Section 78 Town and Country Planning Act 1990

Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

Appeal by RES Developments Limited against the refusal of West Devon Borough Council to grant planning permission for a wind farm at Den Brook

Planning Inspectorate Reference APP/Q/1153/A/06/2017162

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

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October 2009

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Structure

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1. Main Issues And Other Matters

In my view, following the evidence, the main local environmental issues in this appeal are:

- the landscape and visual effects of the development on the character appearance of the area (including Dartmoor National Park);
- cultural heritage; and
- noise.

In relation to the local environmental issues, there are policy matters to be explored and the need for and benefit of the proposed development.

Before turning to deal with other issues discussed in evidence at the inquiry, I feel that this would be the appropriate point to address you on relevance of the previous appeal decision in relation to this same project.

On 22 March 2007 Inspector David Lavender granted planning permission for the development which is before you (CD27(p)). He did so following a public inquiry which considered in detail each of the issues that have been discussed in this inquiry, except for noise.

In the circumstances which are clear from document CD124 Mr Lavender's decision was challenged in the High Court, ultimately resulting in the quashing of the decision and its remittance to the Planning Inspectorate.

The point that I need to deal with at this stage addresses the extent of your duty when arriving at a decision to have regard to the decision of Mr Lavender and the reasons for that decision given in the 22 March 2007 appeal decision. We are fortunate that the law is tolerably clear in this area. It is sufficiently represented in my view in three cases:

- North Wiltshire DC - the Secretary of State for the Environment (1993) 65 P&CR 137
- J.S. Bloor (Sudbury) Limited - first Secretary of State (2003) EWHC 1898 (Admin)
- R (on the application of Chisnell) -v- Richmond Upon Thames LBC (2005) EWHC 134 (Admin)

I do not think that I need to produce these decisions for you and can adequately summarise the position purely in these submissions.

And I think I can adequately summarise the position by specific reference only to the 2005 case referenced above since this decision referenced (indeed necessarily referenced) the Court of Appeal decision in the North Wiltshire case. The facts of the case are not important to the general observations which I need to make. I can do no better than to record exactly what Newman J. had to say on the point. He noted that the legal argument before him relating to this topic reflected, "as one would expect", a substantial measure of common ground between the parties as to how previous decisions in relation to the same planning site should be treated ..". He said:

"The basic position can be stated as follows:

(1) The planning history in relation to [the] site is a material consideration in connection with a planning application (see Spackman -v- Secretary of State for the Environment and Another (1977) 1 All ER 257);

(2) A previous appeal decision is a material consideration in connection with a planning application including a subsequent appeal to a different Inspector (here he referred to the North Wiltshire case). The reason why previous appeal decisions are a material consideration is, as Mann L.J. (the judge in the North Wiltshire case) pointed out;

One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities .."

Mann L.J. went on to add:

> "But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest, and it would be wrong to do so, that like cases must be decided alike. An Inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision."

Thus analysed, the principle is straightforward enough: that in the planning process that previous history in connection with the site, including decisions in connection with the site, are material considerations, but anybody having the power to reach a decision in connection with the site at a subsequent date has a discretion. The discretion must be exercised in accordance with their own

judgment. The requirement for consistency does not mean that they must be slaves to the previous decision and are in any sense bound by it, or must therefore come to the same conclusion. Their judgment and discretion is informed but not fettered by the history.

The principle of consistency comprises a material consideration to be taken account of in reaching a judgment. Because of the importance to be attached to consistency, a decision maker should not depart from it without realising the importance to be attached to it, and when departure occurs reasons for departure from any previous decision must be given."

Newman J. went on to say at a later stage in his judgment that:

> *"In my judgment there was no justification for the committee being told that there was a need for there to be a material change in circumstances in order to introduce a new ground for refusal. There was a need for the committee to understand the importance of [the] consistency, and a need for the committee to express a reason if it was going to depart from it, which would reflect its own judgment as to whether or not a basis for refusal was to be found in the physical impact upon the neighbouring occupiers [this last phrase is clearly case specific] .."*

For the avoidance of doubt, this rehearsal of the law fulfils my promise in my opening statement: "Renewable Energy Systems accept that all issues in the appeal are for your determination. The previous decision is not binding on you. However, I will refer in closing to decisions of the court which make clear the desirability of consistency and decision making, primarily in the interests of predictability and fairness to all participants in the planning process .."

Therefore it is my view that Mr Lavender's appeal decision is merely a material consideration in your decision. The weight that you give to that material

consideration is a matter for you on the evidence. I say at this stage, so as to present the whole of my views on this point at one point, that an element of your judgment on this topic will involve a consideration of the extent to which there has been a material change in planning circumstances since the previous decision, and the influence that any material change may have, based on the evidence. I note at this stage that the Council would not appear to have even considered a material consideration of a previous decision in its evidence, and DBJRG has given scant consideration to the previous appeal decision. On the other hand, the Appellant has provided you with evidence on any changes in material planning circumstances since 22 March 2007 and, if rather prematurely in terms of these submissions, it is my view that the material considerations which are before you, but which were not before Mr Lavender, argue in favour of the grant of a permission rather than that in relation to any evidential topic you should depart from Mr Lavender's decision. There is an exception to the point I make: no substantial noise evidence was before Mr Lavender and I acknowledge that in relation to this issue, the influence of the previous decision is very slight. However, all the other topics debated at the inquiry were before Mr Lavender.

The principal matters debated before you, but not before Mr Lavender (excepting noise) were:

(1) Developments in progress towards 2010 renewable energy targets set out principally in the Structure Plan (CD8).

(2) The Energy White Paper 2007 (CD32b).

(3) The EU Directive on the promotion of renewable energy (CD35).

(4) The Renewable Energy Strategy (CD32c).

It is my view, as I shall make clear in the closing of these submissions, that each of the fresh material considerations before you argue in favour of the grant

of a planning permission rather than comprising an argument that you should make a different decision from that of Mr Lavender.

Finally, on this point, it is my argument (acknowledged to be mine rather than deriving directly from the decisions which I have rehearsed), that considerable weight should be given to the material consideration of consistency in decision making. In circumstances where (for example), the landscape and visual baseline has not changed from that considered by Mr Lavender, I think that there would have to be particularly good reasons for a different decision to be taken in relation to the landscape and visual impacts of the project, remembering that the project before you is precisely that which was before Mr Lavender.

Against that background I now turn to deal with matters which, although brought in evidence to the inquiry, do not in my view amount to potential determining issues.

I should say at this stage that I do not necessarily refer specifically to all the witnesses who gave evidence at the inquiry. No disrespect is intended, and I have taken account of all the evidence given before making these submissions.

(1) *Bats*

Evidence on this topic came from Dr Holloway and Mr Buxton. Dr Holloway is a professional ecologist with much experience of surveying bat activity. Mr Buxton is not a professional ecologist, but he has a lot of experience in survey work and is well respected. My submissions on the evidence are as follows:

Surveys

(1) Recent studies referred to by Dr Holloway (but not before the inquiry) disclose that there is much more bat activity at ground level than at a height of even 30m - particularly in respect of pipestrelles.

(2) Therefore hand held bat detectors at ground level are perfectly sufficient. In any event there are practical difficulties with surveying at height, quite apart from cost. Helium balloons are a possibility, but they need constant refilling and they drift with the wind, and as a result are not very reliable.

(3) The noctule bat does fly higher than other species, but has a louder echo location call, meaning that its calls can be picked up by hand held detectors.

(4) Mr Holloway confirmed that the three surveys undertaken during early Summer, Summer and Autumn were perfectly adequate to record bat activity around the site, and that further surveys would not have revealed additional significant data which would have influenced his impact assessment. In this connection Dr Holloway noted that the Andrew McCarthy Associates paper referred to by Mr Buxton and produced by him as an appendix was written to generate discussion on survey methodology, and not as a prescription for surveys.

(5) There are no particular complexities to explore in respect of the Den Brook site and area such that the three surveys carried out were perfectly appropriate.

(6) The newest bat roost to Den Brook is 3 km from the survey area, and therefore as a matter of professional judgment is not relevant to the level of survey effort from Den Brook.

(7) As to the advice from Eurobat (Mr Buxton Appendix 3), this must be seen in context which is that of mainland Europe where there are migratory species for which different survey methodologies are appropriate. As Dr Holloway said, it must be for individual countries to develop their own advice on the appropriate level and type of surveys.

(8) As to the Natural England Interim Guidance on bats and onshore wind turbines (Appendix 1 to Mr Buxton's evidence), it is indeed interim guidance not final advice. No definitive methodology exists for bat surveys, and I refer again to Dr Holloway's view that the level of the survey effort for this site was adequate for purpose.

(9) Turning to a particular species, noctules were the only species found during the survey effort which are recognised (see the Natural England guidance) as being of high risk of collision because of flight heights and whose population might be at risk from wind turbine collisions.

Collision Risk

(10) Dr Holloway gave convincing evidence that current perceptions of collision risk originate in mainland Europe and in the USA and Canada where researchers concentrated on migratory bat species. It is currently considered unlikely that migration takes place between the UK and mainland Europe.

(11) The survey results at Den Brook showed 10 passes for noctule bats, noting that the record may have been of 10 bats or several passes recorded for fewer bats.

(12) The majority of noctule bat passes were recorded over habitat at some distance from the proposed wind turbines (9 of the passes were more than 150m from any proposed turbine position).

(13) Mr Buxton brought evidence that noctule bats may turn off echo location during feeding. Dr Holloway responded that this could be for a very short period if at all because echo location is vital to a bat's navigational ability when in flight. Therefore any such behaviour would be short term and not material to a collision risk assessment.

(14) It is clear from the survey effort carried out on behalf of RES that the majority of registrations of species relate to populations which (evidence of the Natural England guidance and Dr Holloway in chief) are at low risk in terms of collision.

(15) The most sensitive turbine in terms of collision risk with bats is T1 (see Environmental Statement Figure 5.6). Dr Holloway evaluated this turbine in evidence and concluded that all of the species recorded in the hedgerows close to this location are recognised to be at low risk of collision because of low flying behaviour.

Barotrauma

(16) Dr Buxton brought evidence of deaths of bats, primarily in the USA, from barotrauma (resulting from a drop in air pressure immediately proximate to a turbine blade). Dr Holloway noted that deaths from barotrauma will primarily occur within a 1m radius of a blade tip. Mr Buxton drew attention to wake and vortices effects, but Dr Holloway

said that such information must be read with a degree of caution because of the lack of an evidence base for conclusions drawn.

In summary, I commend the evidence of Dr Holloway whose thorough proof fully addressed all relevant issues. There is no evidence before the inquiry that the operation of the wind farm will give rise to any material risk to individual bats, to individual species, or to bat populations generally.

(2) *Shadow Flicker*

A number of witnesses made contentions in relation to shadow flicker. Quite simply, shadow flicker is a local environmental effect which is well understood and which can be avoided through the deployment of photo sensitive software within the wind turbines. Indeed, the ability to avoid shadow flicker effect was well understood at the time of the previous appeal, and condition 7 imposed by Inspector Lavender addressed the point. There is a similar condition before you which RES invites you to impose. The imposition of this condition will ensure the avoidance of shadow flicker effect and the removal of this issue from consideration.

(3) *Tourism and the local economy*

I deal with this issue briefly in the context of landscape and visual effects.

(4) *Birds*

Although potential for collision between wind turbines and birds was raised at the inquiry, I do not feel I need to make any particular submissions on the topic. Apart from observations of birds in the area of the wind farm, there is no evidence before you of any collision risk, or of the risk of any other adverse interaction between bird populations and the wind farm.

2. Identification of Key Policies

The development plan now comprises RPG10 (CD9), the Devon Structure Plan (CD8) and the West Devon Local Plan (CD14). Mrs Hart confirmed towards the close of evidence on 23 October that the position had not changed since that debated in the session of the inquiry which took place in the summer of 2009. In addition there is a well advanced draft RSS (CD10) which it is common ground should be given considerable weight. Finally, at a regional or local level there is an emerging LDF within West Devon for this is at a very early stage and it is common ground (although not recorded in the Statement of Common Ground) such that you give you weight to this document.

Addressing first the development plan, and within that renewables policies, we have RE6 in RPG10, CO12 in the Structure Plan and PS10 in the Local Plan. RE6 sets regional targets in terms which I need not rehearse and gives advice on content of development plans. Mrs Hart sought to argue (para 5.1.1 of her proof) that, on the basis of advice in para 16 of PPS1 on climate change (CD166) advice on targets in RSS should not be applied directly to individual planning applications. You will remember that in XX I took Mrs Hart to a judgment of the High Court in relation to the proposed Carsington wind farm (CD 164). I commend in closing the reasoning of Carnwath, L.J. in paragraph 42 of his judgment, disagreeing with the submissions of Leading Counsel for the Claimant which reflected Mrs Hart's approach. We can do no better than to commend, with respect, the position of the judge without the need to add more. It flies in the face of any planning logic that RSS advice on targets should not be applied at the project level.

CO12 in the Structure Plan advises that provision should be made for renewables developments in the context of a sub-regional target of 151 MW of electricity production from land based sources by 2010 "subject to the consideration of their

impact upon the qualities and special features of the landscape and upon the conditions of those living or working nearby ..". The policy envisages that priority should be given to locations within the area of search identified in the key diagram. It is clear from paragraph 4.73 of the Structure Plan that the prioritised areas are broadly those outside national designations and AGLVs. Mr Stewart addressed the issue of Areas of Search in his evidence. In reliance on the advice in paras 24 and 25 of PPS7 (CD 16) it seems to be clear that AGLVs will disappear when RSS is adopted where it is my view that even at this stage these regional or local designations should be given less weight and a proper assessment of impact based on landscape character (see here evidence of Mr Goodrum).

In all events, CO12 does not advise that development should be excluded from areas outside the Area of Search. Note that Mr Lavender gave the Area of Search no particular weight in his March 2007 decision, and I concur with his approach.

It seems to me that CO12 is broadly consistent, so far as it goes, with relevant advice in PPS22 (CD21).

Turning to PS10 in the Local Plan, this advises that renewable energy developments should be supported "provided that they have no significant adverse impact upon the qualities and special features of the natural landscape or townscape, upon which conservation or upon the conditions of those living and working nearby ..". In my view this policy is not consistent with the advice in PPS 22 and it does not reflect the realities of wind energy development which will inevitably have some significant impacts on landscape, quite possibly on the visual amenity (stressing here that I do not mean residential amenity) of those living nearby. The test of no significant adverse impact would preclude any proposed wind farm, and in my view weight that might otherwise be given to PS10 as a Development Plan policy should be significantly reduced with this in mind.

Turning to policies within the Development Plan advising on other topics, I will in closing concentrate on those which I feel will attract your attention, as opposed to the many policies referred to by various witnesses which, although theoretically relevant, are unlikely to be helpful.

There are no additional policies to which I wish to refer in the RPG. As to the Structure Plan, CO1 and CO2 require to be considered. CO1 advises that the distinctive qualities and features of Devon's Landscape Character Zones (illustrated in the Structure Plan map) should be sustained and enhanced, and that proposals for development in each part of Devon should be informed by and be sympathetic to landscape character and quality. I make the same submission on CO1 as I made on PS10 on the Local Plan. If the view is taken that the landscape and visual effects of a particular wind energy development are both significant and adverse, then it would be difficult for a development to comply with CO1, but in my view such an approach would not be consistent with PPS22 nor would it be consistent with the approach of the very many appeal decisions which are before you. Likely significant and probably adverse and visual impacts is a factor which cannot be escaped, but which should not of itself be given any particular weight in the decision making process.

Turning to CO2, this advises substantially on development within the Dartmoor National Park, but the last paragraph advises that particular care should be taken that no development is permitted outside the National Park which would damage natural beauty, character and special qualities or otherwise prejudice the achievement of National Park purposes (as set out in the Environment Act 1995). I deal with the advice in the last paragraph of this policy in my submissions on the main issue of landscape and visual effects.

Turning to the Local Plan, NE7 advises on applications for development "on or close to the edge of the Dartmoor National Park". In my view the evidence shows

very clearly that the Den Brook proposal is outside the scope of NE7 and that it could not remotely be described as "on or close to the edge" of the National Park. It is not clear from paragraph 37 and Mr Lavender's decision if he took this view, but he did, in the context of views from the National Park, to the "very distant presence of a lowland wind farm" and I concur with his perception, noting that in my view that necessarily means that NE7 is not engaged.

Turning to NE10 on the Local Plan, this is a standard countryside protection policy relating to developments of all kinds. It requires that any development outside "settlement limits" or "not otherwise in accordance with policies .. in the Plan" must fulfil three criteria. The first relates to the provision of economic or community benefit. The second requires that no unacceptable harm should be called to distinctive landscape character, including views. The third relates to the use of agricultural land (and is clearly not relevant here because the advice is related to maintaining the stock of agricultural land).

This is one of those policies which was written without any regard to wind energy development (not a criticism but just a fact) and in my view it should be given little weight. There is no requirement in PPS22 that economic or community benefit should be provided as a by product of wind energy development (although such benefits may arise during both the construction and the operational period). The criterion relating to landscape character is in fact reasonably consistent with the approach of PPS 22, but I can't have it both ways and my primary argument is that this policy is unlikely to play a major part in your consideration of the proposals. Mr Lavender concluded that any departure from the aims of NE10 would not be overriding. He did not make a finding about the essential applicability of the policy.

Overall in relation to the Development Plan, it has to be said that there is a paucity of really useful advice. The RPG does not engage on local environmental

concerns. The Structure Plan does not engage usefully at a development control level in the renewables policy and gives advice on other policies that is not consistent with PPS 22 (with the exception of the particular care advice in relation to development outside the National Park in CO2). The Local Plan adds nothing really useful to the picture. I suspect that you may find yourself thrown back on national advice more than might usually be the case.

Turning to emerging policies (save for national advice), the draft RSS should as I have already submitted be given significant weight. Relevant advice in the RSS can be found in CD10 and CD10a (the latter comprising revisions to the RSS incorporating the Secretary of State's proposed changes sent out for public consultation in July 2008).

Challenging renewable energy targets are set out in Section 7.3 of the draft RSS and I need not repeat them here. However, I do note that an agreement has been reached between Mr Stewart and the Council in relation to progress that has been made towards draft RSS targets. The position would appear to be that for 2010, set against a regional target of 509 - 611 MW, 154.84 MW was installed as at June 2009, leaving a deficit (wholly unlikely to be addressed) of 354 - 456 MW. For the region for 2020 the target increases to 850 MW, meaning that nearly 700 MW will still require to be consented and built. For Devon the 151 MW target by 2010 has been met to the extent of a paltry 32.8 MW, leaving a deficit of nearly 120 MW. No 2020 targets have yet been established for Devon. It is clear that both the Region and Devon face enormous challenges if 2020 targets are to be met, and I will return to this issue in my final submissions. Generally, I refer to paragraph 7.3 Policy RE1 in the draft RSS.

As to other policies in the RSS, there is one that requires attention. ENV1 addresses a protection and enhancement of the region's natural and historic environment, advising that this should be protected and enhanced, and that

developments which support that positive management will be encouraged. An avoidance, mitigation and compensation pathway is envisaged in ENV1, with priority to be given to international and national designations. ENV2 advises that the distinctive qualities and features of the south west landscape character should be sustained and enhanced. I have to say I am not sure how helpful this advice is. Policies are fairly aspirational and don't really assist at a development control level, even though they are written so that they could be so applied. Repeating what I have already said about the inevitability of significant and quite possibly adverse landscape and visual effects from wind energy development, but noting again the advice on targets in RE1, you may feel that policies ENV1 and ENV2 do not really assist and therefore again, so far as local environmental effects are concerned, you may be thrown back on national advice in PPS7 and PPS22 more than might otherwise be the case.

3. Submission on Main Issues and on Development Plan Compliance

Landscape and Visual Effects

(1) Evidence was given by many witnesses on this topic and, as noted earlier, while I may not refer to many individual witnesses their thoughts have nevertheless been taken into account in these closing submissions.

Professional landscape and visual evidence was given by Mr Goodrum, Mr Holland and Ms Reynolds.

As to the evidence of Mr Holland and Ms Reynolds, neither addressed at any point the decision of Mr Lavender. This seems to me quite incomprehensible that neither witness appeared to be aware that the

previous decision was a material consideration in this appeal, and the absolute absence of any mention of Mr Lavender's decision in their evidence in my view represents a major weakness in the cases that they have presented.

The evidence of Mr Holland and Miss Reynolds in fact contains very little on impact in terms of landscape character and visual amenity. Both witnesses concentrated heavily on the base line and the cases they presented almost appeared to be that the base line was so sensitive that any development would necessarily be unacceptable.

With regard to landscape impact assessment, Mr Holland did engage, but not fully. The 2008 Landscape Character Assessment of mid-Devon (CD86) completely escaped his attention, as he acknowledged in XX. Given the proximity of areas of mid-Devon to the Appeal Site, this seems to me a major omission.

Looking further at the evidence of Mr Holland, he did partly address the 2008 West Devon Landscape Character Assessment (CD87), but only to the extent of the host landscape type - Farmed Lowland Moorland. He failed to address the very proximate Inland Undulating Uplands. Again I think that this was a major omission.

Turning to the key characteristics of landscape zones/types/areas, you will remember that I cross examined Mr Holland on his approach to assessment. No assessment was made by him of the impact of the development on key characteristics even though he set out those key characteristics (or some of them). My observations here apply to the mid-Devon and West Devon assessments to which I have already referred, and

also to the National Character Areas (CD54) and to the Landscape Character Zones in The Devon Landscape (CD59) which underpins policy CO1 in the Structure Plan.

Turning to the evidence of Ms Reynolds, she gave no attention at all to key landscape characteristics for the purposes of landscape impact assessments. Indeed I had the more general observation that her entire proof had no discernible structure. She did not follow the approach advised in the GLVIA to assessment. Indeed her proof contained almost no impact evidence at all. It was in essence a description of the base line and a rehearsal of its sensitivities. Her section 7 which purported to deal with landscape impact was almost wholly devoid of any impact evidence but for some unreasoned sweeping conclusions.

Against this background I turn to the evidence of Mr Goodrum and make some submissions in closing. Dealing with two preliminary points:

(a) I commend the approach of Mr Goodrum to the assessment of the impact of the development on key characteristics of the landscape. With regard to the host landscape area or type of approach is that there may be impacts on any of the defined characteristics of the area. With regard to neighbouring or more distant types or areas, he proceeds on the basis that landscape character effects (as opposed to visual effects) could only arise if one of the characteristics of the area in question was defined as views towards the appeal site (or including the appeal site). I commend this approach which is wholly logical.

(b) With regard to Revision 2020 (CD77), a report by Land Use Consultants, Mr Holland noted that the area of Den Brook was concluded to be of moderate/high sensitivity to development of the scale proposed at Den Brook. However, as explored in XX, in reliance on this degree of sensitivity for the area of Den Brook is, as put to Mr Holland in XX, a song part sung. You may wish in this context to look at Figure 24 in Appendix C to the LUC report. You will note that the whole of Devon is of moderate/high sensitivity to development of this scale. The same applies to Somerset, except for an area of high sensitivity. The same applies to Dorset, except to an area of lower sensitivity near Portland. The same applies to Cornwall, except for two areas of high sensitivity in the far west and an area of lower sensitivity in the Clay district.

Therefore, the area of Den Brook was concluded by Mr Goodrum to be no more sensitive to development of the scale proposed than anywhere else in Devon.

The same sort of point applies in respect of Farmed Lowland Moorland (including the area of Den Brook) defined in the West Devon LCA 2008 (see Mr Holland's Appendix A). The Management Guidelines set out within this document, and relied upon by Mr Holland in terms of landscape sensitivity to wind energy development, advise that development uncharacteristic of this area should be resisted, and that development should reinforce the traditional landscape of the area. Such advice could never be fulfilled by wind energy development. It is singularly negative and unhelpful, and in my view is quite inconsistent with the approach in

PPS22 and noting in this context challenging targets for renewables deployment by 2010 and 2020.

With regard to the evidence of Mr Goodrum, I note on the basis of what I have already said about that of Mr Holland and Ms Reynolds, that Mr Goodrum provides a structured approach and robust and reliable evidence, following the advice in the Guidelines for Landscape and Visual Impact Assessment (CD48). I also note that Mr Goodrum properly engaged with the previous inquiry decision. Section 5 of his evidence describes changes in relevant factors since the previous inquiry.

I also strongly commend Mr Goodrum's evidence on the impacts of climate change on the landscape (and indeed that of Mr Stewart). Relevant evidence can be found at para 5.2 of Mr Goodrum's proof and repays careful attention. In my view the approach we see in the documents canvassed by Mr Stewart and Mr Goodrum in their proofs makes it clear that in assessing the impacts of wind energy development on the landscape, account must be taken of changes that are going to occur as a result of climate change in any case. It is relevant to note that wind energy schemes are a type of development which attracts the support of Government policy in part because they represent a part of a package of measures designed to combat the effects of climate change. This is a material consideration for you to take into account.

I will now summarise my view of the key points to emerge from the evidence of Mr Goodrum, whose evidence I generally commend:

(a) No material changes have occurred in respect of the landscape and visual base line since the previous appeal decision.

(b) Significant effects on landscape character will be confined to the Den Brook valley and neighbouring valley sides. Such effects will apply to each of the national, county and local landscape areas that include the area described. Only the Lowland Farmed Moorland (West Devon LCA) will be significantly affected as a whole.

In this respect I commend the findings of Mr Lavender in paragraph 38 of his appeal decision, and in particular his conclusion that "Indeed, within Devon, I have little doubt that this location would (because of, rather than in spite of, its inherent topographical characteristics) rank highly among the landscapes most able to accommodate development of the type, scale and extent proposed".

(c) With regard to the Dartmoor National Park, no significant landscape or visual effects will arise from the evidence of Mr Goodrum. There could in any event be no prejudice from the development to the natural beauty of the Park itself. There might, however, in some circumstances be damage to the second objective of the National Park (Environment Act 1995) in terms of access and recreation. However, on the evidence of Mr Goodrum such is the distance of the National Park from the appeal site, that there would be no conflict with the second purpose of designation. In this respect I refer to and commend the findings of Mr Lavender in paragraph 37 of the earlier appeal decision.

I have noted that through this inquiry you have asked a number of witnesses questions about the height of the turbines. This is a topic that was covered at various points in his proof by Mr Goodrum. I refer in

particular to what he said at paragraph 6.3.2 in terms of wind farms not currently being a characteristic of any of the landscape character areas. I also refer to his oral evidence on the topic of the scale of the development on the landscape given in chief. You will remember that he took the inquiry to a number of view points in order to demonstrate that the scale of this proposed development is reasonable and acceptable in terms of the local and wider landscape.

In theory it would always be possible to design a wind farm with lower wind turbines. In practice that is neither possible nor necessarily desirable. In terms of possibility, lowland England as a whole is not a region of higher wind speeds. In order to achieve economic viability, hub heights have to be reasonably high. Again, in terms of desirability larger capacity machines deliver more power, meaning that (noting that targets are not a cap), fewer wind turbines will be needed in any given area to reach targets that would be the case with smaller machines, even if such smaller machines were economically viable. To reject a proposal simply because of the scale of the scheme quite simply takes the achievement of Government policy through the attainment of targets up a blind alley, and I strongly submit that this would be neither desirable in terms of the objectives of policy or justified in terms of the evidence placed before you.

(2) Turning to visual effects, Mr Goodrum noted that the ZTV Study indicated that only 14% of the 30 km radius study area would have theoretical visibility of the wind turbines and in practice visibility would be much less, particularly from roads due to high hedge banks. Mr Goodrum also noted that the turbines would be generally seen set low against the land form, since they are located within a shallow valley.

Mr Goodrum acknowledges likely significant visual effects up to about 3 km from the wind turbines. He also recorded a lack of public footpaths in the near vicinity of the site, meaning that higher sensitivity of receptors would primarily be residents.

I think that it is of particular note that Mr Goodrum's evidence demonstrates a relative lack of representative viewpoints within the 3-6 km zone because of extensive screening by local topography and vegetation. It is partly because of this that Mr Goodrum found that the only viewpoint (within the ES) lying within the 3-6 km zone would not experience significant visual effects.

As to effects on residential properties, Mr Goodrum produced a thorough survey (see Figure 5 in Appendix 1 to his evidence). A review of 107 properties within 3 km of the site demonstrates that 32 would receive significant visual effects. Importantly, none of these effects would be of such intensity as to amount to an impact on residential amenity, as opposed to the visual amenity of the residents. In other words none of the effects would be oppressive or over bearing.

In relation to visual effects, and particularly effects on the living conditions of residents (RFR1 and 2) I note and commend Mr Lavender's observations about private and public interests at paragraph 21 of his appeal decision. I also commend his conclusions in respect of impacts on living conditions in paragraph 23.

Generally, I ask you to accept as robust and correct the evidence of Mr Goodrum on this topic.

(3) Cumulative effects did receive some consideration in the inquiry, but in my view this is one of those now rare cases where there is no scheme (built, consented or in the planning system) sufficiently close to give rise to even the possibility of significant landscape and visual effects. I refer in this context to the evidence of Mr Goodrum and believe that the position that I have submitted can be seen very clearly from Mr Goodrum's Figure 6.

In summary, in relation to the landscape and visual effects of the development, including impacts on the Dartmoor National Park and on the living conditions of residents, I submit that this scheme would not give rise to any unacceptable effects, and indeed remarkably few significant landscape impacts and visual effects, given the high degree of local screening noted by Mr Goodrum. I ask you to find that the landscape and visual effects of this proposed development will be acceptable.

Cultural Heritage

Evidence on this topic was given by Frances Griffith on behalf of WDBC and Mr Stewart on behalf of RES. Both gave evidence at the first inquiry.

It is notable that Frances Griffith's evidence is, save for some highlighted changes in the summary, in precisely in the same form as that given to the first inquiry. The highlighted sections of the summary simply contend that further historic features have been identified since 2006 in the vicinity of the Henge at Bow. Ms Griffith also tells us in the summary that the monuments at Bow have captured the public imagination and form part of Bow's appreciation of its heritage in character.

The evidence of Ms Griffiths discloses great depth of knowledge of archaeology and a passion for the subject, but it has to be said that there is no real understanding of a planning approach to the issues before you. Her proof

includes a great deal of baseline material on the Bow complex and little text on Broadnymett Chapel, but little else save for a rehearsal of relevant law and policy. Section 5 of her evidence describes the impacts to be assessed. She confirms that there is no objection to the proposed development upon the basis of direct archaeological impacts, but in relation to indirect facts (ie setting) I can firmly submit that there is no reasoned impact evidence at all. Para 5.4.2 contains a statement that the proposed development will have an unacceptable impact upon the Bow Complex and the understanding and appreciation of its setting, but there is no shred of reasoning within her proof to support the statement. With regard to Broadnymett Chapel, all we have is a single paragraph referring to a photomontage produced by the Appellant which Ms Griffith says demonstrates that "the visual impact is significant, and, given the importance of the monument, unacceptable ..".

Nowhere does Ms Griffith define the setting of Broadnymnett Chapel, nor the setting of Bow Complex for the purposes of this appeal. Nowhere does Ms Griffith indicate precisely why the proposed development might be seen as within the setting of any particular archaeological remains or the Broadnymnett Chapel and nowhere does Ms Griffith assess the impact the proposed development on the setting of the Bow Complex or Broadnymnett Chapel. I am afraid that her evidence is wholly deficient in providing evidence of assistance to you.

Ms Griffith asks you to make bricks without straw. In comparison Mr Stewart, not an archaeologist, but an experienced planner who indeed used to be Chief Planning Officer in a district containing Avebury, does provide specific material on the setting of archaeological remains and listed buildings (not just those described by Ms Griffith) only Mr Stewart gives impact evidence to assist you and I commend it to you.

As with other Council witnesses, Ms Griffith does not engage with the findings of the previous appeal decision - something I find inexplicable. It may be noted that

Mr Lavender discussed historic landscape issues, following the receipt of evidence from Ms Griffith, at paragraphs 39 - 45 and paragraph 76. He made clear findings:

- the setting of the monuments at Bow would be suitably preserved; and
- the setting of Broadnymnett Chapel would not be preserved.

RES may not agree with Mr Lavender in relation to the chapel and I commend the evidence of Mr Stewart.

Overall, the Council has produced no new baseline material of any relevance and no new impact evidence, as with the first inquiry and so with this inquiry. Ms Griffith has lamentably failed to grapple with the issue of setting an impact, and she has lamentably failed to grapple with Mr Lavender's decision.

I ask you to accept the evidence of Mr Stewart, to find in favour of the Appellant in relation to issues relating to the Bow Complex, and to accept the evidence of David Stewart in relation to Broadnymnett Chapel. Given the complete failure of the Council to properly engage with the issues before you, I need say no more. No case has been made to underpin RFR3.

Noise

In relation to this topic the witnesses were Mrs Davis, Mrs Hodgson, Dr Hoare, Mr Stigwood, Dr Barlow and Dr McKenzie.

Dealing first with Mrs Davis and Mrs Hodgson the latter made some general, locally based observations, and I do not feel that any specific closing submissions are required, although Mrs Hodgson's views are respected. With regard to Mrs Davis it is quite clear that she feels that she is suffering from noise at Deeping St Nicholas, and if that was all that Mrs Davis brought to the Inquiry I would, beyond inviting you to visit her property and hear matters for yourself, leave things there. However, Mrs Davis does in my view make some very extreme assertions in her

proof which may beg questions about her general approach and the weight to be given to her evidence:

(a) In the Valuation Tribunal decision (CD 105) there are references to the way in which Mrs Davis perceives the noise that she hears from her house and you will remember that I took her to some of her expressions in XX cross examination. I refer to in particular to the phrases "helicopter noise", "enhanced helicopter noise". In XX Mrs Davis said that the wind turbines near to her house sounded like a Chinook helicopter at about 120 metres above her house. You may find, as RES find, that this is a little unbelievable.

(b) At 3.6 in her evidence Mrs Davis claims that she hears the noise of the nearby wind turbines although a defective car alarm was making a noise at the time and she was wearing ear defenders to shut out the noise of the car alarm. In XX she maintained that this had been the case and confirmed that she had been wearing "industrial quality" ear defenders. Again you may find this evidence a little hard to believe.

(c) Perhaps less extreme, but nonetheless contended by RES, is Mrs Davis' observation (para 2.3 of her proof) that trees tend to filter out sound, emphasising the noise from the turbines. You and I asked the questions on this point, and it is my view that there is no obvious logic in what Mrs Davis says. Trees may act as some kind of noise barrier or filter, but the wind of noise in the trees itself tend to act as a masking noise.

I also wish to refer to the Valuation Tribunal decision (CD 105). You remember that I took Mrs Davis through this decision in XX, having previously confirmed that the Local Authority had served no Enforcement Notice contending a breach of a

planning condition or an Abatement Noise contending a statutory nuisance. It would seem to me that the Tribunal's decision was based very heavily on the views of Mrs Davis, supported by views from estate agents and the lack of any oral evidence from the Local Authority on the reported views of estate agents supporting the local authority's position. On the face of the decision it is my submission that the evidential basis for the view taken by the Tribunal is not obviously well founded.

Overall I feel that Mrs Davis' evidence is very extreme, and except in terms of her perception of noise from her neighbouring wind farm, seriously lacking credibility. The extremes within her evidence in my view undermine the credibility of the whole. Altogether I ask you to view what she has said with extreme caution, but nonetheless to go to Deeping St Nicholas and hear matters for yourself.

I now turn to the professional witnesses. As a preliminary point I record that Dr Hoare whilst giving expert evidence, is not qualified in acoustics. She is undoubtedly very good at analysing data, but it seemed to me from XX that her approach to acoustics in certain respects betrayed her lack of qualification. For example, I refer to the evidence in Section 7 of her proof involving a calculation of the percentage of time the wind farm would be audible at certain properties. This exercise was clearly deeply flawed and I will turn to it later.

You have before you a lot of immensely detailed evidence, and in closing I will keep to some observations on the main themes explored:

1. Background noise measurements.

2. Wind shear.

3. Noise predictions.

4. Noise Assessment (Amplitude Modulation).

While turning to these topics, I deal briefly with policy. Paragraph 22 of PPS22 (CD21) clearly advises that "The 1997 Report by ETSU for the Department of Trade and Industry should be used to assess and rate noise from wind energy development ..". The ETSU Report is of course CD61. The Companion Guide to PPS22 (CD22) advises in detail on noise paragraphs 41 - 46 (pages 167 - 170). Paragraph 44 repeats the advice in paragraph 22 of PPS22. I also refer to a document produced to the inquiry during the noise evidence, an exchange of letters between Environmental Protection UK and Lord Hunt, Minister of State at DECC August/October 2009. I refer in particular to Lord Hunt's letter of 1 October 2009 which, following a discussion, makes it clear that the Government continues to support the approach set out in PPS22, including "the use of ETSU-R-97 to ensure that renewable energy developments have been located and designed in such a way to minimise increases in ambient noise levels ..". Despite so many assaults on ETSU at recent public inquiries the Government, as you noted in questions to Dr McKenzie, remains very clearly committed to ETSU as the appropriate source of advice on the assessment of rating and noise from wind farms.

<u>Background noise measurements</u>

(a) Background noise measurement locations

You will remember that I explored with Mr Stigwood (MS) in XX the aim of background noise measurement locations. Referring to advice on pages 58 and 84 of ETSU (CD 61) and the evidence of Dr McKenzie it seems to me clear that the aim of making background noise measurements is to obtain

representative information at properties where measurements are taken in terms of all the areas used for external amenity. The exercise does not require the selection of a particular hot spot as opposed to obtaining information properly representative of those parts of the property which may be enjoyed for amenity purposes. As Dr McKenzie has said what is required is robust common sense and the selection of appropriate locations during a site visit. Again, what is clearly required is to make free field measurements (that is to say not closer than 3.5 m from reflective surfaces (page 84 ETSU)).

Again, it may be difficult in a particular case to determine an amenity area. In these circumstances, on the evidence of Dr McKenzie, what is required is to make a practical judgement in order to obtain representative information. In this case such a judgement was required at Ham Farm, where there was no obvious amenity area.

Overall, the exercise requires a sensible and not overly prescriptive approach.

I note in this context that MS gave the views we see in this proof without the benefit of site visits except to Coxmoor and Broadnymett. I regard this as a curious approach on this topic, given MS' extreme attention to detail which we see in his Appendix B.

As to the precise locations selected by RES and Dr McKenzie respectively I am not going to take time making detailed submissions in closing. You will make site visits and you have the evidence. I just ask that you exercise the practical judgement I have advocated on the evidence of Dr McKenzie and that you accept his experienced view of the aim of the exercise.