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## Appeal Decision

Inquiry held on 25, 26 and 27 March 2014

Site visit made on 27 March 2014

**by Brendan Lyons BArch MA MRTPI IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 June 2014**

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**Appeal Ref: APP/N2535/A/13/2207053**

**Land west of Ryland Road, Dunholme, Lincolnshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Charles Pickering against the decision of West Lindsey District Council.
  - The application Ref 130168, dated 26 June 2013, was refused by notice dated 20 September 2013.
  - The development proposed is the erection of 74 dwellings (including 30 affordable units) with associated access arrangements and open space provision.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The application that has given rise to this appeal was submitted in outline form, with only the principle of development and the means of access to the site for full approval at this stage. Other matters, including the layout and landscaping of the site and the scale and appearance of development were 'reserved' for later approval by the Council.
3. However, the application was supported by an 'Illustrative Masterplan'<sup>1</sup> that shows how the 74 dwellings for which permission is sought might be laid out on the site. An updated version of this layout<sup>2</sup> was submitted in evidence to the Inquiry, together with some photomontages giving an indication of the possible appearance of the proposed development.
4. The appeal is accompanied by a Statement of Common Ground ('SoCG') which sets out a description of the site, its planning history, and the policy context for consideration of the appeal proposal, including the Government guidance of the National Planning Policy Framework ('NPPF'). Matters not in dispute between the appellant and the Council are identified.
5. The SoCG also includes heads of terms for a planning obligation under S106 of the Town and Country Planning Act 1990. A copy of a draft obligation, in the form of a planning agreement between the Council, Lincolnshire County Council and the landowners, was submitted before the Inquiry. Following discussion at

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<sup>1</sup> Plan Ref 130620-3

<sup>2</sup> Evidence of Brian Duckett: Plan Ref 714.1/10A HDA6

the Inquiry, a copy of a completed amended agreement was provided before the Inquiry closed. The agreement sets out covenants in respect of the provision and management of affordable housing on the site, a contribution towards education provision, the implementation of highway and footpath improvements, and the provision and management of on-site open space. The merits of the obligation are considered later in this decision.

6. Since the appeal was submitted, the Government has published new planning practice guidance, and much former guidance has been cancelled. The parties were given the opportunity at the Inquiry to draw upon any relevant aspects of the new guidance.
7. After the close of the Inquiry, the appellant drew attention to a recently issued decision by the Secretary of State on appeals for housing development and associated open space at a site in Rothley, Leicestershire<sup>3</sup>. As the decision appeared to be relevant to the current appeal, written submissions on the matter were invited and were subsequently received from both main parties. These submissions and the decision itself have been taken into account in the determination of this appeal.

### **Proposal**

8. The appeal site comprises a field of some 4.22ha in area that is no longer in active agricultural use. The field has a frontage to Ryland Road, which links the neighbouring villages of Dunholme and Welton. The space between the villages is narrow at this point. The appeal site adjoins the southernmost projection of the built-up area of Welton, which is the larger of the two villages. This projection, like the appeal site and the remainder of the gap between the villages, actually lies within the parish boundary of Dunholme. A public footpath runs from Ryland Road along the northern edge of the site, next to the built-up area, and carries on to the west.
9. Permission is sought to erect 74 houses, of which 30 (40%) would be reserved for affordable occupation. The Design and Access Statement ('DAS') that accompanied the application indicates that the majority of the houses should be two-storey, with a small number of three-storey and single-storey units. The illustrative plan proposes that the houses would be set back from Ryland Road behind an open space, described as a 'village green' open to residents of both villages. Access would be taken at the south-eastern corner of the site, where there would be a small car park available for use in connection with the open space and the nearby primary school. The intended highway improvements would include a new footway along the site frontage, linked to a crossing of Ryland Road.

### **Main Issue**

10. It was agreed at the Inquiry that the main issue in the appeal is whether the proposal would amount to a sustainable form of development in accordance with national and local policy, having particular regard to the effect on the gap between Dunholme and Welton.

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<sup>3</sup> Appeals Ref APP/X2410/A/13/2196928 & 2196829 Land off Mountsorrel Lane, Rothley, Leicestershire

## Reasons

11. For the purposes of this appeal, the development plan comprises the saved policies of the West Lindsey Local Plan First Review ('LP') adopted in 2006. Work was well advanced on the preparation of a new-style plan, with the Central Lincolnshire Local Plan Core Strategy having been submitted to the Secretary of State for examination in October 2013. The subsequent withdrawal of that draft document in January 2014 means that little or no weight can be attached to its provisions. The Council has instead embarked on the preparation of a district-wide Local Plan, to include site allocations, but this is at too early a stage to influence the current appeal.
12. Initial public consultation has taken place on a Dunholme Parish Council Neighbourhood Plan, which would ultimately form part of the development plan. The Neighbourhood Plan is also at too early a stage to be given significant weight in the determination of the appeal. Welton Parish Council intends to adopt a Neighbourhood Plan. An existing Parish Plan has been rolled forward to cover the period from 2010-2015, but very limited weight can be given to this document, which does not have statutory force as part of the development plan and does not in any event cover the appeal site.
13. The planning application was refused because of conflict with saved LP Policy STRAT 13, which seeks to protect the open rural character of undeveloped gaps between settlements. The site lies outside the development boundaries of the two villages, within the area allocated for protection under this policy. Statutory duty requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise<sup>4</sup>. Should the proposed development for housing be contrary to the LP it should be refused unless material considerations are found to outweigh the conflict with the plan.

### *Compliance with development plan*

14. The conclusion of the appellant's case rests on two alternative propositions. The first of these is that the proposal would meet the aims of Policy STRAT 13 and hence would accord with the development plan. Paragraph 14 of the NPPF states a presumption in favour of sustainable development and advises that proposals that accord with the development plan should be approved without delay.
15. The aims of the policy are to maintain undeveloped land between neighbouring villages that provides open breaks, maintains the physical identity or prevents the coalescence of settlements. The policy justification refers to the importance of such land to the character of the individual settlements and their setting, its role in providing access to the countryside and its value for nature conservation.
16. As the appellant's analysis shows, the area between Dunholme and Welton protected by the STRAT 13 designation forms a discrete part of a much wider landscape setting of the two villages. This relatively small area comprises one very large arable field, immediately to the west of the appeal site, several smaller fields, of which the appeal site is one, a playing field and a patch of woodland. The appeal site thus represents a not inconsiderable proportion of

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<sup>4</sup> Planning and Compulsory Purchase Act 2004 s38(6)

the protected land. Its loss to development would significantly reduce the area of the gap between the villages.

17. Development of the site would also be significant in visual terms, and to the perception of a break between settlements. Ryland Road provides the main link between the two villages, and along which the experience of leaving one place and entering another most commonly happens. The site is located at a critical point immediately adjoining the built-up area of Welton. Its open character can be clearly perceived from Ryland Road, particularly with the recent removal of some trees. The landscape here is relatively small scale, as assessed by the appellant, without expansive links to the wider landscape beyond the villages. Nevertheless, the lack of indication of development further to the west of the field reinforces the perception of an important open break.
18. The appeal site is not of high quality in landscape terms and it does not provide a memorable gateway feature, but its openness provides the contrast with the existing development to define the village edge and maintain the settlement's rural context. The critical factor is the absence of a developed frontage to Ryland Road. It is particularly important that the undeveloped frontage is here reflected by the small field on the east side of Ryland Road. The two fields are not entirely opposite one another, so that the extent of the space they offer does not coincide. But the absence of built development to both sides of the road and the ability to perceive the open land beyond provides a critical clear break between the two villages.
19. Further to the south, the northern edge of Dunholme has been allowed over time to extend outwards into the gap, with a ribbon of residential development on the east side of the road and the more isolated enclave at Cottingham Court on the west side. There remains a clear perception of being outside the village core, but the setting is more difficult to appreciate, despite glimpsed views of fields to the east and the impression of open land to the west. The appeal site and the field opposite provide a better expression of the gap from Ryland Road.
20. Important perception of the gap is also gained from Footpath 169 along the appeal site's northern boundary. The role of the appeal site and the field to the south as a buffer to the northern limit of Dunholme can be readily appreciated. This path allows access to the countryside at the village edge, which LP Policy STRAT 13 seeks to protect. Further to the west, the appeal site and the adjoining field add depth to views from Footpath 785 across the large arable field, and define the extent to the clear gap between the settlements.
21. Should the proposed development proceed, Footpath 169 would be contained by residential development on both sides, other than a short length near Rylands Road. Its value as an accessible outlet to space at the village edge would be greatly reduced. The new houses would be clearly visible from Footpath 785, even with mature edge planting, and would reduce by half the gap between the built edges of the villages.
22. The change from open land to developed housing area would be clearly discernible from Ryland Road. The extent of the open gap between settlements would be significantly reduced.
23. The appellant considers that an acceptable gap would be retained by leaving adequate space between buildings. This would rely on the setting back of the built development behind the proposed green space. Although the Council

objects that layout is not for decision at this stage, some weight can be given to the DAS and the illustrative plan, which could then be taken into account at the reserved matters stage to ensure that this level of setback was incorporated.

24. Even so, the dimensions on which the appellant's judgement is based would seek only to replicate current minimum distances between buildings, from the northernmost house on the east side of Ryland Road. The appeal site forms part of a wider block of open land, whose space between built form is considerably greater. While I note that the Secretary of State was willing to allow a reduction to minimum dimensions of a green wedge in the recent Rothley appeal<sup>5</sup>, that case rested on its own particular facts, and the overall integrity of the green wedge was held to be preserved. The Secretary of State has taken a different view where the purpose of a green wedge was compromised<sup>6</sup>.
25. In this case, an important issue is whether the proposal would be seen from Ryland Road as a developed frontage. In the indicative layout, the houses and their access drive would be set back from the road by less than 100m, and would be closer than that to the footway to be provided in accordance with the planning obligation. This depth, which would be less than that of the small field to the east, would provide insufficient separation to divorce the houses from the road.
26. The later version of the indicative layout shows less formal design for the proposed 'village green'. But as public open space, even if designed to somehow resemble a meadow, it would be seen in conjunction with the houses as a part of the development. The proposed car park, which is not shown on the appellant's photomontages, would emphasise the developed character of the space, which would be markedly different from the tightly enclosed traditional village greens found at the core of the two villages.
27. The effect of this would be to change the character of most of the west side of Ryland Road to a perceived developed frontage. Only the narrow intervals to the north and south of Cottingham Court would remain unbuilt. Crucially, for the first time the developed frontages to both sides of the road would overlap. There would be the beginnings of coalescence of the two villages.
28. For the reasons set out above, I conclude that the proposal would be contrary to LP Policy STRAT 13. For the appeal to be allowed, the conflict with the development plan would have to be outweighed by other considerations.

#### *Consistency with NPPF*

29. The appellant's second proposition is that the designation of the site's location under Policy STRAT 13 should be seen as out of date in the context of current development needs, such that any conflict with the development plan would be outweighed by other considerations, and that planning permission should be granted in accordance with the guidance on out of date policies of paragraph 14 of the NPPF.
30. The LP was adopted to cover the period to 2016. Those policies saved by ministerial direction in 2009 are therefore not strictly time-expired. However,

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<sup>5</sup> Paragraph 7 above

<sup>6</sup> Appeal Ref APP/G2435/A/11/2158154

the higher order regional and county-level plans on which the LP was founded have since respectively been replaced and revoked, and the subsequent Regional Plan of 2009 also cancelled. I agree with the Council that the tests of soundness of a local plan set out in paragraph 182 of the NPPF are specifically directed to the examination of emerging plans. Nevertheless, for any plan to be regarded as up to date, it should reflect current objectively assessed needs for development. The adopted LP no longer reflects such needs, particularly for housing.

31. It is common ground that, allowing the 20% buffer for persistent past under-delivery advised by the NPPF<sup>7</sup>, the Council cannot currently demonstrate a 5 year supply of deliverable housing land. Although the precise level of shortfall is not fully agreed, the difference between the parties is not of great consequence for the appeal, and the shortfall is clearly significant. In these circumstances, the NPPF advises that the housing supply policies of the development plan cannot be regarded as up-to-date<sup>8</sup>. The unmet need for additional housing becomes a consideration of substantial weight in the appeal.
32. In accordance with the judgement of the High Court in the case of *William Davis*<sup>9</sup>, the appellant accepts that STRAT 13 is not a policy relevant to the supply of housing, and is not therefore out of date because of the absence of a 5 year land supply.
33. The appellant also accepts that the principle of protecting space between settlements set by Policy STRAT 13 is consistent with the guidance of the NPPF, but argues that the spatial application of the policy must now be seen as out of date, so that the weight to be given to the policy restriction must be diminished, in accordance with NPPF paragraph 215.
34. For the Council to continue to resist that argument appears to be inconsistent with its position on other LP policies. In particular, the Council considers that the appeal proposal would be contrary to LP Policies STRAT 9, on the sequence of release of housing land, and STRAT 12, on protection of the open countryside, but has not treated either policy conflict as a reason for refusal. The committee report explains that the Council's inadequate housing land supply means that neither policy can currently be strictly applied, despite compliance in principle with NPPF guidance. The acceptance of encroachment beyond boundaries designated by Policy STRAT 12 effectively recognises that the policy protection has been rendered out of date, and that greater weight must be given to other considerations.
35. The distinction drawn by the Council to justify a different approach to the protection offered by Policy STRAT 13 appears to be based on the consistent history of its application and the very specific locations affected. But these are matters to be taken into account when applying weight, rather than to the judgement of whether the policy protection is now fully consistent with the NPPF.
36. Therefore, I accept the appellant's position that the spatial application of Policy STRAT 13 should be seen as out of date. If the appeal proposal is to avail of the presumption in favour of sustainable development, the second bullet point

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<sup>7</sup> paragraph 47

<sup>8</sup> paragraph 49

<sup>9</sup> *William Davis Limited and Jelson Limited v Secretary of State for Communities and Local Government and North West Leicestershire District Council* [2013] EWHC 3058 (Admin)

of NPPF paragraph 14 on decision making must apply. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole.

*Balance of considerations: main issue*

37. The NPPF enjoins the planning system to seek joint and simultaneous gains across the three mutually dependent dimensions of sustainable development: social, economic and environmental. The overall balance must look across all three strands. The Council accepted at the Inquiry that weakness in one dimension did not automatically render a proposal unsustainable.
38. For that reason, I do not agree with the Council that wider application should be given to the judge's remarks in the recent *Bloor Homes* High Court judgement<sup>10</sup>, in which development in a green wedge was considered patently unsustainable. That conclusion related to the particular facts of that case, and should not be read across to the current appeal.
39. Both Welton and Dunholme are recognised by LP Policy STRAT 3 as Primary Rural Settlements and accepted by the Council as sustainable locations for new housing. The appeal site would be well located with regard to access to local services and to public transport links to larger service centres. This would accord with the social dimension of sustainable development.
40. The provision of market housing would also address the social dimension. In the light of the Council's severe deficit in supply, this is a consideration of substantial weight. There has been some local support for this provision as part of a process of growth and renewal of the villages.
41. The proposed provision of affordable housing also attracted some strong local support in written submissions and at the Inquiry. The number of units proposed would exceed the local policy minimum level and would go some way towards meeting the currently identified need from both villages. This would provide positive weight in favour of the proposal.
42. The Council does not dispute the economic benefits outlined by the appellant in terms of job creation during construction, spending power of future residents and the one-off income received under the New Homes Bonus. Moderate weight would attach to these economic benefits.
43. Subject to later approval, biodiversity enhancements and open space provision could produce modest environmental gains. Cumulatively, the benefits of the proposal attract substantial weight.
44. Set against these would be the harm, both environmental and to a certain extent social, caused by development between the villages. Environmental harm would arise from the loss of open land as a buffer to the two built-up areas and from the curtailed landscape setting of the two villages, while residents' access to undeveloped open land leading to the wider countryside would be adversely affected.
45. The extent of the proposed developed frontage to Ryland Road would be significantly harmful. The proposal would appear primarily as an extension of

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<sup>10</sup> *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council* [2014] EWHC 754 (Admin)

the built-up area of Welton, but the overlap of development would make it considerably less clear that, as put by the appellant in closing, 'Welton is Welton; Dunholme is Dunholme'.

46. The planning history shows the consistency with which the objective of protecting the space between settlements has been pursued, and upheld by previous Inspectors. While some of these former decisions are now too old to be seen as compelling precedents, they illustrate the value that has been attached to this policy aim over time.
47. By contrast, it is to be hoped that the current housing shortfall will be relatively short-term. The Council's evidence suggests that moves are afoot to bring forward other potentially more suitable sites to address the need for housing, both market and affordable. By allowing coalescence of the two villages to begin, approval of the appeal proposal could be a watershed moment in the pattern of development. It would become increasingly difficult to resist further development between the villages, particularly adjacent to Ryland Road. I endorse the view taken in the Devon appeal decision<sup>11</sup> referred to by the Council that a change of this significance ought to be subject to formal policy review.
48. There is clearly a good degree of mutual interrelationship between the two villages and shared use of some facilities. But their historic separate identities, dating back to Domesday and beyond, are clearly valued by many local residents and by the two parish councils who have objected to the proposal. Maintenance of the physical gap between the villages is the most obvious way of preserving the separate identities of the two communities.
49. The policy objective of protecting the gap remains an important element of the current development plan, whose principle is consistent with the guidance of the NPPF. The policy's out of date spatial application means that the particular circumstances of any development proposal must be carefully assessed and weighed in the balance set by paragraph 14.
50. In this case, taking account of the extent of development proposed, I find the effect on the gap between villages would be significantly harmful, and would have permanent effect. The direct conflict with the principle outlined by Policy STRAT 13 is a matter of great weight. On balance, the proposal's adverse impacts would significantly and demonstrably outweigh its benefits. The proposal would not comprise a sustainable form of development in accordance with national and local policy.

#### *Fallback position*

51. The appellant states that four agricultural buildings could be erected on the site, their construction having been started in 1991 in accordance with 'permitted development' rights for farm buildings in force at that time. It is suggested that, in the event of the appeal being dismissed, these buildings, each up to 465 sqm in area and 12m in height, would be completed and used for agricultural storage.
52. Letters sent by the Council to the appellant in 1992 and 1993 confirm that holes dug for foundations constituted commencement of development. But apart from that, information about the extent of the works and the location of

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<sup>11</sup> Appeal Ref APP/U1105/A/13/2202124



the buildings appears extremely sketchy, and no sign of them could be discerned at the site visit. A statutory declaration by the appellant merely confirms that some foundations were laid, but work was otherwise delayed. Other evidence suggests that a building was at least partly erected close to Ryland Road, but subsequently taken down.

53. Therefore, there is considerable uncertainty over what precisely could be implemented under the claimed deemed permission, and whether, in the absence of further implementation over the long period of time since commencement, that permission would still have effect. The lack of progress also suggests that the provision has not up to now been seen as necessary for the appellant's agricultural operation. The weight to this proposition as a realistic fallback with a reasonable likelihood of implementation is greatly reduced.
54. But even if any or all of the proposed buildings could be implemented, and if associated hardstandings could also be provided as now claimed, the development would be agricultural in character and not out of keeping with the rural context. It would be well dispersed around the field and would be unlikely to alter the appearance of the site to that of a busy farmyard. The impact on the open character of the site would be significantly less detrimental than that of residential development. The potential fallback does not provide compelling support for approval of the appeal scheme.

#### *Other matters*

55. The Council's second reason for refusal of the application related to inadequate assessment of the potential impact of development on the archaeological significance of the site. Site investigations carried out after the refusal confirmed the presence of archaeological remains, but concentrated at the eastern end of the site, in the area identified as intended open space. The SoCG confirmed the Council's satisfaction that this issue could now be addressed by the imposition of conditions, and I have found no reason to disagree.
56. Objectors to the proposal raise a number of other concerns, primarily concerned with the capacity of local infrastructure to absorb additional development. The effect on schools has been assessed and additional places where required would be funded by the planning obligation. There is no evidence to conclude that the proposal would exacerbate any existing flooding or traffic problems on Ryland Road. The proposed car parking might have some benefit in easing any congestion caused by parking on Ryland Road for school drop-off and collection, but could also merely serve to encourage more car-borne trips for this purpose. There would seem to be little need for a car park to serve the proposed village green, which would aim to provide local open space.
57. The effect on nearby residents, including those living opposite the proposed site access, would not be sufficiently adverse to justify rejection of the proposal and would be subject to further detailed consideration in the event of the appeal being allowed.
58. The provisions set out in the S106 agreement would not in themselves alter the planning balance to render the proposal acceptable, nor could the balance be redressed by the imposition of conditions.

**Conclusion**

59. For the reasons set out above, and having taken careful account of all representations made, both in writing and at the Inquiry, I conclude that the appeal should be dismissed.

*Brendan Lyons*

INSPECTOR

Richborough Estates

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY West Lindsey District Council:

Stephanie Knowles of Counsel	Instructed by Charlotte Lockwood, Senior Planning Solicitor, Legal Services Lincolnshire
She called: Russell Clarkson BA(Hons) DipTP MRTPI	Senior Development Management Officer, Cofely

FOR THE APPELLANT:

Christopher Boyle QC	Instructed by URS Infrastructure and Environment UK Ltd
He called: Brian Duckett BSc(Hons) BPhil CMLI Thomas Smith BSc(Hons) DipTP MRTPI	Managing Director, Hankinson Duckett Associates Planning Consultant

INTERESTED PERSONS:

Robert Jones	Resident of Dunholme
Catherine Cullen	Resident of Welton
Matthew Barber	Resident of Welton
Joanna Pace	Resident of Dunholme
Rachel Jones	Resident of Dunholme
Peter Williams	Resident of Dunholme
Julie Murray	Clerk to Welton Parish Council
Suzanne Hollick	Resident of Welton
Peter Forman	Resident of Dunholme
Tony Pache	Resident of Dunholme
Councillor Sue Rawlins	Member, West Lindsey District Council
Andrew Hunt	Resident of Dunholme
Pamela Vaughan	Resident of Welton

## DOCUMENTS

### Submitted at Inquiry

- 1 West Lindsey District Council's letter of notification of the Inquiry
- 2 Central Lincolnshire Local Plan: Local Development Scheme
- 3 Welton-by-Lincoln Parish Plan 2010-2015
- 4 Saved Local Plan Policy NBE7
- 5 Welton-by-Lincoln Parish Plan 2007-2012
- 6 Local Plan Chapter 6
- 7 Section 106 Agreement with amendments flagged
- 8 Lincolnshire County Council letter dated 21 November 2013
- 9 Completed Section 106 Agreement
- 10 Responses to public consultation event
- 11 Closing Submissions on behalf of West Lindsey District Council
- 12 High Court Judgement: *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council* [2014] EWHC 754 (Admin)
- 13 Closing Submissions on behalf of the appellant

### Submitted after Inquiry

- 14 Secretary of State's Decision on Appeals Ref APP/X2410/A/13/2196928 & 2196829 Land off Mountsorrel Lane, Rothley, Leicestershire
- 15 Letter from Mr T Smith dated 30 April 2014
- 16 High Court Judgement: *Anita Colman v Secretary of State for Communities and Local Government and North Devon District Council and RWE NPower Renewables Limited* [2013] EWHC 1138 (Admin)
- 17 Letter from West Lindsey District Council dated 2 May 2014