections to the proposal;

Dalston Parish Council: - no comments;

Environment Agency (N Area (+ Waste Disp & Planning Liaison Team): - site benefits from a sewage discharge permit issued by the Environment Agency

(EA), the applicant has provided data to the EA, based on current occupancy rates that the existing sewage treatment plant has sufficient capacity to remain within the discharge limits. The site will need to record daily water usage to ensure that daily discharge rates remain within permit limits;

Cumbria Constabulary - North Area Community Safety Unit: - no observations or comments to offer in respect of the proposal;

Cumbria County Council - (Archaeological Services): - no objections and do not wish to make any comments or recommendations;

English Heritage - North West Region: - our specialist staff have considered the information received and do not wish to offer any comments on this occasion.

## **6. Officer's Report**

### **Assessment**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 6.2 The Development Plan for the purposes of the determination of this application is the Carlisle District Local Plan 2001-2016 from which Policies DP1, CP1, CP2, CP3, CP5, CP12, EC15, LE6, LE12 and T1 are of particular relevance.
- 6.3 The National Planning Policy Framework (NPPF), Planning Practice Guidance (March, 2014) and Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 (LBA) are also material planning considerations in the determination of this application. Paragraph 215 of the NPPF highlights that due weight should be given to the relevant policies in existing Plans according to their degree of consistency with the NPPF (the closer the policies in the Plan to the policies in the Framework, the greater the weight that may be given).
- 6.4 Section 66 of the LBA stipulates that special regard is given to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.
- 6.5 Furthermore, English Heritage has produced a document entitled 'The Setting of Heritage Assets' which was intended to be read in conjunction with the now cancelled Planning Policy Statement 5: Planning for the Historic Environment. Whilst some reference in the document is now out-of-date, English Heritage believes that this document still contains useful advice and case studies.
- 6.6 In the context of the foregoing it is considered that the proposal raises the following main planning issues regarding: the principle of development; the living conditions of neighbours; impact on a grade II\* Listed Building; impact on an ancient monument; disposal of foul drainage; highway safety; and the

social/economic benefits.

## **1. Whether The Principle Of Development Is Acceptable**

- 6.7 Paragraph 7 of the NPPF outlines that there are three dimensions to sustainable development: economic, social and environmental all of which give rise to the need for the planning system to perform a number of roles. The NPPF goes on to highlight that these roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.
- 6.8 Paragraph 14 of the NPPF highlights that "*there is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking*". This is further reiterated in paragraphs 25 and 28 which go on to say that the sequential approach should not be applied to applications for small scale rural offices or other small scale rural development; and that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should: support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings; promote the development and diversification of agricultural and other land-based rural businesses; support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.
- 6.9 The aforementioned advice is elaborated in Policies DP1 and EC15 of the Carlisle District Local Plan 2001-2016. Policy DP1 of the Local Plan seeks to promote sustainable development through concentrating development in the urban area then Key and Local Service Centres. Outside of these locations, proposals for new development are to be assessed against the need to be in the location specified or whether it is required to sustain existing businesses. Policy EC15 of the Local Plan recognises that proposals for the development of caravan sites are a valuable tourist facility; however, proposals have to demonstrate compliance with the criteria identified within the policy and are, likewise, not in conflict with any other relevant planning policies.
- 6.10 In light of the foregoing and in overall terms, the principle of an expansion to the existing caravan park is supported by policies both within the NPPF and the Local Plan; however, a more detailed analysis assessing whether the proposal complies with the policies of the NPPF together with the relevant policies of the Local Plan (2001-16) and the duty of Section 66 of the LBA will

be discussed below.

## **2. Impact Of The Proposal On The Living Conditions Of Neighbouring Residents**

- 6.11 Holly Lodge is sited at the entrance of the access road which serves the existing caravan site, Dalston Hall Golf Course and Dalston Hall Hotel. The occupier of Holly Lodge has raised issues in respect of the surface of the driveway and increase in traffic. The applicant has subsequently repaired the road surface. In respect of the increase in traffic, it is inevitable that there will be some increase in traffic using the access road. However, in the overall context of the existing scale of use of the existing caravan park (and irrespective of any decrease in membership and paying golfers to the golf course that may or may not arise) this increase is not considered to be of such a nature as to warrant the refusal of permission.
- 6.12 In comparison to the existing uses and relationship to neighbouring properties, it is considered that the proposal will not exacerbate any problems associated with noise and disturbance.
- 6.13 The occupiers of Dalston Hall Hotel have also raised objections to the proposal. A planning consultant acting on behalf of the occupiers of Dalston Hall has raised objections to the proposal with regard to the potential negative impact on their hotel business together with visual impacts but with specific regard to the setting of Dalston Hall as a grade II\* Listed Building (as opposed to the visual amenity of any residential properties) as well as maintaining that the proposal will have an adverse impact upon the landscape character of the surrounding area. The issues of the impact on the setting of a Listed Building and landscape character (i.e. the landscape impacts that relate to the characteristics of the landscape) will now be addressed.

## **3. Impact Of The Proposal On The Grade II\* Listed Building**

- 6.14 Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 highlights the statutory duties of Local Planning Authorities whilst exercising of their powers in respect of listed buildings. The aforementioned section states 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".*

- 6.15 Members, therefore, must give considerable importance and weight to the desirability of preserving the adjacent Dalston Hall Hotel, a Grade II\* listed building and its setting when assessing this application. If the harm is found to be less than substantial, then any assessment should not ignore the overarching statutory duty imposed by section 66(1).
- 6.16 Paragraph 133 of the NPPF states that Local Planning Authorities should

refuse consent for any development which would lead to substantial harm to or total loss of significance of designated heritage assets. However, in paragraph 134, the NPPF goes on to say 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, including securing its optimum viable use.

- 6.17 Policy LE12 of the Carlisle District Local Plan 2001-2016 also indicates that new development which adversely affects a listed building or its setting will not be permitted.
- 6.18 The planning consultant acting on behalf of the operator of Dalston Hall Hotel has also made reference to a Judicial Review decision ( dated 08/02/2013) involving East Northamptonshire District Council, and an appeal decision (ref. no. APP/G0908/A/13/2191503) relating to a site near Wigton, Cumbria – see attached copies. In the above Judicial Review decision the judge stated that:

*“...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.” (para. 39)*

- 6.19 In light of the foregoing it is considered that Members need to have cognizance of: a) the significance of Dalston Hall Hotel and the contribution made to that significance by its setting; and then assess b) the effect of the proposal on the setting of Dalston Hall Hotel (inclusive of its significance and on the appreciation of that significance). In the case of the former, the more significant the heritage asset, the greater should be the presumption in favour of its conservation. For the latter, the Inspector involved in the Wigton appeal identified that different elements of the setting make different contributions to its significance as a heritage asset, namely: the building's immediate context; the area of countryside that can be seen from the building; and the landscape in which the building is set.

**a) the significance of the heritage asset and the contribution made by its setting**

- 6.20 The application site is located approximately 70 metres north east of the north eastern corner of Dalston Hall Hotel. As previously outlined, Dalston Hall Hotel is a Grade II\* Listed Building. There are over 374,000 listed buildings within England which are categorised as Grade I, Grade II\* and Grade II. Grade I are of exceptional interest, sometimes considered to be internationally important, only 2.5% of Listed Buildings are Grade I. Grade II\* Buildings, within which Dalston Hall Hotel falls, are particularly important buildings of more than special interest, 5.5% of listed buildings are Grade II\*. The final tier of Listed Buildings are Grade II buildings which are nationally important and of special interest.
- 6.21 Dalston Hall Hotel was listed by English Heritage as a Grade II\* Listed Building in 1984. The listing details are as follows:

*"Fortified house now hotel. Mid or late C15, dated by inscription below parapet: JOHN DALLSTON ELSABET MI WYF MAD YS BYLDYNG. West wing c1556 for Sir John Dalston, with central block of c1620; late C17 alterations and further extensions, dated 1899 on lead rainwater heads, by C.J Ferguson for E.W Stead. Large blocks of red and calciferous sandstone. Flat lead roofs on towers; graduated greenslate roofs on wings, ashlar chimney stacks. 3-storey C15 tower to right; 4-storey C16 tower to left, linked together by C16 wings and C19 extension to rear. Early tower has extremely thick walls on chamfered plinth with string courses and battlemented parapet. Angel stair turret projecting above parapet has 4 C15 carved shields of arms of the Kirkbride and Dalston families. 2-light stone mullioned windows with rounded headed in round arch. Interior: stone vaulted basement, now library. Newel Staircase for full 3 storeys to roof. Ground floor inner yett of iron is C15. Bedroom above has mural recess: former fireplace cut through to form bathroom. Wing to left has plank door in roll-moulded architrave. 2- and 3-light stone mullioned windows in roll-moulded architraves. Roll-moulded cornice has cannon-like water spouts. Battlemented tower to left with similar 2- and 3-light windows. Side wall to right has corbelled-out semicircular stair turret from first floor to roof. C19 extensions have stone mullioned windows imitating the earlier work. C20 extension to extreme right is not of interest. Interior of C16 wing was extensively altered by C J Ferguson in Arts and Crafts style; banqueting hall inglenook with firehood of pewter dated 1900 with initials E.W.S. Ground floor room on extreme left has fireplace with William de Morgan tiles".*

- 6.22 The importance of Dalston Hall as an example of an historic former fortified building is further referenced in "The Medieval Fortified Buildings of Cumbria" (Perriam and Robinson, 1998).
- 6.23 Dalston Hall is a visually impressive and historic Grade II\* Listed Building that has part of its landscaped garden surviving but the re-alignment of the drive altered much of this. The Hall has a woodland setting although the topography of the surrounding land is undulating resulting in the Hall and associated gardens nestling into the landscape such that the ground and first floor views from the building are predominantly to the east and towards Dalston. The views from the fifteenth and sixteenth century towers are naturally more extensive although those towards the River Caldew are obscured by the existing trees and topography. When viewing the property there is an overriding sense that the contribution made by the setting has changed over the years from its origins as a fortified house, with the consequent need to view all surroundings, to the work carried out in the nineteenth century with the aspect of the landscaped garden achieving a greater significance.

**b) the effect of the proposed development on the setting of Dalston Hall Hotel including landscape**

- 6.24 Dalston Hall Hotel has an extant Full Planning Permission and Listed Building Consent for a first floor extension and ground floor conversion to form eight rooms in the east wing and the erection of a two storey lodge to the south of



the site (planning references 13/0400 and 13/0401 respectively). Although these permissions have not been implemented they are material planning consideration when determining this application. Ground works are currently ongoing in respect of a marquee to the south of Dalston Hall Hotel (application reference 14/0101).

- 6.25 As has already been explained, English Heritage has produced a document entitled 'The Setting of Heritage Assets' (TSHA) which, although out-of-date, they still believe includes useful advice and case studies.
- 6.26 The TSHA document provides a definition of the setting of a heritage asset as *"the surroundings in which [the asset] is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive and negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral"*.
- 6.27 The NPPF reiterates the importance of a setting of a listed building by outlining that its setting should be taken into account when considering the impact of a proposal on a heritage asset (paragraph 132). However, in paragraph 134, the NPPF goes on to say 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.
- 6.28 Planning Practice Guidance (March, 2014) explains that when assessing any application for development which may affect the setting of a heritage asset, authorities may also need to consider the fact that developments which materially detract the asset's significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation. In relation to assessing harm the Guidance confirms that such a judgement is for the decision taker having regard to the circumstances of the case and the policy in the NPPF. In general terms it is the degree of harm to the asset's significance rather than the scale of the development that needs to be assessed. The harm may arise from works to the asset or from development within its setting.
- 6.29 Section 66 (1) requires that development proposals consider not only the potential impact of any proposal on a listed building but also on its setting. Considerable importance and weight needs to be given to the desirability of preserving Dalston Hall Hotel and its setting when assessing this application. If the harm is found to be less than substantial, then any assessment should not ignore the overarching statutory duty imposed by section 66(1).
- 6.30 When considering the immediate setting of Dalston Hall Hotel, the topography of the surrounding area is such that the property is located at a lower level than that of the application site. The agent acting on behalf of the proprietor of Dalston Hall Hotel has identified that, in particular, any assessment needs to include: the eastern end of the car park; within the proposed extension to the caravan park looking back towards the Hall itself; within the Hall; the planned extensions approved under applications 13/0400;

and from the roof of the Tower. During a site visit on the 2nd May, the proprietor of the Hall Hotel explained that the issue related more to the larger fifteenth century tower (as opposed to the smaller sixteenth century tower); was not necessarily an issue from within the Hall even at first floor level; and related more to the views experienced by the public using the golf course.

- 6.31 When within the grounds of Dalston Hall itself (excluding the eastern end of the car park) there are no views of the caravan park due to the lower ground level, the existing boundary treatments and mature landscaping. From the eastern end of the car park, which also provides an alternative route to the approved marquee, there are views of the caravan park and the site of the proposed extension. The proposal will therefore cause some harm on this aspect as a result but this is not considered to be substantial. Nonetheless, the area in question is already the subject of some planting and this can be readily enhanced and extended such that it carries on along the western boundary up to an existing timber playhouse/shed to mitigate any adverse impact such that it would be very limited and short term.
- 6.32 Room 6 (the current honeymoon suite) of the Hotel has two secondary windows facing the direction of the caravan park and adjoins the staircase leading to the fifteenth century tower. It is considered that the proposal will not harm the views from room 6 because of the depth of the walls, the size and position of the windows and the existing planting. In the case of the works approved under 13/0400 and 13/0401 the approved plans show a first floor bedroom with a window facing the caravan park, however, the view from such will be obscured by the existing trees. Otherwise the elevation facing the caravan park is a blank gable end. In respect of the views from the fifteenth and sixteenth century towers and their associated battlements, access and viewing by the public is restricted not only physically but also because the proprietor insists on a member of staff being present. However, it needs to be acknowledged that the significance of such a heritage asset is not necessarily dependent upon their being an ability to experience the setting in question. From both towers, to varying degrees, there are direct views of the existing caravan park and the site of the proposed extension with particular regard to the fifteenth century tower. The current proposal does not affect the existing wood, nor the remaining views such as the landscaped garden and views towards Dalston. In the backdrop of the existing and already approved extension to the caravan park, the current proposal is limited. However it is also recognised that any impact (particularly through the linear nature of the layout) can be further minimised by the undertaking of additional planting between particular stances/pitches such as at 16, 14/15, 8/9, and 7/8. On this basis it is considered that the proposal will cause some harm but at a level that is considered to be short term and relatively modest.
- 6.33 In respect of the wider context of the setting of Dalston Hall Hotel, although sections of the caravan park are visible from the B5299 when travelling from Carlisle towards Dalston, Dalston Hall Hotel and its grounds together with the application site are screened by mature trees and hedgerows. Public Footpath 114018 follows the railway line located approximately 280 metres to the east of Dalston Hall; however, any views of Dalston Hall are again

restricted due to the topography of the land and existing landscaping. Views from the golf course and the caravan park are already constrained by existing planting and a 2.8 metre high brick wall although the matters discussed and conclusions reached in paragraphs 6.31 and 6.32 above are pertinent.

- 6.34 In summary, Dalston Hall is a Grade II\* Listed Building that has a woodland setting although the topography of the surrounding land is undulating resulting in the property with its associated gardens nestling into the landscape. There is an overriding sense that the contribution made by the setting has changed over the years from its origins as a fortified house, with the consequent need to view all surroundings, to the work carried out in the nineteenth century with the aspect of the landscaped garden and the views towards Dalston latterly appearing to have a greater significance. However, the importance of its setting throughout the history of the building should be given equal significance. When considering the degree to which the proposed changes enhance or detract from that significance, and the ability to appreciate that asset, the current proposal does neither alter the wood nor affect the views of the landscaped garden and towards Dalston. In the case of the eastern end of the car park, the two towers and from the golf course/caravan park the proposal will cause some harm but at a level that is considered to be short term and relatively modest based on the undertaking of additional landscaping.
- 6.35 Having considered the impact of the proposal on Dalston Hall's immediate context and the area of countryside that can be seen from the building, it is also necessary to consider the landscape in which the building is set.
- 6.36 The site falls within Type 5a Ridge and Valley and is neighboured by Type 5b Low Farmland (Insert 1 of the "Cumbria Landscape Character Guidance and Toolkit" 2011) (CLCG). The Ridge and Valley sub type is characterised by a series of ridges and valleys that rises gently towards the limestone fringes of the Lakeland Fells. The key characteristics include well managed regular shaped medium to large pasture fields; hedge bound fields interspersed with native woodland, tree clumps and plantations; scattered farms and linear villages; and that large scale structures are generally scarce.
- 6.37 In consideration of the proposal, the application has been submitted against the current denuded backdrop of the existing golf course and caravans mitigated by the existing belts of mature landscaping. In such a context it is evident that the proposal will not be detached from the existing caravan park and the location is not considered to be highly visible. Furthermore, the scheme proposes the retention of existing landscaping together with additional planting which, if Members consider appropriate, can be enhanced by further landscaping works. Accordingly, it is considered that any impact can be satisfactorily mitigated and enhanced through additional landscaping (which can be undertaken to reflect the existing characteristics of the Ridge and Valley sub type) together with the imposition of relevant conditions regarding the external colour of all new caravans, and external lighting.
- 6.38 English Heritage do not wish to offer any comments; however, recommends that the application should be determined in accordance with national and

local policy guidance, and on the basis of the City Council's specialist conservation advice.

- 6.39 The City Council's Conservation Officer has commented that the application would *"have less than significant harm on the Hall but this should be given weight ...a greater number of units on the site could be acceptable subject to adequate landscaping ..."*.

#### **4. Impact Of The Proposal On The Ancient Monument**

- 6.40 The remains of Bishop's Dyke, a medieval earthwork, is located to the north of the application site which is a legally protected as Scheduled Monument. The Design and Access Statement, submitted as part of the application, acknowledges the presence of the Ancient Monument and outlines that the Ancient Monument would not be affected by the development. Cumbria County Council's Historic Environment Officer has been consulted and has not raised any objections to the proposal.

#### **5. Method Of Disposal Of Foul Water**

- 6.41 Policy CP12 of the Local Plan seeks to protect the quality of ground and surface waters against the risk of pollution from the inadequate provision of foul water drainage systems. The submitted drawings and documents submitted as part of the application outline that foul drainage would go to an existing package sewage treatment plant serving the caravan site.
- 6.42 The Environment Agency has been consulted and has confirmed that it has no objections to the proposal as the relevant discharge licence has been obtained by the applicant. Furthermore, the Agency are satisfied that based on the current occupancy rates the existing treatment plant has sufficient treatment capacity to remain within discharge limits. Accordingly, the proposed method for the disposal of foul drainage is considered acceptable.

#### **6. Impact Of The Proposal On Highway Safety**

- 6.43 It is inevitable that there would be some increase in traffic to the caravan park as a result of the proposal. Based on the scale of the proposal, Cumbria County Council, as Highways Authority, has not raised any objections to the proposal. Accordingly, it is considered that the application would not have such an impact on highway safety as to warrant a refusal of permission.

#### **7. Benefits Of The Application**

- 6.44 The submitted application form identifies that the site currently provides employment to four full time workers and a single part-time worker. The comments from interested parties have also highlighted the wider benefits to the local community in having such a facility.

## **8. Other Matters**

- 6.45 Objections had been raised by the occupier of a neighbouring property as to the poor condition of the access track serving both Dalston Hall Caravan Park and Dalston Hall. Although a civil matter, the applicant has subsequently confirmed that the access driveway has been repaired at his expense.

### **Conclusion**

- 6.46 In overall terms, the principle of development is considered to be acceptable. It is considered that the proposal will not have a detrimental impact on the Bishop's Dyke Ancient Monument; and not lead to any demonstrable harm to the living conditions of the occupiers of any neighbouring properties, nor have a detrimental impact on highway safety. The proposed method for the disposal of foul water is acceptable.
- 6.47 When considering the impact of the proposal on Dalston Hall it is appreciated that it is a Grade II\* Listed Building within an undulating woodland setting resulting in the property with its associated gardens nestling into the landscape. There is an overriding sense that the contribution made by the setting has changed over the years from its origins as a fortified house, with the consequent need to view all surroundings, to the work carried out in the nineteenth century with the aspect of the landscaped garden and the views towards Dalston latterly appearing now to have a greater significance. However, the importance of its setting throughout the history of the building should be given equal significance. When considering the degree to which the proposed changes enhance or detract from that significance, and the ability to appreciate that asset, the current proposal does neither alter the wood nor affect the views of the landscaped garden and towards Dalston. In the case of the eastern end of the car park, the two towers and from the golf course the proposal will cause some harm but at a level that is considered to be short term and relatively modest based on the undertaking of additional landscaping. Additionally, it is considered that any impact on the landscape character can be satisfactorily mitigated and enhanced through additional landscaping (which can be undertaken to reflect the existing characteristics of the Ridge and Valley sub type) together with the imposition of relevant conditions regarding the external colour of all new caravans, and external lighting.
- 6.48 It is recognised and understood that under Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 considerable importance and weight still needs to be given to the desirability of preserving Dalston Hall Hotel and its setting even if the harm is found to be less than substantial. On balance, and having attributed special weight to the desirability of preserving the setting of Dalston Hall, the recommendation is for approval subject to the imposition of relevant conditions.

## **7. Planning History**

- 7.1 The site and adjacent fields have a long and varied history through its use as

a caravan site and golf course.

- 7.2 In 2013, under application numbers 13/0440 and 13/0401, planning permission and Listed Building Consent were renewed for a first floor extension and ground floor conversion to form 8 rooms in the east wing and erection of a two storey lodge comprising 12 rooms at Dalston Hall.
- 7.3 Dalston Hall is also the subject of a current application, reference number 14/0101, for the erection of a marquee.

## **8. Recommendation: Grant Permission**

1. The development shall be begun not later than the expiration of 3 years beginning with the date of the grant of this permission.

**Reason:** In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 ( as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The approved documents for this Planning Permission comprise:

1. the submitted planning application form received 18th February 2014;
2. the Design and Access Statement received 18th February 2014;
3. the Tree Survey received 27th February 2014;
4. the site and block plan (drg. no. GP.3);
5. the Notice of Decision; and
6. any such variation as may subsequently be approved in writing by the Local Planning Authority.

**Reason:** To define the permission.

3. The static caravans shall only be occupied between the 1st March and the 31st January the following year.

**Reason:** To ensure that the approved caravans are not used for unauthorised permanent residential occupation in accordance with the objectives of Policy EC15 of the Carlisle District Local Plan 2001-2016.

4. The static caravans shall be used solely for holiday use and shall not be occupied as permanent accommodation.

**Reason:** To ensure that the approved caravans are not used for unauthorised permanent residential occupation in accordance with the objectives of Policy EC15 of the Carlisle District Local Plan 2001-2016.

5. The static caravans which occupy the stances hereby approved shall be finished in Acadia Green or Cedar Brown and remain so unless agreed in

writing by the Local Planning Authority.

**Reason:** To safeguard the landscape character of the area in accordance with Policy CP1 of the Carlisle District Local Plan 2001-2016.

6. No caravan shall be occupied until the foul drainage system for each caravans occupying the stances hereby approved is connected to the package sewage treatment plant as indicated on Drawing Number GP.3.

**Reason:** To ensure that adequate foul drainage facilities are available in accordance with Policy CP12 of the Carlisle District Local Plan 2001-2016.

7. Notwithstanding any description of landscaping details in the application trees and shrubs shall be planted in accordance with a scheme to be agreed with the Local Planning Authority before work commences. The scheme shall include the use of native species and shall include particulars of the proposed heights and planting densities and shall be retained and maintained thereafter.

**Reason:** To ensure that a satisfactory landscaping scheme is prepared in accordance with Policy CP5 of the Carlisle District Local Plan 2001-2016.

8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site or the completion of the development, whichever is the sooner, and maintained thereafter; and any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

**Reason:** To ensure that a satisfactory landscaping scheme is implemented and that it fulfils the objectives of Policy CP5 of the Carlisle District Local Plan 2001-2016.

9. Before any development is commenced on the site, including site works of any description, a protective fence in accordance with Fig. 2 in B.S. 5837: 2005 shall be erected around the trees and hedges to be retained at the extent of the Root Protection Area as calculated using the formula set out in B.S. 5837. Within the areas fenced off no fires should be lit, the existing ground level shall be neither raised nor lowered, and no materials, temporary buildings or surplus soil of any kind shall be placed or stored thereon. The fence shall thereafter be retained at all times during construction works on the site.

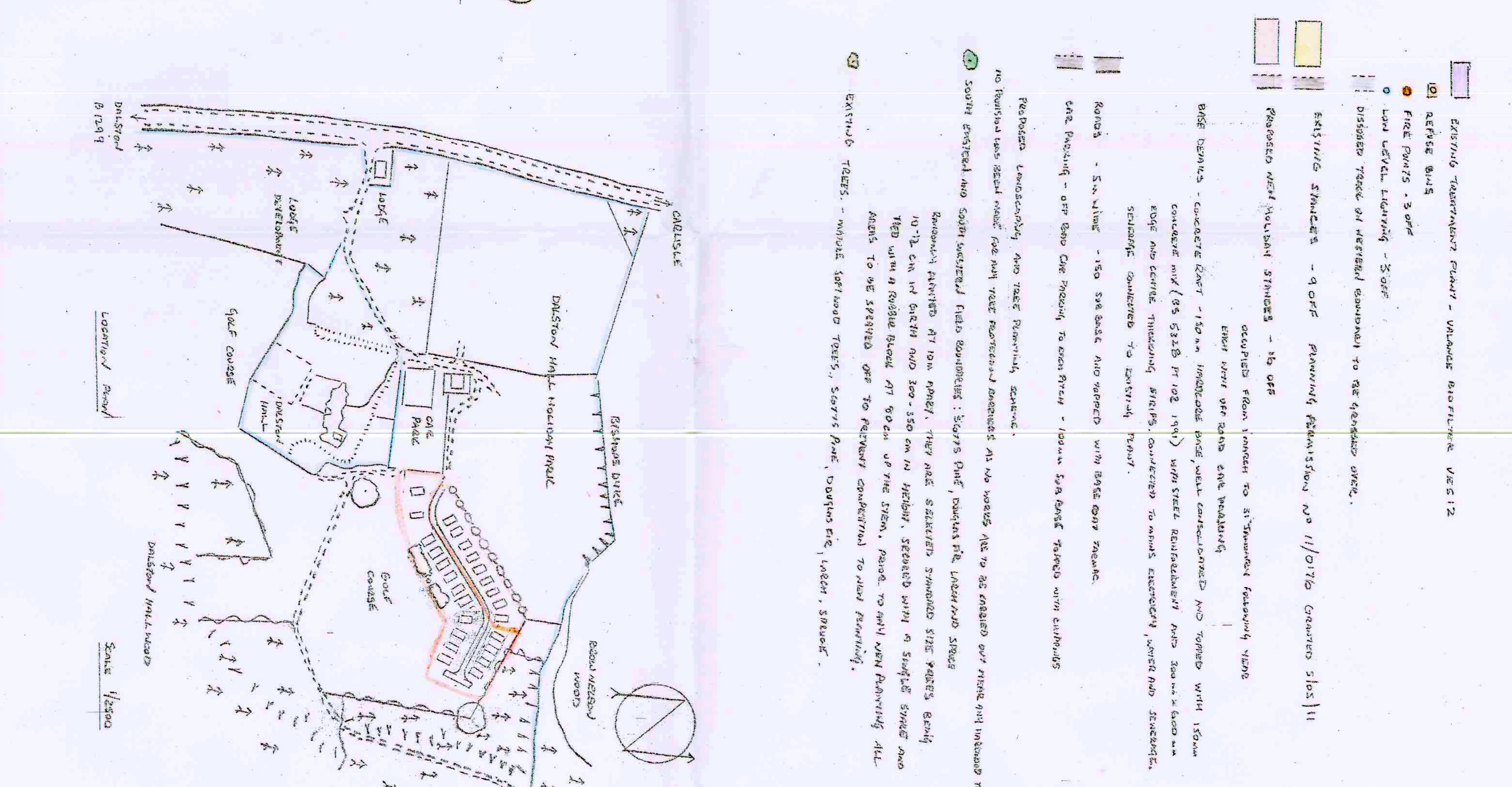
**Reason:** In order to ensure that adequate protection is afforded to all trees/hedges to be retained on site in support of Policies CP3 and CP5 of the Carlisle District Local Plan 2001-2016.

10. Prior to installation details of any proposed means of external lighting to serve the extension to the existing caravan park hereby permitted shall be submitted to and approved in writing beforehand by the Local Planning Authority.

**Reason:** To safeguard the character of the area.

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- EXISTING TREEMOUNT FARMY - UNLAWFUL BIOTIC WASTE
- 101 REFUSE BINS
- FIRE POINTS - 3 OFF
- LOW LEVEL LIGHTING - 3 OFF
- DISPOSED TRUCKS OF WASTE MATERIAL TO BE REMOVED ONCE.
- EXISTING SHEDS - 9 OFF PLANNING PERMISSION NO 11/0176 GRANTER 310/11
- PROPOSED WEST YARD SHEDS - 16 OFF
- occupied from 10m to 31m from roadway
- EXISTING FROM 10m TO 31m FROM ROADWAY
- BRIDGE DETAILS - CONCRETE RAMP - 150m IN LENGTH, 10m WIDE, 10m HIGH AND FORMED WITH 150mm CONCRETE MIX (95.5:25.5 P:102.1:97.9) WITH STEEL REINFORCEMENT AND 200mm x 200mm RIGID AND CURVED THRESHOLD STRIPS, CONNECTED TO MAINS ELECTRICITY, WATER AND SEWERAGE, SCHEDULED CONNECTED TO EXISTING PAVEMENT.
- Roads - 5m wide - 150m x 2m and 100m x 2m with 100mm x 200mm
- EXIST. PAVING - 0.75m x 0.75m TO EXISTING - 100mm x 200mm x 200mm
- PROPOSED LANDSCAPING AND TREE PLANTING, SCHEMATIC.
- NO TREES TO BE REMOVED FOR THE PROPOSED DEVELOPMENT AS NO TREES ARE TO BE REMOVED FOR THE PROPOSED DEVELOPMENT.
- SOUTH EASTERN AND SOUTH WESTERN FIELDS BOUNDARIES: STAFFS DIRT, DUNE FILL, SAND AND STONE
- REMOVED AT 10m FROM THE STAFFS DIRT, DUNE FILL, SAND AND STONE BOUNDARIES, THEY ARE SELECTED STANDS THE STAFFS BOUNDARY TO 12cm IN HEIGHT AND 100-150cm IN HEIGHT, SEPARATED WITH A SINGLE STAKE AND TIED WITH A RUBBER BAND AT 90cm UP THE STEM. STAKE TO ONLY WHEN PLANNING ALL RIGHTS TO BE SPANNED OFF TO PREVENT COMPETITION TO ALSO REMOVED.
- EXISTING TREES - WHITE SOFTWOOD TREES, STAFFS DIRT, DUNE FILL, SAND AND STONE.

This drawing is the property of Ground Beams Limited & may not be used for any purpose or shown to any third party without their permission.

It is essential that all dowel sockets are prepared to the dimensions shown on this drawing.

**Proposal**  
 CHANGE OF USE OF GOLF PRACTICE AREA TO PROVIDE EXTENSION TO EXISTING CARAVAN PARK  
 TO FORM 16 ADDITIONAL SITES FOR HOLIDAY USE.

**Client**  
 ERMW ENTERPRISES LTD  
 LYMWOOD LODGE, DALSTON HALL  
 DALSTON, CHELSEA, CV5 7SX

Drawn	P. S. H.
Checked	P. S. H.
Date	FEBRUARY 2006
Enquiry No.	
Scale	1/500

diag no. G.P. 3

**GB**

Ground Beams Limited  
 Ripon  
 North Yorkshire



Neutral Citation Number: [2014] EWCA Civ 137

Case No: C1/2013/0843

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**THE HON. MRS JUSTICE LANG**  
**CO/4231/2012**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18/02/2014

**Before:**

**LORD JUSTICE MAURICE KAY**  
**VICE PRESIDENT OF THE COURT OF APPEAL, CIVIL DIVISION**  
**LORD JUSTICE SULLIVAN**  
and  
**LADY JUSTICE RAFFERTY**

-----  
**Between:**

<b>BARNWELL MANOR WIND ENERGY LIMITED</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>(1) EAST NORTHAMPTONSHIRE DISTRICT COUNCIL</b>	<b><u>Respondents</u></b>
<b>(2) ENGLISH HERITAGE</b>	
<b>(3) NATIONAL TRUST</b>	
<b>(4) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT</b>	

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**Gordon Nardell QC and Justine Thornton (instructed by Eversheds LLP) for the Appellant**  
**Morag Ellis QC and Robin Green (instructed by Sharpe Pritchard) for the First, Second and**  
**Third Respondents**

**The Fourth Respondent did not appear and was not represented**

Hearing date: 23<sup>rd</sup> January 2014  
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**Approved Judgment**

## **Lord Justice Sullivan:**

### **Introduction**

1. This is an appeal against the order dated 11<sup>th</sup> March 2013 of Lang J quashing the decision dated 12<sup>th</sup> March 2012 of a Planning Inspector appointed by the Secretary of State granting planning permission for a four-turbine wind farm on land north of Catshead Woods, Sudborough, Northamptonshire. The background to the appeal is set out in Lang J's judgment: [2013] EWHC 473 (Admin).

### **Section 66**

2. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings 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."

### **Planning Policy**

3. When the permission was granted the Government's planning policies on the conservation of the historic environment were contained in Planning Policy Statement 5 (PPS5). In PPS5 those parts of the historic environment that have significance because of their historic, archaeological, architectural or artistic interest are called heritage assets. Listed buildings, Scheduled Ancient Monuments and Registered Parks and Gardens are called "designated heritage assets." Guidance to help practitioners implement the policies in PPS5 was contained in "PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide" ("the Practice Guide"). For present purposes, Policies HE9 and HE10 in PPS5 are of particular relevance. Policy HE9.1 advised that:

"There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be.... Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, including scheduled monuments ...grade I and II\* listed buildings and grade I and II\* registered parks and gardens....should be wholly exceptional."

Policy HE9.4 advised that:

"Where a proposal has a harmful impact on the significance of a designated heritage asset which is less than substantial harm, in all cases local planning authorities should:

- (i) weigh the public benefit of the proposal (for example, that it helps to secure the optimum viable use of the heritage asset in the interests of its long-term conservation) against the harm; and
- (ii) recognise that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.”

Policy HE10.1 advised decision-makers that when considering applications for development that do not preserve those elements of the setting of a heritage asset, they:

“should weigh any such harm against the wider benefits of the application. The greater the negative impact on the significance of the heritage asset, the greater the benefits that will be needed to justify approval.”

### **The Inspector’s decision**

4. The Inspector concluded that the wind farm would fall within and affect the setting of a wide range of heritage assets [22]<sup>1</sup>. For the purposes of this appeal the parties’ submissions largely focussed on one of the most significant of those assets: a site owned by the National Trust, Lyveden New Bield. Lyveden New Bield is covered by a range of heritage designations: Grade I listed building, inclusion in the Register of Parks and Gardens of Special Historic Interest at Grade I, and Scheduled Ancient Monument [44].

5. It was common ground between the parties at the inquiry that the group of designated heritage assets at Lyveden New Bield was probably the finest surviving example of an Elizabethan Garden, and that as a group the heritage asset at Lyveden New Bield had a cultural value of national, if not international significance. The Inspector agreed, and found that:

“...this group of designated heritage assets has archaeological, architectural, artistic and historic significance of the highest magnitude.” [45]

6. The closest turbine in the wind farm site (following the deletion of one turbine) to Lyveden New Bield was around 1.3 km from the boundary of the Registered Park and 1.7 km from the New Bield itself. The Inspector found that:

“The wind turbines proposed would be visible from all around the site, to varying degrees, because of the presence of trees. Their visible presence would have a clear influence on the surroundings in which the heritage assets are experienced and

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<sup>1</sup> [ ] refers to paragraph numbers in the Inspector’s decision.

as such they would fall within, and affect, the setting of the group.” [46]

This conclusion led the Inspector to identify the central question, as follows:

“Bearing in mind PPS5 Policy HE7, the central question is the extent to which that visible presence would affect the significance of the heritage assets concerned.” [46]

7. The Inspector answered that question in relation to Lyveden New Bield in paragraphs 47-51 of his decision letter.

“47. While records of Sir Thomas Tresham’s intentions for the site are relatively, and unusually, copious, it is not altogether clear to what extent the gardens and the garden lodge were completed and whether the designer considered views out of the garden to be of any particular significance. As a consequence, notwithstanding planting programmes that the National Trust have undertaken in recent times, the experience of Lyveden New Bield as a place, and as a planned landscape, with earthworks, moats and buildings within it, today, requires imagination and interpretation.

48. At the times of my visits, there were limited numbers of visitors and few vehicles entering and leaving the site. I can imagine that at busy times, the situation might be somewhat different but the relative absence of man-made features in views across and out of the gardens compartments, from the prospect mounds especially, and from within the garden lodge, give the place a sense of isolation that makes the use of one’s imagination to interpret Sir Thomas Tresham’s design intentions somewhat easier.

49. The visible, and sometimes moving, presence of the proposed wind turbine array would introduce a man-made feature, of significant scale, into the experience of the place. The array would act as a distraction that would make it more difficult to understand the place, and the intentions underpinning its design. That would cause harm to the setting of the group of designated heritage assets within it.

50. However, while the array would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the moated orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres, the turbines would not be so close, or fill the field of view to the extent, that they would dominate the

outlook from the site. Moreover, the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter). Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.

51. On that basis, the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield and Lyveden Old Bield, or their relationship to each other. As a consequence, the effect on the setting of these designated heritage assets, while clearly detrimental, would not reach the level of substantial harm.”

8. The Inspector carried out “The Balancing Exercise” in paragraphs 85 and 86 of his decision letter.

“85. The proposal would harm the setting of a number of designated heritage assets. However, the harm would in all cases be less than substantial and reduced by its temporary nature and reversibility. The proposal would also cause harm to the landscape but this would be ameliorated by a number of factors. Read in isolation though, all this means that the proposal would fail to accord with [conservation policies in the East Midlands Regional Plan (EMRP)]. On the other hand, having regard to advice in PPS22, the benefits that would accrue from the wind farm in the 25 year period of its operation attract significant weight in favour of the proposal. The 10 MW that it could provide would contribute towards the 2020 regional target for renewable energy, as required by EMRP Policy 40 and Appendix 5, and the wider UK national requirement.

86. PPS5 Policies HE9.4 and HE10.1 require the identified harm to the setting of designated heritage assets to be balanced against the benefits that the proposal would provide. Application of the development plan as a whole would also require that harm, and the harm to the landscape, to be weighed against the benefits. Key principle (i) of PPS22 says that renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic, and social impacts can be addressed satisfactorily. I take that as a clear expression 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. In my view, the significant benefits of the proposal in terms of the energy it would produce from a renewable source outweigh the less than substantial harm it would cause to the setting of designated heritage assets and the wider landscape.”

### **Lang J’s Judgment**

9. Before Lang J the First, Second and Third Respondents (“the Respondents”) challenged the Inspector’s decision on three grounds. In summary, they submitted that the Inspector had failed to:

- (1) have special regard to the desirability of preserving the settings of listed buildings, including Lyveden New Bield;
- (2) correctly interpret and apply the policies in PPS5; and
- (3) give adequate reasons for his decision.

The Secretary of State, the Fourth Respondent, had conceded prior to the hearing that the Inspector’s decision should be quashed on ground (3), and took no part in the proceedings before Lang J and in this Court.

10. Lang J concluded that all three grounds of challenge were made out. [72]<sup>2</sup> In respect of ground (1) she concluded that:

“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 judgment for the planning authority” [39]

Applying that interpretation of section 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 proposal as if those two factors were of equal importance. Indeed, he downplayed “the desirability of preserving the setting” by

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<sup>2</sup> [ ] refers to paragraph numbers in the judgment.

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.” [46]

11. In respect of ground (2) Lang J concluded that the policy guidance in PPS5 and the Practice Guide required the Inspector to assess the contribution that the setting made to the significance of the heritage assets, including Lyveden New Bield, and the effect of the proposed wind turbines on both the significance of the heritage asset and the ability to appreciate that significance. Having analysed the Inspector’s decision, she found that the Inspector’s assessment had been too narrow. He had failed to assess the contribution that the setting of Lyveden New Bield made to its significance as a heritage asset and the extent to which the wind turbines would enhance or detract from that significance, and had wrongly limited his assessment to one factor: the ability of the public to understand the asset based on the ability of “the reasonable observer” to distinguish between the “modern addition” to the landscape and the “historic landscape.” [55] - [65]
12. In respect of ground (3) Lang J found that the question whether Sir Thomas Tresham intended that the views from the garden and the garden lodge should be of significance was a controversial and important issue at the inquiry which the Inspector should have resolved before proceeding to assess the level of harm.[68] However, the Inspector’s reasoning on this issue was unclear. Having said in paragraph 47 of his decision that it was “not altogether clear ...whether the designer considered views out of the garden to be of any significance”, he had concluded in paragraph 50 that “the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter).” It was not clear whether this was a conclusion that there were no planned views (as submitted by the Appellant) or a conclusion that there were such views but the turbine array would not intrude into them. [70] – [71].

### **The Grounds of Appeal**

13. On behalf of the Appellant, Mr. Nardell QC challenged Lang J’s conclusions in respect of all three grounds. At the forefront of his appeal was the submission 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 judgment for the decision-maker.

14. Turning to the policy ground, he submitted that Lang J had erred by taking an over-rigid approach to PPS5 and the Practice Guide which were not intended to be prescriptive. Given the way in which those objecting to the proposed wind farm had put their case at the inquiry, the Inspector had been entitled to focus on the extent to which the presence of the turbines in views to and from the listed buildings, including Lyveden New Bield, would affect the ability of the public to appreciate the heritage assets.
15. In response to the reasons ground, he submitted that the question whether any significant view from the lodge or garden at Lyveden New Bield was planned or intended was a subsidiary, and not a “principal important controversial”, issue. In any event, he submitted that on a natural reading of paragraph 50 of the decision letter the Inspector had simply found that the turbines would not intrude into such significant views, if any, as were obviously planned or intended, so it had been unnecessary for him to resolve the issue that he had left open in paragraph 47 of the decision.

## **Discussion**

### Ground 1

16. What was Parliament’s intention in imposing both the section 66 duty and the parallel duty under section 72(1) of the Listed Buildings 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. 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] 2 AC 141, per Lord Bridge at page 150.
17. 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 weight 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?
18. Lang J analysed the authorities in paragraphs [34] – [39] of her judgment. In chronological order they are: The Bath Society v Secretary of State for the Environment [1991] 1 WLR 1303; South Lakeland (see paragraph 16 above); Heatherington (UK) Ltd. v Secretary of State for the Environment (1995) 69 P & CR 374; and Tesco Stores Ltd. v Secretary of State for the Environment [1995] 1 WLR 759. Bath and South Lakeland were concerned with (what is now) the duty under

section 72. Heatherington is the only case in which the section 66 duty was considered. Tesco was not a section 66 or section 72 case, it was concerned with the duty to have regard to “other material considerations” under section 70(2) of the Town and Country Planning Act 1990 (“the Planning Act”).

19. When summarising his conclusions in Bath about the proper approach which should be adopted to an application for planning permission in a conservation area, Glidewell LJ distinguished between the general duty under (what is now) section 70(2) of the Planning Act, and the duty under (what is now) section 72(1) of the Listed Buildings Act. Within a conservation area the decision-maker has two statutory duties to perform, but the requirement in section 72(1) to pay “special attention” should be the first consideration for the decision-maker (p. 1318 F-H). Glidewell LJ continued:

“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 nor 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.”

20. In South Lakeland the issue was whether the concept of “preserving” in what is now section 72(1) meant “positively preserving” or merely doing no harm. The House of Lords concluded that the latter interpretation was correct, but 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.”

21. In Heatherington, the principal issue was the interrelationship between the duty imposed by section 66(1) and the newly imposed duty under section 54A of the Planning Act (since repealed and replaced by the duty under section 38(6) of the Planning and Compulsory Purchase Act 2004). However, Mr. David Keene QC (as he then was), when referring to the section 66(1) duty, applied Glidewell LJ's dicta in the Bath case (above), and said that the statutory objective "remains one to which considerable weight should be attached" (p. 383).
22. Mr. Nardell submitted, correctly, that the Inspector's error in the Bath case was that he had failed to carry out the necessary balancing exercise. In the present case the Inspector had expressly carried out the balancing exercise, and decided that the advantages of the proposed wind farm outweighed the less than substantial harm to the setting of the heritage assets. Mr. Nardell submitted that there was nothing in Glidewell LJ's judgment which supported the proposition that the Court could go behind the Inspector's conclusion. I accept that (subject to grounds 2 and 3, see paragraph 29 et seq below) the Inspector's assessment of the degree of harm to the setting of the listed building was a matter for his planning judgment, but I do not accept that he was then free to give that harm such weight as he chose when carrying out the balancing exercise. In my view, Glidewell LJ's judgment 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."
23. That conclusion is reinforced by the passage in the speech of Lord Bridge in South Lakeland to which I have referred (paragraph 20 above). It is true, as Mr. Nardell submits, that the ratio of that decision is that "preserve" means "do no harm". However, Lord Bridge's explanation of the statutory purpose is highly persuasive, and his observation that there will be a "strong presumption" against granting permission for development that would harm the character or appearance of a conservation area is consistent with Glidewell LJ's conclusion in Bath. There is a "strong presumption" against granting planning permission for development which would harm the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of "considerable importance and weight."
24. While I would accept Mr. Nardell's submission that Heatherington does not take the matter any further, it does not cast any doubt on the proposition that emerges from the Bath and South Lakeland cases: that Parliament in enacting section 66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carries out the balancing exercise.
25. In support of his submission that, provided he asked the right question – was the harm to the settings of the listed buildings outweighed by the advantages of the proposed development – the Inspector was free to give what weight he chose to that harm, Mr. Nardell relied on the statement in the speech of Lord Hoffmann in Tesco that the

weight to be given to a material consideration is entirely a matter for the local planning authority (or in this case, the Inspector):

“If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State.” (p.780H).

26. As a general proposition, the principle is not in doubt, but Tesco was concerned with the application of section 70(2) of the Planning Act. It was not a case under section 66(1) or 72(1) of the Listed Buildings Act. The proposition that decision-makers may be required by either statute or planning policy to give particular weight to certain material considerations was not disputed by Mr. Nardell. There are many examples of planning policies, both national and local, which require decision-makers when exercising their planning judgment to give particular weight to certain material considerations. No such policies were in issue in the Tesco case, but an example can be seen in this case. In paragraph 16 of his decision letter the Inspector referred to Planning Policy Statement 22 Renewable Energy (PPS22) which says that the wider environmental and economic benefits of all proposals for renewable energy, whatever their scale, are material considerations which should be given “significant weight”. In this case, the requirement to give “considerable importance and weight” to the policy objective of preserving the setting of listed buildings has been imposed by Parliament. Section 70(3) of the Planning Act provides that section 70(1), which confers the power to grant planning permission, has effect subject to, inter alia, sections 66 and 72 of the Listed Buildings Act. Section 70(2) requires the decision-maker to have regard to “material considerations” when granting planning permission, but Parliament has made the power to grant permission having regard to material considerations expressly subject to the section 66(1) duty.
27. Mr. Nardell also referred us to the decisions of Ouseley J and this Court in Garner v Elmbridge Borough Council [2011] EWCA Civ 891, but the issue in that case was whether the local planning authority had been entitled to conclude that no harm would be caused to the setting of another heritage asset of the highest significance, Hampton Court Palace. Such was the weight given to the desirability of preserving the setting of the Palace that it was common ground that it would not be acceptable to grant planning permission for a redevelopment scheme which would have harmed the setting of the Palace on the basis that such harm would be outweighed by some other planning advantage: see paragraph 14 of my judgment. Far from assisting Mr. Nardell’s case, Garner is an example of the practical application of the advice in policy HE9.1: that substantial harm to designated heritage assets of the highest significance should not merely be exceptional, but “wholly exceptional”.
28. 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.

29. 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. I also agree with her conclusion 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. The Appellant’s Skeleton Argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the Inspector’s planning judgment. In his oral submissions Mr. Nardell contended that the Inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the “significant weight” which the Inspector expressly gave in paragraph 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the section 66(1) duty. It is true that the Inspector set out the duty in paragraph 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out.

## Ground 2

30. Grounds 2 and 3 are interlinked. The Respondents contend that the Inspector either misapplied the relevant policy guidance, or if he correctly applied it, failed to give adequate reasons for his conclusion that the harm to the setting of the listed buildings, including Lyveden New Bield, would in all cases be less than substantial. I begin with the policy challenge in ground 2. Lang J set out the policy guidance relating to setting in PPS5 and the Practice Guide in paragraphs 62-64 of her judgment. The contribution made by the setting of Lyveden New Bield to its significance as a heritage asset was undoubtedly a “principal controversial” issue at the inquiry. In paragraph 4.5.1 of his Proof of Evidence on behalf of the Local Planning Authority Mr. Mills, its Senior Conservation Officer, said:

“To make an assessment of the indirect impact of development or change upon an asset it is first necessary to make a judgment about the contribution made by its setting.”

Having carried out a detailed assessment of that contribution he concluded in paragraph 4.5.17:

“In summary, what Tresham created at the site was a designed experience that was intimately linked to the surrounding landscape. The presence of the four prospect mounts along with the raised terrace provide a clear indication of the relationship of the site with the surrounding landscape.”

Only then did he assess the impact of the proposed development on the setting by way of “a discussion as to the impact of the proposal on how the site is accessed and experienced by visitors.”

31. In its written representations to the inquiry English Heritage said of the significance and setting of Lyveden New Bield:

“The aesthetic value of the Lyveden Heritage Assets partly derives from the extraordinary symbolism and quality of the New Bield and the theatrical design of the park and garden. However, it also derives from their visual association with each other and with their setting. The New Bield is a striking presence when viewed on the skyline from a distance. The New Bield and Lyveden park and garden are wonderfully complemented by their undeveloped setting of woodland, pasture and arable land.”

In paragraph 8.23 English Heritage said:

“The New Bield and Lyveden park and garden were designed to be prominent and admired in their rural setting, isolated from competing structures. The character and setting of the Lyveden Heritage Assets makes a crucial contribution to their significance individually and as a group.”

32. In its written representations to the inquiry the National Trust said that each arm of the cruciform New Bield “was intended to offer extensive views in *all directions* over the surrounding parks and the Tresham estate beyond” (paragraph 11). The National Trust’s evidence was that “one if not *the Principal designed view from* within the lodge was from the withdrawing rooms which linked to the important Great Chamber and Great Hall on the upper two levels of the west arm of the lodge” (paragraph 12). The Trust contended that this vista survived today, and was directly aligned with the proposed wind farm site (emphasis in both paragraphs as in the original).

33. In his proof of evidence, the planning witness for the Stop Barnwell Manor Wind Farm Group said that:
- “...the views of Lyveden New Bield from the east, south-east and south, both as an individual structure and as a group with its adjoining historic garden and listed cottage, are views of a very high order. The proposed turbines, by virtue of their monumental scale, modern mechanical appearance, and motion of the blades, would be wholly alien in this scene and would draw the eye away from the New Bield, destroying its dominating presence in the landscape.”
34. This evidence was disputed by the Appellant’s conservation witness, and the Appellant rightly contends that a section 288 appeal is not an opportunity to re-argue the planning merits. I have set out these extracts from the objectors’ evidence at the inquiry because they demonstrate that the objectors were contending that the undeveloped setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset; that the New Bield (the lodge) had been designed to be a striking and dominant presence when viewed in its rural setting; and that the lodge had been designed so as to afford extensive views in all directions over that rural setting. Did the Inspector resolve these issues in his decision, and if so, how?
35. I endorse Lang J’s conclusion that the Inspector did not assess the contribution made by the setting of Lyveden New Bield, by virtue of its being undeveloped, to the significance of Lyveden New Bield as a heritage asset. The Inspector did not grapple with (or if he did consider it, gave no reasons for rejecting) the objectors’ case that the setting of Lyveden New Bield was of crucial importance to its significance as a heritage asset because Lyveden New Bield was designed to have a dominating presence in the surrounding rural landscape, and to afford extensive views in all directions over that landscape; and that these qualities would be seriously harmed by the visual impact of a modern man-made feature of significant scale in that setting.
36. The Inspector’s reason for concluding in paragraph 51 of the decision that the presence of the wind turbine array, while clearly having a detrimental effect on the setting of Lyveden New Bield, would not reach the level of substantial harm, was that it would not be so distracting that it would not prevent, or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield or Lyveden Old Bield or their relationship to each other.
37. That is, at best, only a partial answer to the objectors’ case. As the Practice Guide makes clear, the ability of the public to appreciate a heritage asset is one, but by no means the only, factor to be considered when assessing the contribution that setting makes to the significance of a heritage asset. The contribution that setting makes does not depend on there being an ability to access or experience the setting: see in particular paragraphs 117 and 122 of the Practice Guide, cited in paragraph 64 of Lang J’s judgment.

38. The Inspector said that his conclusion in paragraph 51 of the decision letter that the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield had been reached on the basis of his conclusions in paragraph 50. In that paragraph, having said that the wind turbine array “would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres”, the Inspector gave three reasons which formed the basis of his conclusion in paragraph 51.
39. Those three reasons were:
- (a) The turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site.
  - (b) The turbine array would not intrude on any obviously intended, planned view out of the garden or the garden lodge (which has windows all around its cruciform perimeter).
  - (c) Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.
40. Taking those reasons in turn, reason (a) does not engage with the objectors’ contention that the setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset because Lyveden New Bield was designed to be the dominant feature in the surrounding rural landscape. A finding that the “readily visible” turbine array would not dominate the outlook from the site puts the boot on the wrong foot. If this aspect of the objectors’ case was not rejected (and there is no reasoned conclusion to that effect) the question was not whether the turbine array would dominate the outlook from Lyveden New Bield, but whether Lyveden New Bield would continue to be dominant within its rural setting.
41. Mr. Nardell’s submission to this Court was not that the Inspector had found that there were no planned views (cf. the submission recorded in paragraph 70 of Lang J’s judgment), but that the Inspector had concluded that the turbine array would not intrude into obviously intended or planned views if any. That submission is difficult to understand given the Inspector’s conclusion that the turbine array would be “readily visible” from the garden lodge, from the prospect mounds, and from various other places around the site. Unless the Inspector had concluded that there were no intended or planned views from the garden or the garden lodge, and he did not reach that conclusion (see paragraph 47 of the decision letter), it is difficult to see how he could have reached the conclusion that the “readily visible” turbine array would not “intrude” on any obviously intended or planned views from the garden lodge. I am inclined to agree with Mr. Nardell’s alternative submission that the Inspector’s conclusion that while “readily visible” from the garden lodge, the turbine array would not “intrude” on any obviously intended or planned view from it, is best understood



by reference to his third conclusion in paragraph 50. While visible in views from the garden lodge the turbine array would not intrude upon, in the sense of doing substantial harm to, those views, for the reasons given in the last sentence of paragraph 50.

42. I confess that, notwithstanding Mr. Nardell's assistance, I found some difficulty, not in understanding the final sentence of paragraph 50 – plainly any reasonable observer would know that the turbine array was a modern addition to the landscape and was separate from the planned historic landscape at Lyveden New Bield – but in understanding how it could rationally justify the conclusion that the detrimental effect of the turbine array on the setting of Lyveden New Bield would not reach the level of substantial harm. The Inspector's application of the "reasonable observer" test was not confined to the effect of the turbine array on the setting of Lyveden New Bield. As Lang J pointed out in paragraph 57 of her judgment, in other paragraphs of his decision letter the Inspector emphasised one particular factor, namely the ability of members of the public to understand and distinguish between a modern wind turbine array and a heritage asset, as his reason for concluding either that the proposed wind turbines would have no impact on the settings of other heritage assets of national significance [28] – [31]; or a harmful impact that was "much less than substantial" on the setting of a Grade 1 listed church in a conservation area [36].
43. Matters of planning judgment are, of course, for the Inspector. No one would quarrel with his conclusion that "any reasonable observer" would understand the differing functions of a wind turbine and a church and a country house or a settlement [30]; would not be confused about the origins or purpose of a settlement and a church and a wind turbine array [36]; and would know that a wind turbine array was a modern addition to the landscape [50]; but no matter how non-prescriptive the approach to the policy guidance in PPS5 and the Practice Guide, that guidance nowhere suggests that the question whether the harm to the setting of a designated heritage asset is substantial can be answered simply by applying the "reasonable observer" test adopted by the Inspector in this decision.
44. If that test was to be the principal basis for deciding whether harm to the setting of a designated heritage asset was substantial, it is difficult to envisage any circumstances, other than those cases where the proposed turbine array would be in the immediate vicinity of the heritage asset, in which it could be said that any harm to the setting of a heritage asset would be substantial: the reasonable observer would always be able to understand the differing functions of the heritage asset and the turbine array, and would always know that the latter was a modern addition to the landscape. Indeed, applying the Inspector's approach, the more obviously modern, large scale and functional the imposition on the landscape forming part of the setting of a heritage asset, the less harm there would be to that setting because the "reasonable observer" would be less likely to be confused about the origins and purpose of the new and the old. If the "reasonable observer" test was the decisive factor in the Inspector's reasoning, as it appears to have been, he was not properly applying the policy approach set out in PPS5 and the Practice Guide. If it was not the decisive factor in the Inspector's reasoning, then he did not give adequate reasons for his conclusion

that the harm to the setting of Lyveden New Bield would not be substantial. Since his conclusion that the harm to the setting of the designated heritage assets would in all cases be less than substantial was fed into the balancing exercise in paragraphs 85 and 86, the decision letter would have been fatally flawed on grounds 2 and 3 even if the Inspector had given proper effect to the section 66(1) duty.

Conclusion

45. For the reasons set out above, which largely echo those given by Lang J in her judgment, I would dismiss this appeal.

**Lady Justice Rafferty:**

46. I agree.

**The Vice President:**

47. I also agree.



Department for  
Communities and  
Local Government

Jim Hartley  
1 Melmount Park  
Strabane  
County Tyrone  
BT82 9SU

Our Ref: APP/G0908/A/13/2191503  
Your ref: Lane Head Farm

16 April 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, J P Watson BSc MICE FCIHT MCMI, who undertook a site visit on 10 September 2013 as part of his consideration of your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Allerdale Borough Council ("the Council") to refuse planning permission for the erection of a single turbine 61 metres to blade tip and associated metering units, dated 22 June 2012, in accordance with application ref: 2/2012/0498.
2. The appeal was recovered for the Secretary of State's determination on 11 October 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, following the Secretary of State's announcement on 10 October 2013 of his intention to consider for recovery appeals for renewable energy developments to enable him to consider the extent to which the new practice guidance (referred to in paragraph 7 below) is meeting the Government's intentions.

**Inspector's recommendation**

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters following receipt of the IR by the Secretary of State**

4. Following receipt of the IR, the Secretary of State wrote to the main parties on 5 March 2014 seeking their views on the implications, if any, of the judgment handed down by the Court of Appeal on 18 February 2014 in the case of *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, the National Trust and the Secretary of State for Communities and Local Government* ("the Barnwell Manor case") for his consideration of the impact of the

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appeal scheme on the Grade 1 listed Church of All Saints, Boltongate. He then wrote again to the parties on 17 March 2014 seeking views on the planning guidance published on 6 March 2014. On 25 March 2014, the Secretary of State circulated the responses to these two letters, inviting final comments. He has carefully considered all these representations in his determination of this appeal. They are listed at Annex A to this letter, and copies may be obtained on written request to the address at the foot of the first page of this letter.

### **Policy Considerations**

5. In deciding this appeal, 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. In this case, the development plan currently consists of the saved policies of the Allerdale Local Plan (LP), adopted in 1999; and the Secretary of State agrees with the Inspector (IR5) that the most relevant policy is LP Policy CO18.
6. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("section 66 of the LBA"), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ("the Framework" – March 2012) and the associated planning guidance (March 2014); the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3); the Overarching NPS for Energy (EN-1); and the Written Ministerial Statements on 'Local Planning and onshore wind' (DCLG) and 'Onshore wind' (DECC).
8. In December 2013, Renewable UK published new research and a proposed planning condition covering the regulation of Other Amplitude Modulation, with accompanying guidance notes. However, this has not yet been reflected in an update to the current good practice guidance that accompanies ETSU-R-97 and, as it has not been endorsed by Government, the Secretary of State gives it very little weight and has not considered it necessary to seek the views of parties on it.

### **Main issues**

9. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR8.

### **The setting of the Church of All Saints, Boltongate**

10. The Secretary of State has carefully considered the Inspector's assessment of the potential impact of the appeal scheme on the setting of the Church of All Saints, Boltongate (IR9-22) in the context of the terms of section 66 of the LBA and the Barnwell Manor case, and having regard to the comments received from parties in response to his letter of 5 March (see paragraph 4 above). He has had particular regard to the Inspector's appraisal of the extent to which the appeal proposal would alter the setting of the church (IR19) and acknowledges that the Inspector concludes that such change would be no more than modest (IR20). However, he also notes the Inspector's conclusion that LP policy CO18(ii) would not be engaged

because the appeal development would not be sympathetic to the church in scale, character, materials or detailing, and has gone on to consider his own statutory duty in respect of section 66 of the LBA.

11. Having regard to the judgment in the Barnwell Manor case, the Secretary of State takes the view that it does not follow that if the harm to heritage assets is found to be less than substantial, then the subsequent balancing exercise undertaken by the decision taker should ignore the overarching statutory duty imposed by section 66(1). He therefore sees a need to give considerable weight to the desirability of preserving the setting of all listed buildings. Accordingly, and also taking account of the fact that English Heritage maintain their objection to the appeal proposal on grounds of its adverse impact on the setting of the church, the Secretary of State gives substantial weight to his statutory duty to protect the setting of the Grade 1 listed building in the overall planning balance.

### **The effect on the character and appearance of the landscape**

12. For the reasons given at IR23-35, the Secretary of State agrees with the Inspector at IR36(a) that the appeal turbine would be significantly harmful to the landscape at most locations within 2km, and that this would be contrary to LP Policy EN19 and to paragraph 17 of the Framework; and he gives significant weight to that. He also agrees with the Inspector (IR36(c) & (d)), that the harm to the landscape at distances greater than 2km would not be significant and that the scheme would have no significant effect on the landscape of the National Park. Like the Inspector, he attributes limited weight to the additional harm which would be caused to the character and appearance of the locally listed parkland at Quarry Hill (IR33, IR34 and IR36(b)); and he also agrees with the Inspector (IR36(e)) that no evidence of harmful cumulative visual effect has been cited to which weight ought to be given.

### **The effect on visual amenity at residential properties in the area**

13. The Secretary of State has also carefully considered the effect of the appeal proposal on visual amenity as set out by the Inspector at IR37-48. He agrees with the Inspector (IR39) that it is not a function of the planning system to protect the view from an individual property for its own sake, but to avoid serious harm to living conditions which might otherwise lead to refusal of planning permission in the public interest. Consequently, he also agrees with the Inspector's conclusion at IR48 that there would be no property at which the appeal turbine would prevent the achievement of a good standard of residential amenity as required by paragraph 17 of the Framework.

### **Tourism**

14. The Secretary of State agrees with the Inspector (IR52) that little weight should be attributed to the appeal scheme's potential effect on tourism.

### **Planning balance**

15. The Secretary of State gives substantial weight to the generating capacity of the proposed turbine and the environmental benefits thereby offered as a contribution to the Government's priority for the need to support the delivery of renewable and low carbon energy (IR53 and IR55-58). However, against that, the Secretary of State also gives substantial weight to his statutory duty under section 66 of the

LBA with regard to preserving the setting of the Grade 1 listed Church of All Saints, Boltongate, as well as significant weight to the harm which the appeal proposal would cause to the landscape at most locations within 2km and limited weight to the harm caused to the character and appearance of the locally listed parkland at Quarry Hill. Taken together, he considers that these harms, which are also contrary to the provisions of the development plan, outweigh the acknowledged environmental benefits which the appeal scheme would provide.

### **Conditions (including those relating to the regulation of noise)**

16. The Secretary of State has considered the Inspector's reasoning and conclusions on the need for a noise condition (IR49-51 & IR59), as well as his recommended conditions as set out in the Annex to his report (pages 13-22). The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that they overcome his reasons for dismissing the appeal.

### **Overall conclusions**

17. Having given careful consideration to the Inspector's advice and the comments received in response to his letters of 5 and 17 March, the Secretary of State concludes that factors weighing against the appeal proposal outweigh those in its favour so that there are insufficient material considerations to justify going against the development plan provisions relevant to this scheme.

### **Formal Decision**

18. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of a single turbine 61 metres to blade tip and associated metering units, dated 22 June 2012, in accordance with application ref: 2/2012/0498.

### **Right to challenge the decision**

19. 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.

20. A copy of this letter has been sent to Allerdale Council and to those who responded to the Secretary of State's letters of 5 and 17 March 2014. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Jean Nowak**

Authorised by the Secretary of State to sign in that behalf

## ANNEX A

### Correspondence received following the Secretary of State's letters of 5, 17 and 25 March 2014 (paragraph 4 above refers)

<b>Name / Organisation</b>	<b>Date</b>
Allerdale Borough Council	19 March 2014
	31 March 2014
J Harley (agent for appellant)	10 March 2014
	18 March 2014
	26 March 2014
David Colborn (Friends of Cumbria's Environment)	18 March 2014
	31 March 2014
Cllr John Havelock (Boltons Parish Council)	25 March 2014
	28 March 2014
Charles Woodhouse	18 March 2014
	28 March 2014
Susan Ross	30 March 2014



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# Report to the Secretary of State for Communities and Local Government

by **J.P. Watson BSc MICE FCIHT MCMI**

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

Date: **27 January 2014**

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Town and Country Planning Act 1990

Allerdale Borough Council

Appeal by Ms Mary Ruth Harker

Site visit made on 10 September 2013

Lane Head Farm, Boltongate, Wigton CA7 1DH

File Ref(s): APP/G0908/A/13/2191503

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**File Ref: APP/G0908/A/13/2191503**

**Lane Head Farm, Boltongate, Wigton CA7 1DH**

- 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 Ms Mary Ruth Harker against the decision of Allerdale Borough Council.
- The application Ref 2/2012/0498, dated 22 June 2012, was refused by notice dated 15 November 2012.
- The development proposed is erection of a single wind turbine 61 metres to blade tip and associated metering units.

**Summary of Recommendation:** That the appeal be allowed and planning permission granted, subject to conditions.

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**The Site and Surroundings**

1. This is a rural area. The appeal site is in a pastoral field at Lane Head Farm, 0.5km north of the village of Boltongate.<sup>1</sup> The field is at the top of a ridge and the appeal site is a little way to the north of the ridge with an extensive view to the west and to the north, across the Solway Firth and into Scotland. The countryside at the site is gently hilly; to the north lies the coastal plain and to the south is the Lake District. Boltongate is lower than the site and the land continues to fall through the village to a watercourse, Gill Beck. The ground cover is largely grassland punctuated by mature hedges with trees and with stands of trees here and there.
2. There are tall artificial features in the landscape: a television mast east of Sandale (the mast is some 3 or 4km to the east of Boltongate); another television mast near Brocklebank (somewhat further from Boltongate, and to the north-east of the Sandale mast) and three wind turbines (95 metres to the blade tip) at High Pow, about 2 km north-east of the appeal site.
3. Application drawing no. T7-PLAN-LOC-2 illustrates some of the surroundings of the area. The northern edge of Boltongate village can be seen on the southern edge of the drawing, and the text "Quarry Hill House" can be discerned at the drawing's western edge.

**Planning Policy**

4. The development plan consists of saved policies of the Allerdale Local Plan, adopted 1999 ("the LP").
5. Attention is drawn to LP Policy CO18, which says that:

*Development proposals which affect the setting of a Listed Building will only be permitted where:-*

- (i) *it does not have a seriously adverse effect on the character of the setting of the Listed Building; and*
- (ii) *the development is sympathetic in scale, character, materials and detailing.*

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<sup>1</sup> GoA page 1

*Subject to other policies of this Local Plan.*

6. The Council's decision notice relies on three formerly saved policies of the former Cumbria and Lake District Joint Structure Plan 2001-2016, and on LP Policy CO18. An Order to revoke the North West Regional Strategy came into force on 20 May 2013, and all Directions preserving policies in structure plans in that area have also been revoked.
7. The Council and the Appellant refer to the Cumbria Wind Energy Supplementary Planning Document ("the SPD"). With the revocation of the saved policies of the Cumbria Joint Structure Plan 2005-2016, the SPD's connection to the development plan was severed. Nevertheless, I attribute weight to technical guidance, specific to the area, that is taken from the SPD.

## **Appraisal**

### **Main Issues**

8. It seems to me that the main issues in this case are:
  - a) The effect the appeal scheme would have on the setting of the Church of All Saints, Boltongate;
  - b) The effect the appeal scheme would have on the character and appearance of the landscape;
  - c) The effect the appeal scheme would have on visual amenity at residential properties in the area;
  - d) Whether any other consideration is such as to outweigh harm associated with the appeal scheme so as to make its impacts acceptable.

### **The Setting of the Church of All Saints, Boltongate**

9. The church is a Grade I listed building. It is a listed building by virtue of its characteristics identified in the Listing Description. It stands in a churchyard in the village and there are buildings and vegetation between the church and the northern fringe of the village. There are two Grade II listed buildings in the village but there was no contention that the setting of either would be harmed, and it seems to me that they would not.
10. The Listing Description is on the case file. It describes the interior and exterior built form of the church but makes no reference to the setting of the building. The evidence of English Heritage in respect of the appeal scheme (given by letter dated 12 September 2012) is that "it is clear that the turbine has (sic) an adverse impact on the setting of the Grade I listed church. We therefore advise refusal of the application." English Heritage's representation does not describe how the appeal proposal would harm the setting of the church. The Council relies on English Heritage in this matter. There is no statement from any party regarding the significance or extent of the setting of the church, or of the harm that some contend would be caused.
11. The National Planning Policy Framework defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced; and explains that elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or

may be neutral. It seems to me that the setting of the church has a number of elements relevant to this appeal, and that different elements of the setting make different contributions to its significance as a heritage asset. The elements of the setting to which attention is drawn in this appeal are the church's immediate context in the churchyard and village, the landscape in which the church is set when viewed from the north (near the appeal site), the landscape in which the church is set when viewed from the south (on the opposite side of the valley), and the area of countryside that can be seen from the church. There was no contention that any other part of the setting of the church would be affected by the appeal scheme, and it seems to me that the list is exhaustive in that respect.

12. I consider first the immediate setting of the church in the churchyard and village. Photomontages A to F look toward the appeal turbine from various locations in the churchyard. Photomontages A to D look away from the church and show various views from the path between the church door and the gate near the north-eastern corner of the churchyard. They show, in this series of views, that the turbine rotor would be concealed from view from those locations by buildings and vegetation. Photomontage E looks away from the church, north from the churchyard, through a gap between village buildings and shows the rotor to be screened by vegetation so that only a filtered view of the passing tips of the turning rotor would be visible. There would be harm in that insofar as the glimpsed rotor tips would, when experienced in the context of the medieval church and the other buildings of the village (which are more recent but traditional forms), be of a very different built form; but the harm would be very limited by virtue of the size and distance of the rotor tips, and the partial screening.
13. Photomontage F was taken from a point to the southwest of the church and is the only view that includes the listed building. From this viewpoint, the turbine would be concealed by a building and by vegetation. In the appellant's cultural heritage assessment further photomontages are presented in figures 14 and 16; they too show that views from the churchyard toward the turbine would be blocked by buildings. And as I walked around the village I found no part of the setting of the church within which the appeal turbine would be apparent.
14. It is clear to me that those parts of the setting of the church from which the significant features of the building (as identified in the Listing Description) are experienced and can be appreciated would not be affected by the appeal scheme, save as I have described. The parts of the setting to which I refer here are the churchyard and nearby public places in the village.
15. My attention was drawn to two viewpoints outside the village from which the church can be seen. The first was to the north, near the appeal site, on private land owned by the appellant between the appeal site and the church. Because of both the lack of public access and the impossibility of seeing the church from this viewpoint in the direct context of the appeal turbine I do not consider the setting of the church as experienced at the first viewpoint as likely to be changed by the appeal scheme in a way that would be perceptible to the public. The second viewpoint was from the lane to Prior Hall, south of the village and on the opposite side of the valley. The turbine would be visible from here, projecting above the ridge, as would the village buildings clustered around the church on the hillside below. The visual effect would be comparable to that shown in photomontage 4. The immediate setting of the church would be unaffected because the village and

the village's immediate environs would not change, but there would be a slight change in the character of the wider countryside in which the village is set.

16. My attention was also drawn to the church's parapet walk, to which the Listing Description refers. And the Council officer report draws attention to Pevsner's "The Buildings of England: Cumberland and Westmoreland (1967)" (the relevance of which has not been disputed) which goes beyond the National Heritage List in that he refers to "the suggestion of a pele tower in the treatment of the embattled parapet, within which much of the church sits, is characteristic of the fortified churches of the Border, such as are found at Newton Arlosh, and are a significant feature of ecclesiastical architecture of Cumbria and for an important part of its local distinctiveness". The parapet walkway is a popular viewing area with visitors.<sup>2</sup> It seems to me that views out from the parapet walk could be held to be views of part of the setting of the church.
17. By virtue of the elevated viewpoint and the rising land to the north of the village, there is visibility from the parapet walk over the village roofs and trees and up towards the turbine site. The parapet walk is a defensive part of the building, designed as a platform from which one may look out into the surrounding country. The country that is visible from the parapet walk is therefore part of the setting of the church.
18. I saw that the view north from the parapet walk toward the appeal site currently reaches to a group of trees on the skyline. From consideration of the site location plan (drawing T7-PLAN-LOC-2) and the longitudinal section submitted by an interested party (which is based on Ordnance Survey mapping and so has a degree of reliability) it is apparent that part of the turbine rotor and its hub would be visible in the distance from the church parapet walkway (the Council's officer report gives the distance from the turbine site to the church as 678 metres). It would form part of the setting of the church. Because of the panoramic nature of the view in question, the fact that there is no evidence that this is a designed view, the size of the appeal turbine rotor, its distance from the church and the proposed finite life of the appeal turbine, the harm to the setting of the church that would be associated with the changed outlook from the parapet walkway would be no more than localised and modest.
19. Where development would affect the setting of a listed building, special regard should be had to the desirability of preserving the setting of the listed building. I therefore summarise the extent to which the appeal proposal would alter the setting of the church:
  - i) Those parts of the setting of the church from which the significant features of the building (as identified in the Listing Description) are experienced and can be appreciated would not be affected by the appeal scheme; save that when looking away from the church from one of the several viewpoints in the churchyard, a filtered view of the passing tips of the turning rotor would be visible through intervening vegetation;
  - ii) There would be a slight change in the character of the wider countryside in which the village (including the church) is set; and,

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<sup>2</sup> Representation of Cllr Havelock, 25/9/13

- iii) There would be localised, modest harm associated with the changed outlook from the parapet walk.
20. I conclude that the change to the setting of the church would be no more than modest. There would not be a seriously adverse effect on the character of the setting of the listed building, and so LP Policy CO18(i) would not be engaged. Policy CO18(ii) would not be satisfied, because the appeal development would not be sympathetic to the church in scale, character, materials or detailing.
21. The National Planning Policy Framework (“the Framework”) considers at paragraphs 132 to 134 the circumstances in which development might be allowed even if it would harm the significance of a listed building:
- i) Significance can be harmed through development within its setting;
- ii) Consent should be refused where a proposed development would lead to substantial harm to or total loss of significance of a listed building (save in the circumstances identified in paragraph 133, which do not apply here);
- iii) Where a proposed development would cause less than substantial harm to the significance of a listed building, this harm should be weighed against the public benefits of the proposal.
22. It is therefore necessary to consider whether the appeal proposal should be regarded as likely to cause less than substantial harm to the significance of the listed building. It seems to me that, for harm to be substantial, the impact on significance would need to be so serious that very much, if not all, of the significance of the heritage asset would be drained away. That would not be the case here, since every characteristic of the listed building as identified by the Listing Description would remain unchanged. The harm to the significance of the listed building caused by the appeal proposal would therefore be less than substantial. The approach set out in Framework paragraph 134 should therefore be followed, and any other harm should be included in the balance.

### ***The Effect On The Character And Appearance Of The Landscape***

23. The Council’s second reason for refusal is:

“The proposal, by reason of its siting, design and elevated level, would constitute a prominent and incongruous feature within the landscape, and would cause unacceptable individual and cumulative harm to the landscape character and appearance of the locality. The proposal is therefore considered to be contrary to Policy R44 of the Cumbria and Lake District Joint Structure Plan 2001-2016 (Saved).”

24. My paragraph 6 has explained that the Structure Plan is now revoked. Framework paragraph 17 requires that planning should recognise the intrinsic character and beauty of the countryside. The Friends of the Lake District draw attention<sup>3</sup> to saved LP Policy EN19, which seeks to conserve and enhance the landscape.

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<sup>3</sup> Letter, 22/12/11

25. The site is in an area whose landscape character type is described as “Lowland Settled Plains”
26. The site is located in Landscape Character Type 12b “Rolling Fringe” as identified in the Cumbria Landscape Character Guidance and Toolkit. Such landscape was identified in the Cumbria Wind Energy SPD as having a low/moderate capacity to accommodate up to a small group of turbines (3 to 5 turbines, at least 95m high to the tip) and in exceptional cases a larger group of turbines. This landscape character type reflects a moderate/high sensitivity overall and moderate/high value as a largely undesignated landscape.<sup>4</sup>
27. The Council officers’ report contends, among other things, that:
- a) The design of the appeal turbine with its hub height of 35m and rotor diameter of 52m would give the turbine a squat appearance;
  - b) The three existing turbines at High Pow are at a level of approximately 155m AOD whereas the appeal turbine would be at 185m AOD, 2km away from the High Pow group and of different proportions; the High Pow turbines would therefore be visually disconnected from the appeal turbine. The proportions of the appeal turbine would add to the disjointed nature of its visual relationship with the High Pow turbines;
  - c) The appeal development would detract from the Rolling Fringe landscape and that of the Lake District fells to the south of the site, and when viewed from within the Lake District fells themselves;
  - d) The appeal scheme has potential to add to the effects of turbine groups at High Pow and Wharrels Hill, (but no such cumulative effect is identified by the Council).
28. The Council’s appeal statement contends that:
- a) Although the appeal scheme would be perceived as a stand-alone turbine, that would not mean that there would be no cumulative impacts with High Pow or Wharrels Hill;
  - b) Although the National Park Authority have not commented on the planning application, there could still be harm to the setting of the National Park;
  - c) There might be combined or sequential views of the appeal turbine from the A595 road, or from the A596 road which is 5.5km to the north.
29. The appellant’s landscape and visual impact assessment (“the LVIA”) contends, among other things, that:
- a) There would be no loss of key landscape features or elements. The landscape would be altered to a degree by the installation of the turbine but the landscape’s characteristics would not be significantly altered<sup>5</sup>;

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<sup>4</sup> LVIA, page 13

<sup>5</sup> LVIA page 20

- b) Appendix 4 (of the LVIA), a map of the zone of visual influence of the turbine, shows that the turbine would be widely visible to the north and west across Lowland landscape character areas 5a and 5b, and more limited visibility to the south. Visibility to the east is restricted by the rising land form. The turbine would be clearly visible from many viewpoints, particularly from receptors on higher ground.
  - c) The landscape magnitude of change will be moderate/high for some viewpoints within 1km, and there would be lesser changes further away. Potential significant visual effects would be within approximately 2km of the proposed turbine and most likely within 1km.
  - d) The ZVI map shows the zone of visual influence of the turbine to extend into the National Park, the northern boundary of which is some 3km south of the appeal site.
30. The ZVI map was generated using a "bare earth" representation of land form and therefore does not account for the effects of screening and filtering of views as a result of intervening features such as buildings, trees and hedgerows.<sup>6</sup> And it is clear from comparison of the ZVI map with my observations that the ZVI map records locations from which all or part of the appeal turbine would be visible.
31. I am not persuaded that the mere sight of the turbine or a small part of it, glimpsed at a distance, would give rise to significantly harmful visual effects or to harm to the landscape. Rather, for such harm to occur it is necessary for the turbine to occupy a large enough part of the view. That will depend on the proximity of the turbine to the landscape element in question, and the proportion of the whole turbine that is in view.
32. My observations in the field and the evidence of the photomontages together satisfy me that the LVIA's finding, that potential significant visual effects would occur only within approximately 2km of the proposed turbine, could reasonably form the basis of an assessment of the change to the landscape that the turbine would cause. Within that distance, the potential for significant changes to the landscape would be realised only where enough of the turbine to have such an effect would be in view. For example, I have identified in my paragraph 12 that the turbine would not be visible at all to an observer in the churchyard at Boltongate, which is within less than 1km of the appeal site; hence, that part of the landscape would not be affected by the turbine. It may be that there are other places within 2km of the site from which the turbine would not be visible, or would be visible to such a limited extent that there would be no significant harm to the landscape; but the evidence before me does not identify such places and so there is no rational basis from which I can conclude other than that they do not exist.
33. Attention is drawn to the historic parkland at Quarry Hill (see also my paragraph 44). Although not Registered, this site was identified in the text of the Allerdale Local Plan as being of local importance. Saved LP policy EN24 is intended to protect such landscapes, "particularly ... those included in the National Register of Parks and Gardens". Policy EN24 forbids development which would detract from the setting of such sites, and development which would adversely affect

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<sup>6</sup> LVIA para 1.2.6

their special character and appearance. The owner of Quarry Hill House reports the appeal site to be included in this local designation<sup>7</sup>, and the point is neither accepted nor disputed<sup>8</sup>. A public road crosses the designated parkland between the appeal site (to the east) and Quarry Hill (to the west); the designated parkland to the east has the character of farmland, whereas that to the west of the road is contiguous with the extensive gardens at Quarry Hill and seemed to me to be more carefully “landscaped” than that to the east. Here I consider the extra weight to be attributed to visual harm to the parkland by virtue of its designation and policy EN24.

34. During my visit I was able to view the parkland from a small mound in the garden, between the House and the turbine site, which acts as a viewpoint. The appeal turbine would stand on rising ground to the east of the viewpoint. Two TV masts can be seen to the east of the park in the same view, taller than the turbine would be but much further from the viewpoint so that their visual effect when viewed from there would approach that of the turbine. Nevertheless there would be harm to the character and appearance of the park by virtue of the incongruous form of the turbine and its motion of the turbine. Because the park is not on the National Register, and because of the presence of the TV masts, I attribute only limited weight to the effect the turbine would have on the park, in addition to that which I have identified in my paragraph 32.
35. The Council considers that wind turbine development in parts of the Borough has “reached a saturation point to the detriment of the visual amenity of the surrounding landscape and local communities”, and draws attention to recent appeals at Great Orton (APP/G0908/A/12/2187146) and Flimby (APP/G0908/A/12/2187146), both of which it reports to have been dismissed on cumulative grounds. No evidence is brought to support the view that such a limit has been reached in the vicinity of the appeal site.
36. In respect of the appeal turbine’s effect on the landscape I therefore find as follows:
  - a) By virtue of its form and incongruity in the landscape, the appeal turbine would be significantly harmful to the landscape at most locations within 2km of the appeal turbine. This would be contrary to LP Policy EN19 and to paragraph 17 of the Framework.
  - b) The character and appearance of the locally listed parkland at Quarry Hill would be harmed, contrary to LP Policy EN24. For the reasons given I attribute limited weight to that additional harm.
  - c) Such harm to the landscape as would accrue at distances greater than 2km would not be significant.
  - d) By virtue of item b) above, and the distance to the National Park boundary, the appeal scheme would have no significant effect on the landscape of the National Park.

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<sup>7</sup> Mr Woodhouse’s letter, 14/9/12

<sup>8</sup> Grounds of Appeal, 3.12



- e) No specific instance has been cited of a harmful cumulative visual effect that would arise from the juxtaposition of the appeal turbine and other existing or consented development.

***The Effect On Visual Amenity At Residential Properties In The Area***

37. The decision notice draws attention to visual amenity at the following residential properties:

Well Head, Mealsgate;

The Close, Mealsgate;

Properties at Quarry Hill, Mealsgate; and

Properties in Boltongate.

38. The Council's representations, and the officer report, explain that in the Council's view insufficient information was provided with the planning application to allow proper evaluation of the proposal's effects on visual amenity at those properties. The Council does not say which effects relating to visual amenity at those properties it considers might be unsatisfactory, nor does it describe standards of visual amenity that it considers would distinguish acceptable from unacceptable conditions. The appellant provides a Landscape and Visual Impact Assessment, indicates (in the Grounds of Appeal) that the visual amenity at a dwelling is related to the magnitude of visual change there and contends (in the Planning Statement) that there would be no overbearing effects on residential amenity.

39. Framework paragraph 17 establishes the core planning principle that planning should seek to secure a good standard of amenity for all existing occupants of land and buildings. But it is not a function of the planning system to protect the view from an individual property for its own sake. With regard to residential amenity, the purpose is to avoid serious harm to living conditions which might otherwise lead to refusal of planning permission in the public interest. This is a more stringent test than simply measuring the visual change and can be expressed through such a question as "Would the proposal affect the outlook of these residents so as to become so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?"

40. My accompanied site visit included residential properties at Well Head, The Close, the grounds of properties at Quarry Hill, Pattenfoot Cottage (some 1.8km north of the appeal site, and visited at the requested of an interested party), The Brooms and Avalon (properties on the north side of Boltongate) and the Old Rectory (a guest house toward the southern end of the village). On the basis of observations made and representations received my assessments of the effects the appeal scheme would have on visual amenity are as follows.

41. Well Head is a former farm house agreed to be 446 metres from the turbine site and to its north and east. There would be a direct view of the turbine, which would stand on land higher than that at the house. No photomontage was provided by the appellant, but the resident of Well Head provided photographs of the outlook from her home toward the appeal site<sup>9</sup> from windows serving rooms

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<sup>9</sup> Ms Lockett's e-mail 20/9/12

- described at the site visit as a kitchen, a bedroom, a dining room and a study. In response the appellant points out that, in the opposite direction, Well Head looks directly at the High Pow wind turbines to the northeast<sup>10</sup>. There would clearly be a marked change in the outlook here but I am not satisfied that the turbine would be so overwhelming and oppressive as to change this to an unattractive place to live – even when the presence of the three turbines at High Pow is taken into account.
42. The Close is a working farm. Its house is reportedly 549 metres from the turbine and on lower ground. Habitable rooms in the house face south and the line of sight to the turbine would be to the south west. The turbine would be visible above intervening trees. The view would change but living conditions here would be little changed; this would remain a pleasant place to live.
  43. Pattenfoot Cottage stands by the A595 some 1.8 km from the site and faces east of south, toward it. I looked out from a first floor bedroom and from a ground floor living room. The turbine would be in plain sight from both, on a hill and framed by the windows. The view would change but living conditions here would be little changed; this would remain a pleasant place to live.
  44. Quarry Hill has three domestic properties: Quarry Hill House, Quarry Hill Cottage and Quarry Hill Courtyard Flat, all almost due west of the turbine site and less elevated. The resident of the House provided a drawing showing the appeal turbine site to be 808 metres from the House, 739 metres from the Cottage and 740 metres from the Courtyard Flat. There are extensive gardens, parkland, and tree planting at Quarry Hill east of the House and Cottage (and an orchard to the north, off the line of sight to the turbine). These would filter the views of the turbine, particularly when in leaf. The turbine would otherwise be in plain sight from the House, the Flat and the Cottage, as it would be from the parkland and from a meadow to the east. The turbine would change the view but living conditions here would be little changed; this would remain a pleasant place to live.
  45. The Brooms is a house on the northern edge of the village of Boltongate. It has habitable rooms that face north across a lane towards the site, which is several hundred metres away. Views toward the turbine would be filtered to an extent by intervening vegetation. The outlook would change but it would remain neither overwhelming nor oppressive. This would remain a pleasant place to live.
  46. Avalon is a bungalow at the man entrance to the village from the west, some 600 metres from the turbine site. The outlook would change but it would remain neither overwhelming nor oppressive. This would remain a pleasant place to live.
  47. The Old Rectory is a short distance due south of the church, lower down the hillside, screened from the turbine site by the church and intervening vegetation, and in my view unlikely to be affected by the appeal scheme.
  48. In summary, having visited all locations to which my attention was drawn in this context, I found no property at which the appeal turbine would prevent the achieving of a good standard of residential amenity. Framework paragraph 17 would therefore be satisfied.

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<sup>10</sup> Grounds of appeal, page 11

### **Other Matters: Noise**

49. Although the Council is satisfied that noise associated with the appeal scheme could be controlled by a planning condition, some interested parties remain concerned.
50. Footnote 17 of the Framework draws attention to the National Policy Statement for Renewable Energy Infrastructure ("EN-3"), which recommends the use of ETSU-R-97 *The Assessment and Rating of Noise from Wind Farms* in cases such as this. The appellant has undertaken no field measurements of noise but provides (in Table 3 of the Planning Statement and Environmental Report, and its Appendix D) an assessment of the noise immissions that would be caused by the turbine at various noise sensitive receptors. Apart from at the appellant's house, the assessment shows that none of those receptors would experience immissions from the appeal turbine greater than 34 dB  $L_{A90,10min}$ . Well Head is modelled to experience that noise level, and Well Head is also modelled by the appellant to experience noise from the High Pow wind farm. Because Well Head is located between the appeal turbine site and High Pow and because of the effect of wind direction on noise propagation, the cumulative turbine noise level at Well Head would not exceed 35 dB  $L_{A90,10min}$ . A planning condition limiting noise from the appeal turbine to an  $L_{A90,10min}$  of 35dB(A) up to wind speeds of 10 metres per second at 10m height based on the simplified procedure can therefore reasonably be imposed and, as described on page 66 of ETSU-R-97, would offer sufficient necessary protection of daytime amenity. A comparable night-time limit of 43 dB  $L_{A90,10min}$  would offer sufficient necessary protection of night-time amenity. ETSU-R-97 further recommends that both day- and night-time lower fixed limits may be increased to 45 dB(A) for properties where the occupier has some financial involvement in the wind turbine, as is the case at Lane Head Farm.
51. I am therefore satisfied that noise associated with the development could adequately be regulated by condition. I propose a condition of the form set out in Annex B of the Institute of Acoustics' *Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise*.

### **Other Matters: Tourism**

52. Cumbria Tourism<sup>11</sup> says that the unspoilt landscape and unique cultural heritage underpin the area's attractiveness for visitors; that the expansion of tourism in Allerdale is an important part of the economic development plan for the area, and that development which potentially threatens the viability of existing and future potential tourism businesses is of great concern to Cumbria Tourism and the West Cumbria Tourism Initiative. No example is given of a business that would be threatened by the appeal turbine, and there is no evidence of direct or inverse correlation between wind turbines and tourism. I attribute little weight to the scheme's effect on tourism.

### **Other Matters: Renewable Energy**

53. Attention is drawn to the 500 kW generating capacity of the proposed turbine. Using Ofcom's medium sized house usage, and DEFRA's factor for the carbon dioxide creation per kilowatt-hour, the appellant estimates the annual reduction

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<sup>11</sup> Letter, 24/8/12

in carbon dioxide emissions associated with the scheme to be just under 800 tonnes. The power generated is estimated to be enough for 400 medium-sized houses.

***Whether Any Other Consideration Is Such As To Outweigh Harm Associated With The Appeal Scheme So As To Make Its Impacts Acceptable***

54. In this appeal, I have found that the proposal would not comply with those parts of the development plan set out in LP Policy CO18(ii) [my paragraph 20] and LP Policies EN19 and EN24 [my paragraph 35]. The development would cause slight and modest harm to the setting of the church, a Grade I listed building. It would be significantly harmful to the undesignated landscape at most locations within 2km of the appeal turbine, and there would be harm to the character and appearance of the locally listed parkland at Quarry Hill; to which additional harm I attribute limited additional weight.
55. That harm falls to be weighed against the priority which is placed by Government on the need to support the delivery of renewable and low carbon energy.
56. Paragraph 93 of the Framework says that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, and in supporting the delivery of renewable energy. This is central to the economic, social and environmental dimensions of sustainable development. There is a presumption in favour of sustainable development set out in the Framework, although this would not apply where any adverse impacts of a development would outweigh the benefits.
57. The Framework's paragraph 98 points out that those who make development control decisions should not require applicants for energy development to demonstrate the overall need for renewable energy. They should recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
58. Having regard to the importance of providing renewable energy as a dimension of sustainable development, I find that significant weight must be attributed to the need for renewable and low carbon energy development. I consider that the harm the appeal turbine would cause is outweighed by its wider environmental benefits. The appeal should therefore be allowed and planning permission granted, subject to conditions.

**Conditions**

59. I have described the need for a noise condition. The Council has suggested further conditions, should permission be granted. The conditions that I recommend are set out in the annexe to this report.

**Recommendation**

60. That the appeal be allowed and planning permission granted, subject to conditions.

*J.P. Watson*

INSPECTOR

## Annexe: Conditions

Should the Secretary of State be minded to allow the appeal and grant planning permission, the following conditions are suggested:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - T7-PLAN-LOC-1 : Site Location (1 of 2)
  - T7-PLAN-LOC-2 : Site Location (2 of 2)
  - T7-PLAN-LAY – Site Layout
  - T-SPEC-DETAIL1 – Switch room and HV metering unit detail
  - 1000913 – Proposed Turbine Details.Reason: to define the permission.
- 3) This permission shall remain valid for a period of 25 years from the date on which electricity from the development is first connected to the grid. That date shall be notified in writing to the local planning authority within seven days of the event. Within 12 months of the cessation of electricity generation at the site or the expiration of this permission, whichever is the sooner, all development shall be removed and the land restored in accordance with a scheme to be submitted to and approved in writing by the local planning authority prior to any development commencing.  
Reason: To ensure the satisfactory long-term restoration of the site and to secure the removal of redundant development from the countryside.
- 4) No development shall take place until a scheme for the reinstatement of temporary working areas on the site has been approved in writing by the local planning authority. Within 6 months of the date on which electricity from the development is first connected to the grid the temporary working areas on the site shall be reinstated in accordance with the approved scheme.  
Reason: To safeguard the appearance of the site in the open countryside.
- 5) Unless agreed in writing by the local planning authority, if the turbine ceases to be operational for a continuous period of 6 months the development hereby permitted shall, within a period of 3 months from the end of the 6-month period (or within such longer period as may be agreed in writing by the local planning authority), be removed in its entirety from the site and the site shall either be restored to its condition before the development took place, or otherwise in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority.  
Reason: To safeguard the appearance of the site and to secure the removal of redundant development from the countryside.

- 6) No development shall take place until a construction method statement (including details of all on-site construction works, post-construction reinstatement, drainage, mitigation, and other restoration, together with details of their timetabling) has been submitted to and approved in writing by the local planning authority. Development shall take place only in accordance with the approved construction method statement. The construction method statement shall include measures to secure:
- a) Formation of the construction compound and access tracks and any areas of hardstanding, earthworks and re-grading associated with the access tracks, storage and handling of topsoils and soils;
  - b) Cleaning of site entrances and the adjacent public highway and measures to prevent mud and debris from the site extending on to the public highway;
  - c) Temporary site illumination measures;
  - d) Disposal of surplus materials;
  - e) The sheeting of all trucks taking spoil to/from the site to prevent spillage or deposition of any materials on the highway;
  - f) Temporary and permanent parking areas for construction vehicles, maintenance vehicles, equipment and component storage associated with the development.

Reason: In the interests of visual amenity and road safety, and to prevent pollution of the environment.

- 7) No development shall take place until a written haul route plan and scheme for temporary works signage has been submitted to and approved in writing by the local planning authority. Vehicles travelling to or from the site while development is taking place shall do so only in accordance with the approved haul route plan. Approved signage shall be provided prior to works commencing on site and shall be retained until the construction phase of development has been completed.

Reason: In the interest of highway safety.

- 8) Construction of any permanent areas of hardstanding shall not commence until the colour finishes of the surface materials to be used have been submitted to and approved in writing by the local planning authority. Development shall take place only in accordance with the approved details.

Reason: To ensure that the development has a satisfactory appearance.

- 9) No development shall take place until details of the external finishes of the turbine, switch room and HV metering unit have been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved details.

Reason: To ensure that the development has a satisfactory appearance.

- 10) No development shall take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol and methodology for dealing with the assessment of shadow flicker in the event of any complaint. The protocol and methodology shall include remedial measures to be taken to alleviate any identified occurrence of

shadow flicker associated with the development. The turbine shall be operated in accordance with the agreed protocol and methodology.

Reason: To maintain residential amenity, with regard to shadow flicker.

- 11) No development shall take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol and methodology for dealing with the assessment of electromagnetic interference in the event of any complaint. The protocol and methodology shall include remedial measures to be taken to alleviate any identified occurrence of electromagnetic interference associated with the development. The turbine shall be operated in accordance with the agreed protocol and methodology.

Reason: To maintain residential amenity, with regard to electromagnetic signals.

- 12) No development shall take place until a scheme for the replanting of any hedgerows or boundary planting removed for the proposed access during construction has been submitted to and approved in writing by the local planning authority. The scheme shall include provision for the replacement of diseased or dead hedgerow or boundary planting, and a programme. Development shall be carried out only in accordance with the approved details.

Reason: to safeguard and enhance the appearance and landscape of the site.

- 13) No development shall take place until a surface water management plan covering water treatment and the means of drainage from all hard surfaces and structures within the site (including access tracks, buildings, turbine base, assembly platform and crane platform) has been submitted to and approved in writing by the local planning authority. The details to be submitted shall indicate the means of protecting groundwater, including private water supplies, and diverting surface water runoff. Development shall be carried out in accordance with the approved details.

Reason: To protect the local water environment from pollution.

- 14) No development shall take place until a scheme of aviation obstruction lighting has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

Reason: In the interest of air safety.

- 15) 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 these conditions 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) No electricity shall be exported until the wind farm operator has submitted to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.

c) 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.

d) 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 (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.

e) 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.

f) 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.

g) 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 (d) 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 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Lane Head Farm	45	45	45	45	45	45	45	45	45	45		
Well Head	35	35	35	35	35	35	35	35	35	35		

Table 2 – Between 23:00 and 07:00 – 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 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Lane Head Farm	45	45	45	45	45	45	45	45	45	45		
Well Head	43	43	43	43	43	43	43	43	43	43		

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

Property	Easting	Northing
Lane Head Farm	322905	541674
Well Head	323463	541747

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

#### 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 turbine operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for the turbine and arithmetic mean power generated by the 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. In specifying such conditions the Local Planning Authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

(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 (d) 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.

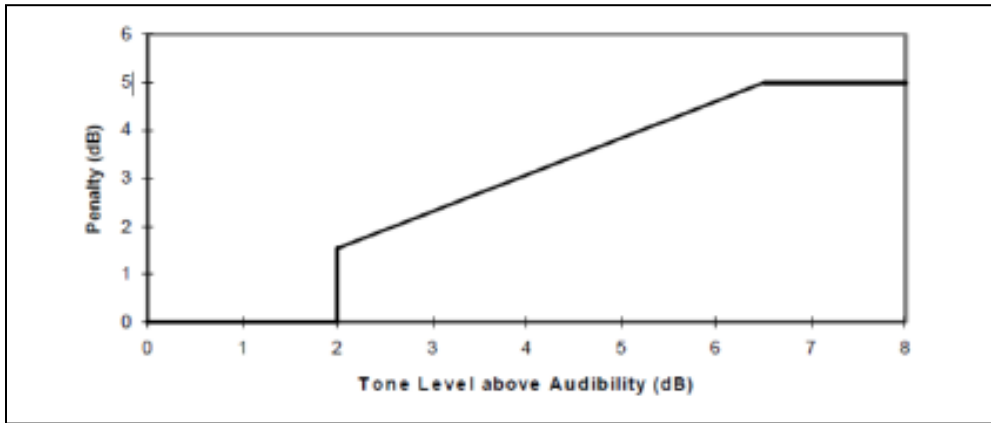
(b) For each 10 minute interval for which  $L_{A90,10 \text{ minute}}$  data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals 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 10 minute 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. 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 (d) 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 (e) 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 turbine operator shall ensure that the wind turbine is 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 turbine 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:

$$L1 = 10\log[10^{L2/10} - 10^{L3/10}]$$

(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: to ensure an acceptable level of residential amenity.



## 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.