TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78

TOWN AND COUNTRY PLANNING APPEALS (DETERMINATION BY INSPECTORS) (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000 (AS AMENDED)

APPEAL BY: BROADVIEW ENERGY LTD

SITE: LAND AT PILROW WIND FARM, LAND EAST of the M5 and SOUTH of the A38 BRISTOL ROAD, ROOKSBRIDGE, AXBRIDGE, SOMERSET,

APPEAL REF. APP/V3310/A/13/2197449

NoPilrow Ltd
Additional Submissions

By his letter of 28th February 2014, Inspector Jackson has invited the parties to consider the implications on the Pilrow proposals of the Court of Appeal judgment in Barnwell Manor and the Secretary of State's decision on Black Ditch Wind Farm, and in response to his invitation we make the following observations.

Heritage

1. This part of our additional Submissions deals with the relevance of the Court of Appeal decision in Barnwell Manor, but to do so we need to go back first to the original case argued before Mrs Justice Lang to which the Court of Appeal referred for the background to their own Judgment.

The High Court decision is cited as [2013] EWHC 473 (Admin). The passages set out below in smaller text reflect the paragraph numbers in that Judgment and later in the passages cited of the Court of Appeal Judgment. In opening, Mrs Justice Lang stated:

4. On appeal, the Inspector identified the main issues, at paragraph 9 of the Appeal Decision, as:

> "whether any benefits of the proposal are sufficient to outweigh any harm caused to the setting of heritage assets, the character and appearance of the surrounding landscape, the enjoyment of the area and the many rights of way within it, by walkers, cyclists and horse riders, ecology and other matters"

5. He concluded, at paragraphs 84 to 86, Appeal Decision:

a) There would be no significant adverse impact on users of public rights of way, no appreciable devaluation of the visitor experience to the area and no harm in ecological terms, and some enhancement.

b) The proposed development would harm the setting of a number of designated heritage assets; however, the harm would in all cases be less than substantial and reduced by the temporary nature of the planning permission (25 years) and its reversibility. The proposal would also cause harm to the landscape.

c) The benefits that would accrue from the wind farm – a 10 MW contribution to the 2020 regional target for renewable energy – attracted significant weight in favour of the proposal.

d) The significant benefits of the wind farm outweighed the harm it would cause to the setting of designated heritage assets and the wider landscape.

Grounds of challenge

11. The issues in dispute on this application were as follows:

a) Did the Inspector give special regard to the desirability of preserving the settings of listed buildings as required by section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990 ("P(LBCA)A 1990")?

b) Did the Inspector correctly interpret and apply planning policy on the effect of development on the setting of heritage assets?

c) Did the Inspector give adequate reasons for his decision?

2. In continuing to describe the principles of law applicable, Mrs Justice Lang observed

16. In *Tesco Stores v. Secretary of State for the Environment & Ors* [1995] 1 WLR 759, Lord Hoffmann said, at 780F-H, that the weight to be given to a material consideration was a question of planning judgment for the planning authority.

3. In Paragraphs 22 onwards Mrs Justice Lang set out the relevant Planning Policies (changed in name since then but substantially unchanged in the principles to be applied) and those of particular relevance to the Pilrow proposals would seem to be as follows

23 These policy documents establish the following (among other) principles:

a) The "significance" of a heritage asset is the "value of that asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. The accompanying Practice Guide expands on how one can analyse the public's interest in heritage assets by sub-dividing it into aesthetic, evidential, historic and communal values. This is not policy, but a tool to aid analysis" (PPS5, Annex 2, Terminology & footnote 18).

b) The "setting" of a heritage asset comprises the "surroundings in which the asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative

contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral." (PPS5, Annex 2, Terminology).

c) The contribution that setting makes to the significance of a heritage asset does not depend on there being an ability to access or experience the setting (PPS5 Practice Guide, para 117).

j) Where a proposal has a harmful impact on the significance of a designated heritage asset which is less than substantial harm, in all cases local planning authorities should (i) weigh the public benefit of the proposal and (ii) recognise that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss (PPS5 Policy HE9.3).

4. Mrs Justice Lang then goes on to explain the statutory duty in paras 25 & seq including the following passages:

39. In my judgment, in order to give effect to the statutory duty under section 66(1), a decision-maker should accord considerable importance and weight to the "desirability of preserving … the setting" of listed buildings when weighing this factor in the balance with other 'material considerations' which have not been given this special statutory status. Thus, where the section 66(1) duty is in play, it is necessary to qualify Lord Hoffmann's statement in *Tesco Stores v. Secretary of State for the Environment & Ors* [1995] 1 WLR 759, at 780F-H, that the weight to be given to a material consideration was a question of planning judgment for the planning authority.

5. After describing the Inspector's findings on the impact on heritage assets, Mrs Justice Lang found that the Inspector had failed to give proper effect to the section 66(1) in the balancing exercise concluding:

46 In my judgment, the Inspector did not at any stage in the balancing exercise accord "special weight", or considerable importance to "the desirability of preserving the setting". He treated the "harm" to the setting and the wider benefit of the wind farm proposal as if those two factors were of equal importance. Indeed, he downplayed "the desirability of preserving the setting" by adopting key principle (i) of PPS22, as a "clear indication that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided" (paragraph 86). In so doing, he applied the policy without giving effect to the section 66(1) duty, which applies to all listed buildings, whether the "harm" has been assessed as substantial or less than substantial.

47 For the reasons set out above, I have concluded that the Inspector erred in law by not giving effect to the duty under section 66(1) P(LBCA)A 1990 when carrying out the balancing exercise.

6. Mrs Justice Lang then described the conflicting arguments between the Claimant Developer and the English Heritage and National Trust objectors. The Local Planning Authority did not participate in the hearing having accepted that the Inspectors decision should be quashed. The details are set out in paragraphs 48 & seq. The Developers position in the

case echoes the Appellants position in this Appeal, Mrs Justice Lang summarizing that position as follows

> 50. The (Developer's) response was that the Inspector had correctly applied the relevant policy tests (including English Heritage guidance on setting) in that he:
>
> e) identified each heritage asset;
>
> f) assessed the significance of each asset including any contribution made to significance by elements of setting;
>
> g) assessed the degree of impact that the turbines would have on those elements of setting that contributed to significance;
>
> h) assessed the degree of impact that the turbines would have on the ability of receptors to experience each heritage asset;
>
> i) formed a view on whether any harm to significance was substantial or less than substantial.

Against that, the objectors argued:

> 48. The Claimants submitted that the Inspector failed correctly to interpret and apply planning policy on the effect of development on the setting of heritage assets. He assessed the potential harm to the setting solely or principally by reference to the extent to which the proposed development might affect an observer's understanding of what the heritage asset was. That was an inadequate basis for an assessment of the effect of the proposed development on heritage assets. The Inspector had to assess:
>
> a) the significance of the heritage asset;
>
> b) the contribution made to that significance by its setting;
>
> c) the effect of the proposed development on the setting; and
>
> d) the effect of the proposed development on the significance of the heritage asset and on the appreciation of that significance.

7. In the discussion that followed on the aspects of the Inspector's Appeal Decision under review a common thread was a reference to the ability on the part of a "reasonable observer" to distinguish between the differing functions of a wind turbine and a church or country house and reference is made through the passages in Para 48 & seq to this approach, which Mrs Justice Lang summarized in her conclusion in relation to the specified heritage assets listed in the Appeal Decision:

> 57. In respect of each of the assets listed above, the Inspector's assessment of the effect of the proposal on its setting and in turn, on its significance was, in my view, too limited. Although he correctly considered the separation distance between the assets and the turbines, he went on to emphasise one factor above all else, namely the ability of members of the public to understand and distinguish the assets from the wind turbines. He said:

> "(a) any reasonable observer would understand the differing functions of a wind turbine and a church or a country house or a settlement and that the latter have a much greater … significance" (assets at Titchmarsh, Aldwincle, Wadenhoe, Benefield, paragraph 30);
>
> (b) any reasonable observer would not be confused by the juxtaposition and would recognise the settlement and the church as features of historic, architectural and cultural significance, and the wind turbines as modern, large-scale, functional impositions designed to capture energy from the wind. There would be no confusion about the origins or purpose of either, or both." (Lowick, paragraph 36);
>
> (c) Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering or interpreting." (Lyveden New Bield, paragraph 50).

8. Mrs Justice Lang went on to make a finding that:

> 59. It appears, therefore, that the ability of the "reasonable observer" to distinguish "the modern array" from the "historic landscape or building" was the decisive factor for the Inspector in reaching his conclusion in paragraph 51 that the effect on the setting would not reach the level of substantial harm.

In her judgment, Mrs Justice Lang found that the Inspector had failed to have proper regard to the relevant planning policies and in particular that he limited his assessment to the ability of the public to understand the asset and failed to consider the contribution made by the setting to the significance of the asset.

9. Before going on to examine the impact of the Court of Appeal decision which confirmed the judgment of Mrs Justice Lang, its worth noting this Appellants position on heritage assets, the evidence of which will be familiar to the Inspector and is partly summarised in the Appellants Closing Submissions to which the Inspector can refer at 38 & seq including the following observations:

> 43. ….it is clear from Dr Collcutt's assessment (of heritage assets) that none would experience a material effect upon their setting, let alone one which would not be decisively outweighed by the benefits that would arise from this proposed development. In particular as regards the Brent Knoll Hillfort:

- the readily visible modern elements in the landscape (especially the large scale infrastructure features) demonstrate that there has been great change in the setting of the hillfort with a diminished contribution to the heritage-significance capable of being experienced from the present characteristics of the surroundings;

- in addition to having been greatly damaged by quarrying the hillfort is disadvantaged by a poor archaeological record and very little is known of the Iron Age and Roman use of the site. Even in respect of what we actually do know, there is currently no interpretation material on or even signage to the site;

- in views outward from the hillfort, the proposed turbines would occupy a small proportion of the whole panorama available. The relationship with other historic sites (such as the neighbouring hillforts or Glastonbury) would remain entirely legible;

- the proposal site does not stand in a relationship with Brent Knoll (let alone with the hillfort of Brent Knoll) that corresponds with current axes, inwards or outward, of active public interest.

- the Pilrow proposal will be distinguished clearly from the cultural heritage aspects of the Inner Farm decision.

10. In our respectful submission none of the above conclusions can now be maintained following the judgment of Mrs Justice Lang and its upholding by the Court of Appeal on the 18th February 2014 to which we now turn. By way of reminder, the Appeal Court judgment on the case brought by Barnwell Manor Wind Energy Ltd (Neutral Citation 2014 EWCA Civ 137) (case ref C1/2013/0843) related to a proposed four-turbine wind farm in Northamptonshire, which as we have seen the Planning Inspector had allowed at appeal.

Mrs Justice Lang made findings that the wind farm would have harmed the setting of designated heritage assets, including Lyveden New Bield, a Grade I listed building, Grade I registered park and garden, and Scheduled Ancient Monument. The Appeal Court judgment followed on from the High Court judgment (Neutral Citation 2013 EWHC 473 (Admin)) (ref CO/4231/2012) dated 8 March 2013, and has effectively upheld that original judgment.

11. In the High Court judgment, Mrs Justice Lang found that the Inspector had failed to:

(1) have special regard to the desirability of preserving the settings of listed buildings, including Lyevden New Bield [pursuant to section 66(1) of the Planning (Listed Buildings and Conservation Area) Act 1990];

(2) correctly interpret and apply the policies in PPS5; and

(3) give adequate reasons for his decision.

12. In the Court of Appeal, where the appellant developer challenged all three of the above grounds, Lord Justice Sullivan concluded:

(1) "I agree with Lang J's conclusion that Parliament's intention in enacting section 66(1) was that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise"; "The Inspector appears to have treated the less than substantial harm to the setting of the listed buildings… as a less than substantial objection to the grant of planning permission" [para 29]

(2) "I endorse Lang J's conclusion that the Inspector did not assess the contribution made by the setting of Lyveden New Bield by virtue of it being undeveloped, to the significance of Lyveden New Bield as a heritage asset"; "the ability of the public to appreciate a heritage asset is one, but by no means the only, factor to be considered when assessing the contribution that setting makes to the significance of a heritage asset". [para's 35 and 37]

(3) "…I found some difficulty, not in understanding the final sentence of paragraph 50… but in understanding how it could rationally justify the conclusion that the detrimental effect of the turbine array on the setting of Lyveden New Bield would not reach the level of substantial harm"; [the guidance in PPS5 and the Practice Guide] "nowhere suggests that the question whether the harm to the setting of a designated heritage asset is substantial can be answered simply by applying the "reasonable observer" test adopted by the Inspector in his decision". [para's 42 and 43]

13. Lord Justice Sullivan was robust in his dismissal of the assertion that there was some test that involved any "reasonable observer" knowing the difference between a turbine array and a feature of the historic landscape. It's worth setting out some of the passages of that Judgment.

38. The Inspector said that his conclusion in paragraph 51 of the decision letter that the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield had been reached on the basis of his conclusions in paragraph 50. In that paragraph, having said that the wind turbine array "would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the orchard, and various

other places around the site, at a separation distance of between 1 and 2 kilometers", the Inspector gave three reasons which formed the basis of his conclusion in paragraph 51.

39. Those three reasons were:

(a) The turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site.

(b) The turbine array would not intrude on any obviously intended, planned view out of the garden or the garden lodge (which has windows all around its cruciform perimeter).

(c) Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.

40. Taking those reasons in turn, reason (a) does not engage with the objectors' contention that the setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset because Lyveden New Bield was designed to be the dominant feature in the surrounding rural landscape. A finding that the "readily visible" turbine array would not dominate the outlook from the site puts the boot on the wrong foot. If this aspect of the objectors' case was not rejected (and there is no reasoned conclusion to that effect) the question was not whether the turbine array would dominate the outlook from Lyveden New Bield, but whether Lyveden New Bield would continue to be dominant within its rural setting.

43. Matters of planning judgment are, of course, for the Inspector. No one would quarrel with his conclusion that "any reasonable observer" would understand the differing functions of a wind turbine and a church and a country house or a settlement [30]; would not be confused about the origins or purpose of a settlement and a church and a wind turbine array [36]; and would know that a wind turbine array was a modern addition to the landscape [50]; but no matter how non-prescriptive the approach to the policy guidance in PPS5 and the Practice Guide, that guidance nowhere suggests that the question whether the harm to the setting of a designated heritage asset is substantial can be answered simply by applying the "reasonable observer" test adopted by the Inspector in this decision.

44. If that test was to be the principal basis for deciding whether harm to the setting of a designated heritage asset was substantial, it is difficult to envisage any circumstances, other than those cases where the proposed turbine array would be in the immediate vicinity of the heritage asset, in which it could be said that any harm to the setting of a heritage asset would be substantial: the reasonable observer would always be able to understand the differing functions of the heritage asset and the turbine array, and would always know that the latter was a modern addition to the landscape. Indeed, applying the Inspector's approach, the more obviously modern, large scale and functional the imposition on the landscape forming part of the setting of a heritage asset, the less harm there would be to that setting because the "reasonable observer" would be less likely to be confused about the origins and purpose of the new and the old. If the "reasonable observer" test was the decisive factor in the Inspector's reasoning, as it appears to have been, he was not properly applying the policy approach set out in PPS5 and the Practice Guide. If it was not the decisive factor in the Inspector's reasoning, then he did not give adequate reasons for his conclusion that the harm to the setting of Lyveden New Bield would not be substantial. Since his conclusion that the harm to

> the setting of the designated heritage assets would in all cases be less than substantial was fed into the balancing exercise in paragraphs 85 and 86, the decision letter would have been fatally flawed on grounds 2 and 3 even if the Inspector had given proper effect to the section 66(1) duty.

14. In terms of the grounds for quashing the appeal decision, we accept that one of the main designated heritage assets affected by the proposed Pilrow wind farm (Brent Knoll hill fort and its associated field systems) is a Scheduled Monument and not a listed building. However, the judgment has relevance for any listed buildings that are affected by the wind farm. There are a large number of Scheduled Monuments and Listed Buildings around the site and which are conveniently set out in Appendix 7A -1,2,3 (& seq) ES and whilst a great deal of attention (rightly so) has been devoted to Brent Knoll and its Hillfort the decision maker must not lose sight of the settings of those Listed Buildings which are equally impacted by the findings of the Judgments of the High Court and the Court of Appeal.

Indeed, if the Inspector were to look again at the Arup Map delineating the 2.5km and 5.0km buffers around the proposed turbines then as to the Listed Buildings, all bar the last two listed at Appendix 7 A-10 ES fall within the 5.0km radius, the settings of which require assessment in the balancing exercise.

15. In addition, the Court of Appeal suggests that any conclusion that a proposal would have 'less than substantial harm' to the setting of heritage assets does not automatically mean that the public benefits of a renewable energy scheme will always weigh more heavily. In the current proposal there has not been any significant debate on what those public benefits might be when examining the burdens that usually accompany any benefit. (And it is also interesting to note that in para 42, Lord Justice Sullivan had difficulty in understanding how the impact would not reach the level of 'substantial harm' ;).

16. In terms of the correct interpretation and application of the policies in PPS5, it should be noted that the NPPF is now in force, but that it does not substantially alter the national planning policies relating to heritage assets. Overall, the two judgments (High Court and Appeal Court) indicate that the Inspector took too 'narrow' a view of the impact of the proposal on the setting of heritage assets. He did not assess the contribution made by the (undeveloped) setting of the heritage asset to its significance. In respect of the Pilrow proposal, this emphasises the need to assess the contribution made by the landscape setting of Brent Knoll hillfort – which is free from large-scale moving structures – on its significance as a heritage asset. The fact that the public would realise that the hillfort and the turbines are separate components in the landscape is but one factor to consider when assessing the effect on significance.

In terms of giving adequate reasons for the decision, the judgments illustrate the importance of fully justifying any conclusions on the level of harm on the setting of heritage assets, as well as ensuring that a reasoned and proportionate approach is taken when weighing up the harm and the benefits of proposals. Furthermore, it is arguably extremely pertinent that Lord Justice Sullivan raised the question that it is not whether the wind turbines would dominate the outlook from the heritage asset, but whether the heritage asset would continue to be dominant within its rural setting. This links to the Inspector's conclusions in the Inner Farm appeal decision, and the reference to the isolation of Brent Knoll in the landscape. The phrases in paragraph 40 of the Court of Appeal judgment are particularly telling where he deals with the argument (as asserted by this Appellant) that a "readily visible turbine array would not dominate the outlook from the site "puts the boot on the wrong foot"

Landscape & Cultural Heritage

17. Whilst NoPilrow Ltd did not argue landscape in the generality at the Inquiry, landscape in any event is inextricably bound up with Cultural Heritage and the significance of setting as what is "setting" if it isn't landscape, and it also has importance to the related issues of visual amenity to those who live in the landscape and other users of that landscape. The passages in the Judgments have relevance to other aspects of the Appellant's case, in particular the arguments propounded by Mr Stevenson whose written and oral evidence would seek to persuade the decision maker (and echoed in Appellants Submissions) that the Pilrow proposal would have little relevance except at the local scale and that the landscape has a prevailing character that would be sufficiently strong to maintain its presence notwithstanding the presence of a wind farm. Mr Stevenson argued (3.15 Proof of Evidence) that Brent Knoll would remain an Isolated Lowland Hill clearly separate from and distinct from the Wind Farm Landscape and the Levels with Wind Farm sub-type that would be established around the site.

18. Mr Stevenson goes on to argue amongst other matters that (eg in 3.19) that

- The wind farm would comprise tall vertical elements which would contrast strongly with the broad horizontal emphasis of the local landscape
- The wind farm would be dominant when seen from close by
- The wind farm would not conflict significantly with the cultural heritage context or unacceptably compromise its value

And (eg in 3.20) that

- The wind farm would be set within open farmland such that existing uses would continue much as before; and would be additive and be easily removed such that the original landscape could be easily recovered; and have a high degree of permeability permitting observers to look between and beyond individual elements and maintain linkage and reference to the wider host context; openness would be reduced to a degree but not significantly;

And (eg in 3.29)

- The result of adding the proposed wind farm to the local environment would result in only local change within a very large landscape type and character area.

19. In our submission these arguments (and others repeated throughout the evidence) cannot be maintained when to quote the phrase "the boot is on the wrong foot".

From the perspective of the setting of the "Isolated Lowland Hill", it is that "Isolation" in its setting that acquires a greater importance than that advanced by this Appellant. From the perspective of the settings of the dwellings of the owners and occupiers in and around the "Theoretical Wind Farm Landscape" and "Probable/Possible Theoretical Local Landscape with Wind Farm sub-type" as postulated by the Appellants, it is the preservation of that landscape character that is supported by the High Court and Court of Appeal decisions because the decision maker looks at the issue from a different perspective to that postulated by the Appellants in this proposed development.

The objectivity suggested by the use of a "reasonable observer" type of test has to give way to the local and immediate characteristics of the landscape as to do otherwise would mean that any dominant development such as a wind farm would always be consented because any "reasonable observer" would always be able to distinguish between the differing functions of a wind turbine array and for example the amenity land attached to a dwelling house within or without the boundaries argued for of a wind farm landscape. The perspective to be applied is that of the local user impacted and not the artificial concept of a "reasonable observer"

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20**.** It is difficult to see how the Secretary of State would be persuaded to grant permission on the Pilrow proposed development in the light of the Appeal Decision in Black Ditch but undoubtedly the Appellants here will seek to accentuate differences and allow for the prospect that the disappointed Appellants in Black Ditch will seek Judicial Review.

21. We are at a slight disadvantage on the facts as we of course were not a Rule 6 Party in Black Ditch and we note that Counsel for the Appellants and the Respondents in Black Ditch are the same as in the instant Appeal and that Mr Dobson gave evidence in both Appeals so they will all plainly be able to assist the Inspector to a greater degree than we can.

22. Inspector Baird dealt with Landscape and Visual Impact in Paragraphs 14 to 25 of his Report. On the assumption that Inspector Baird's conclusions were urged upon him by the Appellants in that case, there are obvious similarities to the case being urged upon our Inspector in this proposed development notably:

- Man-made influences in the landscape such as the A38, the M5, the mainline railway, the canalized Huntspill River, the proximities of the Walpole landfill site and former Royal Ordnance Factory at Puriton, and lines of substantial overhead power lines and pylons;
- That notwithstanding the above, the Levels retain a sense of quiet unspoilt rural charm forming an important component of a distinctive Somerset Landscape.
- The Appellants identified a Hybrid Character Zone covering an area of approximately 2 km around the turbines assessing this to have a local landscape sensitivity of Medium to Low resulting in a Medium to High capacity to accept a medium scale wind energy development
- Whilst the Inspector could see the force of an argument creating a Hybrid Character Zone, of the features that would make up that Zone only the pylons and cables and the urban development are visible to the majority of the observers passing through the area and the remaining features are either well screened or unobtrusive or not unexpected in the rural area.
- The only views where all these features would be seen as a group would be from the top of Brent Knoll (7km), the Mendips and Quantocks (some 12-13 km respectively)
- The Inspector found that a development within a 2km zone of the proposed site would result in the creation of a wind farm landscape and the impact would be significant in ES terms
- The key impacts would be felt most in views obtained by drivers/pedestrians on the A38 and walkers on the permissive path on the raised banks of the Huntspill River
- Given their height the turbines and the rotating blades would have a significant impact on the immediate where they would become a major component of that landscape and have a significant public visual impact.
- The landscape and visual impact would decrease with distance and national policy acknowledges there will always be significant

landscape and visual impacts for several kilometers around a site, but significance does not necessarily equate to harm.

- The landscape around the site and the wider Somerset Levels does not have a particular designation. The landscape would be able to absorb the substantial but slender scale of the turbines without significant harm.
- Despite the height and spread of the turbines they would be dwarfed by the landscape and in long range views would appear as relatively small components of the overall view.
- In comparing the impact on Brent Knoll from the Inner Farm proposal, the relevant distances were 1.4km as against 7km and whilst some views would be altered, the significant and very broad scale of the sky and the Levels landscape would allow these features to remain the dominant visual and physical characteristics in any view. The scheme when viewed from Brent Knoll would not be significant.
- Given the substantial degree of separation of the scheme from the Mendip and Quantock AONB's, their character and settings would not be harmed.
- Concluding, the Inspector found that whilst there would be a significant landscape and visual impact within a zone approximately 2km around the site, the change would not be sufficiently adverse or unacceptable and the substantial and broad scale of the sky and The Levels landscape would allow these defining features to remain the dominant visual characteristics and enable the landscape to absorb the substantial but very slender scale of the turbines.

23. Inspector Baird would have allowed the Appeal on the basis of the arguments in the précis above. Given the commonality of representation it is not surprising that the same arguments have been advanced to Inspector Jackson in this Appeal. Before leaving Inspector Baird's findings of this aspect of the Appeal we need to refer to the passages in the Report under "Outlook" at paras 52 to 55. Unfortunately these passages do not assist the decision maker in applying any principles to "Outlook" or more accurately Visual Amenity in the current Appeal. We do not have the actual details of the dwellings visited, the separation distances, the sweep of the landscape, screening where applicable, and other factors that no doubt Inspector Jackson will be referring to in some detail in his Report following his own site visits. The physical location of the Black Ditch site appears more "hemmed in" by the A38, the M5, the train mainline, and the industrial zones of the Royal Ordnance Factory and the Walpole Landfill Site compared to the Pilrow site where the "corridor" issue is restricted to the western edge of the site, and doesn't include the mainline with much more open rural aspect to the east, taking in the Isle of Wedmore for example, and the viewpoints from it such as Ashton Windmill.

24. In considering what issues are not referred to in the Black Ditch Report and Decision Letter we should mention the obvious in terms of Brent Knoll as the present dominant feature of the landscape close to the Pilrow site, and its heritage and cultural importance on at least a local level.

Additionally, the Pilrow site is a good deal closer to Mendip AONB and the sweep of the landscape from Brean Down across the West Mendip Way on which we have commented before.

What the Black Ditch Report also doesn't have is any comment at all on any (if any) nearby Scheduled Monuments and/or Grade 1 or 2 Listed Buildings.

No issues of Highways/Traffic Safety, Site Access, Traffic/Construction volumes and associated noise seem to feature in Black Ditch.

Had the Inspector's Report been accepted by the Secretary of State as it stood and consent given, we could have made submissions to persuade the decision maker in this Appeal that there are sufficient differences in the two locations that would result in Pilrow being refused in any event. We are also conscious that Inspector Baird was in fact supporting the position taken by the LPA Officer's Report which recommended the grant of permission on this site, originally identified by Arup, as a potential site for a wind farm.

As it is, the Inspector in his Report in this appeal does not need to address those differences and distinctions, as the Secretary of State has determined that notwithstanding the arguments deployed by the Appellants in Black Ditch their application must be refused.

25. Paragraphs 13 to 14 of the Decision Letter dated 25th February 2014 are the pertinent passages which are perhaps summarized as follows:

- The Secretary of State does *not* share the Inspectors view that having regard to Policy D4 the change which the scheme would bring about would not be significantly adverse or unacceptable having regard to local topography with PPG Paragraph 15 being an important factor in assessing whether wind turbines could have a damaging effect on landscape and which makes clear that the impact of wind turbines can be as great in predominantly flat landscapes as in hilly or mountainous areas.
- The evidence shows that from specific viewpoints especially where a view is not screened, there will be a significant adverse impact, and
- The Secretary of State considers there would be a significant adverse impact on local landscape character, scenic quality and distinctive landscape features albeit this impact is limited to the area within about 2km of the appeal site
- Notwithstanding the absence of harmful impact when viewed from Brent Knoll, and the Quantock and Mendip AONB's, the Secretary of

> State considers that the scheme would have a significantly adverse impact within a zone of about 2km around the appeal site and he considers that conflict would therefore arise with Policies D4 and D14.

Just pausing there, the Report and Decision Letter do not define the "Appeal Site". Applying an interpretation to the Pilrow site offers a number of possibilities. Arguably it could be a 2km radius around the footprint of the intended turbines, similar to the elliptical radii on the "Arup Map" prepared by Mr Fancourt as part of his evidence. It could also be a 2km radius around the "wind farm landscape" advocated by Mr Stevenson where he (in 3.11 of his Proof of Evidence) gave an immediate character effect in a 700-800m range, so 2km on top of that takes us to the 2.5km range on the "Arup Map" where there would be significant change. It could also be a 2km radius around the Appeal Site as delineated by the boundaries of the land referred to on the Planning Application, which in Pilrow's case takes the effects well into the 5km radius on the "Arup Map".

Whichever it is, the Secretary of State decided that the impact was sufficiently adverse to refuse permission, and the same considerations apply to the Pilrow site.

26. The Secretary of State goes on to agree with Inspector Baird's analysis in his Report paras 52 to 55, on which as stated above we can also not make further comment because of the absence of information available to us of the actual evidence considered by Inspector Baird, but then goes on to deal with the Planning Balance.

In Paragraph 21 of the Decision Letter, the Secretary of State sets out the material considerations including

- The contribution of small scale projects contributing to cutting greenhouse gas emissions;
- The stated installed capacity of the scheme at 9.2MW;
- The benefit in terms of addressing the need for renewable energy;

However none of those asserted benefits outweigh the conflicts with the policies identified and the harm that the scheme would cause to landscape and visual impact.

What is noteworthy of this aspect of the Decision Letter is that Inspector Baird and the Secretary of State must be taken to have had regard to the evidence for the Appellant in Black Ditch of Mr. Dobson and the Submissions made in Black Ditch by the Appellant's Counsel about the need to utilise the resources apparently available. Inspector Baird and the Secretary of State will have considered the same core documents including the Core Strategy and the Arup Report. The Decision Maker here can look

at the Proof of Evidence of Mr Dobson on the Sedgemoor web site for the Black Ditch proposal (ref 52/10/00018) where it is listed under "Appeal Documents" and large swathes of that evidence are in identical terms to Mr Dobson's evidence in this Appeal, in many passages, word for word. The Arup Report was an Appendix to his Proof.

The issue of utilising asserted wind resources is further addressed in summary in the Appellant's Counsels Closing Submissions to this Inquiry, specifically in Paragraphs 4-5 and 52-62. As the Inspector knows, the writer was unable to be present during the closing session when the Submissions were presented so we don't know how far the written Submissions were developed in oral argument but we are assuming there was no significant difference between any oral and written Submission.

The central complaint of this Appellant, through Mr Dobson's Written and Oral Evidence, and Counsel's Submissions, is that there is a failure on the part of Sedgemoor to realise and grant permission for any of the asserted 28MW wind energy resource referred to in the Arup Report (which would have potentially more relevance to Black Ditch which was identified as a possible site unlike Pilrow which was identified but discounted). That failure was not overcome by the growth in solar, and any growth in solar is additional to that wind capacity and not an alternative to it. Further, it is asserted that if the Council does not like what is set out in the Core Strategy (evidenced perhaps by the refusal of the elected Councillors overruling the Officer's recommendations for approval in both Black Ditch and Withy Farm), it cannot ignore the Core Strategy in the absence of any revision to it. The Appellants describes Sedgemoor's position as "laughable" (Para 62 Submissions).

Seemingly the Secretary of State does not regard Sedgemoor's position in the same pejorative terms. His Decision Letter robustly rejects the tenor arguments put forward by this Appellant as expressed by Messrs Dobson and Stevenson in their evidence. It would arguably be perverse to come to the opposite decision on the same or similar evidence given by the Appellants in this Appeal.

27. Translating the principles enunciated in the Black Ditch Decision Letter across to the Pilrow scheme, Inspector Jackson can readily compare the two schemes as we have alluded to in our paragraphs 22, 23 and 24 above. He will of course have the opportunity (if he hasn't already taken it) to visit the Black Ditch location to assess the differences for himself. Additionally whilst the Secretary of State's Decision Letter does not refer to **Bozeat** 2140401, 2149434, 2149437 which we cited in our Closing Submissions, there seems to be a pattern developing concerning the creation of wind farm landscape types (which the Appellants urge as necessary) but in Bozeat it is suggested that the acknowledgement that a new wind farm landscape type would be created is itself a measure of the

substantial impact of the proposed development and the adoption of any standard radius would itself be an acknowledgement of dominance.

Although not expressly stated in those terms, the Decision Letter in Black Ditch covers the same principles described in Bozeat. It confirms that the assertion made by the Appellants in their evidence and Submissions that the landscape can somehow accommodate the proposed scheme is flawed. The issue is not the "capacity" of the landscape to enable there to be some "competition" between the impact of the Knoll on the landscape, and the impact of the proposed wind farm in the same landscape, readily distinguishable by a "reasonable observer". The issue is the creation in that landscape of a "Hybrid Character Area" or "Wind farm landscape type" or "Theoretical Wind Farm Landscape" alternatively "Probable/Possible Theoretical Local Landscape with wind farm sub-type".

Cutting through the technical language, the Black Ditch Decision Letter simply refers to a "zone", in which the creation of any of the aforesaid landscape types or sub-types creates a harmful impact in more ways than one such that the purported benefits of such schemes do not outweigh the harm. In Black Ditch, landscape trumped all other considerations. In Pilrow an equivalent or greater significant adverse impact would accrue, and on that ground alone this proposal should be rejected, without having to go on to consider the other issues of importance and relevance, not least the setting of heritage assets, and visual amenity impacts on neighbours neither being an issue that seemingly featured in the decision in Black Ditch.

13th March 2014
Martin Keegan
Director
NoPilrow Ltd