

Appeal by RES UK
SWIFT WIND FARM, ON LAND AT CESTERSOVER FARM, LUTTERWORTH
ROAD, CHURCHOVER, RUGBY CV23 0QP

Closing Submissions on behalf of
Churchover Parish Council

Introduction

1. These submissions are made on behalf of Churchover Parish Council (“CPC”), who in turn represent the people that make up the local community of Churchover, a village to the south of the appeal site that will suffer from the unacceptable effects of the inappropriately placed appeal proposal.
2. An important part of the context for this appeal is that this is not a proposal that has local community backing. That is of significant importance in light of recent guidance published by the Secretary of State, because unless the proposal demonstrates, following consultation, that the planning concerns of the local communities have been addressed, and therefore it has their backing, permission should not be granted.
3. At the start of the Inquiry the Inspector set out what he considered to be the main issues and these submissions are structure to address those matters in turn. They are:
 - (i) The effect of the proposal on the setting and significance of nearby heritage assets ;
 - (ii) The landscape and visual effects of the proposal ;
 - (iii) Whether the environmental benefits of the scheme outweigh the harm the caused by the proposals.

Issue 1: Heritage

4. These submission necessarily focus on the harm to the Holy Trinity Grade II* Listed Church, Churchover (“HTC”), and the Churchover Conservation Area (“CA”) as these are the main assets with which the Parish Council is concerned. That of course does not represent the totality of the harm brought about by the scheme to the historic interest of the area, particularly in respect of the ridge and furrow that will be directly impacted by the scheme, but is in fact a non designated heritage asset.
5. In respect of the two main assets, every witness who has appeared at the Inquiry is agreed that the harm is, in Framework terms, less than substantial “LTSH”. That does not however amount to a less than substantial objection to the grant of planning permission – to treat it in that way would be an error of law.¹
6. In terms of the decision-making framework - the Court of Appeal decision in *Barnwell Manor*² [CD/E.29] provided authoritative guidance on the correct interpretation of section 66. Having reviewed the relevant authorities, Sullivan LJ concluded, supporting the findings of Justice Lang in the Court below;

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

¹ *Barnwell Manor Wind Energy Ltd -v- East Northants DC & Other* [2013] EWHC 473 (Admin) and [2014] EWCA Civ 137, paras 28 and 29

² *ibid*

contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the Inspector's planning judgment. (emphasis added)

7. That decision has been followed in the more recent *Forge Fields* case³ where, in a key paragraph, Lindblom J said:

49 This does not mean that an authority's assessment of likely harm to the setting of a listed building or to a conservation area is other than a matter for its own planning judgment. It does not mean that the weight the authority should give to harm which it considers would be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But it is to recognise, as the Court of Appeal emphasized in Barnwell, that a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering. (emphasis added)

8. In this matter, it is accepted by the Appellant that the development will result in harm to a Grade II* listed building deserving of the highest level of protection. In those circumstances, the section 66 duty applies with particular force.⁴ Dr Edis also identifies LTSH in respect of the Conservation Area (an asset that he regards is of high value)⁵ and while there is no statutory protection for the setting

³ *R. (on the application of Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 CD/E. 28

⁴ *Barnwell* [2014] EWCA Civ 137 para 29

⁵ see ES, Table 10.1, p.226 – answers in XIC

of a CA, the framework steps in to plug the gap through the operation of para 132 because

- (i) the “great weight” to be given to an asset’s conservation is akin to the test of considerable importance and weight to be applied where section 66 is triggered as agreed with Dr Edis in XX; and
- (ii) the Framework does not discriminate between assets – it applies with as much force to Listed Buildings as it does to Conservation Areas.

9. Accordingly, following the *Barnwell Manor* and *Forge Field* Judgments, the ‘strong’ presumption against the grant of planning permission is engaged and considerable weight attaches to the harm that has been identified in this case.

10. Turning then to what the harm actually is, while it has been well articulated by CPC through the evidence of KD, one could be forgiven, if having read Dr Edis’ evidence to this Inquiry, they were none the wiser.

11. Nowhere in Dr Edis’ proof does he articulate what the harmful effect of the turbines is on the significance of the HTC or the CA. The closest he comes is at his para 4.5 where he talks about the change in views, followed by the statement that

“Viewpoint 18 is a worst case example, and it draws attention to the effect.”
[para 4.7]

12. The “effect” is never explained however, and it was not until Dr Edis’ evidence in chief that some elucidation on the matter was provided. How Dr Edis can claim to have fairly assessed the effects on the relevant assets without actually identifying what it is and how it arises is a mystery. It is plainly inadequate for an expert witness to present evidence to an Inquiry on that basis.

13. That is even more plain when it is considered that:

- (a) Dr Edis played no part in the drafting of the relevant chapter of the ES
- (b) He was instructed late in the appeal process;
- (c) He departs from the ES in respect of key conclusions, see para 4.3(ii) of his proof; and

(d) He observes that the “effect” identified leads to the conclusion that there is no heritage objection to the scheme.⁶⁷

14. Dr Edis’ answer to the point was that the effect was “obvious” –the impact of turbines on heritage assets such as this are well known and didn’t need to be rehearsed in his proof. With respect to Dr Edis, that is an entirely incorrect approach. It was incumbent upon him to carry out the process of identifying harm to the significance of the asset, because without doing so, his conclusions on the level of harm are inexplicable.
15. Dr Edis argues that the harm is minimal, because there will be many elements of the Church’s significance that remain unchanged, and there will still be many views where the Church can be appreciated without turbines interrupting the view i.e. closer to the Church such as within the CA itself.
16. However, Dr Edis also accepted in XX that harm to just one key element of an asset’s significance could give rise to LTSH and even substantial harm in some circumstances, and so it is of no assistance to repeat the mantra that other elements of the Church’s significance remain unchanged. Dr Edis further recognised that while he himself placed more value on the architectural features of the church that can be appreciated in close proximity, local people may place greater value on the spire acting as a landmark in the wider landscape. There is no evidence before the Inquiry that would suggest one element of significance is more important than the other – both are elements of the significance of the broader whole, and both are considered in KDs evidence **[from para 43]**.
17. Moreover, in closer views where the architecture of the church for example can be better appreciated, then the prominent landmark effect of the church spire is not. In views where that is appreciated, Dr Edis had to concede his paragraph 4.6 should be modified. There would not be many more unaffected views than affected views. That must be right – KD explains in her proof that on all approaches to Churchover, the village stands out in the landscape that

⁶ Dr Edis 4.2 proof

⁷ As Dr Edis fairly conceded in XX, that final matter is not a conclusion that the author of the heritage chapter can fairly draw, given that the harm identified is to be weighed in the balance with the other harms and benefits identified.

has changed little in several hundred years⁸, and her appendix 2 demonstrates a range of views around 360° where the turbines will be seen in the same view as the Spire, competing with and diminishing its current prominence in the landscape.

18. By concentrating on elements of the Church's significance that are not going to be impacted by the scheme Dr Edis dilutes the effect with which we are really concerned for the purposes of this Inquiry. He has failed to concentrate upon the effect of the turbines on the spire, or "spike" as he called it, and in doing so, has failed to properly engage with the real area of concern.

19. That is a remarkable failing when the ES accepts the Spire is "prominent" (**para 10.8.26, p.244**) albeit Dr Edis modified the word to "apparent". Moreover Dr Edis accepted in XX that:

- (i) the Church was built as a landmark
- (ii) it is the main landmark in the area;
- (iii) it is a focal point that was intended to be seen from a distance and functions as a waymark (albeit the function has declined over time);
and
- (iv) there are no other landmark structures in the vicinity of the HTC Spire.

20. Furthermore, Dr Edis recognises the interaction between the Church and the Swift Valley in which the appeal site lies, and as was alluded to in the text of Joseph Ashby's 'Victorian Warwickshire';

"The quaintly built church, with its unpretentious tower and steeple, which lift themselves aloft as though to watch maternally over the valley below, stands upon the highest ground, and form in warm sunshine, which lights it slumbering masonry into every shade of brown and silver, a delightful picture."

21. Dr Edis accepted that it was important to preserve all those aspects of the Church's significance as far as possible.

⁸ K Down Proof at para 40.

22. In light of the particular characteristics of the church and the nature of this development, a strong theme emerges from the guidance, that careful regard should be had to the form, appearance and proximity to heritage assets of wind development. In particular, the now archived Historic England Guidance on “Wind Energy and the Historic Environment” **[CD/G7]** explains

“Visual dominance: Wind turbines are far greater in vertical scale than most historic features. Where an historic feature (such as a hilltop monument or fortification, a church spire, or a plantation belonging to a designed landscape) is the most visually dominant feature in the surrounding landscape, adjacent construction of turbines may be inappropriate.”

23. Dr Edis fairly observed that “adjacent” is unlikely to mean “next to”, but more likely to mean “proximity”. Indeed, that is precisely the situation we have here, and not just from vp18, but from a number of views. Again, Dr Edis happily accepted in XX that the undesirable “effect” can occur when the turbines appear behind, in front of, or to the sides of the asset.

24. Historic England’s latest guidance also provides a list of factors that are useful in elucidating the implications of development for the significance of the heritage asset in question **[CD/G1, p.11]** under the general heading ‘the form and appearance of the development’ two examples of which are:

- (i) prominence, dominance, or conspicuousness
- (ii) competition with or distraction from the asset

25. Dr Edis conceded that he hadn’t made an assessment in those terms despite being aware of the guidance that was published earlier this year and accepting in XX (yet not mentioning it in his proof) that the turbines will undermine a person’s ability to appreciate the spire as a landmark feature. Again, the position taken by him, that the effects are “obvious” might be true, but it is inadequate nonetheless.

26. Dr Edis relies on the Hawton Appeal decision **[CD/E9]** to support the proposition that a finding of LTSH even to an asset of the highest significance is not necessarily fatal to a scheme. The opposite is also true. LTSH to an asset of

lower value can, and indeed has been fatal to a wind farm scheme that was proposed adjacent to the Louth Canal in Lincolnshire.

27. In respect of the Hawton appeal, an agreed position was reached at the Inquiry that it was a very different context and not one that was readily comparable to the current appeal. However, in the Louth Canal decision, in which Dr Edis represented the appellant, a number of comparisons can be drawn in terms of the particular effect of the turbines on the asset in question, albeit not in respect of the landscape.
28. In that case, the relevant asset was a Grade II listed warehouse, and the proposal was for three turbines, the closest of which was within 500 m of the asset.
29. At para 412, in her Report, the Inspector observed the following :

“412. Whilst the proposed development would not harm the listed building’s fabric, I have no doubt that it would adversely impact upon the setting of the listed building. The wind turbines would be significantly taller structures than the warehouse. The warehouse when built would have been an imposing and dominant structure with primacy in scale. Moreover, it remains the tallest significant built feature when seen from the road and from the canal. Thus, the scale of the turbines would dominate the warehouse and devalue its current visual status afforded by its height. Furthermore, the contrasting, and conflicting, modern materials and rotational movement of the turbines would draw the eye away from the warehouse which, as a consequence, would lose its visual significance and way marking role. There would also be a visual conflict in that the current setting is of low lying, level, land of drained fields such that the strong vertical emphasis of three turbines would be a particularly uncharacteristic addition to the immediate surroundings. The harm to that setting, by detracting from the presence of the building as a key feature in the landscape, which has a clear way-marking function for the canal and which links the canal to the surrounding land, would harm the significance of this designated heritage asset.”

30. Dr Edis agreed in XX that many of the effects experienced in that instance

would also be seen here – like the warehouse (which itself is significantly smaller than the spire) the Church is the tallest significant built structure in the area at present, and while the landscape in which it sits is not comparable to the warehouse's, the turbines in this instance would dominate the Church in many views, and detract from its presence as a key feature in the landscape in the same way as turbines at Louth Canal would have.

31. Accordingly, the Inspector concluded (IR 416) that there would be *“considerable harm to the significance of the building which falls not far short of substantial harm, largely because of the erosion of the prominence of the building and its canal side way-marking function which would be seriously diminished by the proposed development.”*

32. CPC consider the same conclusions flow here.

33. Dr Edis' evidence to the Inquiry as confirmed in XX is that the effects in respect of the Conservation Area are broadly the same as for the Church **[proof 5.11]**. That conclusion is based, in part, on an understanding that the Church is a key element of the Conservation Area, and that harm to the setting of that asset is harm to the CA as a whole. It follows then that if Dr Edis is wrong about the level of harm to the Church, which he says is “minor” **[proof, 5.7]** then he is wrong about the harm to the CA. Dr Edis does not suggest that the proposal will conserve or enhance the character or appearance of the CA as a whole and while he suggested that he had taken into account the views suggest by KD in her appendix 1 in the drafting of his evidence, there is no evidence that any views other than vp18 have been taken into account by Dr Edis **[proof, para 5.11]**.

34. Again, saying that the harm will be limited to specific views, and that the majority of the setting will be preserved fails to engage with the harm that will be occasioned to the CA, and can be experienced when in the church yard (vp3) as well as when moving out of the CA to the north of the village.

35. Insofar as it is claimed by the appellant that the Council's decision not to pursue a heritage reason for refusal is some sort of endorsement of the proposal, it should be noted that

- (i) while the section 66 duty received a cursory mention in the committee report, there is no evidence of it being rigorously applied in the way we all now understand it should be ;
- (ii) there is no evidence that any advice was taken from a conservation or heritage specialist, on behalf of the Council or that the Officer understood that the harm to the Church created a strong presumption against the grant of planning permission – Mr Lowde accepted in XX he had not been aware of the presumption created by section 66 ; and
- (iii) the conclusions of the ES in respect of harm to the HTC and the CA seem on their face to have been accepted by Mr Lowde. Dr Edis departs from those conclusions, considering the impacts of the proposal were underestimated in the ES. Mr Lowde did not have the benefit of that insight when he drafted his recommendation.

36. Dr Edis relies heavily on the time limited nature of the development to mitigate the harmful impact. Dr Edis confirmed in XX that the he had fed that consideration into his identification of the harm.

37. Essentially, the consideration it is a matter of weight for the decision maker, but a number of points arise:

- (i) 25 years is an unacceptable amount of time for the level of harm identified by CPC and HE to persist;
- (ii) if weight is to be given to the limited duration of the development in principle, there has to be some likelihood that the harm will be removed after 25 years. There isn't. There is no guarantee that the harm will cease because the Appellant has confirmed that it will review the situation and determine whether to seek a further permission. Giving weight to reversibility of the proposal pre-determines that a future decision maker would refuse any further application at that time.
- (iii) The harm to the non-designated heritage asset – the ridge and furrow will not be extinguished after the development is removed – that harm is permanent.
- (iv) There are a number of recent examples of appeal decisions where both Inspectors and the Secretary of State have considered that little

weight should be given to the reversibility of the scheme; see for example **CD.E11/ E32 / E33**.

38. In conclusion, Dr Edis is right –the impact of the scheme is obvious, and it is obviously harmful. While it falls within the LTSH category, it is nonetheless harm to a most valuable asset – HTC, as well as the CA. The Church and CA share an intimate connection with the valley – that connection will be affected by the presence of wind turbines which far exceed the modest scale of the Church spire, and the effect of the Spire as a key landmark in this area will be lost – not through physical destruction, but because of the dominating and distracting presence of the very much larger turbines that do not sit easily amidst this historic context, and interfere with the peace and tranquility of the Church, and the wider CA.

Issue 2 : Landscape and Visual Effects

39. Everyone agrees that there will be significant landscape and visual effects, but that is not what makes the effects of the scheme acceptable or unacceptable. The acceptability of the effects depends on the particular characteristics of the individual landscape – its sensitivity to this sort of development, its interaction with surrounding landscape features and the impact on the value of the landscape as well as the visual receptors who use it.

40. The Council are not fighting the case on landscape grounds, but that doesn't provide very much support for the Appellant's case because the Councils' approach to landscape matters throughout the application process is frankly unclear. Dr Down's proof at paras 38 – 39 suggests that the LPA's scrutiny of the landscape elements of the ES had been less than thorough - perhaps because of an observation in respect of the previous 9 turbine scheme that 4 turbines could be acceptable.

41. Whatever the reason, it is plain that Mr Collett, the Council's landscape officer failed to appropriately scrutinise this application. His email to the case officer discloses no analysis whatsoever of the scheme and its landscape and visual effects. There is no acknowledgment of the warnings given in the White

Reports and the conflicts between the scheme and the recommendations in those Reports (discussed below) and while the Council might argue Mr Collett has the relevant expertise and reviewed the application, there is no evidence that he applied those skills and expertise in an appropriate manner on this occasion.

42. The site is designated as High Cross Plateau/ Open Plateau, but that represents just a name, it is clear (as Ms Oxley accepted) that the character and sensitivity of the area varies throughout, and in order to arrive at a proper judgment as to the landscape effects of a proposal such as this, the assessor needs to be aware of the characteristics which both increase and decrease the landscape's sensitivity to wind development.⁹
43. Ms Oxley has not provided such a balanced assessment. Neither her assessment of the landscape capacity, nor the LVIA submitted as part of the ES are balanced in the way they should be. While Ms Oxley is keen to point out features of the landscape that might be said to detract from its sensitivity, she does not recognise so readily the features that enhance its sensitivity. Perhaps that is not surprising, when it is considered that Ms Oxley was instructed very late in this matter and had visited the site on just one occasion prior to drafting her evidence. That is plainly not enough time to understand and appreciate the full context of the landscape, or the value of the site, judged against the criteria in GLVIA 3 **[CD/F.3, p. p.84]** for example.
44. In particular Ms Oxley relies on a number of features that either ought not to be regarded as detractors at all, or which do not exert the influence over the landscape she says they do –
 - (i) the existing anemometer that will be removed should not be taken into account in the baseline;
 - (ii) the Magna Park development which is some way from the appeal site, does not exert any significant effect over the landscape around Churchover, which is bounded by a comprehensive landscaping scheme that will continue to mature in any event ;

⁹ Agreed by Ms Oxley in XX

- (iii) the farm silos again, exert very little influences over the landscape, and are screened in many views, and despite the presence of major road infrastructure, it is the evidence by Dr Down and a number of local residents that the area maintains a sense of tranquility and calm;
- (iv) the spinneys which Ms Oxley says are robust landscape features that will help absorb the turbines into the landscape. In fact, they will merely serve to accentuate the great height of the turbines that are out of scale with them, the nearby Church Spire of Holy Trinity Church and the Swift valley, which the turbines span.

45. In any event, of the detractors that Ms Oxley identifies, many have a strong horizontal focus, none of them are close to the scale of a turbine, and none of them usurp the function of the church as the tallest landmark feature in the vicinity of the proposed wind farm.

46. There is a detractor that Ms Oxley didn't mention and that is the cement works at Rugby, which can be seen alongside the Church in views from the north. It wasn't mentioned because Ms Oxley's hadn't reviewed the impact of the scheme from the north prior to the evening before the Inquiry. Upon seeing it, Ms Oxley commented that its juxtaposition with the Church was "unfortunate." CPC agree, but the cement works are about 5km away and its 100m tower stands at 195 AOD. That is to be contrasted with the turbines that will reach up to 236 AOD – the effect will be most unfortunate.

47. In terms of "value" of the landscape, Ms Oxley's assessment stopped at determining the site was of "local value", on the basis that it has no national designation, and all landscapes are locally valued by the communities who live in them and use them. That assessment is plainly inadequate, it does not meet with the guidance **[CD/F.3, p. p.84]**, and that assessment impacts on the overall view of sensitivity of this particular landscape because the judgement in respect of value feeds into sensitivity **[CD/F.3, p. p.71]**. Neither does it explain how this site is more or less valuable than any other landscape upon which turbines might be built, so there can be no comparative exercise. Ms Oxley eventually accepted in XX that there is no specific assessment of value in the terms recommended by the GLVIA in her proof.

48. Accordingly, Dr Down's comprehensive analysis of the criteria are commended to the Inspector and the Secretary of State [appendix 11]. It was suggested to Dr Down in XX that he might have a different perception of the landscape because he is a local resident. That he is de-sensitised to the detracting elements. That might be the case, and Dr Down was perfectly proper in accepting that it might be so. However, it is the local people who have a more intimate knowledge of the landscape and in many instances are better placed to comment on its value. Further, given they are the ones who have to live with the effects of the wind farm, their perception of the value of the landscape and how it might change are highly relevant.

49. Likewise, it might be said that Ms Oxley's view of the wind farm proposal wasn't as comprehensive as it might be. She has not seen the landscape at any time other than summer when the trees and hedges are in full leaf and the potential for screening is at its maximum. She has not spent long enough in and around the site to understand its value to the local community and its use for recreation – she agreed that she could not dispute Dr Down's evidence that the footpaths (which will be well within 100 of the turbines) are well used¹⁰, and further accepted in XX that local people had an important insight into the value of the landscape that she couldn't possibly hope to achieve after just one visit.

50. It is right to note that Ms Oxley has relied on past assessments of landscape character in the District, and these do provide a good starting point, but are too broad in nature to relate to the appeal site and surrounding landscape in the level of detail requirement. Accordingly, existing assessments should be viewed critically to ensure a balanced picture is given.

2021 and 2013 White Reports

51. Ms Oxley agreed that she had placed "notable weight" on the two White Reports that she considers support development of the appeal site, but neither Report is a ringing endorsement of the instant proposals, as Appellant's would hope to demonstrate. In particular the Reports recognise

¹⁰ Indeed, during his accompanied site visit, the Inspector will have observed a large group of ramblers enjoying the footpath network.

the differing sensitivities of the character area and urge caution in respect of siting turbines near Churchover .

52. At **CD/C.1**, page 5 of the 2011 Report - which is a general study of land within Rugby Borough to determine its sensitivity to wind farm development- gives a brief description of the sensitivity of the character area concluding in respect of High Cross Plateau – Open Plateau that:

“Wind turbine development is more compatible with the large scale, less settled parts of the area, possibly associated with Magna Park, although proximity to Newnham Paddock could be an issue.”

53. Despite Ms Oxley’s reluctance to agree the point, the Report clearly draws a distinction between land within the vicinity of the appeal site, and land of lower sensitivity elsewhere in the character area.

54. In addressing the capacity of the area for wind development, the Report notes that it has “some capacity for wind farm development – **preferably one** but one other may be possible.” (emphasis added) Again, the Report is noting that there are better places than the appeal site, notably the upper plateau in the north of the character area, and that while one other development might be possible, it is not the preferred option.

55. Pertinently, towards the end of that paragraph, a number of features are mentioned to which particular regard should be given in the siting of a second cluster, and those include Churchover, its spire, and the character of the Swift Valley. Indeed Ms Oxley eventually agreed in her XX that the 2011 Report recognises the closer you get to Churchover, the less able the land is to accommodate wind development.

56. The effects of development on Churchover, and on the spire, are a feature that is repeated throughout both **CD/C.1** and **C.2**. The authors of the Reports were clearly concerned to ensure that any development did not have unacceptable effects on those interests. In particular, at Appendix A;

- (i) under the heading ‘landform scale and enclosure’ the authors’ comments are that wind development is more compatible with the

broader plateau than the Swift valley. The turbines in this instance span the valley on the eastern and western slopes, and so depart from the recommendation of the 2011 Report in that respect. Miss Oxley does not refer to the Swift Valley as a feature of sensitivity in her evidence. She should have;

- (ii) the next section of the report notes that “[T]here are some pockets of pasture and fields with ridge and furrow which are sensitive.” It is concluded that wind farm development is less compatible with the complex lower areas and elements such as ridge and furrow which would include the appeal site and surrounding land. Again Ms Oxley neglected to comment on those sensitivities in her proof;
- (iii) The Report notes that the Church spire is the most notable focus and that wind energy could diminish the spire and replace this as a focal point in the landscape. Plainly then, the Report is highlighting a potential adverse effect that is to be avoided, and which has had a bearing on the conclusion that wind energy development is better placed elsewhere.

57. Appendix B which contains the capacity worksheets specifically addresses Landscape Description Unit 106 which includes the appeal site and Churchover (page 5), again referring to the “small church spire at Churchover as the main landmark in the area.”

58. The Report then goes on from page 6 to make recommendations about where wind development might be accommodated and should be read with reference to the plans contained earlier on in the Report (Figures 7 and 8). These show that Scenario B includes 1 scheme towards the north of the character area (the preferred option), and one scheme to the north east of the appeal site. Based on that scenario, pages 7, 8 and 9 raise a number of concerns including:

- (i) the potential for dominance;
- (ii) a recommendation that development avoid the eastern side and the floor of the swift valley (the scheme doesn’t); and

- (iii) the Report warns that a cluster within 2 km of Churchover “**would** affect views to the listed church and spire diminishing its scale and affecting its context including the conservation area..” (emphasis added)

59. In the second Report (“the 2013 Report”) [CD/C2] White Consultants were focused on the specifics of the scheme before the Inquiry, Ms Oxley said in XX the approach of the Report was “neutral”. It was not there to provide a recommendation as to whether the scheme was acceptable or not, but it is clear that the caution arising from the 2011 Report about development in the area of the appeal site continues.

60. Page 4 accepts that the proposal is within the size limit recommended in the 2011 Report, but acknowledged that it lies within the Swift Valley so is on the more sensitive fringes of the landscape character area, and is within 1km of Churchover. Those are features which are undoubtedly less desirable, and the Report acknowledged that.

61. In assessing how the proposal conformed with the criteria set out in the 2011 Report from page 6, the 2013 Report observes:

- (i) that the close proximity to Churchover means that the issue of dominance needs to be addressed;
- (ii) there would be an effect on footpaths;
- (iii) the potential for dominating the valley is less with 4 rather than 7 turbines, but the Report does not say the potential is avoided; and
- (iv) importantly,

“The turbines are seen in juxtaposition with the Churchover church spire located closer to the village than the report scenario position. They are significantly larger structures than the church and would diminish its scale and affect its context becoming the dominant foci...”

62. The Parish Council agree with the last comment which presents a severe hurdle for the scheme, and while Ms Oxley agreed that the Church was the dominant focus at present, and an important waymarker it is important to preserve as part of the character of the area, she would not accept that the

proposal will replace the spire in that regard. Her evidence was that it would simply add other foci. Nor did she agree that the turbines would diminish the scale of the spire.

63. The position is unsustainable when the relative heights and proximity of the structures are considered. Moreover, the guidance at **CD/ F1** page 20 states that a key design objective is to place wind farms where they are of a minor size compared to other key features and foci within the landscape (para 3.33).

64. Further guidance is given on page 22 under the heading 'Focal Features' where it is explained at 3.42 that

"Wind farms, because of their very nature and typical location within open landscape, often become major focal points. Their interaction with the existing hierarchy of foci needs to be considered in their siting and design, in order to minimize visual conflicts or avoid compromising the value of existing foci."

65. Below that a diagram is given explaining how wind farms can, if sited inappropriately, reduce focal prominence and distinction of the original foci. The diagram is of a small church. Despite being taken to the guidance, Ms Oxley would not accept the point that the wind turbines were capable of diminishing the scale of the Church Spire, because of their far larger scale.

66. The reluctance to accept the blindingly obvious might be a symptom of Ms Oxley's lack of experience with this particular site, or defence of the indefensible. The scheme will of course challenge the dominance of the spire as an important landscape features, and this part of the character area will be the worse for it. The scheme does not respect the scale of the Church or the interaction between Churchover and the valley the turbines spans – building on the eastern slopes which the White Report cautioned against.

Visual Effects

67. It is agreed that significant visual effects can extend to up to 5km, which will undoubtedly affect people in and around Churchover as well as Cotesbach. There is a well used network of footpaths extending from Churchover, around

the site and along the valley, and the area is covered by a Green Infrastructure designation. It is remarkable that Ms Oxley should consider it “inappropriate” to assess the impact of the proposal on the designation when the Guidance issued by the Landscape Institute itself says at para 2.10 that:

68. *“Green Infrastructure is not separate from the landscape but is a part of it and operates at what is sometimes referred to as the ‘landscape scale’. It is generally concerned with sites and linking networks that are set within the wider context of the surrounding landscape or townscape. LVIA will often need to address the effect of proposed development on green infrastructure as well as the potential the development may offer to enhance it.”*

69. The GI designation is intended to promote the protection restoration and enhancement of the land it covers (see Policy CS14 **CD/B2**) and encourage people to use it. To the extent it succeeds in the final aim, it exposes more visual receptors to the impacts of the turbines which Ms Oxley fairly accepted should be considered as a negative effect. That can only increase the level of visual harm of the scheme because there are more receptors to experience the effect.

70. In respect of the specific viewpoints, the Inspector has the view of the Appellant on each one, and Dr Down has also provided a commentary at appendix 12 of his proof. CPC commend the views of Dr Down to the Inspector and Secretary of State, because that is view formed with a full and comprehensive knowledge of the area, and in the context of a robust value assessment.

71. Of note however is one particular viewpoint, and that is viewpoint 3 from the area of the Church burial yard. As a place where active burials take place, those who use the churchyard are entitled to expect peace and tranquility when they visit, and while the full array of turbines will not be visible, they will be obvious to the north of the church, and the rotating of the blades is bound to intrude on the experience of the very high sensitivity users of the church yard.

Residential Amenity

72. It is surprising that none of the representatives of RES have been in touch with any of the occupants of properties who might be adversely impacted by the proposals. Judgements have been arrived at as to the impact of the proposal on individual homes without any knowledge of how those homes are used, without which, a judgement about the effect of the turbines cannot be made. This is yet another example of the inadequate approach the appellant has taken to assessing the visual impact of the scheme.

Written Ministerial Statement, 18th June 2015 [CD/10 -11]

73. CPC perfectly understand why in the face of overwhelming local community opposition to the scheme, the Appellant has little choice but to argue that the WMS means something other than what it says it means. It is noted at the outset that everyone agrees the WMS is a material consideration, but the way it is interpreted and how it should be applied in this particular matter was a topic of extended discussion at the Inquiry.

74. The text of the WMS as transposed into the PPG is quite plain that in relation to this scheme, the scheme will only be acceptable if following consultation, the decision maker¹¹ is satisfied that

- (i) the planning impacts of the affected local communities have been fully addressed; and
- (ii) therefore, the proposal has the “backing” of the local community.

75. The conjunctive “and” is fundamentally important in the drafting of the guidance. It means that both (i) and (ii) above are requirements, and satisfaction of the first is not enough to pass the test.

¹¹ Expressed as the local planning authority in the guidance, but accepted to apply to all decision makers by all parties to the Inquiry.

76. This is where the Appellant, and also the Council go wrong. Despite Mr Stewart agreeing in XX that :

- a. the guidance was intended to bring about a significant change in the way that decisions in respect of wind farms are taken;
- b. “backing” can fairly be equated with support. It is a positive act;
- c. “backing” does not mean ambivalence;
- d. the guidance should be approached in a common sense way

77. Mr Stewart refused to approach the matter in a common sense way. He would not take a common sense view of who the local community were, and insisted that “backing is to be inferred” if the information submitted by the Appellant assessed the planning impacts identified by the local community and the local authority were content to approve the scheme.

78. If the only requirements of the guidance were to consult with the local community and then submit sufficient information to allow the local authority to arrive at a decision as to whether the adverse impacts of a scheme were outweighed by the benefits, then there would be no change in the decision making process. That is what is expected anyway, and yet Mr Stewart recognises that the guidance is a “major change” (**proof 5.2.9**).

79. Moreover, in the PPG the guidance appears under the heading “Do local people have the final say on wind farm applications?” The implication is clearly “yes” – it is intended to signal a change, whereby council officers, planning committees Inspectors and the Secretary of State cannot permit a scheme that they consider to be acceptable in all other respects if the local community do not support it.

80. Accordingly, the following questions need to be answered;

- (i) Who is / are the relevant local community/communities ?
- (ii) Are their concerns “planning concerns”;
- (iii) Have those concerns been fully addressed?
- (iv) Does the proposal have local community backing.

Local Communities – who are they?

81. It is accepted that in some appeals this question might be difficult to answer – fortunately this is not such an appeal. That answer is obvious - the two most affected local communities are Churchover and Cotesbach.
82. That follows whether you look at the proposal in plan form, if you look at the settlements most visually affected, or whether you look to Mr Stewart's appendices, and you see that responses from those places in respect of the initial application, the re-application, and the appeal are consistently higher than from elsewhere.
83. Moreover, in relation to the re-application R15/0908 RES wrote on 21 April a circular letter ¹²(attached to these submissions) to announce the application was being made. At page 2 is the statement: "LEDS (RES's Local Energy Discount Scheme) offers neighbours within 1.4km of the proposed windfarm an annual discount of £180 off their electricity bills – paid directly to the supplier". This pre-dates the WMS and can be very fairly taken to indicate RES' view prior to the WMS of what constitutes the "local community", namely the only people deserving of subsidy.
84. That rather undermines Mr Stewart's entirely unworkable test of including all the communities within a 5km radius.

Planning Concerns?

85. There will inevitably be responses during a planning application process that raise matters that cannot properly be regarded as material considerations. However, it has not been alleged that the fundamental concerns and objection raised by the local community and residents of Churchover in particular, are not planning concerns for the purpose of the guidance. Moreover, the concerns relate to the array of the turbines – this is not a case where it is one turbine that is objected to such that its removal would remove the objection.

¹² For ease of reference – this document is already before the Inquiry

86. In any event there has been no change to the scheme whatsoever since the Appellant proposed 4 turbines. CPC strongly resists any suggestion by the Appellant that this scheme should be taken to be a mitigation of the previous 9 turbine scheme. First, the previous scheme was entirely inappropriate as indicated by Mr Stewart in XX. Secondly, the applicant for this scheme is different, and proposes the present layout as a result of environmental constraints rather than any specific consultation with the local community as to how many turbines they thought appropriate. In other words, the proposals do not relate to carefully considered consultation responses.

87. It was also clear from the analysis of responses given in Mr Stewart's appendix 1 that overwhelmingly responses dwelt on legitimate planning concerns and almost none were concerned with non-planning issues such as property values.

Fully Addressed?

88. Fully addressing the planning concerns of the local community cannot just mean providing evidence and reports dealing with those issues by way of environmental information because the appellant is bound to do that anyway, and there would be no need for the WMS to re-state it. The concerns of the community still remain such that Churchover Parish Council as well as ASWAR and a number of individual speakers attended the Inquiry to give evidence objecting to the scheme.

89. Further, the sustained objection of Historic England seems to provide an objective measure that the concerns over heritage have not, as a matter of fact, been fully addressed.

Support ?

90. The final requirement, that there must be community support, cannot be ignored. The words are there, because they mean something. If they were not intended to establish a test, then the guidance might have stopped at saying

“following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed.”

91. On any view this proposal cannot be said to attract community support. The elected Parish Councillors, Borough Councillor, County Councillor and Member of Parliament all oppose it. Mr Stewart was keen to point out that there was not total opposition - not everyone is opposed to the proposal – there are an amount of people who expressed no view either way. Quite apart from the fact that “total opposition” is not the test expressed in the guidance, Mr Stewart’s contention that those people who do not express a view should be taken to support the development is entirely wrong.
92. There was some suggestion during the Inquiry that those who wanted support the scheme might worry about voicing their opinion in a village that was generally opposed. That cannot be right. Dr Down explained how drop in confidential surgeries were held in the village so that the Parish Council could receive all views from the local community. Moreover, members of the public are perfectly entitled to write to either the LPA or the Planning Inspectorate to give their views on a scheme and ask that their details remain confidential. There was a speaker in support of the scheme from Churchover who spoke at the public session – he obviously wasn’t concerned there would be a backlash in the village.
93. Those who have not expressed a view are entitled to hold no view, or indeed, rely on their Parish Council as elected representatives to make the case against the wind farm on their behalf as they have done at this Inquiry. Certainly, none of those people can be said to be “backing” the proposal. As Mr Stewart agreed in XX, ambivalence is not “backing”, because “backing” suggests something positive. It is not something that can be inferred from silence. Moreover, just because people support the generation of electricity from renewable sources nationally, does not translate into support for a specific scheme. If national support were the intended measure of “community backing”, the guidance would have said so.
94. There may of course be cases where there are a number of people against and also in support of a proposal from the same community such that it

becomes difficult to discern who has the majority and whether the proposal has the backing of the local community - there is no such difficulty here.

95. Indeed RBC has stated twice in written evidence¹³ and in their response to PINS on a request for submissions concerning the WMS that there is significant local objection.

96. The question then is what does it all mean for paragraph 98 of the NPPF? The answer must be that the impacts of the proposal cannot be made “acceptable” if the proposal does not have local community support.

97. It is understood that the council seek to rely on the case of *Newport BC v. The Secretary of State for Wales* [1998] Env. L.R. 174. CPC has not yet seen those submissions, but insofar as the Council seek to rely on the case to argue their interpretation of the WMS, it is noted that:

(a) the case concerns the public perception of risk arising from a development. That may be a part of local opposition to the wind turbines, but not necessarily so. The objections that have been raised by CPC, particularly landscape and heritage, do not arise from a fear about the safety of the turbines;

(b) the context in that decision was different - there was no WMS that explicitly elevates public opposition to a scheme to the status of material consideration that is capable of leading to the refusal of a scheme where it does not have the backing of the local community .

The planning balance

98. Throughout their evidence, CPCs witnesses have acknowledged and accepted the benefits of renewable energy generation. Chief among those benefits is the contribution the scheme makes to the generation of renewable energy as part of the UKs binding targets, as well as the increased energy security that arises as a result. There are some short-term economic benefits to be gained from the construction of the wind farm too, but they are minor in

¹³ N Lowde, Appendix 4 (Committee Report)

comparison to the operational lifetime of the scheme. These benefits have to be weighed into the balance with the acknowledgement that there is strong policy support for the generation of renewable energy. That benefit however is significantly and substantially outweighed by the numerous harms that have been identified as arising from the scheme, not least a strong presumption against the grant of planning permission arising from the harm to nearby heritage assets, and the lack of community support for the scheme.

99. It is right to note that wind power is an important part of the energy mix, but such development, because of its significant adverse impacts, must be sited appropriately. Churchover is not an appropriate place to put a wind farm. Despite the presence of significant road infrastructure, the Swift valley remains a rural and intimate landscape that would be unacceptably damaged by the introduction of turbines on either side of it. Moreover, the valley retains a historic link with Churchover Church that overlooks it and would be entirely dominated by the presence of structures that tower at over five times its height. It is for those reasons that CPC identify conflict with both the development plan and the NPPF, both of which aim to secure sustainable development that protects the historic and natural environment as well as respecting the character and amenity of the area in which development is situated.

100. Mr Stewart agreed in XX that if policies CS16 **[CD/B2]** and GP5 **[CD/B1]** are taken at their word, then there is a conflict with the development plan because the proposals will undoubtedly cause “material harm”. Mr Stewart however says that when read together with the explanatory text, GP5 can be interpreted so as to encourage a balance to be struck in the assessment of a particular project, i.e. development such as this will be permitted where there is no “unacceptable” harm. Frankly, CPC don’t mind how the policy is read, the harm is significant and is unacceptable in any event and there is a conflict whether “material harm” means “any harm” or “unacceptable harm.”

101. CPC also identify a conflict with policy GP2, and indeed, it has never been the Appellant’s case that the proposals will retain the character of the landscape or even enhance it -the significant adverse effects are acknowledged and that harm weighs against the scheme.

102. Likewise, there is an undeniable conflict with Policy E17 – because there is harm to the setting of heritage assets. The weight to be given to that policy may be reduced because it does not incorporate a balance in the same way that the Framework does. Nonetheless, the development plan, together with the statutory duty under section 66 of the Planning (LBCA) Act 1990 is the starting point, and the policies of the plan reflect the same laudable aims the Framework is seeking to secure.

103. In respect of Green Infrastructure Policy, there has been no assessment by the Appellant as to whether there is a conflict or not. They have simply ignored it. However, the scheme will neither protect, restore nor enhance the Green Infrastructure around the site, and the harm to the landscape will lead to harm to that asset because its value is bound up in the landscape. The text accompanying Policy CS14 [CD/ B.2, page 37] at 6.11 recognises that the intrinsic value of the asset might be lost and CPCs case is that harm that will arise here if the appeal proposals are constructed and will cause a conflict with that policy.

Conclusion

104. In conclusion, the proposals give rise to a number of conflicts with the development plan. They fail to meet with the aims of the plan policies as well as the Framework in bringing forward development that respects the natural and historic environment. The generation of electricity through renewable means might be sustainable, but the development proposed here is not. The harm associated with a wind farm at this particular location significantly and demonstrably outweighs the benefits of the project as a whole, and the adverse impacts of the proposal cannot be made acceptable. Accordingly, permission should not be granted; the Inspector is respectfully asked to recommend the appeal be dismissed and the Secretary of State is invited to do so.

THEA OSMUND-SMITH
No5 Chambers
14th September 2015

**Appeal by RES UK
SWIFT WIND FARM, ON LAND
AT CESTERSOVER FARM,
LUTTERWORTH ROAD,
CHURCHOVER, RUGBY CV23
0QP**

**Closing Submissions on
behalf of
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