

VARIOUS WIND FARM PROPOSALS

CLOSING SUBMISSIONS ON BEHALF OF TYNE DALE D.C.

INTRODUCTION

1. The function of this closing speech is to summarise the argument on behalf of the Council, explain how that argument is justified by reference to the evidence called and tested at the Inquiry and to highlight those aspects of the evidence which illuminate the principal controversial issues. It is not and does not purport to be a document which repeats the evidence or acts as a surrogate planning proof.
2. The structure of this speech is dictated by the fact that there are several applications and by the Council's response to them. The Council does not wish to see consent granted for any of the applications. Alternatively there are reasons particular to each of the proposals which justify a rejection of them singularly. The intention is therefore to explain the Council's case with regard to all three schemes and then to condescend to an analysis of the

reasons why each individual scheme is objectionable. Beyond that, and pursuant to the Inspectors ruling,<sup>(1)</sup> the Council will comment on an order of ranking should it be thought appropriate to grant consent for one of the schemes.

3. This approach immediately calls for a note of caution. It does not follow that the Secretary of State is left with Hobson's Choice in which he must choose the least worst of the three schemes before him. In this case it is open to Secretary of State to reject the three schemes in view of the particular harm which they cause. In rejecting them it is open to the Secretary of State to explain that a different proposal with a different, less harmful configuration or size or number of turbines should receive rapid and sympathetic treatment from the Council. In this way the policy imperatives for bringing forward renewable energy schemes could be advanced without the particular harm associated with each individual scheme presently before the Inquiry. This is not to suggest the Secretary of State should be required to design a new scheme in the decision letter. It would be sufficient to indicate in general terms the type of wind farm which might be regarded as acceptable. Beyond that it is a matter for the commercial market to bring forward a scheme which respects such general indications.

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(1) See Inspectors Oral Ruling on 25 January 2008

THE APPROACH TO THE EVIDENCE

4. In view of the approach taken by some of the parties to this Inquiry the Council feels compelled to submit what it feels should be the appropriate approach to the consideration of the issues and evidence.
  
5. Some of the parties to the Inquiry have tried to erect procedural barriers, the effect of which is to forbid the Inspector from fully engaging with the substantive issues before him because of some complaint about the manner by which they have been presented to the Inquiry. This approach seeks to elevate form over substance and to fix the Inquiry in a procedural straight jacket which forbids a proper consideration of the issues which are fairly and appropriately before the Inquiry. The Council deplores this approach and invites its rejection whenever it arises
  
6. This is not a partisan point. It is one which addresses the overall approach regardless of whether the outcome is helpful to the Council's case. For example, there is a debate between MOD <sup>(2)</sup> and AMEC <sup>(3)</sup> about whether AMEC can adopt cross examination from Steadings and Wind Prospects Ltd in so far as it is thought to be helpful to its case. The Council unhesitatingly supports AMEC's position in that debate. The MOD position in this debate

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(2) MOD/0/3

(3) AMEC/0/50

amounts to “legalistic bickering”, a phrase whose provenance is explained below, and which should be rejected.

7. The Council’s attempt to advance its case (especially during the Planning topic) was beset by a series of similarly unmeritorious procedural complaints about form which substantially detracted from the debate over substance. The Applicant’s concerns were eventually allayed by TDC/0/6 and TDC/0/18 which traced the authorisation for the statutory authority to argue its case in the manner presented to the Inquiry.
8. TDC/0/19 reflects the views of the Court of Appeal to this type of argument as advanced by Steadings:

“20 *I have no hesitation in saying that the claimant’s attitude in this matter is unreasonable and absurd. The sole arguable complaint is that the claimant did not have an opportunity to explain to the defendant why an Inquiry or other hearing should be held. When the claimant is offered that opportunity by the defendant, instead of seizing it and making representations, it engages instead in legalistic bickering and declines to provide any explanation as to why there should have been an Inquiry or a hearing”.*

“21 *The submissions advanced on behalf of the claimant look solely to form rather than substance*”.

9. The facts may differ but the principle does not. The Court of Appeal was there expressing itself with some irritation at an approach which sought to subordinate issues of substance beneath pedantic arguments about procedure or form. The Council contends that all the issues which have a bearing on the questions before this Inquiry should be considered openly and fully and in no circumstances should the Inspector or Secretary of State feel constrained because of procedural niceties. This approach is invited, regardless of whether the outcome is favourable or unfavourable to the Council’s position at the Inquiry.

#### MATTERS CONCERNING ALL THE APPLICATIONS

##### I Grid Connection

10. It is not open to the Secretary of State to grant any consent for any application before this Inquiry. There are two reasons for this, one of law and one of policy.
11. The legal prohibition is explained in TDC/0/0A and supplemented by TDC/0/10A. We refer in particular to TDC/0/0A paragraph 39

*“Once consent had been granted for the wind farms the Secretary of State would be committed to allowing the development to go ahead. That means a grid connection of one sort or another must be provided however harmful it may turn out to be at the subsequent stage of investigation. It is therefore essential, following the Hardy and BAA principles, that the decision maker is fully appraised of the likely effects of the entire scheme before the initial decision to grant consent”.*

12. That is a statement of the Law which applies within the domestic jurisdiction. It reflects the position in Law as directed by the E.I.A Directive which provides that the decision maker must be in possession of full environmental information relevant to the E.I.A project at the “earliest possible stage”.<sup>(4)</sup> In domestic Law this approach is supported by House of Lords in Barker v Bromley LBC<sup>(5)</sup>.
13. The obligation for the Secretary of State to be fully appraised as to the likely significant effects of constructing the grid connection is an obligation of Law. He must be so appraised at the time of taking the initial decision to grant consent for the wind farm project. It serves no party’s interest to invite the Secretary of State to purport to issue any consent in the absence of this information as that would involve a clear error of Law.

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(4) Council Directive (85/337/EEC) Recitals

(5) (2006) UKHL 52 page 3

14. Wind Prospect Ltd unsuccessfully submitted that it was not necessary for them to provide further information as to the proposed Grid Connection because those effects were not capable of being assessed at this stage <sup>(6)</sup>. As an important part of that unsuccessful submission Wind Prospect Ltd referred to R (Delena Wells) v SSSLGR <sup>(7)</sup>.
15. Far from assisting them, this case emphasises the proposition of Law, the Council advances in support of its case:
- “The competent authority was to take account of the environmental effects of the project in question at the earliest possible stage in the decision making process. Accordingly, where national law provided that the consent procedure was to be carried out in several stages, one involving a principal decision and the other involving an implementing decision..., the effects of which the project might have on the environment had to be identified and assessed at the time of the procedure relating to the principal decision. It was only if those effects were not identifiable until the time of the procedure relating to the implementing decision that the assessment should be carried out in the course of that procedure”.* <sup>(8)</sup>

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(6) WPD/0/2A, paragraph 24

(7) (2004) 1 CMLR 31

(8) Page 2

16. Wind Prospect Ltd unsuccessfully tried to rely upon the final sentence as absolving them of any obligation to provide further information as to the Grid Connection. Their failure in this regard is reflected in the Regulation 19 request.<sup>(9)</sup>
  
17. The position is therefore that they can, and should (and, in law, must) provide full information about the likely environmental effects of the Grid Connection as an essential constituent of their present application.
  
18. The Regulation 19 material provided a sufficient basis for the Inquiry to continue as, in practical terms, this allowed Wind Prospect Ltd to reach an evidential parity with the material provided by Steadings. It does not and cannot satisfy the requirement in law to provide a full assessment of the likely environmental impacts of the particular scheme which has been selected by the Applicant and which will be implemented upon the grant of consent.
  
19. A further argument advanced by the Applicants involved the contention that the Grid Connection was a separate and separable application for a distinct development and that it was wrong for the Council to seek to elide them. The point was argued by Steadings in this way:

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<sup>(9)</sup> See X 18

*“The fact that a grid connection may fall to be seen as part of the same scheme or project does not mean that it forms part of the development for which consents are here being considered”.*<sup>(10)</sup>

20. In support of that proposition reliance was placed on R (Candlish) v Hasting BC.<sup>(11)</sup>
  
21. That argument is plainly wrong. It fails to recognise the reality of the position faced by the Secretary of State at this Inquiry. Neither the turbines nor the grid connection have any practical utility without the other. The impacts caused by the grid connection are a necessary and inevitable concomitant of the grant of consent for the wind farm. It is only in a wholly theoretical (and legalistically bickering) sense that they can be argued as being separate projects. Even though there are separate administrative steps involved in obtaining consent, the reality is that both are essential elements of the same indivisible development project. As a matter of domestic and European law the Secretary of State must be in possession of the full environmental information concerning the impacts of the Grid Connection before he can make a lawful decision to grant consent for the wind turbines.

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(10) SWFL/0/2 paragraph 9

(11) (2005) EWHC 1539 (Admin)

22. This argument applies with equal force to all three applications. The highest the material goes at present is to sketch out different route options. This would not be sufficient even in the absence of a likely impact on a World Heritage Site, the presence of which engages an equally decisive question of policy to which we now turn.

POLICY – PPS 22 PARAGRAPH 9

23. The Secretary of State is under a legal obligation to understand and apply his own policy in a rational and intelligible manner. If he elects not to follow his own policy he must give clear and convincing reasons.<sup>(12)</sup>
24. The Developers' planning witnesses were all asked about PPS22 paragraph 9 and all confirmed they were not seeking to challenge its application to the decision at this Inquiry.
25. As applied to this Inquiry, the policy requires an initial decision as to whether the proposal is likely to have an adverse effect on Hadrian's Wall. The bar here is not high. The decision maker must simply make a common sense judgement about the probable impacts of the Grid Connection on the World Heritage Site in order to determine whether the policy is engaged.

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(12) E C Grandsden & Co Ltd v SSE & Gillingham BC (1985) quoted at para 13 of "The Planning System: General Principles"

26. The information provided by the Applicants makes it clear that none of them rule out the possibility of a route passing under or over Hadrian's Wall. A connection which does either is likely to have an adverse effect on the World Heritage Site. No more evidence is required to pass the initial stage. If the Inspector or Secretary of State require more we refer to the representations of English Heritage:

*“English Heritage is concerned about the potential impact on the historic environment of the connection of the development to the national grid”.*

*“...the connection could potentially have an adverse impact on both the archaeological remains and setting of the World Heritage Site”.*<sup>(13)</sup>

27. Whilst this refers specifically to Steadings, English Heritage make similar points with regard to the other two schemes.<sup>(14)</sup>
28. The Council therefore submits that the requirement of paragraph 9 of PPS22 is fully engaged by this Inquiry.

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(13) EH/1/1 paragraph 7.3, 7.4

(14) EH/2/1 para 7.3, 7.4 and EH/3/1 para 7.2, 7.3

29. The policy imposes a specific and direct prohibition on the grant of consent for any of the wind farm applications unless and until the Secretary of State has been supplied with an “Assessment” which “...*has shown that the integrity of the site would not be adversely affected*”.
30. Three points need to be emphasised with regard to that requirement.
- i) the burden is on the party applying for consent to provide such an assessment. It is an undisputed fact at this Inquiry that none of the Applicants have supplied such an assessment.
  - ii) the policy is written in mandatory language in view of the importance of the interests addressed by the policy. There is no discretion permitted in the policy to allow a wind farm notwithstanding the absence of such an assessment.
  - iii) the policy involves an absolute prohibition. It does not imply a balancing exercise in which the need for renewable energy can outweigh a failure of an Applicant to comply with its terms.

31. In the light of the application of this policy (the correctness of which no one disputes) and the undisputed factual position on the evidence the Secretary of State may not grant consent for any of the wind farm projects.
32. The Council is not interested in taking pedantic points capable of easy resolution. The Inspector referred in his ruling to the fact that this problem may be over come by -
- “... a ‘minded to approve’ letter as the catalyst to an authoritative and reliable grid connection proposal”* <sup>(15)</sup>
33. We agree that this is a potential solution but it must carry with it the express contemplation that permission will not be granted if it results in an adverse impact on the World Heritage Site in accordance with paragraph 9 PPS22.

### III BENEFIT V HARM

34. The Grid Connection and, potentially, aviation objections are “show stoppers”, an expression employed by Mr Norris Q.C. to describe the decisive importance of the aviation issue to the outcome of these Inquiries.<sup>16</sup> It is only if the Applicants persuade the Secretary of State that their applications are able to overcome

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(15) X17 para 16

<sup>16</sup> AMEC 0/0/para 20

these matters that it would then be appropriate to assess the applications on a more conventional basis of benefit against harm.

35. It is clear from the written and oral submissions of those acting on behalf of the Applicants that the need to address the harmful consequences of climate change is an interest to which a great deal of weight must attach. The Council agrees. All relevant advice requires that the decision maker must attach particular weight to this interest and provide an appropriately positive policy framework. The Council agrees with this approach and has drafted such a policy in LDF C.S. which has met with the Inspector's approval at the examination for soundness.<sup>(17)</sup>

36. All of that is agreed.

37. The Council departs from the Applicants when they start to assert, or imply, that these considerations are overriding. They are not overriding. It is not the intention of policy at any level that they should be regarded as overriding. Indeed PPS22 paragraph 1 (i) "Key Principles" provides:

*"Renewable energy developments should be capable of being accommodated throughout England in locations where the*

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(17) CD311 para 2.85

*technology is viable and environmental, economic and social impacts can be addressed satisfactorily”.*

38. Mr Provan agreed that this invited a comparison of the benefit of the turbines against the harmful impacts by reference to those three indices; environmental, social and economic impacts. He further agreed that a proposal which could not address satisfactorily those matters had to be rejected. Finally, and most important, he agreed that a rejection of a scheme which could not address satisfactorily those matters was a direct requirement of national energy policy.
39. This short and simple point reveals a deep divergence of approach as between the Applicants and the Council. The Applicants all, in one way or another, suggest that national energy policy requires a grant of consent and that countervailing harm can only ever amount to a basis for rejecting a scheme as an exception to policy. That approach is not correct. The rejection of a scheme which cannot address satisfactorily the environmental, economic and social impacts is a requirement of national energy policy, not an exception to it.
40. The importance of this point is that the balance of benefit and harm is an internal requirement of renewable energy policy. Thus anyone who suggests that the need for renewables overrides other considerations has misunderstood and misapplied national energy

policy. All of the applicants fall into this error. One example will suffice. In the Steadings Statement of Case it is asserted:

*“The development plan whether under S38(6) or not, falls to be construed and applied in the context of higher policy at international, European and national levels”.*<sup>(18)</sup>

41. The clear implication of this is that the policy which seeks to combat climate change overrides any identified beach of the development plan. That approach, if followed, would involve misunderstanding and misapplying national energy policy. As with so much of the Steadings Case, the extreme approach in their written material was scaled back in oral evidence. On this point Mr Provan agreed that the imperatives of international, European and national policy were subsumed within the policies of the development plan and could not therefore be used as a means of overriding the development plan.

#### IV THE DEVELOPMENT PLAN

42. The Green Rigg application is made under the Town and Country planning Act 1990. S78 (2) expressly incorporates the development plan into the determination of their appeal. S38(6) P & C P Act 2004 provides the statutory formula for determining the appeal; by reference to the development plan and any other

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(18) X/11 B2 para 5.6

material considerations. The development plan therefore lies at the heart of the decision making process with regard to the Green Rigg appeal and no one suggests otherwise.

43. There was then a somewhat sterile debate about the application of the development plan to the Electricity Act applications as they fall out with the Planning Acts.
44. The answer, as Mr Provan agreed, lies in PPS22. PPS22 provides that the development plan is the essential mechanism for striking the balance between harm and benefit. If the view is formed that the proposals are in conflict with the development plan then, as Mr Provan agreed, they must also be in conflict with PPS22. The importance of this is that PPS22 is, as Mr Provan put it,:

*“...a fundamental part of the primary national policy statement relating to renewable energy provision and is thus the most important policy document”.*<sup>(19)</sup>

45. The Council agrees. The Applicants all assert that their proposals are in conformity with PPS22.
46. The Council disagrees. It asserts that the harm in each case outweighs the benefit of each scheme and that each is therefore in

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(19) SWFL 1.2 para 4.5

conflict with PPS22. The development plan provides the framework for balancing harm against benefit. It follows that conflict with the development plan necessarily implies conflict with PPS22.

47. In this way, as Mr Provan agreed, conflict with the development plan is of central importance to the determination of the Electricity Act applications regardless of the operations of S38 (6) P & C P Act 2004.
48. Having established the importance of the development plan in the decision making process there was then a further argument (advanced only by Steadings) as to the way the development plan should be applied in a case of this nature.
49. Mr Lewis was cross-examined about this. It was suggested to him that the Inspector should look for the “dominant theme” and then apply that, with all other policies being (by necessary inference) subordinate to the “dominant theme”. The “dominant theme” quickly became, in the hands of the Steadings advisors, the domineering theme and in this way the Inquiry was taken back to the suggestion that the need for renewables is the overriding consideration at the Inquiry.

50. This approach to policy is hopelessly misconceived. In support of this approach Steadings produced an extract from the Planning Encyclopaedia <sup>(20)</sup> which provided a digest of R (Cummins) v Camden LBC [2001]. The Council then provided a copy of the relevant extracts of the authority. <sup>(21)</sup> The judgement of Ouseley J. refers to Rv Rochdale MBC exp Milne which in turn refers to City of Edinburgh Council v SOS Scotland [1997] IWLR 1447. In each case the Court approved the approach adopted and these cases provide between them a consensus of high authority as to the correct approach to the application of the development plan.
51. The task of the decision maker is to consider whether the proposal is in accordance with the plan. To do this he must make a judgement bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. He is required to assess all relevant policies and then decide whether in the light of the whole plan the proposal does or does not accord with it.
52. For the purpose of S38(6) it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.

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(20) SWFL/0/8

(21) TDC/0/16

53. This is the correct legal approach to the application of the development plan at this Inquiry.
54. Contrary to the repeated contention of Steadings there is no legal basis for trying to identify a “dominant theme”. The highest this point goes is a suggestion by Ouseley J that:

*“It may be necessary for a Council in a case where policies pull in different directions to decide which is the dominant policy: whether one policy compared to another is directly as opposed to tangentially relevant, or should be seen as one to which greater weight is required to be given”.*

55. In a piece of lazy reasoning the Applicants asserted that renewable energy policy was “dominant” and, by inference, all other policies were “tangentially relevant”. This is a further manifestation of the false argument that the drive for renewables is the overriding consideration at this Inquiry. In fact there are development control policies which protect the Scheduled Ancient Monuments of concern to this Inquiry and which thereby incorporate the national policy presumption against proposals which will adversely impact on their setting. There are policies which presume against any proposal which harms the setting of a Listed Building which acquire added force where the building has a II\* designation and which incorporate the statutory protection for such heritage

interests. There are also policies which apply the highest protection to Hadrian's Wall as a World Heritage Site which enjoys both Scheduled Ancient Monuments and Grade I Listed Building status.

56. All of these policies are “...*directly as opposed to tangentially relevant*” to the determination of these appeals. This is therefore not a situation in which a simple dominant policy oversees the application of development plan policy. In re-examination Mr Lewis referred to the final sentence of SWFL/0/8:

“The implication that a breach of one necessarily showed that a proposal was out of accord with the development plan would impose a legalistic straight jacket upon the appraisal process. It was very much a matter for planning judgement, and it was sufficient that a purposive view had been taken by the local planning authority of the group of policies overall”.

57. A similar result arises if the suggestion is that conformity with one necessarily showed that a proposal was in accord with the development plan. Mr Lewis said this approach should be rejected and that a more conventional Rochdale/City of Edinburgh approach should be adopted in which the proposal is considered against the development plan as a whole. The Council submits this is the correct approach to adopt in this case.

FINITE/INFINITE

58. All of this is predicated on the basis that the number of wind farms or turbines which may be built within the region is finite. The counter-argument is that scope for accommodating wind turbines in the landscape is infinite.

59. The key to this dispute is PPS22 paragraph 3:

*“Targets should be reviewed on a regular basis and revised upwards (if they are met) subject to the region’s renewable energy resource potential and the capacity of the environment in the region for further renewable energy developments”.*

60. Mr Provan asserted and Mr Newcombe submitted that if targets are met they should be revised upwards. The targets should not therefore be regarded as a ceiling and more schemes will have to be granted because the need is infinite.

61. This is a fallacious argument because it takes account of neither the language of the policy nor the reality on the ground. There is a constraint on the number of turbines which may be granted consent. It has nothing to do with carbon emissions and it has

everything to do with environmental capacity. National policy recognises that there will come a point when the environment has no more capacity for accommodating wind farms without causing unacceptable levels of harm. This necessarily involves the conclusion that the number which may be granted consent is finite. This in turn makes it essential to consider whether this finite capacity should be spent in area A or area B.

62. The second argument against the consideration of alternative sites repeatedly raised by Steadings (but curiously not raised by either Wind Prospect Ltd nor AMEC) is that the White Paper ruled the matter out of consideration.
63. Repeated reference was made to the White Paper at paragraph 5.3.67. It is unnecessary to quote it because it has been superseded by Government's policy on Climate Change. This provides:
- "...planning authorities should not question the energy justification for why a proposal for such development must be sited in a particular location".* <sup>(22)</sup>
64. The footnote at paragraph 20 at PPS1 Climate Change makes it clear that the same paragraph of the White Paper as repeatedly relied on in Steadings Mantra was in the Secretary of State's mind

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(22) CD 71A paragraph 20

when he published PPS1 in the final form. It is clear that he changed the advice deliberately and consciously. This advice does not forbid the Council from enquiring into the justification of the appeal site on any index of consideration other than energy. Thus it is entirely appropriate to compare more favourable sites when dealing with a constrained and finite capacity.

65. As if there were any further doubt about the matter, the forward makes clear that any conflict on Climate Change policy between PPS1 and any other document in the national series is intentional. PPS1 prevails. The White Paper is therefore an immaterial consideration to the extent that paragraph 5.3.67 conflicts with paragraph of PPS1 Climate Change.
66. It is obvious that there is insufficient scope to provide any but a very small number of industrial scale wind farms of the type proposed at this Inquiry in this sub-region. The legal framework applicable to alternative sites is plainly relevant.
67. The attempt to argue it is not applicable by reference to PPS22 involves a misreading of PPS22. The attempt to suggest it is not applicable by reference to the White paper involves a failure to understand that the White paper advice has been overtaken by PPS1 Climate Change and therefore has no application to this Inquiry.

68. Furthermore, on the facts of this case, it cannot be assumed that targets will be revised upwards in this sub-region if it is met. The NERRES report <sup>(23)</sup> describes Northumberland's potential future capacity in this way:

*“...it seems likely, and probably inevitable that once the major schemes are developed it will become progressively more difficult to bring forward further sites. On this basis the period beyond 2010 is likely to see a reduction in the scale of new development, unless the strategic scale resources at Kielder can be released”.*

69. It makes it all the more critical that the capacity for accommodating wind farms in this area is not recklessly spent in areas which produce high degrees of harm to other important interests.

70. The final point here is to refer to the abundance of sites at which the need may be accommodated. It has already been said that Northumberland has a rich wind resource. The NEA has explained that the search for sites for wind farms should not be confined to those areas identified in Policy 42 RSS:

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(23) CD 142, March 2005, paragraph 35

*“Proposals for wind farms both inside and outside the WRA’s should be judged against the RSS and local development framework policies “.*<sup>(24)</sup>

71. The site selection process in the ES cut out large areas of potentially viable land on the grounds of Wind Speed. For AMEC the cut off point was 7m/s, for Wind Prospect Ltd 6.5 m/s and for Steadings 6 m/s. This immediately reveals that the cut off for 6.5 m/s and 7 m/s wrongly avoids consideration of these areas of 6 m/s.
  
72. More importantly, the Companion Guide to PPS22<sup>(25)</sup> indicates that at 4 m/s there is sufficient energy in the wind for the wind turbine to generate electricity. The Applicants have all dismissed land with a wind resource between 4 m/s and 6 m/s as likely to be unattractive to the commercial market. They have done nothing to establish in the evidence the basis for this approach.
  
73. The Council suggests from this that there is a plentiful supply of sites which may be able to accommodate a commercial scale wind farm if a thorough and proper search is made. No such search has been undertaken by any of the Applicants. It follows that the harm associated with these applications is optional. The Secretary of State does not have to tolerate this harm because there are likely to

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(24) NEA/1 paragraph 28

(25) Paragraph 12 Figure 3

be other sites which meet the need without causing this level of harm.

#### VII BENEFIT V HARM

74. Furthermore, the High Court in Bovale has made it clear that the first question to be asked and answered in considering the potential relevance of Alternative Sites is whether any application might give rise to “clear planning objections”<sup>26</sup>
75. Taking, for example, the Steadings scheme; if it is concluded that it conflicts with the policy approach of preserving the setting of St. Aidan’s Church then that would amount to a clear planning objection. Steadings’ case (apart from suggesting there is no harm) is that the need for renewables outweighs that harm. In those circumstances it would be:

*“...as a matter of commonsense relevant for the Inspector to consider whether the need for certain facilities in Hereford could be met only on the appeal site or whether it might be met on other sites...”<sup>27</sup>*

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<sup>26</sup> See parags 27 and 30

<sup>27</sup> Bovale para 27

76. The same point may be made about Steadings' argument concerning the need for renewable energy in Knowesgate or the region.

CARBON DIOXIDE REDUCTIONS

77. There is a difference in principle as to whether it is necessary for the Inspector and Secretary of State to attempt to quantify these reductions.
78. The Council contend it is essential to understand the quantitative reduction in Co<sup>2</sup> emissions as an essential pre-requisite for understanding the weight to be attached to this matter as a benefit.
79. One of the Applicants witnesses suggested that it was enough to reduce Co<sup>2</sup> emissions in order to engage the support of policy at every level. It made no difference to what extent they were reduced. Thus a scheme which reduced emissions by 100 tons was to be treated in the same way in policy as a scheme which reduced emissions by 1000 tons. The fact that one is ten times greater than the other was irrelevant as a matter of principle. Both engage the policy and both are therefore to be treated with equivalent weight.
80. This argument is absurd and non-sensical. The primary function of policy is the reduction of Carbon Dioxide emissions. In

deciding how much weight to attach to a proposal it is relevant – indeed essential – to enquire into the extent of the Co<sup>2</sup> reductions in order to draw a conclusion about the scale of the benefit. A scheme which reduces Co<sup>2</sup> emissions by 1000 tons is able to justify a lot more harm than a scheme which reduces Co<sup>2</sup> emissions by 100 tons.

81. Similarly, consider two schemes which have the same physical characteristics; say 22 turbines of 125m to blade tip height occupying a total area of 735 hectares. One of them reduces Co<sup>2</sup> emissions by 1000 tons and the other reduces Co<sup>2</sup> emissions by 100 tons because there is a carbon penalty attaching to one scheme which does not apply to the other. One scheme promotes the central objective of national policy to an extent ten times greater than the other. The scheme which offers the higher reductions is plainly superior when examined against the central policy objective with which wind farms are concerned.
  
82. In order to consider both of these matters it is essential for the decision maker to enquire into the extent of the savings. This is especially important when dealing with a sub-regional context which provides for only a finite and very limited ability to accommodate wind farms of the type and scale on offer at this Inquiry. The Secretary of State will want to ensure that whenever a consent is granted it will maximise carbon reduction. He will

want to obtain the biggest bang for his buck, to employ one of Mr Newcombe's more colourful phrases.

83. This approach requires an examination of absolute reductions and relative reductions. The relative reductions are to be assessed on a net as opposed to gross basis.
84. The absolute reductions were all proclaimed in the ES. By way of example, Steadings claimed an annual reduction of Co<sup>2</sup> emissions of 142,385 tons assuming 63mw of installed capacity.<sup>(28)</sup> However, that figure was based on BWEA methodology which in turn was based on an assumption of 860g CO<sup>2</sup>/KWH. However, the ASA has advised that 430 mw/KWH is a more appropriate figure to use. Mr Provan agreed it was appropriate to use the lower figure from the ASA. None of the other planning witnesses disagreed with him. This approach was preferred by the Inspector at Fullabrook.<sup>(29)</sup> The consensus at the Inquiry is therefore that the 430 figure should be adopted. It follows that the Co<sup>2</sup> reductions on offer with the Steadings scheme (for example) are not the advertised figure of 142,385 tons per annum but the much lower figure of 71,192. This is the agreed figure in TDC/0/4.
85. A similar pro-rata reduction falls to be made with regard to the other schemes. The obvious and immediate conclusion to be

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(28) See Steadings SEI, Chapter 9 paragraph 9.3 page 60

(29) See Fullabrook D.L. paragraph 8.38 and the explanation provided by Mr Douglas at SWFL 11.2

drawn from this is that the advertised figure of reductions is 100% greater than the actual figure. The scale of the benefit is half that which the Applicants thought they were and this substantially scales back the extent of harm which might be justified by reference to these schemes.

86. The figures in TDC/0/4 are gross figures. They make no allowance for the extent of carbon emissions which will or may be generated as a direct consequence of granting consent for these schemes. We refer here to the aviation evidence. It may be that aircraft are caused to be diverted around the wind farms causing to be expended further aviation mileage. This will lead to an increase in Co<sup>2</sup> emissions wholly and exclusively attributable to the development of these wind farms. It may not be possible to precisely quantify the extent of this carbon penalty but that is no justification for ignoring it. If every aircraft taking off from Newcastle Airport were forced to make a small diversion around the wind farms, the accumulated total of this will be very substantial. It may not be possible to conclude that this would wipe out the more limited reductions claimed by the Applicants, but on any view it will substantially reduce them. It is this reduced figure (whatever it may be) which provides the basis – and the only basis – for assessing the scale of the benefit on offer with these proposals.

87. It is rational and appropriate to enquire into the extent of Co<sup>2</sup> emissions savings as an essential means of understanding the weight to be attached to this matter as a benefit. This is important for two reasons. The first is to balance that benefit against the global extent of the harm in order to decide if one outweighs the other. If it does not then permission ought not to be granted. This is a specific requirement of national policy in PPS22 as discussed. The second is to understand whether Knowesgate is a sensible or appropriate location for wind farms having regard to the fact that a substantially greater Co<sup>2</sup> saving may be achievable in alternative locations which are not subject to a carbon penalty. This is especially important in a context which imposes limits on the number of turbines which may be consented.
88. It is wrong to choose Knowesgate as a location for turbines because there is a particular problem (carbon penalty) with that area which does not apply to other areas. Further, there is harm to priceless cultural heritage, which impact is unnecessary and optional. This is because it is possible to bring forward other schemes elsewhere which have no such impact and which (in view of the absence of a carbon penalty) achieve a higher degree of carbon dioxide reductions.
89. On the basis of this analysis, the claimed benefit of Co<sup>2</sup> reductions has been overstated by the Applicants. They have failed to

provide an accurate assessment of the Co<sup>2</sup> reductions because they have failed to take account of the carbon penalty. The net reduction in Co<sup>2</sup> emissions on offer by these proposals is not able to outweigh the harm which they cause especially in an environment where greater reductions may be achieved elsewhere without causing such specific harm. This is of central importance to the decision at this Inquiry because we are here concerned with a restricted environment in which only a limited number of permissions may be granted.

#### TARGETS

90. The first and most important point to bear in mind is that published targets are on immaterial consideration at this Inquiry. If the Secretary of State purports to take into account the published targets for renewable energy in this region or sub-region then his decision will be wrong in Law. This is because it will reveal a failure to understand and rationally apply his own policy.

91. This argument derives from PPS1 (cc) paragraph 16 which provides that targets:

*“...should not be applied directly to individual planning applications”*

92. It is not the function of the Council to explain or justify that policy advice but simply to apply it. It is respectfully suggested that the Inspector (in reporting on this case) and the Secretary of State (in deciding it) are in the same position.
93. There has been an active debate in the senior Courts as to the correct legal approach to the interpretation of policy. This has culminated in The Queen on the application of Raissi; and the Secretary of State for the Home Department [2008] EWCA Civ 72 which has been helpfully submitted to the Inquiry by Steadings.
94. There is no pithy sentence which may be quoted to express the ratio of that case. Instead attention is drawn to paragraph 107 and following of the judgment and a careful reading is invited.
95. In the Council's submission the Court of Appeal was considering a dichotomy between two approaches to the interpretation of policy.
96. The first suggested there might be a range of reasonable responses to the interpretation of a policy and provided the one chosen fell within that range the decision was unimpeachable. The other approach suggested that a fair and effective public law system required that policy statements should be interpreted objectively in accordance with the language used in giving expression to the

policy. This approach is set out by Bingham M.R. in ex parte Save our Railways:

*“the Court cannot...in case of dispute abdicate its responsibility to give the document its proper meaning. It means what it means. Not what anyone would like it to mean”<sup>30</sup>*

97. The Council submits the Court came down in favour of the latter. The reason for rejecting the former is set out at paragraph 122. The decisive conclusion of the Court is at paragraph 123.
98. Applying this approach to PPS1 (CC) para 16 the conclusion could not be more obvious. The published targets upon which the Applicants place so much store in advancing their case on need are immaterial to the determination of these applications. This is because they:

*“...should not be applied directly to individual planning applications”*

99. This advice is clear. *“It means what it means. Not what anyone would like it to mean”*.

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<sup>30</sup> Quoted at para 118

100. Steadings suggest the Secretary of State in this case may take comfort from the approach adopted by the Secretary of State's Inspector at the Carsington Wind Farm Decision Letter. Here the Inspector embarked on an extended metaphor about going on a journey and arriving at a station as a means of applying an interpretation of PPS1 (CC) para 16 which allowed him to take into account targets in determining that planning application.
101. It remains to be seen whether that approach to the interpretation of policy will hit the buffers in the High Court.
102. The remainder of the submissions on targets is set out without prejudice to this primary argument.
103. Information has been submitted to the Inquiry which indicates what are the published targets and how far the consenting regime has gone towards meeting them. This may be assessed without the need for further submission save for this. In approaching the question of whether to approve a scheme in order to meet, or contribute towards meeting a target the Secretary of State should bear in mind the Council's ranking submissions of Ray, Green Rigg and Steadings.
104. The initial question is whether the residual need is so great as to warrant the harm caused by the Ray proposal. If the answer is yes,

then the approach to Green Rigg is to consider the extent of the residual need by reference to the unmet target assuming the presence of the Ray Scheme. Thus there is a much smaller residual need against which the harmful impact of the Green Rigg Scheme fall to be assessed. Finally, in looking at the Steadings Scheme the Secretary of State is invited to assume the presence of both Ray and Green Rigg. The question then becomes: is the remaining unmet need at Knowesgate or the sub-region so great as to justify the harmful impacts of the Steadings Scheme?

105. Further and in any event, it is now clear that none of the schemes before this Inquiry are capable of making a contribution to the 2010 target. Mr Matthews explained that a typical scheme required three years before a grid connection could be made. These are not typical schemes. Each will require an EIA and (possibly) a SAM application before they can proceed (even assuming they are successful in the SAM application without having to appeal). Four years is a more realistic estimate following a grant of consent in, say, early 2009. The schemes will not contribute to targets for installed capacity prior to 2013.
106. The three schemes will make a contribution to the general sum of renewable energy and are, to that extent, a positive development. In this way they will also contribute in general to meeting a national target of 20% of electricity generation from renewable

energy by 2020 and in this regard they are also to be seen in a positive light. None of that is disputed.

107. The relevance of this argument however, is directed at the assertion that there is a particular and pressing need to grant consent for these schemes as necessary elements in meeting the specific sub-regional target of 212 mw by 2010. For reasons discussed, the target is immaterial because it is likely to change and, in any event, none of the schemes before this Inquiry can make any contribution towards meeting that target in view of the timescales involved.
108. It follows that the assertion that a benefit of granting consent for any of these schemes is that they will help to meet the RSS target of 212 mw by 2010 is misplaced.
109. The residual argument is that it is necessary to bring forward these schemes in order to meet the regional target to 2020.
110. Policy 40 b) RSS contains an aspiration that 20% of regional electricity consumption arises from renewable generation by 2020. There is no figure attached to that aspiration and so the Inquiry is left with a generalised need and a general contribution.

111. It is clear, however, from Mr Lewis' supplementary proof that there are a large number of schemes already being advanced in this region. The aggregate of these schemes far exceeds the total regional figure of 454 mw to 2010 and all of which are likely to contribute to the 2020 target (subject to site specific considerations). Furthermore, the development plan contains an appropriately encouraging and sympathetic treatment of renewable energy projects and the evidence is that the commercial market is responding enthusiastically to that encouragement in exploiting Northumberland's rich wind resource.
112. The Inspector and Secretary of State may draw two conclusions from these factors:
- i) the evidence is that regional policy is working in the way intended by national policy by encouraging the commercial market to bring forward schemes; and
  - ii) it cannot be said there is a specific need for these schemes under consideration at this Inquiry to meet the 2020 target in view of the abundance of schemes elsewhere in the region.
113. The Council submits it is not open to the Applicants to allege that these schemes are needed to meet any specific target set out in

development plan policy. It is therefore not open to them to claim that a specific benefit of a scheme is helping to reach a particular target.

114. The most that can be said for these schemes is that they add an element of renewable energy to the national sum and that this in turn will lead to a reduction of unquantified proportions in the amount of carbon dioxide released into the atmosphere.
115. In the Council's submission this is the background against which the harm falls to be assessed.

#### LANDSCAPE

116. Before making submissions in relation to the individual schemes, it is appropriate to make some general points.
117. To varying degrees, all three developers point to the changes that climate change would bring to the character of the landscape and use that as a point in favour of their proposals. It is submitted that is a weak point for the following reasons.
118. Support was drawn from paragraph 2.12 of the then emerging replacement RSS<sup>31</sup>, which is now paragraph 2.15 in the approved final version<sup>32</sup>. That paragraph refers to the likely impacts from

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<sup>31</sup> CD44.  
<sup>32</sup> CD 45.

climate change, but the preceding paragraph (in both versions of the document) point out that it is difficult to quantify the extent of the likely changes.

119. Reference has also been made to the Tynedale Landscape Character Assessment<sup>33</sup> and its reference to the effects of climate change on the landscape. That assessment does not set out what the changes would be or the likely extent of them.
120. On that basis, it is not possible to ascribe significant weight to the simple fact that landscape changes would occur through climate change. Nor is there any evidence as to the extent to which allowing these developments to proceed, or any of them, would reverse any perceptible effects of climate change. Although PPS22 requires significant weight to be attached to the benefits of renewable energy, whatever their scale, it does not follow, in the absence of evidence, that the benefits of the schemes would bring perceptible changes.
121. The second general point is this. The fact that schemes would be in the general location of the “W” notation in the approved Regional Spatial Strategy does not mean that the three sites are to be taken as having any approval in any of their site specific characteristics, let alone their landscape and visual impacts. Mr.

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<sup>33</sup> CD 192.

Goodrum, for Steadings, was therefore quite wrong to claim in his evidence<sup>34</sup> that the appropriateness of the location of the Steadings site had been settled by the “W” notation in what was then the emerging Regional Spatial Strategy.

122. Third, the proper role for the Knowesgate and Harwood Forest Arup Study<sup>35</sup> needs to be established. Tynedale District Council makes no claim for it to have Development Plan status. Nor does the Council use the scenarios in that document as having any particular weight. Rather, it is a study which forms part of the background to the assessment of the three schemes. It is accepted that it is not, and does not claim to be, site specific and that it does not purport to carry out an assessment of the level of detail which is required by an Environmental Statement. More will be said about this below, when it comes to dealing with the way that Dr. Wimble was questioned by the Green Rigg promoters.

123. The fourth point is that the absence of a detailed assessment by Dr. Wimble is not a serious omission in the Council’s case. In the end, the Inspector will make his own assessment of the landscape and visual effects of the schemes and it is perfectly acceptable for Dr. Wimble to explain his own views by reference to the defects he contends appear in the developers’ assessments.

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<sup>34</sup> At paragraph 3.1.3, page 13 of SWFL3.1.

<sup>35</sup> CD 104.

124. The fifth, and most significant, general point is the extent to which a decision maker should take into account the fact that different persons have different attitudes to wind turbines – the so called “valency” issue. That point is taken into account in differing ways by the three landscape witnesses promoting the schemes. For Steadings, Mr Goodrum attempts to decide, when assessing visual impact viewpoint by viewpoint, whether the impact of the turbines would be positive, neutral or adverse. For AMEC, Ms Rylott adopts an approach which, it will be submitted, is pregnant with a positive disposition towards wind turbines. For Green Rigg, Ms Hawkins scrupulously avoids any value judgment and simply ascribes a magnitude and significance to an effect. However, in RX she sought to suggest that the valency issue is relevant. If it was, the Secretary of State could have been expected to tell us in National Guidance, but there is no such statement.
125. Tynedale District Council accepts that:
- (a) There are Inspectors who have found wind turbines to be attractive features in a landscape, even “iconic” structures;  
and
  - (b) Other Inspectors may not themselves hold that view, but have taken into account and weighed the fact that some people find them attractive.

126. However, all of the developers' landscape witnesses were cross-examined about how such an approach accords with policy. All three witnesses agreed that they could point to no decision of the Secretary of State which takes that positive approach or ascribes weight to such an approach. That is true whether one considers decisions under the Planning Acts or the Electricity Act. Neither of the developers' advocates who were present for the landscape session sought to demonstrate that there was such a decision either in re-examination of their own witness or when cross-examining on the landscape and visual issues.
127. Further, it can properly be inferred that the Secretary of State, in PPS22, is of the view that the landscape and visual impacts are adverse ones. If it were otherwise, paragraph 19 would not refer to "the minimisation of visual effects". There would be no need to minimise a neutral or positive impact. Nor would paragraph 20 highlight wind turbines as being likely to have the greatest landscape and visual effects and then go on to remind planning authorities that the effects may be temporary. The language used in that paragraph again only makes sense if the Secretary of State is advising that weight should be attached to the temporary duration of a negative impact. Again, an impact which is neutral or positive in its effect would not be more acceptable if it were temporary.
128. That interpretation of paragraphs 19 and 20 of PPS 22 is supported by considering paragraph 12 of PPS22. In that

paragraph, it is stated that “small scale” developments should be permitted in sensitive areas, provided that there is no significant environmental detriment to the area concerned. These sensitive areas include areas where landscape and visual matters will be a main reason for their designation, such as National Parks or Areas of Outstanding Natural Beauty. If the impacts of wind turbines were neutral or positive, development would not have to be limited to that which is small in scale.

129. Nor does the Secretary of State, in PPS22, give that guidance having first advised that consideration should be given to whether the effects are adverse. The assumption is that the effects will be adverse.
130. There is thus no support in National Planning Policy for weight to be attached to the fact that some people like wind turbines. Policy requires the impacts to be treated as though they are adverse. As will be explained below, the landscape and visual evidence given on behalf of the Steadings scheme shows why that is the case.
131. Nor can the developers draw any comfort from the Companion Guide to PPS22. Although not policy, it does provide practical advice on the implementation of the policies in PPS22. All three developer witnesses accepted that there was nothing in the Companion Guide to indicate that the Secretary of State expected any weight to be attached to some peoples’ positive view of wind turbines in the landscape.

132. Nor was any witness able to point to any part of what was then the emerging RSS<sup>36</sup> which shows that weight should be afforded to some peoples' positive view of turbines. The same was true of the Tynedale core strategy.
133. The upshot is that the so-called valency issue is a developer-devised concept which has no support in the Development Plan, National Policy or in any decision letter of the Secretary of State (as opposed to her Inspectors). The Council submits that the proper interpretation of the relevant policy guidance is that the landscape and visual impacts of turbines are negative. The developers at this inquiry cannot bring themselves to admit that but to ask that the benefits be weighed against that harm. Instead, they either claim that the impacts are positive or else ascribe no consequences to them. It is submitted that the decisions on these three schemes form an appropriate opportunity for the Secretaries of State to say that the valency issue has no proper role in assessing the merit of wind farm developments.

#### Steadings

134. In terms of landscape and visual issues, the case for Steadings as presented at the inquiry is markedly different from that set out in the assessment which formed part of the Environmental Statement. The Environmental Statement assumed that all impacts were negative. For the reasons just set out, that was a proper approach.

The evidence of Mr. Goodrum adopts the erroneous approach of trying to decide, on a viewpoint by viewpoint basis, whether the impacts would be positive, negative or adverse. That may be tied to the second main difference between the evidence and the Environmental Statement. The Environmental Statement adopted a threshold of significance of impacts as being those which were “moderate/substantial”. If the lower threshold of significance was adopted, and all impacts were treated as adverse, then Steadings would have been found to have had 20 out of 38 viewpoints which had a significant adverse visual impact. By ascribing positive or neutral effects to those significant impacts, the harm caused by the Steadings scheme can be downplayed.

135. Further, Mr. Goodrum accepted in XX that he was adopting an approach which could not stand with what he calls the “*accepted interpretation of the guidance*”<sup>37</sup>, which is that development which is out of character with its surroundings is automatically considered to be adverse. He was forced to adopt that line of argument because he sets out earlier in his evidence<sup>38</sup> that wind turbines are not in character anywhere in England. This is another example of the Steadings team trying to avoid any finding of adverse impacts. Instead of taking on the chin the finding that the turbines are adverse in the landscape, but arguing that the impacts are minimised and outweighed by the benefits of the scheme, the

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<sup>36</sup> CD 44.

<sup>37</sup> SWFL3.1, page 37, paragraph 7.3.5.

<sup>38</sup> SWFL3.1, page 14, paragraph 3.1.9.

promoters feel compelled to adopt an approach which is not recommended by guidance and which, on their own witness's evidence is positively out of step with the proper interpretation of the guidance. In RX of Mr. Goodrum, the difficulty caused for Steadings was blithely swept to one side on the basis that it should come as no surprise to someone that a wind turbine is a large structure which you cannot blink and miss. But Steadings cannot bring themselves to argue the point that way. The inference must be that if the "*accepted interpretation of the guidance*" was used, the Steadings promoters realise that they are promoting a scheme which would cause harm to landscape and visual interests which would not be outweighed by the benefits of the scheme, even ascribing significant weight to those benefits, as required by PPS22.

136. As a result, when it comes to assessing the landscape character impacts of the Steadings scheme, the Steadings evidence is undermined by the adoption of an erroneous approach to assessment which is accepted to be out of step with the accepted interpretation of the relevant guidance. Further, when assessing the landscape character impacts at pages 38 to 40 of SWFL 3.1, it appears as though Mr. Goodrum tests the character impact of the scheme against the whole of the relevant unit which has that

character<sup>39</sup>. That can only have the effect of diluting the effects of the Steadings scheme.

137. To set against that, we can take into account the landscape character points taken by Dr. Wimble, explained by reference to the viewpoints set out in the Supplementary Environmental Information<sup>40</sup>. By reference to what is shown in viewpoints 1, 4, 13 and 43, one can appreciate that the wind turbines of the Steadings scheme would bring about effects where the turbines would become the defining characteristic of the landscape. They would be out of character. On the agreed accepted interpretation of the guidance, that would make the impacts ones which have an adverse effect. They are patently significant ones at that.
138. Even taking more distant areas, such as those exemplified by viewpoints 21, 27, 29, 44 and 48 of Appendix 1 of CD7 volume (ii), the low to medium sensitivity of the landscape combined with high or medium magnitude effects, and so the impacts from those locations should be seen as significant, and adverse<sup>41</sup>.
139. It is instructive that Mr. Goodrum uses the “*accepted interpretation of the guidance*” when it suits him. He does so on two occasions:

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<sup>39</sup> See the example taken in XX, of the assessment of the impact upon the Upland Farming Fringe Landscape Character Area at page 39 of SWFL3.1.

<sup>40</sup> CD7, vol (ii), Appendix 1.

<sup>41</sup> As explained by Dr. Wimble at paragraph 6.11, page 33 of his proof TDC/2/1.

140. First, he asks for weight to be attributed to the effect that climate change would have on landscape character. He does not assess whether those changes would be positive, neutral or adverse. For that argument, a simple change of character is enough. It should also be noted that there is no evidence at all for the assertion in Mr. Goodrum's evidence<sup>42</sup> that failing to build a wind farm may effect a greater change in the landscape than building one would. As explained earlier, there simply is not the evidential basis for quantifying the effects of climate change.
141. Second, he was asked in RX about the effect of paragraph 15 of PPS22. He said that as there was no local policy designation basis for refusing permission, one had to use the character based approach. Quite so. But one has to use it consistently, not partially.
142. The evidence produced by Steadings seriously underplays the likely landscape character effects of the Steadings scheme.
143. As for visual effects, it is here where the defects in trying to ascribe positive or neutral effects to wind farm development can be seen. Effects which would be substantial were sometimes described as positive. However, the adjective "substantial" applies only to the significance and it did not follow that the positive effect was one which was substantially positive. Indeed, Mr. Goodrum was unwilling even to try to assist the inquiry by saying how positive the effect would be. It was enough, he claimed, to set out

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<sup>42</sup> SWFL3.1, page 31, paragraph 6.7.4.

that the effect would be a positive one. That will not do. It will not do because the decision maker needs to know what weight to attach to the positive effect. Weight cannot be ascribed to an effect which is not quantified. If the person claiming the effect would be positive is not willing or able to ascribe weight to it, then the decision maker cannot be so expected. It is submitted that no weight should be ascribed to the claimed positive effects.

144. Again, references are to the viewpoints referred to in the Supplementary Environmental Information<sup>43</sup> and as summarised in the Viewpoints Summary Table<sup>44</sup>. A few examples will suffice to show the problems with the approach adopted:
145. For viewpoint 1, Plashetts Farm, the Applicant's evidence is that there would be an effect of substantial significance and which is positive. However, that was said to be because the "*view is bland and the turbines would add interest and would not present marked scale contrasts with existing features*". We leave the comparison of scale to on-site judgment, but opinions based on "adding interest" to a bland view are loaded with a positive disposition to wind turbines. An assessment of whether the turbines were in character with their surroundings would produce quite a different result.
146. The effect on viewpoint 4 at Crookdean Hill is summarised as a substantial effect, which is also neutral, because "the existing view lacks focus". That is simply a way of saying that the view is a wide

ranging one where the elements in it have equal prominence. It does not follow that providing a focal point in that view is necessary or even desirable. In any event, any new development (such as a superstore) could form a new focus in the view. That is a non-point. The real issue is to assess whether the turbines would be in character. They would not. Mr. Goodrum made similar points about his viewpoint 10 at Sweethope Loughs. The same response applies.

147. The effect on Thockrington Churchyard is accepted to be substantial/moderate impact which is also adverse. Every Steadings turbine would be visible. The effect would be more adverse still if Green Rigg or Green Rigg plus Ray were added to the view.
148. Viewpoint 27 is at the A68 near Crowden. This is another viewpoint where the turbines would have a positive effect because they would add focus and interest. The earlier response to that point applies. But the viewpoint analysis here is interesting because of what is said about cumulative effects. Viewpoint I in the cumulative wire frames<sup>45</sup> is said to show that the addition of Ray alone would be moderate and positive, but the addition of Ray and Green Rigg would merely be neutral in its effect. Such a conclusion is unexplained and unreasoned.

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<sup>43</sup> CD7 vol (ii), Appendix 1.

<sup>44</sup> SWFL3.3, appendix 2.3.

<sup>45</sup> A document which has escaped the numbering system: AMEC/1/12 is the 16 turbine option version.

149. Viewpoint 42 is Great Wanney Crag. The applicant recognises this to be a popular walking and climbing area whose sensitivities led to a redesign of the layout of the Steadings scheme<sup>46</sup>. Clearly, it is not disputed that the effect of turbines on this location should be afforded weight. However, in this view all 21 Steadings turbines would be visible. The moderate, but neutral effect is claimed to arise because there would be the addition of a further pattern to the simple patterns already present. That view omits consideration of the sweeping dynamic which is referred to in the commentary to this viewpoint in appendix 1 of CD7 (ii). The turbines would interrupt that sweeping dynamic. A neutral effect is not credible. At least Mr. Goodrum recognised that the addition of either other scheme would bring about a substantial and adverse impact.
150. Finally, viewpoint 43 is the trigonometry point north of Great Bavington. The effect here is accepted to be substantial and adverse, for Steadings alone. It is adverse because it distracts from the expansive views beyond. Adding Ray or Green Rigg, or both, to that view would further increase the distraction. The impact would be worse still.
151. In XX of Dr. Wimble, reliance was placed on CD114, the Sustainable Development Commission Document “Wind Power in the UK”. Page 60, in the right hand column, was referred to, where

the document sets out that it would not be equitable to cause landscape damage elsewhere in the world to preserve UK landscapes. It was then put that landscape impact in a non-designated area could not be a proper reason for refusal. That is wrong. The Development Commission does not devise planning policy. CD 114 is not planning policy. There is no evidence that any landscape harm would be caused in another country were Steadings not to receive consent. The proposition put does not accord with the landscape and visual policy guidance in PPS22 and there are many cases where landscape and visual impacts in a non-designated landscape have led to the refusal of planning permission or consent under the Electricity Act. The point is manifestly bad and should be rejected.

152. Similarly bad was the point made about Planning Advice Note 45<sup>47</sup>. It was said that this shows that the valency issue does figure in guidance. The assertion suffers from the following problems:
- a. PAN45 is not guidance in England and has no application;
  - b. The Note does not say that the valency issue should figure in assessing the acceptability of landscape and visual impacts;
  - c. The point was so unimportant that Mr. Goodrum did not take it, despite being given the chance; and

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<sup>46</sup> SWFL 3.1, page 28, paragraph 6.1.7.

<sup>47</sup> The extract put in as SWFL/0/14.

- d. PAN45 pre-dates PPS22 and so the Secretary of State could have picked up on it and applied it in England, had she chosen to. She has not.
153. There was an attempt in XX of Dr. Wimble to show that wind farms were but another example of humans exploiting natural resources, like farming. The comparison is misplaced and unhelpful. Farming has characteristics which are in keeping with the extant character of the landscape. Wind turbines do not – that is Mr. Goodrum’s own view, discussed above.
154. It can be seen that when both landscape and visual issues are considered, and when the orthodox, accepted interpretation of the guidance is used, that the Steadings scheme would have significant adverse landscape and visual effects. The Council submits those impacts are unacceptable when weighed against the scheme’s benefits. The applicants do not assist in that weighing task, for two reasons:
- a. They avoid assessing the effect of turbines on the character of their surroundings, and
  - b. The Steadings approach is to utilise the benefits of a scheme as a trump card. For the reasons set out in the policy section of these submissions, that is not a correct approach.

The Ray Estate

155. Because of AMEC's decision not to participate fully in the inquiry, Dr. Wimble's evidence in respect of the Ray scheme has not been challenged. The Council is entitled to ask the Secretary of State to accept Dr. Wimble's points which are specific to Ray or which have not been challenged by the other two developers.
156. Testing the Ray scheme at inquiry has certainly achieved something. That is the deletion of the 4 turbines nearest Great Wanney Crag. So much was inevitable after the answers given to the Council and to Mr. Short in cross-examination by Ms. Rylott. However, the Council still opposes the 16 turbine Ray scheme on landscape and visual grounds.
157. The Ray evidence on landscape and visual issues is the evidence most affected by a poorly hidden positive predisposition to wind turbines. For example:
- a. Her evidence<sup>48</sup> says that wind farms should not be treated any differently from other forms of development which contribute strongly to existing character, form a positive component to the landscape and which are taken for granted. That evidence explicitly argues that wind turbines may be a positive feature in the landscape. In any event the argument deployed misses the point. The fact that earlier development

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<sup>48</sup> AMEC/1/14, page 14, paragraph 2.3.12.

has contributed to the existing character of an area is no justification for changing that character with further development. One could not use the existence of villages to justify the creation of a new settlement in rural Northumberland, which is the logic of the argument.

- b. The rotation speeds of modern turbines are said to be “soothing and restful”<sup>49</sup>. Persons who consider turbines to be “*detracting or contrasting*” are condemned as having “more traditional views” and are implied to be advocating stone cladding of turbines<sup>50</sup>. The proposal would “*offer the opportunity of an architectural landmark*”<sup>51</sup>. The landscape would still “fundamentally remain and Area of Outcrop Hills and Escarpment, but it would contain a wind farm”<sup>52</sup>. These are opinions which can only be founded on a positive disposition to wind farm development. They cannot rest on an objective testing of the compatibility of turbines with the character of their surroundings. These points could be used to justify any turbine in any location.
- c. Even when the evidence tries to show that an objective approach is being taken, it fails. For example, when addressing cumulative effects of the three schemes on users

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<sup>49</sup> AMEC/1/14, page 34, paragraph 3.3.19.

<sup>50</sup> AMEC/1/14, page 34, paragraph 3.3.20.

<sup>51</sup> AMEC/1/14, page 36, paragraph 3.3.33.

<sup>52</sup> AMEC/1/14, page 46, paragraph 4.4.12.

of the A696 and A68<sup>53</sup>, there is a purported assessment of whether effects would be positive or adverse. However, the factors that allegedly make the impact positive are that the views are from a road, the speed of travel and the “*likely experience of the wind farms as a ‘feature’ of the route*”.

Those arguments could be used in relation to any view from a road. There is no objectivity. The assessment is pregnant with a positive predisposition to wind farm development which must colour how one approaches the evidence.

- d. This point is reinforced when one sees how objectors’ views are characterised. Persons who consider that the turbines are out of scale are condemned as presenting an “*alarmist theory*” that other landscape features will be “*dwarfed*” in size<sup>54</sup>.
  
- e. But the real giveaway is the extravagant argument about the architectural characteristics of wind turbines. They are said to have much in common with “*similar*” forms of admired architectural styles that are attractive and beneficial additions to the landscape in which they are located<sup>55</sup>. These are illustrated at Appendix AMEC/1/5. The argument is certainly not undersold. We are asked to compare wind turbines to, amongst other things, the Millau Viaduct, the London Eye, the Eden Project, “*Falling Water*” by Frank

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<sup>53</sup> AMEC/1/14, page 67, paragraph 5.3.6

<sup>54</sup> AMEC/1/14, page 21, paragraph 3.2.8 (i), fourth line on page.

Lloyd Wright, the Falkirk Wheel and last, but definitely not least, the Sydney Opera House. The comparison is manifestly poor. A wind turbine is a mass-produced utilitarian structure. All of the other structures are unique and genuinely important milestones in the progress of architectural endeavour.

158. Even when dealing with the site specific aspects of the case, the Ray Estate evidence adopts an inappropriate approach. When assessing the sensitivity of the landscape character, Ms. Rylott takes CD141 "*Landscape Appraisal for Onshore Wind Development*" and revisits its findings on sensitivity for the Outcrop Hills and Escarpment landscape character type. There is no warrant for doing so. The presented conclusions thereafter refer to the area around the Ray site, presenting a different conclusion for "*the Wanney Crag*", which is an entirely unclear phrase, given that there are distinct groups of such crags. The matter had to be explained by drawing a line on plan, "*on the hoof*" in XXm. In addition, CD141 "*ideally requires the interpretation of a chartered landscape architect*"<sup>56</sup>. Plainly, AMEC consider that the Secretary of State cannot be left to understand CD141 for himself. Nor does the evidence ascribe any sensitivity to the application site or the Wanney Crag.

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<sup>55</sup> AMEC/1/14, page 32, paragraph 3.3.13.

<sup>56</sup> AMEC/1/14 page 24, paragraph 3.2.9.

159. Further, the threshold of significance used by Ms Rylott is one of “*major/moderate*”. The threshold is identified in paragraph 16 of Appendix 1/9, but not explained or justified. Nor is there any explanation in the methodology of how an impact of “*moderate*” significance has been arrived at. We are left to see what the effect is if Dr. Wimble’s favoured threshold of significance is used: see his appendix 3<sup>57</sup>.
160. When assessing landscape character impacts, Ms. Rylott’s assessment is largely redundant, because she is of the view that a single wind farm usually cannot change or override the existing landscape character or become a new characteristic element or alter the existing landscape quality<sup>58</sup>. On that basis, a single wind farm could rarely be objectionable in landscape character terms. Such an approach displays a favourable bias towards wind turbine development.
161. Further, the applicant chooses an arbitrary basis for limiting the area over which the landscape would become “*a wind farm landscape*”. The area is one which is 700m around the outside of the turbines and is based on the distance between the proposed turbines<sup>59</sup>. Such an approach is illogical. It appears not to be affected by the number of turbines. On that basis, it seems to be argued that two turbines spaced 700m apart would create a “*wind farm landscape*” anywhere within 700 m of either turbine, but a

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<sup>57</sup> In TDC/2/3.

<sup>58</sup> AMEC/1/14, page 16, paragraph 2.3.18.

development of 20 turbines spaced 200m apart would only create such a landscape when seen from 200m from a turbine. There can be no sensible rationale for such an approach. It is also out of step with the Environmental Statement. Volume 4 of that Statement<sup>60</sup> sets out that the wind turbines would bring about substantial change in the character of the site and its immediate surroundings, where the turbines would become a defining characteristic in the landscape, and refers to viewpoints 1, 2 and 4. Volume 4 of the Environmental Statement<sup>61</sup> contains those viewpoints and shows that those viewpoints are, respectively, 840m, 1200m and 1870m from the nearest turbine. The 700m threshold is arbitrary and erroneous. Significant landscape effects would occur over a much wider area, as argued by Dr. Wimble.

162. Further still, Ms. Rylott underplays the area over which moderate landscape effects would occur. Her evidence said that the Environmental Statement's assessment shows that moderate effects would be experienced at distances up to about 4 km away<sup>62</sup>. That is not right. The Statement says that the moderate effects occur over distances of more than 4 km<sup>63</sup>. An example of that can be seen in the entry for viewpoint 12 in table 7-68 in the Environmental Statement<sup>64</sup>, where there is a landscape impact of moderate significance at 6.58km from the nearest turbine. That

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<sup>59</sup> AMEC/1/14, page 46, paragraph 4.4.13.

<sup>60</sup> CD14, page 7-69, paragraph 327.

<sup>61</sup> CD16.

<sup>62</sup> AMEC/1/14, page 46, paragraph 4.4.14.

<sup>63</sup> CD14, paragraph 336, very bottom of page 7-70 to top page 7-71

shows that Dr. Wimble is right when he says that the Ray scheme would affect sufficiently extensive parts of landscape character areas 1c (Rolling Moorland with Forestry) and 3a (Upland Fringe Farming with Moorland)<sup>65</sup> for the whole of these areas to be considered significantly adversely affected. That matter can be further appreciated by considering viewpoints 1 to 6 and 10 and 11 in volume 4 of the Environmental Statement<sup>66</sup>.

163. As for the visual impacts of the Ray scheme, two general points need to be made. First, Ms. Rylott contends that the viewpoints are chosen on the basis that they show where the sensitivity of the receptor is greatest and where the views would be greatest and are not typical or representative<sup>67</sup>. Again, that is not right. The Environmental Statement sets out that the viewpoints were chosen to be representative<sup>68</sup>. They are not worst case.

164. Second, if a significance threshold of moderate or greater impacts is chosen, as Dr. Wimble advocates, then instead of 11/28 viewpoints having a significant impact, the number would rise to 21/28<sup>69</sup>. Further, the distance over which significant impacts would occur would increase to up to about 13.5km<sup>70</sup>.

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<sup>64</sup> CD14, page 7-63, bottom entry on that page.

<sup>65</sup> As shown on figures 7.4 to 7.6 of volume 4 of the Ray Environmental Statement [CD16].

<sup>66</sup> CD16.

<sup>67</sup> AMEC/1/14, page 58, paragraph 5.1.5 and page 7-34, paragraph 143.

<sup>68</sup> See CD 14, page 7-5, paragraph 22 and paragraph 23.

<sup>69</sup> That can be seen by looking at table 7-8 in CD14.

<sup>70</sup> Table 7-8 in CD14, viewpoints 15, 18 and 22.

165. Those general points explain the difference in outcomes of the Council's and AMEC's assessment of the visual effects. However, some further differences arise which are specific to particular viewpoints.
166. Ray viewpoint 1 is Great Wanney Crag<sup>71</sup>. It can be seen that the turbines are not hidden below the crags, contrary to what is claimed in the evidence<sup>72</sup>. The same can be seen if the cumulative wire frames are considered<sup>73</sup>. The rebuttal evidence is illuminating. In AMEC/1/17, at paragraph 1.3.27 and the screen prints following, Ms Rylott still contends that the majority of the turbines are screened by the rock face. That contention can be disposed of in two quick points:
- a. The viewpoint has been moved to a different location, behind the rock face; and
  - b. Even then, parts of the majority of turbines can be seen, despite the rock screen<sup>74</sup> (see the first, non-transparent, wire frame).
167. Ray viewpoint 5 is Knowesgate. In the evidence, it is said that the impacts would be moderate and not significant<sup>75</sup>. That does not match with what is said in the viewpoint analysis<sup>76</sup>, where a

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<sup>71</sup> Shown in CD16, photomontage 1b.

<sup>72</sup> AMEC/1/14, page 82, paragraph 7.5.10.

<sup>73</sup> In AMEC/1/12.

<sup>74</sup> See the first non-transparent wire frame after paragraph 1.3.27 of AMEC/1/17.

<sup>75</sup> AMEC/1/14, page 62, paragraph 5.2.9(i).

<sup>76</sup> AMEC/1/4, table A, viewpoint 5 columns headed "level of effect".

major/moderate effect is ascribed, even for the 16 turbine scheme. The answer to that was apparently that the viewpoint is a roadside location with little to attract viewers<sup>77</sup>, but that is not right. The viewpoint has roadside amenities<sup>78</sup>.

168. The Council submits that the landscape and visual impacts of the 16 turbine Ray scheme are significant, adverse and unacceptable, when properly weighed against the benefits of that scheme. Cumulatively, Ms Rylott told Mr. Archbold in XX that all three schemes would exceed the carrying capacity of the landscape.

#### Green Rigg

169. It is appropriate to recognise at the outset that, at the end of his cross-examination, Dr. Wimble told Mr. Fraser QC that he no longer could maintain his objections to the Green Rigg scheme. Of necessity, that limits the submissions that can properly be made by the Council, but the concession is not of great assistance to the Inspector or the Secretary of State, because of the way it was obtained.
170. The concession was obtained by reference to the Arup Study<sup>79</sup>. That is not a Development Plan document and does not condescend to site specific detail. The exercise conducted by Mr. Fraser QC was to show that Dr. Wimble would support development of the types and in the locations which are supported

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<sup>77</sup> Ms Rylott's answer in XX.

<sup>78</sup> AMEC/1/14, page 81, paragraph 7.5.5.

<sup>79</sup> CD104.

by the Arup Study itself. That approach ultimately gets Green Rigg nowhere, for this reason. The Appellant does not approve of the Arup Study. Mr. Fraser QC was at pains to point out its defects when he cross-examined its author. The Appellant's point was that the Arup Study deserves no weight. So, to remove Dr. Wimble's concerns by reference to that document does not assist. If the lack of objection arises because of reliance upon a document which, the Appellant says, is flawed and does not deserve weight, the concession is worthless. The obtaining of the concession did not engage with the merit of the landscape and visual impacts as assessed by Ms. Hawkins. Indeed, Dr. Wimble was cross-examined solely by reference to his own material, not by reference to Ms. Hawkins.

171. The position is, therefore, that Wind Prospect Developments will have to ask the Inspector and Secretary of State to make their own assessment of the landscape and visual impacts of the Green Rigg scheme, based on material other than the Arup Study. The product of the cross-examination of Dr. Wimble does not assist in that task.
172. On that basis, it is proper to make some submissions about Ms. Hawkins' own evidence.
173. On landscape character issues, she does not use the Tynedale Landscape Character Assessment<sup>80</sup>. The Council considers that it should have been. It contains a finer grained assessment of

landscape character, with subdivisions of the areas set out in the Landscape Appraisal for Onshore Wind Development<sup>81</sup>, which she did use. The reasons for not using it are set out in paragraphs 66 to 70 of her evidence<sup>82</sup>. Those reasons would be sound ones for not relying upon any policy approaches set out in the document, but they are not sound reasons for declining to use it as a description of the landscape character baseline.

174. It is also clear that Ms. Hawkins accepts that the turbines would not be in keeping with their surroundings. At paragraph 46 of the proof<sup>83</sup> she states that the turbines would “contrast” with the landscape character of the appeal site. To contrast is to be out of keeping with surroundings. For the same reasons as were explored with Mr. Goodrum, that means that the impacts of the Green Rigg scheme would be adverse.
175. Over longer distances, the turbines would still bring about significant changes to landscape character. Ms Hawkins herself puts that as occurring up to 3km west and 4 km south of the appeal site, within the Upland Farming Fringe Landscape Character Area. Dr. Wimble puts the effect as occurring up to 8km away<sup>84</sup>.
176. From the north, the Green Rigg turbines would be screened to a degree by Great Wanney Crag. The extent of screening will plainly

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<sup>80</sup> CD192.

<sup>81</sup> CD141.

<sup>82</sup> WPD/3/2, page 23 to 24.

<sup>83</sup> WPD/3/2, page 46, paragraph 146.

vary by location and will have to be assessed on site. There is a dispute about the extent to which the turbines would be screened by trees which exist or which are likely to be replanted on the Forestry Commission plantation between Great Wanney Crag and the appeal site. The evidence of the growth rates of the trees which have been planted is flimsy and caution should be exercised before attaching weight to it. What is clear is that views will be opened up as felling occurs and there will be a period of time before the new trees screen turbines. The Council submits that turbines 10 to 12 will be particularly opened up to views after felling.

177. As for visual impacts, three general points can be made:

- a. First, the assumption that there is excellent visibility is not an unusual or generous position to adopt. It is no more than standard practice expects: see the Guidelines for Landscape and Visual Impact Assessment<sup>85</sup>.
- b. Second, Ms Hawkins assumes that the impact is upon a person who is seeing the turbines for the first time<sup>86</sup>. We are then asked to bear in mind that impacts will decrease as receptors get used to the impact. There is no warrant for such an approach. It brings about the illogical conclusion that the longer the development will exist, the more acceptable it becomes.

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<sup>84</sup> TDC/2/1, page 31, end of paragraph 6.7 and see the revised viewpoints referred to in that paragraph.

<sup>85</sup> CD140, page 18, last bullet point.

c. Third, the bar for significance of impact is set high. That can be shown by way of an example. The threshold is explained at paragraph 87 and table 2/3 on page A2/20 of WPD/3/3. An overall effect of moderate+ “may” be significant. Such an overall effect can be the product of a substantial/moderate magnitude of change at a location of medium sensitivity. An example of a medium sensitivity location would be a school playground<sup>87</sup>. If the turbines were a “clearly visible element in the view”<sup>88</sup> then an overall effect of “moderate+” would be the result. Applying paragraph 87 of Appendix 2/2, the effect only “may” be significant. That shows how high the threshold of significance has been set. Dr. Wimble’s appendix 3<sup>89</sup> shows the effects of adopting a more appropriate threshold of significance.

178. Against those general points, some observations about particular viewpoints can be made.

179. The view from Great Wanney Crag would be significantly affected. As is set out in the evidence, there is an area of access land on the crag, and so the impacts are not limited to points or line receptors and the effects are said by the Appellant to be

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<sup>86</sup> WPD/3/2, page 86, paragraph 282.

<sup>87</sup> WPD/3/3, table 2/2, page A2/18.

<sup>88</sup> WPD/3/3, page A2/19, paragraph 84.

<sup>89</sup> TDC/2/2.

significant changes, with significant effects on amenity<sup>90</sup>. The persons who perceive these effects are likely to be there to appreciate the views as part of a recreational experience<sup>91</sup>. Of course, Ms Hawkins leaves it to others to assess whether the effects would be positive, neutral or adverse. We submit that they should be assessed as adverse. The development would be out of keeping with the character of the surroundings. The effects would be worse still if either the Ray 16 or the Steadings schemes were factored into account. Ms. Hawkins herself ascribes the addition of either of the other schemes as taking the effects to “major++” significance and the addition of both scheme would make the effect one which was “severe/major+”<sup>92</sup>.

180. It is therefore submitted that Dr. Wimble’s concession, whilst skilfully obtained, is of little assistance in assessing the merit of the Green Rigg scheme and that the effects of the Green Rigg scheme are more extensive than assessed by Ms Hawkins. They should also be seen as adverse effects, which require to be weighed against the benefit.

#### CULTURAL HERITAGE

181. The following submissions on Cultural Heritage are set out without prejudice to the primary argument above concerning the

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<sup>90</sup> WPD/3/2, page 67, paragraph 225.

<sup>91</sup> WPD/3/2, page 65, paragraph 218.

<sup>92</sup> WPD/3/6, page 11, table 1, entry for viewpoint C.

potential adverse impact of all three projects on the historic environment resulting from the grid connections.

182. The Council raises no objection to the Ray Scheme under this topic because it is now accepted that, in its amended form, that scheme causes no harm to any interest of Cultural Heritage. The opinion of the Council in this regard is shared by English Heritage and the County Council. None of the relevant experts instructed by Wind Prospect or Banks have suggested the Ray Scheme causes any harm. It follows there is a uniform consensus amongst all the cultural heritage experts that the SOS may grant a consent for a medium scale wind farm in the Knowesgate area without causing any, material harm to any interest of cultural heritage.
183. Furthermore, there is agreement among the relevant experts that the Green Rigg Scheme has no adverse impact on any interest of cultural heritage save for five turbines. Green Rigg have not suggested that the deletion of the five offending turbines would impair, frustrate or prevent the implementation of that scheme with regard to the remaining 13 turbines.
184. It follows that it is open to SOS to grant consent for two of the Schemes under consideration at this Inquiry without causing any harm to any interest of cultural heritage.
185. This is very important evidence when considering and rationally applying the legal and policy regime which seeks to protect interests of cultural heritage.

186. Both Steading and Green Rigg assert their schemes will cause no harm to any interests of cultural heritage. They are wrong in this assertion and that matter is considered below. However, they also both have a fallback position in the alternative; if their schemes cause harm then the need for renewable energy outweighs that harm.

187. This second argument falls to be assessed against the relevant legal and policy background. S66 Listed Building Act provides as follows:

*“...the SOS shall have special regard to the desirability of preserving the building or its setting or any interest of special architectural or historic interests which it possesses”.*

188. PPG16 para 27 provides as follows:

*“...a presumption against proposals which...would have a significant impact on the setting of visible remains”*

189. In each case there is a presumption against harm. There is massive scope for accommodating renewable energy development in the Knowesgate area without causing harm. This truth (from which, as explained above, no relevant person dissents) is fatal to the alternative argument to the effect that the statutory and policy

presumption against harm is outweighed by need. This is because the need may be met without causing harm.

190. On this analysis it follows that it is only the contribution of renewable energy from the additional turbines (i.e. over and above those which are acknowledged to be harmless) which are theoretically capable of justifying the harm to the heritage assets. In other words, it is only the renewable energy generated by five turbines which is capable of justifying the harm which is caused to the scheduled ancient monument by the Green Rigg Scheme. Similarly, it is only the renewable energy generated by 14 turbines in the Steadings Scheme which is capable of justifying the harm to the Church of St. Aidans.

191. In both cases these are trivial contributions of renewable energy when set against the totality which may be generated by Ray and those parts of Green Rigg and Steadings which are harmless. In the Council's submission that contribution is not sufficient to justify the harm which will be caused to the heritage assets. This point is emphasised by the fact that the SOS is seized of two heritage assets which have accorded to them some of the highest degrees of protection which the planning system is able to bestow. It would take a substantial and weighty consideration to displace the presumption against harm. The modest contribution from the harmful turbines provides no such justification.

192. A further general point falls to be made at this stage. The SOS is able to delete the five turbines of the Green Rigg Scheme and grant a consent for the remaining 13. This is because it is a Planning Act application with no lower limit on the permitted capacity which may act as a bar to justification. Further, to grant consent for 13 rather than 18 is to grant consent for less than was applied for and would not thereby create any legal or procedural difficulties concerning a failure to properly notify the public about the subject matter of consent. Finally, it has not been suggested by anyone on behalf of Green Rigg that reducing that scheme to 13 would render it commercially non-viable or would otherwise erect any practical obstacles to the satisfactory implementation of that scheme.
193. The 13 Green Rigg turbines may be added to the 16 Ray turbines and the accumulated 29 turbines will generate about 80MW of renewable energy without causing any harm to any interest of cultural heritage.
194. The Steadings application is in a different position. That application is made under S36 Electricity Act. S36(2) provides:
- “Subsection (1) above shall not apply to a generating station whose capacity –*

a. *does not exceed the permitted capacity, that is to say, 50 megawatts...*<sup>93</sup>

195. The Steadings Scheme proposes 21 turbines with a notional capacity up to 65MW. If 5 turbines are deleted then the accumulated total of the remainder cannot exceed 50MW.

196. In those circumstances on Electricity Act consent may not be issued as a matter of Law. To delete five or more of the Steadings turbines is to lead inexorably to the conclusion that the Steadings application in its current form must be rejected as a matter of law. This point is considered in the context that the District, County and English Heritage all assert that at least 5 turbines cause harm to the setting of St. Aiden's Church and should be deleted for that reason. The District goes further and suggests a total of 14 should be deleted.

197. There is no objection to the 7 Steadings turbines in the northern cluster. This point is of no assistance to the current Steadings application but it does serve to indicate to the SOS that it is possible to bring forward a more modest proposal in this part of Knowesgate which will not harm cultural heritage interests.

198. The next overarching point concerns the planning balance. Dr Collcutt accepted and asserted that the only rational grounds by

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<sup>93</sup> TDC/0/13

which that balance may be struck is to understand the full benefit and to weight that against the full harm.

199. Neither the Inspector nor SOS are in any position to carry out such a balancing exercise. The reason for this is that an important part of the harm, or potential harm, is unknown to this Inquiry. We refer here to the impact of the grid connection on interests of cultural heritage. This lacuna in the evidential material is especially important in this context as all parties agree that the route of the grid connection on the WHS excludes the possibility of a rational exercise balancing the harm against the benefit.

200. The final general point which applies to both schemes concerns a fundamental divergence of methodology approach between the District Council and the Applicants. This has to do with the role and significance of the man on the Chapman Omnibus.

201. Dr Collcutt and Mr Cardwell are expert and learned gentleman who bring to the Inquiry a lifetime of professional study of historic assets in an academic environment. This causes them to have a natural and understandable prejudice in favour of the “expert” with a corresponding (if unconscious) denigration of the position of the “layman”. Dr Collcutt expressed himself in this way:

*“The professional’s job should be to make sure that the public perception is properly tempered by the criterion of authenticity, by resisting ‘false remembrance’ or substitution of the historically*

*genuine simply at the dictates of modern (and possibly transient) taste”<sup>94</sup>*

202. It was put to Dr Collcutt that the planning system operates to protect and promote the public interest. His response was to assert that the public do not know the difference between good and bad, authentic or false, in the historic environment and that it is the role of the expert to guide them.
203. This evidence given orally to the Inquiry in cross examination reflects the view expressed in the JPL article. It is understandable that Dr Collcutt should take this view and he is not criticised for doing so. Furthermore, in an academic context he is unquestionably right. The approach of Mr Cardwell betrays a similar cast of mind.
204. The Council contends that the planning system invites and requires a different approach. The interests of the ordinary member of the public is at centre stage. It is not leavened by, or subject to, the instruction of, the expert. The response of the ordinary member of the public to the historic asset is central to the application of the planning concept of “setting” and, therefore, harm to “setting”. It makes no difference if that response is ill informed or not informed at all. It makes no difference if that response is rational, intellectual, emotional and spiritual. The Council is not contending that the scrupulously researched

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<sup>94</sup> SWFL 16.25 513

academic approach to the setting is irrelevant. The contention is that that is one aspect of an understanding of “setting” but it is not the only one. It is not even the main one. Indeed, in a democratic planning system the response of the majority of people is the one which should be accorded the more significant weight. In the case of both historic assets with which this Inquiry is concerned that response is more likely to be emotional, spiritual or aesthetic rather than academic. It is all of these responses which fall to be considered in forming a judgment about both the extent of the setting and the degree to which it is harmed by these proposals.

205. The Council’s approach derives clear support from the English Heritage definition of “setting” in “Conservation Principles”<sup>95</sup> which defines it in this way:

*“The surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape”.*

206. The nature of the experience is not confined to the intellectual or academic. The definition is equally capable of embracing a non-intellectual impression; emotional, spiritual, aesthetic. The definition also invites an application with the contemporary adjacent landscape regardless of whether it reflects authentic historic circumstances.

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<sup>95</sup> TDC/026

207. The Council invites the Inspector and SOS to approach the concept of setting with the ordinary member of the public at centre stage. Any other approach would be at odds with the central purpose of the modern planning system.

**HARM: Steadings**

208. The northern cluster of turbines will not cause any relevant impact and are ignored for the purpose of this discussion.

209. Turbines 9 and 11 together with the anemometer mast have a harmful and adverse impact on the character and appearance of the Great Bavington C.A. The presumption in S.72 Listed Building Act operates therefore to exclude these turbines. The contribution of renewable energy from those two turbines is not so great as to outweigh the statutory presumption against harm.

210. This is fundamentally a visual concept and the Council is content for the Inspector to form his own judgment about that relationship. It is noteworthy in this context that Mr Reed addressed the Inquiry in the course of the Heritage topic. In tone and content he was strident and dogmatic in his assertion about the extreme urgency and importance of obtaining as much renewable energy from these schemes as quickly as possible. Despite that he asserted that turbines 9 and 11 and the anemometer mast were so harmful to the character and appearance of the conservation area that they ought to be deleted.

211. The greater degree of harm applies to the impact of this proposed on St. Aidan's Church, Throckington ("The Church").
212. In approaching the question of harm it is first necessary to understand the importance of the historic asset under consideration. PPG15 sets out the SOS attitude to the importance of Grade II\* Listed buildings. Dr Collcutt agreed this should provide the platform for understanding the importance of the Church with which this Inquiry is concerned. To adopt the language of para 3.5, it is agreed that this Church should be approached on the basis that it is of particularly great importance to the nations built heritage, and its significance is beyond doubt. No party to the Inquiry disagrees with this proposition.
213. The Council submits that the approach which is called for by this level of importance requires a corresponding sensitivity to the toleration of harm.
214. The Council contends there will be harm to the setting of the Listed Building. This requires in the first instance to understand what is the scope of the setting. In this regard Dr Collcutt agrees that setting is fundamentally a visual concept<sup>96</sup>. He further agreed that "setting" is not the same thing as "context" because the latter deals with intellectual surrounding whereas the former is fundamentally a visual concept. The importance of this is that both policy and statute confines itself to setting. It follows that

anything involved in “context” is irrelevant to setting. “Setting” is therefore to be approached on the basis that it is fundamentally a visual concept which consideration is applied in accordance with the definition provided by English Heritage and the subsequent judgment is made on the basis of common sense.

215. All of this suggests a broad brush approach unconstrained by artificial precepts of special character and geographical limitation. Dr Collcutt’s approach is excessively refined, pedantic and constrained by a misplaced academic obsession with authenticity. In approaching the matter in this way he has literally and metaphorically missed the big picture.
216. Dr Collcutt helpfully provided two photomontages which illustrate the visual relationship between the 14 turbines about which the Council complain and the Church<sup>97</sup>. He was asked if the turbines in those photomontages were in the setting of the Listed Building and he replied “no”. He further contended that those turbines standing in that proximity to the Church caused no harm to the setting of the Church.
217. In each regard the opinion expressed to the Inquiry by Dr Collcutt is preposterous and absurd. It ought to be rejected.

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<sup>96</sup> See SWFL 16.25 page 500 and SWFL 4.3 page 5

<sup>97</sup> SWFL 4.6

218. A far better approach should be to consider the English Heritage criteria for assessing harm to setting<sup>98</sup> and to assess each criteria against these proposals. The Council contends that these criteria could have been written with this case in mind:

*“- Visual dominance: where an historic feature...is the most visually dominant feature in the surrounding landscape, adjacent construction of turbines may be inappropriate”*

*“- Scale: the extent of a wind farm, and the number, density and disposition of its turbines will also contribute to its visual impact”*

*“- Unaltered setting: Largely unaltered settings may be especially vulnerable to modern intrusions such as wind turbines.”*

219. It is no exaggeration to say the Steadings scheme will DEVASTATE the setting of the Grade II\* Church. Applying the relevant statutory and policy background the Steadings application should be rejected for that reason regardless of any other consideration.

### **GREEN RIGG - HARM**

220. Much of the discussion set out above is of equal relevance to the approach with regard to this scheme. This applies to the decision maker's approach to understanding the importance of the heritage

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<sup>98</sup> CD116 page 8

asset, the setting, the criteria for assessing harm to setting and the importance of taking the perspective of an ordinary member of the public and applying a judgment based on common sense.

221. The position is further narrowed by acknowledging that only five turbines are alleged to cause harm, that they are in non-critical views and that the concern over harm may be resolved by the retention of the trees.
222. A judgment must still be formed about the extent of the acknowledged harm. Mr Cardwell contends it is minor. Mr Best says “Significant”. We leave that judgment to the SOS.
223. It is acknowledged that the judgments here are more marginal and in this way the poverty of the Steadings Scheme is further emphasised. In cultural heritage terms the evidence reveals that the SOS is left with three schemes; one which is acknowledged to cause no harm at all; one which causes some harm with marginal judgments about severity; and one which causes dramatic and profound harm to a priceless and irreplaceable part of the nation’s heritage.

CONFLICT WITH DEVELOPMENT PLAN POLICY

224. In the light of the above submissions, it can be concluded that the three schemes each conflict with the Development Plan<sup>99</sup> to a significant degree:

*Steadings*

225. The landscape and visual impacts dealt with above show that the scheme would breach policy 2(g) and 40(b) of the approved RSS<sup>100</sup>, policy GD2(a) of the Tynedale Local Plan and policies NE1(a) and EN2(a) (second bullet) of the Tynedale Core Strategy<sup>101</sup>;

226. The effect upon the setting of St. Aidan's Church at Thockrington would amount to a breach of policy 2(j) of the approved RSS, policies GD2(a) and BE22 of the Tynedale Local Plan and policy EN2(a) (fourth bullet) of the Tynedale Core Strategy;

*Ray Estate:*

227. The landscape and visual impacts dealt with above show that the scheme would breach policies 2(g) and 40(b) of the approved RSS,

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<sup>99</sup> Compared to the Development Plan as it now stands.

<sup>100</sup> CD45

<sup>101</sup> CD39

policy GD2(a) of the Tynedale Local Plan and policies NE1(a) and EN2(a) (second bullet) of the Tynedale Core Strategy.

***Green Rigg:***

228. Despite Dr. Wimble's concessions, the Inspector and Secretary of State may also conclude that Green Rigg would have unacceptable landscape and visual effects breaching policies 2(g) and 40(b) of the approved RSS, policy GD2(a) of the Tynedale Local Plan and policies NE1(a) and EN2(a) (second bullet) of the Tynedale Core Strategy.

229. The impact upon the setting of the Scheduled Ancient Monument at Great Wanney Crag would bring about conflict with policy 2(j) of the approved RSS, policy EN2(a) (fourth bullet) of the Tynedale Core Strategy and policy BE25 of the Tynedale Local Plan.

***All Three Schemes***

230. For all three schemes, policy EN2 of the Core Strategy, even if interpreted as advocated by the Appellant and Applicants, recognises that significant weight has to be given to the benefits of renewable energy development when weighing them against any adverse impact. Policy EN2 of the Core Strategy is the "dominant policy", as dealt with above. A proposal which fails to accord with it, and with the other relevant Development Plan policies, can be said to be a development which fails to accord with the

Development Plan. If that is so, the benefits of the schemes cannot come to their rescue as a material indication which indicates that a decision otherwise that in accordance with the Development Plan should be reached. That is because the benefits have already been weighed when reaching a conclusion on compliance with the Development Plan. To give them significant weight does not mean they should be double counted.

### ALTERNATIVE SITES

231. The lack of compliance with the Development Plan means that alternative sites are relevant. This subject is more controversial but it should not be. It has been rudely characterised by some as a “wizard wheeze” on behalf of the Council but, in so far as that expression is understood, it is no such thing. The Council’s intention in raising the subject is simply to ensure that a decision is taken within an appropriately informed legal basis.
232. The relevant legal principles are set out in TDC/0/0A paragraph 14 to 22 inclusive. These principles are now to be understood in the light of the ruling of the High Court in Bovale. It is not open to any party to the Inquiry to question those legal principles but simply to apply them. In so far as the Secretary of State considers it is helpful to understand the underlying rationale for those principles, as a means of informing their application, it is to do

with the minimisation of harm. The planning system operates so as to bring forward appropriate development in the public interest. It is not possible to erect a wind farm of the scale proposed by any of the schemes before this Inquiry without causing significant harm to important interests which are protected by the planning system. The legal obligation on the decision maker is therefore to identify the best, or least damaging, site in which to accommodate the proposal. This necessarily involves a comparative exercise in which the merits of Site A are assessed against the merits of Site B.

233. It is important to note:

- i) it is not incumbent on the Council to identify any alternative site. It is sufficient for the matter to be raised as a relevant consideration. Beyond that, it is open to the decision maker to conclude that the need can and should be met elsewhere without reference to any specific site.<sup>(102)</sup> This approach is especially applicable in Northumberland as that is a County which has been identified as having an especially rich wind resource.<sup>(103)</sup>

This question is necessarily comparative. It invites a comparison between the three schemes on offer at this

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(102) See the discussion of *Rhodes v MHLG* [1963] 1 All ER 300 referred to at paragraph 15 (c) of TDC/0/0/A

(103) See CD 109 page 32 paragraph 8.2.1

Inquiry. (For the Council's views on this comparison see the discussion of ranking below).

234. The Council asserts that the internal Knowesgate comparison indicates that consent should be granted to; first Ray; second Green Rigg and third Steadings. It is emphasised however, as indicated above, that even within Knowesgate it is open to the Secretary of State to conclude that all three schemes should be rejected and that an alternative form of design, siting, location, size or arrangement of turbines would be appropriate.
235. It became clear from the evidence of the Developers' planning witnesses and from the planning authorities planning witnesses that there is a strong consensus about the objectives of policy. All planning experts accept that carbon reduction is the primary objective of policy. It provides the central, indeed the only, justification for erecting wind turbines in the open countryside. Without that need no serious person would advance a proposal for an industrial scale wind farm in the open countryside.
236. As if this point were not self-evident, CD 071A paragraph 9 has the need to reduce carbon dioxide emissions as one of the key principles of National policy on climate change.

237. It is necessary to state this proposition because of the curious way in which some parties presented their case. Some parties revealed they had become obsessed with the installation of mega watts and considered the need to meet targets by the installation of mega watts an end in itself. It is a means to an end, namely, the reduction in carbon dioxide emissions. If the erection of turbines does not lead to a reduction in carbon dioxide emissions then there is no national policy justification for their erection in the open countryside.

238. Similarly, if the erection of turbines in Site A will lead to a materially lower reduction in carbon dioxide emissions than the erection of turbines in Site B, then Site B is plainly preferable. The alternative sites issue requires this comparison.

#### RANKING

239. For reasons already explained, in the submission of the Council, if the Secretary of State is minded to allow any of these applications it should be in the following order of merit:

- (i) Ray
- (ii) Green Rigg
- (iii) Steadings

**VARIOUS WINDFARM PROPOSALS**

**CLOSING SUBMISSIONS ON BEHALF OF TYNEDALE D.C.**

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