Planning Application ref: R12/2009
(Proposed windfarm on LAND AT CESTERSOVER FARM LUTTERWORTH ROAD CHURCHOVER RUGBY WARWICKSHIRE CV23 0QP ["Swift Wind Farm"])

Objections of Churchover Parish Council

January 2014

Introduction

1.1 At its meeting on 9 December 2013, Churchover Parish Council (CPC) resolved to OBJECT to the above planning application, on the grounds set out below.

1.2 This objection has been formulated in the light of the planning application as received. Councillors had previously attended public exhibitions and other meetings earlier in 2013, some organised by the Applicant (RES), and held in Churchover village hall. Village residents have expressed an overwhelming majority of opinion (>90%) opposing this proposed windfarm.

1.3 Churchover also has an action group, Against Subsidised Windfarms Around Rugby (ASWAR), formed to co-ordinate action against a previous windfarm proposal. ASWAR is not a CPC body, although parish councillors liaise with ASWAR in order to stay abreast of village opinion.

1.4 In summary, CPC objects on the following grounds:

SUMMARY GROUNDS OF OBJECTION

Visual Impact

The proposed development would have an unacceptable visual impact upon residents, walkers and other users of the village and rural environment. The turbines would be as little as 960m from individual village dwellings, and the whole of the village lies within 1260m. Houses at Greens Close (8 dwellings in total) would be especially badly affected although the village as a whole, and its context, would be harmed.

The visual amenity of dwellings beyond the village and parish boundaries would also be severely damaged, including the closest dwelling, Streetfield Cottage at 657m distance.

The visual impacts of the turbines would be unavoidable and unpleasantly overwhelming, aggravated by their eye-catching rotation. They would occupy a substantial proportion of the main outward field of view of numerous of properties and most of the best walking and recreational areas of the village. Essentially the whole of this small community would be dominated by their unavoidable presence, whether seen as a complete cluster, individually or just in glimpses of moving blades. Many views into the village would combine the proposed new turbines with the existing highly visible turbines at Shawell and Gilmorton (15 turbines in all). Some views, for example looking southeast along the northern parish boundary (the A5), would also include the Yelvertoft wind farm (an extra 8 turbines) in a single view. This cumulative impact is unacceptable.

Overall, these tall, rotating structures would be overwhelming, obtrusive and unavoidable to the residents of many properties such that their amenities would be unacceptably impaired and taken as a whole the settlement would become a less satisfactory place in which to live than it is now, contrary to policy. So too would be several individual dwellings.

As such the development would fail to comply with **NPPF**, Saved **Rugby Borough Local Plan saved** policies GP2 and GP5 and **Rugby Core Strategy 2011**, Spatial Vision, Spatial Vision 11 and policy CS14.

Heritage Assets

The proposed development would fail to protect and enhance the historic environment or the countryside, destroying the setting of listed buildings and in particular Holy Trinity, by dwarfing its 25m spire with 126.5m turbines within 1100m. A unique and particularly compelling importance attaches to maintaining the peace and tranquillity of the surroundings and the quality of views to, from and of churches that are religiously, socially, architecturally, historically or visually important to the community.

The vertical scale and blade sweep would have a harmful impact on, and fail to preserve the setting of the church, and the conservation area. It would also damage important archaeological features.

As such, it would fail to comply with the **Planning (Listed Buildings & Conservation Areas) Act 1990** s.66 and ss.69-73; **NPPF**; **PPS5 Planning for the Historic Environment 2010 (Practice Guide)**; Saved **Rugby Borough Local Plan** policies GP2 and GP5; and **Rugby Core Strategy 2011** Spatial Vision, Chapter 6 and policy CS14.

It is also noted that English Heritage rejects completely the development, on these grounds.

Landscape

The development would produce an unacceptable change in the landscape, and far exceed the landscape capacity of the area as assessed independently by the White report (adopted by the Borough Council as material to planning decisions) of 2010 and its review in 2013. In cumulation with three other windfarm developments, totalling 23 turbines and all easily visible from Churchover, there would be a domination of 150^0 of landscape around the village by turbines, destroying landscape character, quality and the amenity of daily life. It would also conflict with Green Belt policy and no very special circumstances have been shown.

As such, the development would be contrary to **NPPF**; Saved **Rugby Borough Local Plan** policies GP2 and GP5; and **Rugby Core Strategy 2011** Spatial Vision, Spatial Vision 11 and policy CS14.

It is also noted that Leicestershire County Council rejects the development on landscape grounds.

Other environmental impacts

The impacts on public rights of way will be unacceptable, turbines being as close as 30m from PROWs and oversailing them. Other peaceful enjoyment of the countryside will be interfered with or prevented, including equestrianism and angling.

The "temporary" nature of the development, 25 years, is illusory, cannot be ensured and is therefore not a material planning consideration. Indeed, RES admit as much saying that after 25 years they will consider removing, but also replacing or refurbishing the turbines. The worst-case development is therefore permanent.

There are significant risks of damage to another heritage asset, mediaeval ridge-and-furrow land.

The ecological data are unreliable and Natural England has expressly failed to consider it. No "green light" on ecology can be given.

The planning balance

Overall, and in the light of recent Ministerial guidance and appeal decisions regarding the balance and weight to be afforded to local and cumulative impacts, Churchover Parish Council concludes that the need for the development is minimal to non-existent and is clearly outweighed by its major adverse environmental impacts identified both by the Parish Council below and by Statutory Consultees, notably English Heritage. As such, planning permission should be refused.

2.0 Visual Impact Assessment (VIA)

Introduction

2.1 VIA is concerned with the immediate impacts of development upon the visual quality of local receptors such as Churchover, in terms of impacts upon primarily residents and users of the land. This is a narrower focus than, but closely connected with, wider landscape, cultural, social and heritage issues, which are examined in Sections 3 and 4.

2.2 RES set out their assessment in Appendix 6.1 to the ES, describing it as a Residential Amenity Assessment. This is, in effect, a still more narrowly focussed examination of VI.

2.3 An important qualification to what follows is that there is no document within the planning application or ES that allows distances to be scaled with confidence. Because the RES approach has been to fit everything (except the landscape panoramas) onto A3 paper, plan scales are often odd and contrived to fit on A3. Therefore accurate scaling of distances is not easy.

2.4 Also, the application includes a proposed 50m "micro-siting" allowance which has to be presumed to be the worst case and to reduce scaled distances by 50m. The RES analysis ignores this completely. References to distances below include the micro-siting allowance where relevant. The distances used by CPC are scaled from Figure 1.3, which was printed at 1:16,000 scale.

Detailed objection

2.5 The two closest turbines are nominally located at distances ranging from 960m (T1) to 1024m (T2) from the northern edge of Churchover village and similar distances from isolated dwellings elsewhere in the Swift Valley. Thus, these are potentially 910m and 974m after micro-siting.

2.6 The 'old' village itself has some 67 dwellings as follows, all between 960 (910)m and 1260 (1210)m from the nearest turbine:

- Church Street (31 dwellings)
- The Green (3 dwellings)
- School Street (25 dwellings)
- Old Rectory Close (8 dwellings)

2.7 Just beyond the old village lie the more recent house on the north of the Lutterworth Road, 1070 (1020)m from the nearest turbine – Adelante, 6 – 1 Greens Close and the Old Rectory; and on the south of the road Trusteel Houses, 1150 (1100)m. On Coton Road are 15 dwellings, 1760 (1710)m from the turbines.

2.8 Beyond the confines of the village there are 2 parish dwellings at Gibbet Hill (1070 [1020]m from T1), and there are isolated rural dwellings in other parishes (see below).

2.9 The visual impact of the development will, of course, be experienced in different ways, varying according to the location of each dwelling, its orientation, location and features of its garden, immediate surroundings, etc. The worst visual impact upon village dwellings will be experienced by residents of the 8 dwellings on Lutterworth Road over distances of 1070 (1020)m, with no significant intervening screening. Occupants of many of these houses will be unable to avoid permanent exposure to the windfarm, both from inside their houses in habitable rooms and their gardens.

2.10 The second group of residents to be seriously exposed to the windfarm will be those at the north of Church Street, where four properties will receive full or partial views of the turbines from main and side windows and gardens. These will be particularly damaging from gardens

2.11 Partial/glimpsed views will be obtained by residents of 1-12 Trusteel Houses, including views from front gardens and bedrooms, and by 1 – 15 Coton Road. The effects on the latter will be more one of landscape damage than looming overbearing predominance. They will, however, be able to see the entire windfarm.

2.12 Beyond the parish boundaries, the dwellings at Streetfield Farm (805 [755]m) and Streetfield Cottage (657][607]m) are also severely impacted, the latter being the closest of all. These views, as defined by RES, are well within the 800m they allege is the limit for oppressive or overbearing visual effects from turbines.

2.13 The properties at Moorbarns are just inside the 1km line (and with micro-siting) could be as close as 910m. These isolated properties will experience unrelieved visual impact, due to their orientations and lack of any intervening vegetation.

The developer's assessment

2.14 RES Appendix 6.1 seeks to separate residential impact from visual impact more generally, in order to "*identify whether the effects* [of the windfarm] *would result in unacceptable harm to residential amenity*". It asserts that there is an emerging consensus that oppressive or overbearing visual effects from turbines are only likely to exist within 800m of turbines up to 130m in height. It therefore takes a 1km distance from the turbine for its assessment and describes that as an "agreed" study area although not identifying by whom it was agreed. It was not agreed with CPC, and the basic premise of 800/1000m is strongly disputed, and shown to be false, later in this section.

2.15 However, taking it on its own terms, the core of its analysis is its drawings 3515_6012, 6013 and 6014. These purport to identify properties within 1km of the turbines. They are factually incorrect. Taking 3515_6012 as an example:

- Within the 1km zone, as drawn, property 05 is actually two dwellings
- Despite supposedly concerning itself only with properties within 1km, it nonetheless includes reference to a further three properties (10, 11, 12) beyond the 1km line, but ignores other properties that are also just beyond the 1km line
- Property 10 is actually four separate dwellings – Manor House, Manor Court, The Haybarn and The Coach House

- In the same distance (18m) beyond the 1km line are numbers 5 and 4 (and possibly 3) The Charity Houses.

2.16 However, the worst inaccuracy in the data for this analysis it that it ignores the 50m micro-siting. If the 1km line was redrawn to include the extra 50m, several other dwelling fall within it, in particular Mabapa, Applegates, Wolford and numbers 1 and 2 The Charity Houses.

2.17 Next, if the 50m micro-siting is accounted for – as it must be for a worst-case analysis – then it also should include in particular the 8 properties on the north of Lutterworth Road (Adelante, numbers 6 – 1 Greens Close and the Old Rectory) which are 1050-1070m from T1 before micro-siting. These, which have direct line of sight to all four turbines and will be among the worst-affected Churchover properties, are ignored completely in RES's analysis.

2.18 The outcome of the analysis undertaken is pre-determined, because RES has chosen to define, in the absence of any good evidence, 800m as the limit beyond which turbines cannot be "overbearing" or "oppressive". Therefore, regardless of what can be seen from the various properties, the significance is pre-determined. The entire analysis can be discounted for these reasons.

2.19 Turning to the 800m cut-off distance used by RES, this is completely unjustified, even with the 130m turbine qualification. Firstly, EN3[1] advises [CPC emphasis]:

> *"2.7.48 Modern onshore wind turbines that are used in commercial wind farms are large structures and there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around a site."*

2.20 It is therefore not open to RES to argue that significant impacts cannot be experienced beyond 800m.

2.21 Second, a recent appeal decision refusing a wind farm at Treading[2] gives guidance on the Secretary of State's approach following his 2013 interventions. The SoS endorsed the Inspector's report and conclusions expressed as follows [CPC emphasis]:

> *"23. Turning to individual properties, the majority of residential receptors likely to be significantly affected lie within and around a radius line drawn 1km away from the turbines and this includes 37 individual dwellings.*
>
> *"24. It has become an accepted principle that when turbines are present in such number, size and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is every likelihood that the property concerned would come to be widely regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. It may not be in the public interest to create such living conditions where they did not exist before. Private and public interests could coincide in such a way that the outlook*

[1] National Policy Statement for Renewable Energy Infrastructure (EN□3) July 2011
[2] APP/D0515/A/12/2181777 and APP/A2525/A/12/2184954, 9 October 2013

from a dwelling would be so harmed as to be generally regarded as unacceptable.

"26.There are 4 main groups of dwellings that would be affected, most of which enjoy views across the open fields of the appeal site to varying degrees. …. Property 5 lies just within the 1km radius line in Cross Road. …….However the windows of the main habitable rooms of many ….. also directly face the turbines at distances (to the nearest turbine) from 680m to 1060m. Whilst orientation, garden planting and other buildings would limit the impact of turbines for many, there would be 4 properties where they would become an unavoidable and dominant feature for the occupants from day to day.

"32.White Cottage … is surrounded by open arable fields with very little meaningful screening. T2 would be 735m from the façade and all the other turbines would be visible. T2, T3 and T4 would be seen in close association with blade overlap at distances between 735m and 1.7km.

2.22 Therefore, in terms of separation distances, Treading offers an almost exact parallel with Lutterworth Road in Churchover.

CPC's assessment

2.23 IN order to illustrate the above points, a series of photomontages has been prepared by CPC, and includes examples of the most dominating visual impacts, as well as the wider landscape impacts upon the village setting[3]. They are appended as Visualisations A, B, C and D.

2.24 A, B and C illustrates both how the choice of lens focal length and photo-stitching into a panorama give rise to different impressions of visual and landscape impact; and also illustrate more accurately than does RES the actual impact upon the village. The viewpoint is the same in each case: looking from across the valley over the village and the proposed windfarm site:

A – this is comparable to various RES views in terms of its creation. It is a photo-stitch panorama of the landscape over a wide arc constructed from 50mm focal length shots. It can be observed that almost no detail is visible: Churchover village and Swinford wind farm and hardly be perceived, and the 4 proposed RES turbines are trivialised. This is why wind farm developers employ panoramas, to minimise the landscape impact of their proposals. Nonetheless, in the RES assessment criteria (see section 4, below), the impact would be categorised as "Large scale effect, major alteration to character, fundamental change".

B – from the same viewpoint, but cropped to show only T1 nearest to the village. Although using exactly the same photographs as (A), cropping instantly makes the existing Swinford turbines and the village much more prominent. This picture is a much more accurate depiction of how people actually look at landscapes. It is now very much clearer how the existing visual impact and the additional RES proposal result in unacceptable cumulative impacts.

[3] These views are created using the 80m high meteorological mast as a reference.

C – again the same viewpoint, but a single frame using a 320mm lens. This telephoto view exaggerates how people perceive landscapes, but demonstrates how people perceive visual impacts. It is included here to make the important point that visual impact is about perception as well as appearance. The picture demonstrates that the existing Swinford turbines already induce a looming, overbearing, dominating feeling and make the point that Churchover has already suffered enough, without the addition harm from RES.

2.25 Figure D depicts the view from Adelante, on the Lutterworth Road, where 8 dwellings will have direct and inescapable views of all 4 turbines. This particular view is from the rear bedroom window. Other views, from downstairs rooms or in gardens will be similarly oppressive, depending on the property, but this is typical.

Relative heights of observer and turbines

2.26 In round figures, Churchover and the proposed windfarm are at comparable ground levels, around 110mAOD. However, views from local public rights of way (PROWs) include several where the PROW is below the ground level of the turbines. Several PROWs crossing the River Swift are at about 92-96m AOD, whereas the nearby turbines are based at 110-115m AOD. Therefore, the already substantial height of 126.5m will effectively be increased, to 140-150m, when perceived from those viewpoints. That inevitably increases the looming, overbearing, dominating, effects.

Additional Impact due to motion

2.27 A very significant additional source of visual impact is that, unlike almost any other tall structure, wind turbine blades move (sometimes) and thus draw the eye to them. Motion causes a considerable increase in noticeability, and hence aggravates visual impact. Still worse, the "lazy" rotation common at lower wind speeds, plus the fact that in multiple installations individual turbines can turn at slightly different speeds, creates both a robotic[4] and a chaotic visual effect. Put simply, operating wind turbines attract attention to themselves which makes them much more difficult – indeed arguably impossible – to ignore[5]. In the worst-affected houses and gardens in Churchover, normal relaxation in the house and garden could be prevented substantially or completely.

2.28 It should be made clear that although in Load Factor terms, turbines are only around 25% efficient (and in this locality it is believed that they are only about 18% efficient) that does not mean they operate at 100% efficiency for 25% of the time and are stationary for the rest. It means that they drift around for a great deal of the time, causing the visual nuisance but generating little electricity.

2.29 Several appeal decisions have confirmed this. An Inspector refusing an appeal at Market Drayton commented[6]:

"*Apart from their height the movement of the blades would draw the eye and be a constant reminder of their presence*."

[4] Some might say hypnotic.
[5] This can easily be confirmed by observing the two small turbines on top of the multi-storey Rugby Station car park in Mill Road, Rugby. When stationary, they are hardly visible; when rotating, they are highly prominent.
[6] APP/L3245/A/08/2088742 and APP/P3420/A/08/2088745, paragraph 41

2.30 And, later in his decision[7]:

> "….*I consider* ***the panorama of rotating turbines would be overwhelming, obtrusive and unavoidable to the residents*** *of these properties*." [CPC emphasis]

2.31 Many other appeal refusals also refer to movement as a drawback of wind turbines. All confirm that at Churchover this would, of itself, lend great weight to a refusal.

[7] ibid, paragraph 45

3.0 The Historic Environment

3.1 Archaeology and cultural heritage issues are very relevant to, indeed an integral part of, landscape assessments, but are dealt with here in their own right because additional planning criteria apply in certain respects. The European Landscape Convention came into force in 2004 and defines landscape as "*an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors*." This acknowledges that landscapes are not just products of geology, geography, climate and ecology; they are also the result (in the UK at least) of centuries of human endeavour, as emphasised by the Government's statutory adviser Natural England[8].

Conservation Area and Listed Buildings

3.2 The old village area of Churchover has held Conservation Area (CA) status for many years[9]. Within the CA are numerous Listed Buildings (LBs), of which the most notable is Holy Trinity Church, listed Grade II*. That grade is also applied to Coton House, 2km from Churchover. Grade II status is awarded to a barn at the Manor House, and the White House (both Church Street), Heath Farmhouse (School Street) and the stables at Coton House. In addition, other CAs and LBs beyond Churchover may be affected (e.g. Newnham Paddox).

3.3 The Planning (Listed Buildings & Conservation Areas) Act 1990 s.66 and ss.69-73 is the main source of protection for heritage assets. Guidance issued under it in Planning Policy Statement 5 (PPS5), "Planning for the Historic Environment" is now withdrawn but its principles are perpetuated in NPPF Chapter 12 and the PPS5 Practice Guide remains in force. The Government's objectives for planning authorities[10], *inter alia*, include:

- The desirability of sustaining and enhancing the significance of heritage assets….
- The positive contribution that conservation of heritage assets can make to sustainable communities….

3.4 NPPF notes[11] that in respect of designated heritage assets "great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be." It notes that the significance of assets can be harmed or lost through development within its setting and that such assets are irreplaceable.

3.5 This is an extremely powerful policy. It makes clear that Grade II* LBs are next to the highest level of significance and, as the fundamental damage to Holy Trinity, for one, can hardly be doubted, it is clear that the proposed development should be rejected. The magnitude of the harm would require that a "substantial public benefits that outweigh that harm" should be demonstrated before it could be permitted. There is nothing substantially beneficial about this windfarm, which is run-of-the-mill, of no material relevance to combating climate change, is non-viable and not needed, and is not even the best renewable energy technique.

[8] Natural England, "Making space for renewable energy: assessing on-shore wind energy development", 2010; see pp 6, 9
[9] Date uncertain, but ca 1979, it is thought. It has recently (2010) been reassessed and the CA status remains justified.
[10] NPPF paragraph 131
[11] NPPF paragraph 132

3.6 The proposed development will have very clear negative effects on the integrity of the CA and some of its LBs, notably Holy Trinity and the White House. This damage is impossible to mitigate. It will also give rise to irreparable damage to the historic setting of those assets: it is CPC's view that the combination of heritage assets severely damaged by this proposal – the LBs, the CA as a whole, and their landscape and cultural context, the Swift Valley– are of high significance for this and future generations, as they have been for past generations for a thousand years.

3.7 It is clear that the harm to Churchover's CA, LBs and context generally would be substantial at the least and, in respect of Holy Trinity, total loss of significance due to the overwhelming dominance of turbines five times higher than the spire and as little as 1100m from it. In this regard, several planning appeal decisions are very relevant as illustrating the factors involved in determining appeals in which LBs churches and turbines are involved.

3.8 The most relevant relates to an appeal re a single 126.5m high turbine proposed at Curborough sewage treatment works, near Lichfield[12], Staffordshire. The turbine was 3.98km from Lichfield Cathedral, a Grade I LB. The Inspector found that the turbine was supported by national and local policy, and the landscape of the "immediate surrounding area" would be able to accommodate a single turbine without undue significant effect[13]. But, on the issue of impact upon the Cathedral, the Inspector found that:

> "*views are uninterrupted by landscape features such that the cathedral spires dominate the skyline and one's eye is drawn to them****. I find that to place this turbine in this location would reduce the visual dominance of the spires …. and severely diminish the visual dominance of the cathedral over the surrounding area. It would be detrimental and harmful to the appearance and the character, and hence the significance, of the cathedral and its setting***." [CPC emphasis]

3.9 Bearing in mind that this was just one turbine (identical in size to the 4 proposed at Churchover) over 3.98km distance – rather than Churchover's separation of 1.1km distance – it is a very clear indication that the present proposal would be found unacceptable on appeal.

Churchover – a cultural landscape

3.10 Churchover maintains a close association between the village and the land that has supported it for a thousand years. Only in the last fifty years have active farm buildings moved out of the old village (the last not until 1990) and the land today, including the whole of the windfarm site, remains in the same mixed arable/cattle/sheep grazing pattern that it has enjoyed for a millennium. Nor has the landscape been seriously stripped of hedgerows. The traditional field patterns and names largely remain, as do large areas of mediaeval ridge-and-furrow land.

3.11 Churchover and its Swift Valley setting are mutually supporting: to harm either is to harm both. The settlement and its valley context go back to about 880 AD[14].

[12] APP/K3415/A/10/2134017
[13] Paragraphs 10 and 14 of the decision
[14] C.G.Down, "A brief history of Churchover with notes on Coton and Cestersover", 1997.

3.12 Churchover appears in Domesday as *Wara*, *Wavra*, *Wavre, Gavra* and *Gawre*. These are all derivatives of Old English *woefre*, meaning 'wandering' and rendered today as "over", a name which occurs as both a personal and a geographical element[15]. It originates probably as an allusion to the meandering river which was, until recent centuries, in fact named the River Over and not the River Swift. The 'Church' element of Churchover had been introduced by 1247 to distinguish the settlement from Domesday's "*Bruno's Gavra*" – today's Rugby suburb of Brownsover. It is remarkable to find, a thousand years after the event, a Midlands Domesday settlement so clearly exhibiting in unspoilt surroundings its linguistic, topographic and cultural origins. The church, Holy Trinity, is the defining landmark of the village and distinctive from a wide area.

3.13 Another important landmark is Cestersover Farm house, not just a landscape adornment in its own right but an ever-present reminder of the deserted and destroyed mediaeval village of Cestersover[16] which adjoins or partly underlies the proposed windfarm. Visible too are the earliest remains of the Oxford Canal, and many other historic features, including another Domesday reference, the old water mill. Overlaying all this, the extensive and well developed areas of mediaeval ridge-and-furrow ploughland on the village side of the Swift represent an historic and landscape resource which is slowly but surely being destroyed across Warwickshire and other midland counties.

3.14 Simply to stand in the churchyard, or to walk the numerous footpaths – and these are the daily privileges of residents and visitors alike – is to commune and connect with this history. The unity of the whole – farmland, river and settlement – is remarkably pure, especially so close to Rugby. The key to all this is the church: its contribution to the name of the village, the focus and scale it imparts, its landmark quality, etc. It would be comprehensively destroyed if the windfarm were to be developed.

3.15 The photomontages referred to above, particularly B and C attached, demonstrate this impact very well, as do others submitted by RES themselves (see section 4 below)

3.16 These points were comprehensively made by an Inspector rejecting an appeal against refusal of planning permission for the Dover North Windfarm in 2009[17], in a situation where a village church figured heavily:

> "***Churches are the main spiritual and pastoral focus of community activity and local people identify strongly with them to establish, individually and collectively, their own distinctive sense of place, purpose and history. The quality of the buildings themselves and of their surroundings also often represent the pinnacle of a settlement's architectural achievement*** *and they are widely recognised and appreciated as a showcase of the environmental quality of a settlement and the social well-being of its people. For all of these reasons, it seems to me* ***that a unique and particularly compelling importance attaches to maintaining the peace and tranquillity of their surrounds and the***

[15] It has been a surname associated with the locality for a thousand years and remains so today.
[16] In January 1467 Sir Henry Waver (another echo of Over) was granted a licence to erect and crenellate walls and towers at Cestersover and that embellishment of his house is thought to have been the spark for the clearance of the village
[17] APP/X2220/A/08/2071880, paragraph 80.

> ***quality of views to, from and of them that are religiously, socially, architecturally, historically or visually important to the community***." [CPC emphasis]

3.17 The Inspector considered specifically a church which was Grade II* listed (the same as Churchover) and also a SAM, and in a CA.

> "***I saw that the low but clearly identifiable tower of the Church is a significant landmark in itself, enabling the eye to alight easily on other visible parts of the settlement and providing a clear reference for the scale of buildings within it. The turbine cluster would effectively become a broad and eye-catching backdrop to this charmingly arcadian scene. The contrast in height, modernity and character between these very different structures in such close juxtaposition would, I consider, be jarring…..*** *It is thus my conclusion that neither four nor five turbines would suitably preserve or enhance the setting of the Church, or what I regard as important views into the Conservation Area*." [CPC emphasis]

3.18 This approach has been endorsed more recently in an appeal at Market Drayton (7 x 110m turbines)[18] where the Inspector repeated the above judgement and added: "***It is not in the public interest to create such living conditions where they did not exist before***." [CPC emphasis]

3.19 A recent (April 2011) appeal refusal, at Tilton-on-the-Hill (Leicestershire) further illuminates what is and is not acceptable with regard to wind turbines and listed churches[19]. A single 50m-high turbine was proposed 910m[20] from a Grade I listed church, St. Peter's. The Inspector noted that its spire was a dominant feature on the hill, "*particularly from the valley to the north on the north slope of which the proposed wind turbine would be sited*."[21] She also noted that there was a Grade II listed house, and that the village was a Conservation Area. Her conclusions demonstrate other similarities with the Churchover situation:

> "7. *The landscape of the area provides the setting not only for the Church but for the historic settlement of Halstead and its grade II listed Halstead House some 700m to the south east, typical of 18th and 19th century farmsteads.* ***The proposed wind turbine would not have a direct effect on the Church from within Tilton on the Hill or its conservation area but would result in the loss of prominence of the spire from the surrounding area. The proposed turbine would be dominant in views of the Church spire****, particularly from the road through the valley from Halstead to Marefield along parts of which* ***the church spire would be lost behind the turbine or at least dwarfed.*** *…..*
>
> *8. Nevertheless****, by virtue of its*** [the turbine] ***isolated location within the field away from any of the sizeable trees within the holding or the farm buildings, its vertical scale and blade sweep would have an harmful impact on, and fail to preserve the setting of the Church***

[18] APP/L3245/A/08/2088742 and APP/P3420/A/08/2088745, paragraph 43.
[19] APP/F2415/A/10/2134781
[20] Distance not given in the Inspector's decision letter, but taken as 910m from www.magic.gov.uk
[21] Decision, paragraph 6

> ***contrary to the general duty in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990*** *and LP policy EV/16*." [CPC emphasis]

3.20 From these appeal decisions, taken together with the facts at Churchover, there can be no doubt that turbines, similar or fewer in number and/or smaller than now proposed, are repeatedly judged to fail to preserve the setting of LBs and to be contrary to the duty in the Act to preserve listed buildings and their settings, and the duty of preserving or enhancing the character or appearance of conservation areas.

Archaeology

3.21 The proposed development will harm the County's diminishing resource of ridge-and-furrow land, especially T2 and its access. In this respect, a very recent (22 November 2013) appeal decision near Nuneaton is of relevance[22]. A development of up to 105 new dwellings, in a situation with an acknowledged shortfall in housing supply, highway improvement benefits and no other compelling reasons for refusal, , was nonetheless refused on the basis of non-designated ridge-and-furrow. In the words of the Inspector:

> *"33. However, the proposal would have an impact on the significance of the non designated heritage asset affected that would stop not very far short of destruction. In my judgment, cognisant of paragraph 135 of the Framework, this irrevocable loss of significance represents an adverse impact that would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies of the Framework, taken as a whole. The proposal does not, therefore, benefit from the presumption in favour of sustainable forms of development."*

3.22 A similar reasoning can be applied in the present case.

[22] APP/W3710/A/13/2195900 Land to the North of Tunnel Road, Galley Common, Nuneaton

4.0 Landscape Impacts

4.1 It is widely acknowledged, even by their proponents, that landscape impacts are likely to be a particular problem with windfarm development. Techniques of assessment have evolved which, so far as possible, seek to remove the personal element of landscape and visual assessment.

4.2 Landscape Character Assessment (LCA) is the characterisation of landscapes in as value-free way as possible, by identifying the various elements which go to make up the landscape. LCA does not try to judge the more subjective matters of landscape quality or value. LCA has been conducted at all level from national, via regional to very local levels. In Warwickshire and Rugby, studies undertaken in 1993 and 2006 comprised the evidence base until 2011, when a Landscape Capacity Study was undertaken[23] (commissioned by Rugby Borough Council (RBC) which was adopted by RBC as a "*material consideration in planning determinations*" in April 2011. This was revisited in 2013.

Landscape character and capacity

4.3 The LCA work referred to above formed the basis of the White Consultants capacity assessment in 2011[24]. The purpose of this work was to assess "…*the ability of a landscape to accommodate different amounts of change (i.e. commercial scale wind energy development) without a fundamental change in character*…"[25]. It drew a clear distinction between a landscape with windfarms and a windfarm landscape – that is, the tipping point between the maximum capacity of the landscape and excess windfarm development. This tipping point is what the Secretary of State has recently accepted as creating a new type of landscape and therefore harmful (see section 7, below)

4.4 The LCA work identifies that the current proposed development[26] lies within the "*High Cross Plateau – open plateau*" character type which was judged to have a medium sensitivity to wind energy development. Following the testing of a series of scenarios, the report concluded that this landscape type had "...*some capacity for wind-farm development – preferably one but one other may be possible*."

4.5 The 'one' was a cluster of 1 – 7 turbines best located in the core of the upper plateau to the north, in the general area of Copston Magna. Indeed, that cluster was generally equivalent to a real proposed windfarm[27].

4.6 The <u>possible</u> 'one other' was the proposed (and refused) Bransford Bridge windfarm at Churchover, where the report advised[28]:

---

[24] White Consultants, "*Rugby Borough Landscape Capacity Study for Wind Energy Developments*" Final Report, March 2011
[25] Page 4
[26] In addition to identifying theoretical locations for wind turbine clusters, in various landscapes, the report adopted the two publicised "real" locations at Churchover and Copston Magna, on the basis that it would be nonsense to ignore them. It is highly questionable whether, if those proposals had not already emerged, the study would have identified them without such prompting.
[27] Page 27, paragraph 7.3; the Copston Magna proposal secured permission for anemometry, but no turbine application has been made to date.
[28] Page 27, paragraph 7.3

"*One further small cluster (preferably 1 – 4 turbines) <u>may</u> be able to be accommodated further east* [of Copston Magna - CPC] *but <u>its siting and design needs to ensure that effects are minimised on Churchover and its spire</u> and other settlement*[s] *as well as on Newnham Paddox and the landscape character of the Swift Valley*." [CPC emphasis]

4.7 It went on to say[29]:

"*Three windfarm clusters would be likely to make a significant part of the landscape feel like a windfarm landscape and become a dominant characteristic as well as having unacceptable cumulative significant effects upon sensitive receptors*."

4.8 So, the conclusions of the only independent landscape study specific to windfarms at and around Churchover were that the whole of the landscape character area could absorb preferably just one cluster of 1 – 7 turbines near Copston Magna; and that a second small cluster (1 – 4 turbines) *might* be possible subject to severe qualifications; but that any more clusters would change the landscape character into a windfarm landscape and have unacceptable cumulative significant effects.

4.9 In 2013, what were in 2011 proposed wind farms in adjoining local authority areas have now become realities and their effects upon the Churchover landscape can be seen and not merely predicted. Three main windfarms can now be seen: Gilmorton (4 turbines), Swinford (11 turbines) and Yelvertoft (8 turbines), all of which are of similar heights to Churchover. A further shorter turbine behind Magna Park is now visible from Churchover, two have been built at DIRFT2, one was recently proposed at Shawell almost on the parish boundary, two smaller "farm" turbines now exist along the A5 near Cathorpe, and three are currently being applied for at Field Gate Farm, Harborough Magna. Lilbourne Fields, a further large-scale windfarm (5 x 125m turbines), has been consented but not yet commenced. The cumulative impact of the 23 major turbines that already exist is substantial, and the current proposal is an unacceptable further source of damage, in its own right and cumulatively.

4.10 The White Consultants' revisiting of their assessment[30] comments:

- "*The turbines are seen in juxtaposition with the Churchover church spire, located closer to the village than the report scenario position. They are significantly larger structures than the church and would diminish its scale and affect its context becoming the dominant foci*". (Page 7 comment)

- *"3.4. Overall, the scale and effects of the various existing/consented windfarms are consistent to that expected in the report. The report findings therefore remain a valid context. Whilst the windfarms have a substantial effect on the M1 corridor, arguably creating a windfarm landscape, their effects reduce to the west, such as around Churchover. The intervening topography and trees help to mitigate effects to an extent. However, they are still apparent and noticeable in some locations, especially Swinford."*

- *"3.5. <u>The above comments still mean that the individual and cumulative landscape and visual effects of the Swift windfarm will need to be carefully</u>*

[29] Page 27, paragraph 7.4
[30] Rugby Borough landscape capacity study for wind energy review, October 2013

assessed, especially in respect of Churchover, including its spire, conservation area and effects on residents." [CPC emphasis]

4.11 The revisiting concludes: *"Possibly between 1-4 turbines may be appropriate."* Despite RES's repeated attempts to 'spin' this statement into supporting 4 turbines, as a simple matter of grammar, it can equally be phrased as meaning that no turbines may be appropriate. Between 1 and 4 turbines is only "possible", not probable or certain, so that none may also be possible; and it/they may – but equally may not – be appropriate. The White Consultants' conclusion from 2011 and endorsed in 2013 offers no support whatever for the proposal. The response of English Heritage indicates clearly that the proposal does not meet the White criteria in that plainly it has an unacceptable effect on both the church spire and CA.

The Developer's Position

4.12 The Capacity Study directly and fundamentally contradicts the planning application. Suggesting that up to 1 – 4 turbines may be able to be accommodated is a long way from saying that 4 turbines can be accommodated.

4.13 The viewpoints presented by RES total 19. All of them are created using stitched together photographs which are known to distort what is actually seen by people. Nonetheless, taking them on their own terms, the conclusions drawn by RES in respect of those views most relevant to Churchover are as follows[31]:

Number	View	RES assessment
1	Looking S towards Ryehill Spinney from Bransford Bridge	Large scale effect, major alteration to character, fundamental change
2	(a) Looking N from edge of Churchover (b) ditto, cumulative	Large scale effect, major alteration to character, fundamental change
3	Churchover churchyard looking north	Medium scale effect, partial alteration to character, noticeable change
5	Junction of Lutterworth and Coton roads looking N	Large scale effect, major alteration to character, fundamental change
6	PROW on W side of valley looking E to Churchover	Large scale effect, major alteration to character, fundamental change. "The proposed development would have a strong presence and would become the main focus of the view"
8	Minor road SW of Churchover looking NE	Large-medium scale effect, partial alteration to character, noticeable change
18	Minor road S of Churchover looking NNE	Large scale effect, major alteration to character, fundamental change. "The church spire would 'split' the two turbines"
19	Track to N of Churchover looking NNE	Large scale effect, major alteration to character, fundamental change

4.14 So, even on RES's assessment, of the views most immediately relevant to Churchover. All except two result in large scale changes to the landscape, major alterations to character, and result in permanent change mostly fundamental in character. As set out in section 7 below, a radical change in character such as this must inevitably be considered to be harmful.

4.15 In fact, the situation is still worse than presented by RES and not merely because of the wide-angle effect disguising the true magnitude of the changes. The positioning

[31] Other views are not so relevant to the village itself.

of some of the viewpoints is vary partial and appears to have been selected to minimise adverse assessments:

- Viewpoint 2 is off a PROW and towards the middle of a field and appears to have been chosen to be low enough to diminish the visibility of the Gilmorton windfarm

- Viewpoint 3 is so chosen that the turbines are hidden by buildings and trees. RES acknowledges that "*the proposed development would commonly be seen above the rooflines to the north and between single mature trees*" and that "*the number of turbines visible would change dependent upon where the viewer was stood*", but they have carefully omitted to produce any such photomontages. No view from the modern churchyard is included, from where visibility would be highest and where the peace of the churchyard would be most damaged.

- Viewpoint 5 – the wide angle hides the much greater visual impact from the Gilmorton (Low Spinney) turbines which can be seen prominently from this viewpoint

- Viewpoint 19 is a virtual duplicate of VP2 and, like it, has been taken at a lower position in order to minimise visibility of Gilmorton windfarm.

4.16 Despite these criticisms, RES's own assessments are quite severely against the acceptability of the development. This is aggravated by the nature of residents' use of these routes which is not just car-borne: they form daily walks for dog-walking and weekend/evening recreational strolling and there is nothing transient or glimpsed about the views. They will be permanently and adversely affected to a major degree[32].

4.17 Taken overall, CPC would suggest that RES seriously underestimates the significance of these adverse landscape impacts.

CPC's Position on the Landscape Capacity Study

4.18 CPC, although understanding the broad conclusions reached in the Capacity study, disputes that the landscape capacity of the Swift Valley area of the High Cross Plateau is sufficient for even one cluster of 1 – 4 turbines. CPC reaches this conclusion for the following reasons.

Landscape type

4.19 The "High Cross Plateau – open plateau" landscape type is too broad and is not considered to be the correct description of the Swift Valley, which is not in any sense characteristic of the open plateau, but of the "High Cross Plateau – village farmlands" type instead. This is proved by the illustration on p.23 of the 2011 report, which although looking straight across the plateau – thus confirming its open plateau character – also looks straight across Churchover but conceals the village completely. The valley is therefore demonstrably not in the landscape type. It needs

[32] A key to this argument is that, with any development and especially with windfarms, one can identify dozens – hundreds maybe – of viewpoints from which only modest and non-significant visual or landscape change would occur. Multiplying such examples, as the ES does, proves nothing. It is a few critical viewpoints – such as the impact upon the nearest and mainly affected settlement, that are key to the conclusion and that may explain why RES has carefully avoided assessing any such viewpoint.

to be remembered that the proposed windfarm is predominantly founded *in* the Swift Valley and not *on* the plateau. A detailed comparison of the two descriptions[33] makes quite clear that the Swift Valley, when judged against all the physical criteria defined for the two landscape types, matches the village farmlands and not open plateau type. The village farmlands sensitivity is judged by White Consultants to be that *no* wind turbines would be acceptable, and CPC believes that is the correct conclusion for the Swift Valley also. This is a detailed argument and is set more fully in Appendix A to this objection[34].

Vertical v horizontal features

4.20 A fundamental point about the Swift Valley landscape most affected by the proposed development is that, however it might be christened in the studies previously referred to, it is a relatively horizontal landscape with only modest man-made vertical elements. It is not, however, entirely a flat landscape. The River Swift itself falls from about 98m AOD at Bransford Bridge to about 90m AOD at the ford on the Churchover – Harborough Magna road, a difference of about 8m in a distance of some 3km (river length) or a fall of only 1 in 375 and therefore slow flowing.

4.21 The High Cross plateau, across which the Swift flows, is fairly flat and regular, in the range 110-130m AOD for 10km and more. Churchover itself lies generally at 110-120m; other settlements are similarly located: Harborough Magna (typically 110m AOD), Pailton (115m AOD), etc. The Swift Valley is an area of more varied relief within the wider plateau landscape.

4.22 This semi-natural valley landscape is supplemented by some extensive developments from the last 50 years, principally the M6 motorway, Coton Park (and the emerging Rugby Gateway development), Magna Park and Swift Valley distribution parks. But, every one of these developments is also predominantly horizontal in form. The largest elements, such as the distribution warehouses, are extensive in area (up to 90,000m^2) but very low in height (15-20m at most). Churchover's Holy Trinity is the tallest structure, at just 25m high to the top of the spire and there is nothing else remotely approaching that in the valley views.

4.23 Therefore, notwithstanding the extensive land areas taken by these modern built features, their heights are very modest and the overall result is that, considered solely as landscape building blocks, these very large structures are quite well absorbed into the naturally more horizontal landscape forms. In many cases this is assisted by landscape planting, with several years of growth. Nor do they encroach upon the relevant section of the Swift Valley, staying south of the M6 and north of the A5.

4.24 It is important to emphasise that there are virtually no strong vertical forms in the whole of the High Cross plateau, nor in the Borough of Rugby, with the exception of the Rugby Cement preheater tower which has a base level of 85m, a height of 110m and an upper AOD of 195m. The proposed windfarm has basal levels of 101 – 110m AOD and total heights to the blade tips of 126m, so that each turbine installation would have an elevation at the tip of around 227 - 236m AOD or 30-40m above

[33] White Consultants' Report, Appendix A, pp10 – 12
[34] Extracted from CPC comments on the draft White Consultants report, discussed at a meeting on 8 February 2011

Rugby Cement. Wind turbines are not, therefore, reflective of any pre-existing feature.

Cumulative impacts

4.25 Although the White report frequently refers to cumulative landscape impacts and indeed rules out a third cluster for that reason, and although it identifies other permitted windfarms on the Leicestershire side of the A5, the report's consideration of cumulative impacts is not followed through. With the benefit of "ground truth" information not available at the time, the construction of the first of the most relevant windfarms, Low Spinney at Gilmorton, demonstrates without the possibility of error the impact of just 4 x 126m turbines at a distance of 9.5km from Churchover.

4.26 These appeared in April 2011 and are now prominent on the Churchover skyline. They dominate and diminish what used to be a pleasing rural view from Churchover of Lutterworth church steeple. They are highly visible, despite their distance, on every journey into the village from the east.

4.27 11 x 126m turbines have now been constructed at Swinford, between 5 and 8km east from Churchover, plus 8 x 126m at Yelvertoft. All these can be seen (and cannot avoid being seen) from the usual routes in and out of the village. Many positions enable the majority of turbines in all three windfarms to be seen, notably from a walk along Lutterworth Road. Taken together, no fewer than 23 turbines are now very prominent from Churchover, over a 120 degree arc of horizon east and north of the village.

4.28 Adding the effects of the now proposed 4 x 126.5m Swift ones, and there would be 27 large turbines, at distances 0.8km to 9km, totally dominating the village landscape over an arc of 120 degrees. A representative popular viewpoint is the public footpath 100m north of Church Street (roughly, VPs 2 and 19), which leads to the village's steepest hill where the village children go sledging in the snow. The 4 Gilmorton turbines are already prominent, and many of a potential ultimate 23 turbines would be highly visible, dominant and massively intrusive, from there.

4.29 Churchover's landscape (whatever its character might be classed as by White Consultants) will have changed from rural and historic with distant and well-concealed large warehouses, to a full windfarm landscape – not just a landscape with windfarms. That change, and its many consequences, is completely unacceptable and the White report makes that abundantly clear.

4.30 The matter of cumulative impact has already figured in refusals of planning permission on appeal, long before the 2013 Government guidance gave greater emphasis to it. One example, at Hemsby, Norfolk[35], involved a proposal of four turbines, 105m maximum height, in an area with no landscape designations but with three existing windfarms, one off-shore and two on-shore. The Inspector found no reasons to reject the appeal in terms of PPS22 policy on ecology, listed buildings, conservation areas, noise or health, but found that:

> "*11. …. in this particular locality the proximity of so many* [wind turbines] *together with their varying inter-visibility would unacceptably change the*

[35] APP/U2615/A/10/2131105

delicate balance that exists between the turbines and their natural surroundings. It would compromise the visual amenity of residents, workers and travellers in the locality."

"*28. It is concluded above* ***that the development would result in material harm to the character and appearance of the area because of its scale and location and the cumulative impacts of other similar developments***." [CPC emphasis]

4.31 That is the situation already warned of in the White Consultants report, and already clearly occurring at Churchover, as proven by CPC photomontages B and C.

4.32 The massive cumulative impact is also confirmed in data presented by RES. Figure 6.13, for example, demonstrates that for a distance of nearly 24km along the A5 (including the northern boundary of Churchover parish) no fewer than 15 consented and operational windfarms are or will be visible; there is not a single kilometre of the A5 from which windfarms cannot be seen. At The Gibbett, a representative location for considering the specific impact upon Churchover, RES calculate that 13 different consented wind farms are or will be visible, at distances between 1 and 19km. Figure 6.14, showing proposed but not consented windfarms, shows how much worse the position will be if those were also consented: an additional 7 windfarms would become visible at distances from 0.5km to 22km.

4.33 Figure 6.15 shows visibility of consented and operational windfarms from the A426; from Churchover parish, 15 windfarms are visible at distances 1.5km to 24km. Figure 6.16, proposed but not consented windfarms, would add a further 8 windfarms.

4.34 A cumulative outcome in which using the two main roads affecting the parish, the A5 and A426, will see at leat 20 different windfarms, is patently unacceptable. Moreover, it is not the case that such a concentration of views would be obtainable only by people in cars, as the adjoining roads used for recreation will suffer exactly the same impact.

Scale

4.35 Scottish Natural Heritage (SNH) guidance[36] contains some important advice on relative scales of landscapes and windfarm developments. With reference to design objectives for windfarms it says the following[37]:

"*4.33 A key design objective for a windfarm will be finding an appropriate scale for the windfarm that is in keeping with that of the landscape. To achieve this, the siting and design of the development will need to ensure that the windfarm, in relation to the following aspects, is:*
– Of minor vertical scale in relation to the key features of the landscape (typically less than one third);
– Of minor horizontal scale in relation to the key features of the landscape – the windfarm surrounded by a much larger proportion of open space than occupied by the development;

[36] Scottish Natural Heritage, "Siting and Designing windfarms in the landscape" Version 1, December 2009. It is worth noting that Scottish guidance is used because there is no English guidance
[37] Page 24, paragraph 4.33

– *Of minor size compared to other key features and foci within the landscape; or separated from these by a sufficiently large area of open space (either horizontally or vertically) so that direct scale comparison does not occur."*

4.36 The present proposal completely fails to comply with this advice:

- The proposed windfarm is about 500% taller than the key features of the Swift Valley landscape (the topography, church spire, existing pylons, etc), although SNH recommends less than 33%.

- A windfarm should be of "minor horizontal scale" in relation to key features of the landscape, whereas this proposal is a major horizontal scale, because the landscape horizons are very close to the Swift Valley, due to the surrounding plateau: the windfarm is NOT surrounded by a much larger proportion of open space than occupied by the development, but would predominates over 90° and, with the other permitted windfarms, over nearly 180°.

- There is just one key feature or focus, Holy Trinity spire which at 25m is only 20% of the size of the turbines, whereas SNH say that turbines should be of minor size comparatively. With a separation distance between spire and turbines of more or less zero from many public viewpoints, "*direct scale comparison*" cannot be avoided.

Flexibility ("micro-siting") of location of turbines

4.37 The application seeks a so-called "micro-siting" allowance of 50m. This is an astonishing exemption from planning control available to windfarms. When householders are served with enforcement notices for building home extensions half a metre closer to boundaries than permitted, it is incomprehensible that windfarm developers should be allowed to avoid proper site investigations and instead shift their project around willy-nilly. Such an approach invalidates both the environmental assessment and the application as a whole.

4.38 In the present case, where the separation between dwellings, rights-of-way and turbines is already far too small, it would be utterly unacceptable to reduce the distances at all and certainly not by a further 50m, which is what is applied for, for visual reasons let alone noise or any other impact.

4.39 No such allowance should be permitted. The developer should have undertaken proper site investigations prior to application.

5.0 Other Environmental Impacts

Noise

5.1 A principal difficulty with noise is that although a noise condition would be essential on any planning permission, it would be in effect unenforceable, because the ultimate sanction – closing and demolishing the windfarm if it failed to meet the noise condition – could never be applied. Permanent closure would be argued to be disproportionate and, maybe after a great deal of legal argument, the installation would be allowed to be retained but emitting higher noise levels.

5.2 Any other development that failed to meet noise limits has available to it technical mitigation measures. A quarry can adjust its working boundary, improve silencing of mobile plant, or build a larger acoustic bund. A factory can install better wall insulation. A night club can have its hours limited. There is no comparable sanction upon wind farms, because there are no technical mitigation solutions other than switching it off. Therefore, even ignoring the micro-siting issue, a condition would be in practise unenforceable. With micro-siting, the risk becomes that much worse.

5.3 Therefore, such a condition would fail the test of ability to enforce set out in Circular 11/95[38] and should not be imposed. As the Circular states, "*It is often useful to consider what means are available to secure compliance with a proposed condition*" but:

> "*Sometimes a condition will be unenforceable because it is in practice impossible to detect a contravention*" and "*A condition may raise doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail…*"

5.4 This is exactly the difficulty. Inherent in many noise complaints is the difficulty of replicating the circumstances that gave rise to the complaint, often several days beforehand. Weather and operational conditions are unlikely to be identical. So, notwithstanding that windfarms often are subject to noise conditions that include a requirement to monitor in response to complaints, in reality that is likely to be ineffective, and almost useless if complaints result from an unusual conjunction of independent events. But, noise conditions are required before a windfarm could be permitted. Therefore, if the condition cannot be enforced and, even if enforceable, there can be no realistic sanction for failing to comply with it, a windfarm should not be permitted.

5.5 A final observation on noise is contained in a recent appeal decision. An Inspector dismissing an appeal at Nantglyn, North Wales, in 2009[39] was sceptical about ETSU-R-97. Noting that this was the source for standards normally applied in Wales, he had no doubt that the proposed windfarm could comply, but he added:

> "… ***however they are for guidance and are not absolute values. The problem is that those noise levels do not mean that the turbines cannot be heard***." [CPC emphasis]

[38] DoE Circular 11/95, "The Use of Conditions in Planning Permissions" (July 1995), paragraphs 26-8
[39] APP/R6830/A/08/2074921; development of 13 x 125m turbines

5.6 That is the commonsense conclusion. Further, as the reasonable fear of nuisance – which is the fear of several residents – is a material planning consideration, it seems very probable that the development will in fact cause a noise nuisance, either from non-compliance with noise conditions; non-enforceability of noise conditions; noise impacts from frequencies not covered by conditions; or the reasonable fear of any of these.

Public Rights-of-Way (PROW)

5.7 In additional to full public highways, used by all vehicles, the relevant PROWs in and extending beyond the parish boundaries are:

- *Byway and National/regional cycle network route*
  - R334/E2052 – northeast from Church Street to A5 via Black Spinney
- *Bridleways*
  - R62 – from byway R334 just north of Church Street northwest to Cestersover Farm and then Lutterworth Road
- *Footpaths*
  - R63 and R63a – northeast from Church Street, across River Swift to A5 at Bransford Bridge
  - R66 – west-northwest from Church Street across River Swift to old Leicester railway and on to Montilo Lane and Tythe Farm
  - R98 – from The Green west across River Swift and Montilo Lane
  - R296 – north/south route connecting R98, R66 and R62, then north from Cestersover Farm to Walton Lodge Farm
  - R297 south from R98/R296 via Harborough Fields Farm and then west to Montilo Lane
  - R99, R100, R100a and R101 – a series of paths connecting Harborough Road and the ford with the M6/canal feeder underbridge.

5.8 To a greater or lesser extent, all of these PROWs afford uniterrupted views of parts or all of the proposed windfarm. The routes that would especially impacted visually are those either crossing the valley floor, or running along the valley sides; all, in fact, except R99 and R100 although the development will not be completely concealed from those.

5.9 The effects upon PROWs will be three fold.

5.10 First, the detriment to the immediate landscape. Virtually all these PROWs afford excellent views of Churchover village, its CA and its landmark church spire. In every case where northwards views over the village and Ryehill Spinney can be obtained, the quality of the view will be damaged or destroyed, by the excessive scale of the turbines relative to the church spire – five times the height. That impact will be aggravated when the blades rotate, and by any noise or vibration impacts.

5.11 Second, the turbines will be extremely close to PROWs:

- Turbine 1 lies within 30-50m of R334 and with micro-siting could adjoin it

- Turbine 2 is within 100m of R63 and with micro-siting could be within 50m
- Turbines 3 and 4 are not so close to PROW (300-400m from R63) but their sites adjoin informal walking routes along the old Mill feeder.

5.12 That proximity will create a looming, overbearing, and possibly a toppling visual effect that will deter people from walking the routes or prevent their enjoyment of doing so. With the proposed hub height of 80m, the tip of the blades will be variously at between 126m and 34m above ground, depending upon where they are in the rotational cycle. Standing just 75m from a 92m diameter blade rotation circle at 34m above one's head could be terrifying, the more so if the plane of rotation is at right angles to the footpath, when it will be overhead. The overall effect upon walkers will be extremely intimidating.

5.13 Third, the noise from blade rotation and reorientation would destroy any semblance of a peaceful country walk. None of the noise assessment considers this aspect. Added to the visual effects, the combination is likely to prove daunting.

5.14 There is no statutory distance between PROWs and turbines, but often fall-over distance (126.5m minimum in this case) is taken to be the minimum acceptable, and there should be no over-sail of the turbine blade above the PROW. The <100m separation distance of turbines 1 and 2 are less than the minimum fall-over distances of 126.5m which, in reality may in any case be more like 150m.

Effects on horse riding

5.15 Equestrian activities are common and widespread in and around Churchover, where there are several livery yards, and therefore the effects of the proposed development on equestrianism are very relevant.

5.16 Turbines 1 and 2 lie within 30-100m of byway R334 R62. The British Horse Society has issued guidance on stand-off distances from windfarms, which is that:

> "*as a starting point when assessing a* [windfarm] *site and its potential layout, a separation distance of four times the overall height should be the target for National Trails and Ride UK routes* [i.e. 500m in this case]*, as these are likely to be used by equestrians unfamiliar with turbines, and a distance of three times overall height* [375m] *from all other routes, including roads, with the 200m recommended in the Technical Guidance to PPS 22 being seen as the minimum, where it is shown in a particular case that this would be acceptable. The negotiation process recommended in PPS 22 should indicate whether, in the particular circumstances of each site, these guidelines can be relaxed or need strengthening to minimise or eliminate the potential difficulties*.

5.17 Therefore the BHS recommends a minimum distance of about 500m between main horse routes and about 375m for all others. This compares with the <100m now proposed, and the minimum 200m recommended in PPS22[40]. Moreover, the 200m is the *minimum* and only acceptable subject to negotiation around specific site characteristics.

[40] PPS22, Companion Guide p172, paragraph 56.

Effect on other recreational activities

5.18 Of all recreational activities, among the most "quietly contemplative" must be angling. Warwickshire flyfishers hold rights to the north bank[41]. They stock the river annually and fishing within 200m of T2, at least, will be the antithesis of quiet enjoyment, not least because of the noise impacts.

5.19 The quiet enjoyment of other rural pursuits, including riding to hounds and rough shooting, will also inevitably be damaged by wind turbines within 100m.

Temporary Nature

5.20 The planning application specifies a 25-year life for the development but, unlike most similar applications, does not promise its removal after that time. On the contrary, the application states: "*At the end of this period, a decision would be made as to whether to remove, refurbish or replace the turbines*."

5.21 This is a remarkable change of tune from the pre-application consultation. The exhibition boards stated[42] unequivocally: "*A wind farm typically has a 25-year lifetime. Decommissioning is simple. The turbines are taken away and other visible infrastructure, such as the substation, is removed[43] and the land is restored*."

5.22 Therefore, that application cannot be judged on the basis of a lengthy but nonetheless temporary life. It must be assumed to be permanent and be judged as such.

Ecology

5.23 The ES includes extensive ecological assessment. However, CPC is advised that important elements of that assessment are defective. The following initial view has been received from the consultancy, Ecotext, which specialises *inter alia* in the detailed analysis of ecology assessments. One of their specialisms is the critical review of ecological data presented in support of wind farm applications. Specifically in relation to this application, they say:

> *"We believe that the methods used to collect bird, bat and water vole data for the proposed development were unsuitable, and did not follow the NE accepted standards sufficiently well that the data collected are not suitable for planning determination. As these data include European protected species, the Council will be aware of its responsibility under Section 40 of the Natural Environment and Rural Communities Act (2006) which states that '**Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'**. The deficiencies in data provided by the developer will affect the capacity of the Council to determine the current planning application without provision of suitable data. Until these are available, the Council cannot reasonably progress any determination."* [CPC emphasis]

[41] http://www.warwickshireflyfishers.co.uk/3.html
[42] RES Statement of Community Consultation, Appendix 2
[43] But, note, the concrete foundations are not proposed to be removed

5.24 Given that the basic data are suspect, the weight to be accorded to Natural England's response[44] to Rugby Borough Council as a statutory consultee is zero, because they state:

> *"**Protected species** We have not assessed this application and associated documents for impacts on protected species."*

5.25 As a neglect of statutory duty, that seems hard to beat. However, the fact is that a specialist professional ecologist considers the basic data unreliable, and the statutory consultee has not bothered to look at the data at all. On that basis, the application should be refused or, at best, a decision deferred for 6-9 months to allow data capture to be improved to the required standards.

5.26 In the light of the above criticisms, a representation already made to Rugby Borough Council regarding wildlife issues carries significant weight. From Dr Steven Nichols, it states:

> *"From my direct observations over many years the Swift Valley is a key fly-way (migration route) and feeding area through out the year for bird species including several vulnerable and declining bird species, waders (including Snipe, Golden Plover), birds of prey (including Red Kite, Buzzard, Kestrel) and Thrushes (Redwing, Fieldfare) to names but a few. These species are vulnerable and are prone to collision with wind turbines as they use this area due to their typical flight altitudes. Efforts elsewhere in the UK are being made to increase or to halt the decline of many of our (once common) bird species, especially those found on farmland, and indeed the government is financing many projects through various schemes to halt the decline in farmland bird species. It is clearly, counter to these schemes to build these turbines in this area"*

5.27 A further important point in this respect is that CPC understands that the Warwickshire Wildlife Trust and the County Biodiversity survey team consider this site may have potential for county wildlife status particularly in view of the increasing scarcity of flood plain grassland and medieval ridge and furrow in the Warwickshire landscape. The valley is already identified as Churchover Meadows in the county habitat survey. The necessary surveys to establish if designated County status is warranted would be normally from April to August and it would be entirely wrong for an early planning decision to pre-empt that survey now.

5.28 What is especially important about the potential County status is that it does not necessarily hinge on one or two rare species, but could reflect an assemblage of species, none of which may be of great consequence individually but collectively at one location could be important. That is independent of the presence of specific European Protected Species that are addressed by the applicant and where the survey data are unreliable. Taken together, these matters should preclude any determination until Autumn 2014 at the earliest.

Pre-application Consultations

5.29 The Statement of Community Consultation displays how the application appears to have sought to mislead the public and RBC. For example, on p.4 it is stated that

[44] Letter ref105093 dated 3 December 2013

Press Release 3 was intended "… *once the planning application had been validated to tell people how they could access the documents and register their views*." The headline to that press release was "*Planning Application for Swift Wind Farm has been Accepted*" and that misleading statement – the application had only been registered – confused many people. The press release also omitted one of the most im portent facts: the date by which representations were sought.

5.30 Second, on p.6 it is stated "that in Churchover 56% of respondents were "*slightly or strongly in favour of the development*." Because village representatives attended all three public consultations, and interviewed every member of the public who attended, it is known that the statistic is entirely false. The questions asked referred to windfarms in general and not to Swift wind farm; the answers are not therefore relevant.

Impact upon aircraft/airport safety

5.31 It is noted that Coventry Airport has issued a holding objection, but suggest that two planning conditions might resolve their objection. The alleged solution referred to is not one that could be imposed by condition. This is because the impact upon airport safety is due to the presence of the turbines and not merely to their rotation. If the developer were to go bankrupt, the turbines would remain but safety would be compromised.

5.32 Coventry Airport appears to envisage some sort of bi-partite agreement direct with the developers. That would be unacceptable as it would be unenforceable. A recent High Court judgement confirms that only s.106 agreements could be appropriate[45].

5.33 In this instance, it is improbable that even a s.106 agreement involving the landowners could deal with this risk. In a similar manner to the impact of noise, the situation is that a condition or s.106 is required, but neither could be legally effective. Accordingly, the application should fail.

[45] QB Case No: CO/12040/2011, Date: 27 March 2013: WESTMINSTER CITY COUNCIL and (1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2) MRS. MARILYN ACONS

6.0 Associated Infrastructure

6.1 The above analysis has largely concentrated upon the wind turbines themselves. Ancillary developments – grid connections, access tracks, construction impacts, switching buildings, security, etc – are also of importance. Although in themselves such facilities might not be so objectionable as to justify refusal on their own characteristics (and few if any appeal cases appear to have turned upon associated infrastructure as opposed to the turbines themselves), ancillary infrastructure taken in conjunction with the turbines could, cumulatively, aggravate environmental impacts and create, or add weight to, a case of refusal of the overall development. The sections below set out CPC's concerns about the elements of ancillary development associated with the main development.

6.2 The worst adverse impact of the present proposal is the access road connecting the turbines and the associated hard standings for cranage. Contrary to the public exhibitions, when these tracks were presented as being like farm tracks, what is proposed is clearly more akin to a substantial public highway.

6.3 As shown in RES Fig. 4.6 the basic track width will be 5.5m including hard shoulders (equivalent to a secondary 'B' class public highway) with soil banks or cuts on either side for around 4m width, giving a basic total width of 13m or so. No details of surfacing are given, other than "suitable material".

6.4 The specification is not remotely like a farm track and will not be remotely acceptable in the landscape. It is noteworthy that of the photomontages created by the developer, not one includes any representation of the tracks and standages. Their visual impact is ignored.

6.5 Additionally, in certain locations (notable in the area of T1, and T2) these works will destroy extensive areas of increasing scarce ridge-and-furrow.)

6.6 Overall, the two roads and standages are, of themselves, unacceptable in the landscape and in their damage to heritage assets.

6.7 Nor is it acceptable that a critical item of the development – connecting the turbines to the National Grid – is omitted from the application. No ordinary planning application would be permitted if the developer declined to give details of the access, and nor should this one be.

7.0 The planning balance

7.1 From the above assessment it is clear that, in terms of adverse impacts upon planning factors of acknowledged importance, the proposed development has only one point in its favour: that obtaining increased contributions from renewable energy remains at the heart of Government policy. The balance to be struck, therefore, is whether the merit of the very minor and uncertain addition to UK renewable energy supplies represented by the development is outweighed by the environmental damage caused by the development.

7.2 During 2013, the Government has, directly and through the Localism Act, made clear that local concerns and considerations carry greater weight than hitherto implied.

7.3 On 29 July 2013 the Government published '*Planning practice guidance for renewable and low carbon energy*'. It replaced the Companion Guide to PPS22. In summary, it makes the following points [CPC emphasis where indicated]:

- *"Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the **local** environmental impact is acceptable." (Paragraph 3).*

- *"…this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. As with other types of development, it is important that the planning concerns of **local communities** are properly heard in matters that directly affect them." (Paragraph 5)*

- *"…local planning authorities will need to ensure they take into account the requirements of the technology (see paragraphs 12-13) and, critically, the potential impacts on the local environment, including from cumulative impacts (see paragraphs 43-44). The views of **local communities** likely to be affected should be listened to." (Paragraph 8)*

- "*….it is important to be clear that:*
  - *the need for renewable or low carbon energy does not automatically override environmental protections*
  - *cumulative impacts require particular attention, especially the increasing impact that wind turbines ….. can have on landscape and local amenity as the number of turbines … in an area increases*
  - ***local topography** is an important factor in assessing whether wind turbines ….. could have a damaging effect on landscape and recognise that the impact can be as great in predominately flat landscapes as in hilly or mountainous areas*
  - *great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting ….*
  - *protecting **local amenity** is an important consideration which should be given proper weight in planning decisions*." (paragraph 15)

- *"How should heritage be taken into account in assessing wind turbine applications?*
  34 *As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset*."

- *"How should cumulative landscape and visual impacts from wind turbines be assessed?*
  39 Cumulative landscape impacts and cumulative visual impacts are best considered separately. The cumulative landscape impacts are the effects of a proposed development on the fabric, character and quality of the landscape; it is concerned with the degree to which a proposed renewable energy development will become a significant or defining characteristic of the landscape.

  40 Cumulative visual impacts concern the degree to which proposed renewable energy development will become a feature in particular views (or sequences of views), and the impact this has upon the people experiencing those views. Cumulative visual impacts may arise where two or more of the same type of renewable energy development will be visible from the same point, or will be visible shortly after each other along the same journey. Hence, it should not be assumed that, just because no other sites will be visible from the proposed development site, the proposal will not create any cumulative impacts."

7.4 It is very clear that the RES proposal is in conflict with all these Practice requirements and, as such, the planning balance is decisively against granting planning permission.

7.5 Since the Secretary of State recovered several windfarm appeals for his own determination during 2013, there is an increasing body of evidence that illuminates how he interprets his own guidance on the changed emphasis he now requires. The most recent example is the Nun Wood decision, near Milton Keynes[46].

7.6 The SoS stated[47] that "*In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. He has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990*".

7.7 After noting that the landscape change as a result of the development would be sufficient to create a windfarm landscape in a localised area extending some 650-700m from the turbines and further change would be felt for a distance of some 3-4kms from the turbines, the SoS continued:

[46] APP/Y0435/A/10/2140401; APP/K0235/A/11/2149434; APP/H2835/A/11/2149437, 17 December 2013
[47] Paragraphs 8 - 10

"…that a new windfarm landscape type would be created is itself a measure of the substantial impact of the proposed development. He agrees with the Inspector that, although the effect of the scheme on the landscape fabric would be limited, landscape character is derived from a number of contributory components; and that the division of the effect of the windfarm into relatively geometrical inner and outer areas pays insufficient regard to some of the other contributors. He agrees that, at 125m, the proposed turbines would be very tall components of the landscape; that the adoption of a standard radius to define the area of the new windfarm landscape is an acknowledgement of dominance; and that there would be nothing in any way comparable in the immediate area of the turbines He also agrees with the Inspector that, although the impact of the turbines on landscape character would generally be reduced as the former landscape character reasserts itself, the assessment of effects is not just a measure of visibility."

7.8 This is a brand new aspect of landscape impact assessment. The SoS is now saying that the fact that, even very locally, the turbines themselves give rise to new landscape categories and that is in itself a measure of impact. He concluded:

"…a significant change to the landscape character in the area would result from the construction of the proposed windfarm …. it is possible that a scheme with fewer, smaller turbines would not give rise to such a radical change in landscape character that new classifications would be required, but that where this does occur it must inevitably be considered to be harmful."

7.9 This is exactly the change that would occur at Churchover, creation of a new landscape type, as acknowledged by the RES assessments in section 4.

7.10 The SoS continued[48] to agree "*that, in relation to the extent of the interface between the built-up area and its undeveloped surroundings, the relationship in all the settlements …. is intimate and essential, and* ***in many ways the area immediately surrounding a settlement is the most important and accessible expression of its rural location***." (CPC emphasis)

7.11 Overall, the SoS concluded at paragraph 30 that:

"*The Secretary of State concludes that the proposal conflicts in important respects with the relevant development plans and the Framework and that there would be immediate and substantial impacts on the landscape. Furthermore, although the scheme addresses climate change and renewable energy considerations, this is outweighed by the inadequate protection of the character and quality of local landscapes and overall, on balance, the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits. In relation to the harm to the preservation of the setting of the church at Easton Maudit, the Secretary of State concludes that this would be less than substantial but, although he considers that this in itself would not outweigh the public benefits of the proposal, it adds to his concern about the impact of the scheme. Taking all these considerations into account, the Secretary of State concludes that, within the terms of paragraph 98 of the Framework, the adverse impacts of the proposed development would be unacceptable.* "

[48] Paragraph 12

7.12 At Churchover, where the harm to the setting of the listed church is demonstrably greater (as identified decisively by English Heritage) than that at Nun Wood, a refusal is still more justified.

END
CPC/CGD 12.1.2014