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Protecting the Natural and Cultural Heritage of Local Landscapes: finding substance in law and legal decision making

Keywords Law; Landscape; Land Use Planning; Natural Heritage; Cultural Heritage.

Local landscapes enrich the lives of the communities that live and work within them by reflecting their natural and cultural heritage. This heritage emerges from the physical formation of landscape and its relationship with the heritage assets and sites within it, for example, historic buildings, wildlife and protected habitats. This paper seeks to explore how these values are given substance in law and legal decision making. It outlines the conceptual framework for the protection of local landscape values in England and then reflects upon the way in which they are identified in land use planning decisions. It does so by focusing on the narratives that emerge around these values in the reports of Planning Inspectors. Two case studies are used to illustrate the possible challenges that might be encountered in attempting to adopt local and holistic perspectives, and a broad interpretation of the heritage that lies in the local landscape. The paper concludes by considering a possible future research agenda, especially the means of appreciating the role and significance of law in a multi-disciplinary approach.

1. Introduction

'Local landscapes' inextricably bind communities, their history and culture, to the natural surroundings. Thus, the concepts of natural and cultural heritage are increasingly used to explain the significance of 'local landscapes'.¹ It is a central contention of this paper that there are inextricable connections between all aspects of 'heritage' relevant to the local landscape. This includes heritage assets, such as buildings, ancient monuments and wildlife; defined areas or sites within the landscape; and the 'heritage' inherent in its physical formation.² The definition and value of cultural heritage has gained much academic attention, whilst natural heritage is a relatively unexplored concept.³ Nevertheless, both have increasingly been recognised as essential to the value of landscape which is itself a subject of extended intellectual debate of a multi-disciplinary nature.⁴ There remains, however, a lack of attention to the connections between the different aspects of 'heritage' relevant to the local landscape.

Lawyers are rarely included in the academic debate surrounding the natural and cultural heritage of landscape.⁵ Yet, law plays an essential role in providing

¹ See for example the European Landscape Convention discussed at n. 40 below.

² See discussion from n. 15 onwards. On the distinction between this definition of 'heritage assets' and that in planning see further n. 105 below.

³ See discussion from n. 15 onwards.

⁴ Olwig notes that this traditionally relates to geography, history and aesthetics, but can be considered to add depth to study in anthropology, archaeology, philosophy and sociology Olwig K., 'Recovering the Substantive Nature of Landscape' (1996) 86(4) *Annals of the Association of American Geographers* 630-653. See further n. 24 onwards.

⁵ Lee has noted that landscape is underexplored in legal literature, but her work is a notable exception Lee M 'Knowledge and Landscape in Wind Energy Planning' (2017) 37 (1) *Legal Studies* 3-25. Also relevant is the work of Lee and others on participation and land use planning that touches on issues of landscape. Lee M. et al 'Public Participation and Climate Change Infrastructure' (2013) 25(1) *Journal of Environmental Law* 33 and Rydin Y Lee M and Stock S 'Public Engagement in Decision Making on Major Wind Energy Projects (2015) 27(1) *Journal of Environmental Law* 139. Also very relevant, is the work of Jane Holder on law and hedgerows: Holder J. 'Law and Landscape: The Legal

substantive meaning to these concepts;⁶ not just in reflecting prevailing societal views, but in shaping those perceptions.⁷ Law from international sources also helps to frame normative understandings of these concepts. The European Landscape Convention (ELC) highlights the value of all landscape and identifies this with the concepts of natural and cultural heritage, whilst the World Heritage Convention (WHC) assists in considering how to define these terms and apply them to landscape.⁸ Nevertheless, these Conventions adopt a fragmented approach to heritage assets/sites, and that which is inherent in the physical formation of landscape. English law is also focused on the separate designation of landscapes, cultural heritage assets and wildlife;⁹ and these separate interests are viewed in narrow terms, i.e., by reference to aesthetic, historical/cultural and scientific value respectively.

Designations in English law identify only aspects of heritage and landscape that are of 'national significance'. 'Nationally significant' natural and cultural heritage can be important from a local perspective. For example, a prominent ancient monument can contribute to the formation of local culture whilst endangered wildlife, such as wetland birds, can viewed as part of both the natural and cultural heritage of that landscape.¹⁰

The natural beauty of landscape can also be significant to local people, notwithstanding its value to the nation as a whole. Nevertheless, there will undoubtedly be features and aspects of local significance. One way of recognising

Construction and Protection of Hedgerows' (1999) 62 Modern Law Review 100. An international perspective is provided by Fisher, Fisher D 'Can the Law Protect Landscape values?' (2005) 9 New Zealand Journal of Environmental Law 1-49.

⁶ See Olwig n. 4 above.

⁷ See further Martin and Scherr who note that: "Legal rules shape landscapes, while landscapes shape the culture from which rules emerge. In describing this interplay, landscape can seem passive, as a canvas on which laws paint visions of society; or active, as a matrix for the creation of law and culture." Martin D and Scherr A 'Lawyering Landscapes: Lawyers as Constituents of Landscape' (2005) 30 Landscape Research, 379-393, 379.

⁸ See discussion from n.29 onwards

⁹ See discussion from n. 45 onwards.

¹⁰ See further discussion in case studies at n and respectively.

the 'local significance' of landscapes, heritage assets and specific sites and areas of local interest in the landscape, is to introduce formal systems of local designation.

English law, however, provides little opportunity for this.

Land use planning law is relied upon to ensure the protection of the natural and cultural heritage relevant to the local landscape. Land use planning in England is focused on the local community interest and grants decision-makers broad discretion to consider a range of relevant issues which should facilitate a holistic perspective.¹¹ Some constraint is, however, provided by laws on the designation of interests of 'national significance' and national planning policies. The way in which decision-makers identify the natural and cultural heritage values of the local landscape, in practice, is essential in providing substance to those values. This is explored in this paper with reference to the narratives that emerge around these issues in the reports of Planning Inspectors in recovered planning appeals on wind farm development.

Wind farm development often raises issues relevant to 'landscape protection'.¹² A wealth of literature exists on wind farm planning.¹³ In general, this focuses on the parameters within which decision-makers operate in assessing the 'impact' of such

¹¹ For further discussion of these key aspects of the system see further Stallworthy M. *Sustainability, Land Use and the Environment* (Cavendish, 2002), 105 and 112.

¹² A point made by Lee in her work on knowledge and landscape n 5 above, 4.

¹³ This is an inter-disciplinary literature much of which, nevertheless focuses on issues around participation in wind farm decision-making: See for example in law, the work of Lee and other authors at n. 5 above and Scott K 'Tilting at offshore windmills: Regulating wind farm Development within the Renewable Energy Zone' (2006) 18 (1) *Journal of Environmental Law* 89–118. From other disciplinary perspectives see also Devine-Wright, P. 'Beyond NIMBYism: towards an integrated framework for understanding public perceptions of wind energy.' (2005) 8(2) *Wind energy* 125-139 and Breukers S. and Maarten W. 'Wind power implementation in changing institutional landscapes: An international comparison.' *Energy policy* (2007) 35(5) 2737-2750. There is also some interesting work around the political issues associated with wind farm development: Pasqualetti M, Gipe P and Righter R, eds. *Wind Power in View: Energy Landscapes in a Crowded World* (Academic Press, 2002) and D Toke. 'Exploring the landscape of wind farm developments; local area characteristics and planning process outcomes in rural England' (2010) 27(2) *Land Use Policy* 214-221.

development, its 'effects' and 'acceptability'.¹⁴ In contrast, this paper focuses on the narrative that emerges around the values of the local landscape as the decision-maker, in these cases the Planning Inspector, establishes baseline evidence of the values of the local landscape to use in making these judgements.. These narratives provide a lens through which to reflect upon the challenges that decision-makers may face in adopting local and holistic perspectives, and a broad interpretation of these values. As the aim was not to draw any firm conclusions from these cases, two are chosen for illustrative purposes only.

The paper begins with an explanation of key aspects of the multi-disciplinary debate around the values of landscape and the way in which these are given substance in international convention and English law. It then outlines the framework for decision-making in land use planning in England, including the constraints provided by legal designations, land use planning policy and the necessity of rationality in decision-making. The main body of the paper focuses on the narratives that emerge in the two case studies and the way in which they highlight some issues that might require further research. The paper concludes by drawing together the issues raised in the paper to suggest a possible means of mapping out a future agenda for research. In doing so it pays particular attention the contribution that lawyers may make to the multi-disciplinary debate in this regard.

¹⁴ The difference between the 'impact' and 'effects' of development is explained in the guidance on landscape impact assessment. Landscape Institute *Guidelines for Landscape and Visual Impact Assessment (Third Edition)* (Routledge, 2013). 'Impact' is defined as action being taken and 'effect' as the change resulting from that action (para 1.15). Making a judgement about the 'effects' of development is a two-stage process; first, establishing the sensitivity of the landscape to the proposed development and then assessing the magnitude of change. Once the 'significance' of each of those 'effects' has been established they must all be considered as part of the 'planning balance' before a final judgement can be made about the 'acceptability' of the proposed development.

2. Defining Natural and Cultural Heritage in Landscape: Academic Debate and International Convention

‘Cultural heritage’ is a notion that has attracted considerable academic attention; whilst natural heritage is a concept that has emerged more recently.¹⁵ Cultural heritage can be defined along a continuum from a narrow definition that focuses on ‘tangible assets’ to one that encompasses broader concerns.¹⁶ It was originally focused on buildings and ancient monuments, but it is now acknowledged to include ‘intangible’ aspects of cultural heritage including skills, knowledge, craft and beliefs.¹⁷ There is an extensive literature around the values of cultural heritage and a number of attempts have been made to create relevant typologies.¹⁸ For example, the statutory organisation responsible for heritage protection in England, has referred to these values as evidential, historical, aesthetic and communal.¹⁹

¹⁵ These two concepts are bound by the notion of ‘heritage’. This generally leads us to consider the importance of the ‘conservation’ of those aspects of nature and culture that we wish to hold on to. We can however, make temporal connections between the past and the future in considering the importance of this ‘heritage’ to future generations. On the legal questions in this regard see further Ross A and Zasinaita A ‘The Use of Presumptions and Duties in Sustainable Development Equations: Promoting Micro-Renewables and Preserving Historic Buildings’ (2017) *Environmental Law Review* 93–112. This perspective is particularly important in landscape given the dynamic nature and the significance of human intervention in their development.

¹⁶ On defining cultural heritage see further Smith G, Messentger P and Soderland H (eds) *Heritage Values in Contemporary Society* (Routledge, 2015). On the relationship between natural and cultural heritage see for example Baird M. ‘Natural Heritage, Heritage Ecologies and the Rhetoric of Nature in Rhetoric and Redescription’ in Samuels K and Rico T *Cultural Heritage* (University Press of Colorado, 2015).

¹⁷ See for example Borelli S and Lenzerini F (eds) *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law* (Martinus Nijhoff, 2012); Smith L and Akagawa N (eds) *Intangible Heritage* (Routledge, 2009); and Ahmad Y ‘The Scope and Definitions of Heritage: From Tangible to Intangible’ (2006) 12 (3) *International Journal of Heritage Studies* 292-300.

¹⁸ See further Fredheim LH and Khalaf M ‘The significance of values: heritage value typologies re-examined’ (2016) 22(6) *International Journal of Heritage Studies* 466-481. This paper also discusses the significance of these ‘value-based’ approaches.

¹⁹ *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment* (English Heritage, 2008). Note that English Heritage is now referred to as Historic England see n. 74.

Natural heritage is a concept that is still relatively unexplored, but is clearly related to traditional concerns to protect endangered flora and fauna. Natural heritage can be viewed from an entirely eco-centric perspective, but is equally of anthropocentric concern, most notably where it relates to an aesthetic perspective.²⁰ An anthropocentric perspective might also lead us to consider the cultural value of wildlife. For example, animals have long been important in art, literature and mythology;²¹ and there has been some exploration of the connections between wildlife and 'place' in naturalist writing.²² Although natural and cultural heritage have often been treated separately in academic debate, there has been some recognition of the 'false dichotomies of cultural/natural and tangible/intangible heritage'.²³ They are also both concepts that have attracted attention in the context of landscape studies.

Landscape has long been essential to geography, focusing as it does on the idea of 'place'. The traditional approach was to consider different topographies of landscape identified from its formation.²⁴ However, in the late 20th century a more humanist perspective has emerged and landscape has come to be understood as essential to our understanding of cultural heritage.²⁵ Natural heritage is also clearly linked to the

²⁰ On the relationship between animal beauty and environmental protection see further Hettinger N 'Animal Beauty, Ethics and Environmental Preservation' (2010) 32(2) *Environmental Ethics* 115-134. On the importance of aesthetics to the value of landscape formation see further n. 46 below.

²¹ 'How to Describe Animals' *BBC news* 24th May 2013.

²² Kerasote T *Heart of Home: People, Wildlife, Place* (University of California, 2010). On the importance of the way that humans relate to nature for environmental protection see further Gray G *Wildlife and People: The Human Dimensions of Wildlife Ecology* (University of Illinois Press, 1993).

²³ See Fredheim and Khalaf n.18 above, 466.

²⁴ Antrop M. 'A Brief History of Landscape Research' in P. Howard, I Thompson and E. Waterton *Routledge Companion to Landscape Studies* (Routledge, 2012) 12-14). The focus on 'place' initially led to the rejection of a humanist perspective on landscape. Hartshorne, R. 'The Nature of Geography: A Critical Survey of Current Thought in the Light of The Past.' (1939) 29 *Annals of the Association of American Geographers* 173-412.

²⁵ Atkins P., et al, *People, Land and Time: An Historical Introduction to the Relations Between Landscape Culture and Environment* (Wiley and Sons New York, 1998) p.p. xvi-xvii. On this

physiographical and geomorphological features of landscape.²⁶ This creates an important link between landscape, the protection of biodiversity and the pursuit of ecological resilience.²⁷ Landscape formation is, thus, recognised to be important from both a cultural and natural heritage perspective.

International law, despite lacking enforceable obligations, can also help to shape normative understandings of the natural and cultural heritage of landscape.²⁸ The World Heritage Convention (WHC) and European Landscape Convention (ELC) have been particularly important in this regard. The WHC has long been the driving force in the protection of cultural heritage across the globe.²⁹ It is popularly perceived to be an instrument focused on internationally significant cultural heritage sites,³⁰ but actually calls upon State Parties to 'identify, protect and conserve the cultural *and natural heritage* situated on its territory for the benefit of future generations (emphasis added)'.³¹ The definitions of natural and cultural heritage in the WHC are particularly significant.³²

renaissance in landscape geography more generally see Olwig K., 'Landscape: The Lowenthal Legacy' 200393(4) *Annals of the Association of American Geographers* 871-877.

²⁶ See for example Evelpidou N et al *Natural Heritage from East to West: Case Studies from Six EU Countries* (Springer 2010).

²⁷ See for example Burnett D 'New Science but Old Laws: The Need to Include Landscape Ecology in the Legal Framework of Biodiversity Protection' (1999) 23 *Environmental Law and Policy Journal* 47.

²⁸ Lawyers make a distinction between 'hard' and 'soft' law that is particularly significant in understanding international law. This distinction is not always clear, but is usually defined by the extent to which the rules provide binding and enforceable obligations. Contrary to the perception that might arise from its denotation, 'soft law' is still considered very significant in guiding decision making.

²⁹ World Heritage Convention (United Nations Economic and Social Organisation, 1972). The WHC includes specific obligations around the introduction of policies, programmes and other measures to contribute to these aims; but no formal enforcement mechanism. However, there are reporting requirements. State Parties must submit reports to the WHC Committee outlining the information on the legislative and administrative provisions that States have adopted and other action which they have taken as well as details of the experience acquired in this field (Article 29).

³⁰ World Heritage sites are identified by States and agreed by the World Heritage Committee set up under the Convention (Article 11).

³¹ WHC *ibid* Article 4.

³² WHC *ibid*. Articles 1 and 2.

Cultural heritage is defined in the WHC as monuments and groups of buildings, specifically acknowledging that the latter may gain their significance from their relationship with their surroundings.³³ Sites of cultural heritage interest are also included which may arise not just from the works of man but the combined works of man and nature.³⁴ The focus on sites created by man and nature has led to the designation of many 'cultural landscapes' that include parks and gardens, relict landscapes and those that have a strong relationship to art or religion.³⁵ The value of cultural heritage is considered to arise from its relevance to history, ethnology/anthropology, science and aesthetics/art.³⁶

Natural heritage is defined with reference to the physical form of landscape and its geology. This term also includes 'natural features' and 'natural sites';³⁷ the latter encompassing areas designated as protected habitat for endangered wildlife.³⁸

Natural heritage is valued from a scientific and aesthetic perspective, but not for its cultural contribution.³⁹

One of the most significant international agreements on landscape protection is the European Landscape Convention (ELC).⁴⁰ The ELC identifies the significance of landscapes with natural and cultural heritage and highlights their importance at a

³³ WHC *ibid.* Articles 1.

³⁴ WHC *ibid.* Articles 1.

³⁵ See further <http://whc.unesco.org/en/culturallandscape/#2> last accessed 24th November 2017.

³⁶ WHC *ibid.* Article 1.

³⁷ WHC *ibid.* Articles 2.

³⁸ WHC *ibid.* Articles 2.

³⁹ WHC *ibid.* Articles 2.

⁴⁰ European Landscape Convention Florence, 20.X.2000. The International Union for the Conservation of Nature (IUCN) has also been influential in the designation of nationally significant or 'protected landscapes' across the globe. Given its focus, the IUCN was initially concerned with the relevance of these areas to nature conservation; but, today, the IUCN advocates a 'protected landscape approach' that makes links between the conservation of nature and culture. Brown J. Mitchell N and Beresford M (eds) *The Protected Landscape Approach. Linking Nature, Culture and Community* (IUCN, 2005).

local level to the formation of cultures, human well-being and identity.⁴¹ The latter means that the ELC places particular emphasis on public participation in the definition and implementation of landscape policies;⁴² thus emphasising the contribution of local knowledge to different conceptions of landscape.⁴³ However, the terms natural and cultural heritage remain undefined and the ELC is singularly concerned with those values in landscape formation.⁴⁴

Existing academic literature and international law have begun to identify the value(s) of landscape with the concepts of natural and cultural heritage and attempt to define these. Both have, however, adopted a singular perspective on either 'heritage' assets or landscape formation. This denies the importance of a holistic perspective on the natural and cultural heritage values relevant to landscape.

⁴¹ European Landscape Convention *ibid.*, preamble.

⁴² European Landscape Convention *ibid.*, Article 5. Attention to participatory rights is perhaps to be expected of a Convention created by the Council of Europe that it focuses on the protection of human rights.

⁴³ Jones and Stenseke describe the three prevailing notions of landscape as morphology, scenery, and polity. Jones M and Stenseke M 'The Issue of Public Participation in the Landscape Convention' in Stone M and Stenseke M (eds) *The European Landscape Convention: Challenges of Public Participation* (Springer, 2010), 1-27.

⁴⁴ In terms of specific obligations, it calls upon states to recognise landscapes in law; establish and implement landscape policies aimed at landscape protection, management and planning. European Landscape Convention *ibid.*, Article 5. However, like the WHC, there is little in the way of enforcement mechanisms. The implementation of the ELC is monitored by existing Committees of Experts in the Council of Europe which report to its Committee of Ministers (Article 10).

3. Protecting the Natural and Cultural Heritage of Landscapes: Designation in English Law

In English law, there are separate systems for the designation of 'nationally significant' cultural/natural heritage and landscape dating back to the end of the Second World War. These laws pre-date the WHC and ELC by some years and have been influenced by long-standing traditions particularly pertinent to this country. Nevertheless, these laws perpetuate the fragmented approach identified at this level.

The system of designation for 'protected landscapes', referred to as National Parks and Areas of Outstanding Natural Beauty (AONBs), was introduced by the National Parks and Access to the Countryside Act 1949.⁴⁵ In the Romantic tradition, there is an enduring emphasis in English landscape law on the aesthetic appreciation of landscape; and, the key criterion for designation even today is the protection of natural beauty.⁴⁶ The National Parks and Access to the Countryside Act 1949 is also the origin of early laws on species and habitat protection. This was based on a scientific system that protects endangered species, their habitats and sites of geological and physiographical importance.⁴⁷ The modern system also adopts a multi-level governance approach in which legal frameworks for wildlife and habitat

⁴⁵ National Parks and Access to the Countryside Act 1949. Today, there are 10 National Parks covering 9.3 per cent of the land area in England and 34 AONBS. See further <http://www.nationalparks.gov.uk/students/whatisanationalpark/factsandfigures> and <http://www.landscapesforlife.org.uk/about-aonbs/faqs/> both last accessed 24th November 2017

⁴⁶ The criteria for National Parks are found in s5 National Parks and Access to the Countryside Act 1949 and AONBs s82 Countryside and Rights of Way Act 2000. Although in the case of National Parks, opportunities for recreation are also a key consideration. On the relationship between natural beauty and landscape see further, Kernal S and Gaskell *Landscape, Natural Beauty and the Arts* (Cambridge University Publishing, 1995).

⁴⁷ National Parks and Access to the Countryside Act 1949 Part III. Protected habitats were known as Sites of Special Scientific Interest (SSSIs).

protection at international and EU level are very significant.⁴⁸ Cultural heritage law is traditionally focused on protecting ancient monuments and historical buildings.⁴⁹ The scheduling of 'ancient monuments' dates back to 1882 and, today, these are defined with reference to their historic, architectural, traditional, artistic or archaeological interest.⁵⁰ A system of designation also exists for 'listed buildings' of special architectural or historic interest.⁵¹

These legal regimes take a deconstructive approach to issues relevant to the natural and cultural heritage of landscape and identify 'significance' from a national perspective. They also define value with respect to these different forms of 'heritage' in very different terms and largely from a narrow perspective, i.e., landscape is viewed from an aesthetic perspective, cultural heritage as important historically and aesthetically and natural heritage as endangered wildlife identified by scientific criteria. As a departure from these general trends, it is interesting to note the following provisions of English law. First, 'special regard' must be given to the 'setting' of listed buildings, recognising the links between these cultural assets and the landscape.⁵² Secondly, it is possible to create 'conservation areas' where their

⁴⁸ SSSIs and endangered species are now protected under the Wildlife and Countryside Act 1981. A network of Special Areas of Conservation which are considered to be of significance to the European Union are protected by the Conservation of Habitats and Species Regulations 2010 SI No. 490 introduced pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive). From an international perspective of particular significance is the United Nations Convention on Biological Diversity (United Nations, 1992), the RAMSAR Convention on Wetlands of International Importance especially as Waterfowl Habitat (United Nations Economic and Social Committee, 1971) and the Bern Convention on the Conservation of European Wildlife and Natural Habitats (Council of Europe, 1979).

⁴⁹ On cultural heritage law see further Mynores C 'Working With the Heritage: The New Rules'. 2006 *Journal of Planning Law Dec Supp* (Planning: The Changing Climate?), 22-47.

⁵⁰ The SS has wide discretion to include a monument in the schedule 'as he sees fit'. S1 Ancient Monuments and Archaeological Areas Act 1979. However, further guidance is provided in guidance provided by the Department of Culture Media and Sport. *Scheduled Monuments and Nationally Important but Non-Scheduled Monuments* (Department of Culture Media and Sport, 2013) Appendix 1.

⁵¹ S1(1) Planning (Listed Buildings and Conservation Areas) Act 1990.

⁵² Planning (Listed Buildings and Conservation Areas) Act 1990, s66(1).

character or appearance is considered to have ‘national significance’ in terms of its architectural or historic interest.⁵³ Conservation areas can be viewed as an ‘an expression of a new discourse begun by the Civic Amenity Trust to encourage people to protect and care for their ‘place’; and, as such, are particularly important in providing a local perspective on cultural heritage as well as linking the cultural heritage of the built environment to the landscape.⁵⁴ Thirdly, it is possible to designate hedgerows that contain an archaeological feature or provide the setting for archaeological sites.⁵⁵ This provides a rare example of ‘natural heritage’ that enjoys legal protection as a result of its contribution to our cultural heritage.

Local significance does not, generally, form a significant element of English law on heritage and landscape protection. Provision is made for the designation of local nature reserves⁵⁶; but although there are many of these in England they cover only a relative small land area.⁵⁷ Furthermore, although there are statutory consultation rights with respect to the ‘protected landscapes’, there is no convention of public involvement in the designation of ‘nationally significant’ cultural heritage assets.⁵⁸

The scientific focus of regimes for the protection of wildlife sites at national and local

⁵³ This was first introduced by the Civic Amenities Act 1967 and is now found in the Planning (Listed Buildings and Conservation Areas) Act 1990, s69. On the importance of conservation areas to landscape law see Fisher. See n.5 above

⁵⁴ Macnaghten P and Urry J *Contested Natures* (Sagem 1998) 43.

⁵⁵ See further s97 Environment Act 1995 and Hedgerows Regulations 1997/1160 Regulation 4 and Schedule 1 Part II.

⁵⁶ These may be subject to designation where they provide opportunities for the study of, and research into, ‘special features’ of the wildlife and geological or physiographical features of the area. (S15 (2) National Parks and Access to the Countryside Act 1949). Although this does not specifically relate to the protection of endangered species, it retains a scientific perspective. See further Local nature reserves: setting up and management (DEFRA, 2014) available at <https://www.gov.uk/guidance/create-and-manage-local-nature-reserves> last accessed 24th November 2017. The Wildlife Trust has also been involved in setting up and protecting wildlife in nature reserves since 1912. See further <http://www.wildlifetrusts.org/reserves-wildlife/our-nature-reserves> last accessed 24th November 2017.

⁵⁷ There are 1500 local nature reserves in England. See further http://www.lnr.naturalengland.org.uk/Special/lnr/lnr_search.asp. last accessed 24th November 2017.

⁵⁸ On statutory rights to participation in the designation of ‘protected landscapes’. National Parks, National Parks and Access to the Countryside Act 1949 Schedule 1, 1(2); and AONBs S83(2) Countryside and Rights of Way Act 2000.

level also results in the exclusion of public views, with no opportunity for public consultation on the identification of protected species and habitats.

4. The Protection of the Natural and Cultural Heritage of Local Landscapes: the Importance of Land Use Planning Law

The lack of attention to local designation in English law means that land use planning law is the central vehicle for the protection of the natural and cultural heritage relevant to the local landscape. Land use law dictates that planning decisions are made in line with the Local Development Plan (LDP) unless ‘material considerations’ indicate otherwise.⁵⁹ Thus, decisions are guided by the presumption in favour of the LDP.⁶⁰ This necessarily provides a very local perspective on the relevant issues. An LDP involves a mapping process of proposed sites for different types of development, but also includes local planning policies to guide development where specific sites are not allocated. These policies may refer to local nature reserves and non-statutory registers of heritage assets and areas of special local character held by local authorities.⁶¹ In addition, there is a long tradition of the designation of locally significant landscapes, which dates back to the creation of the first LDPs under the Town and Country Planning Act 1947.⁶²

⁵⁹ Town and Country Planning Act 1990 s70(2) and) Planning and Compulsory Purchase Act 2004 s38(6).

⁶⁰ *City of Edinburgh v SS Scotland* (1997)1 WLR 1447 and *SS for Communities and Local Government v Calderdale MBC* (2011) JPL 412.

⁶¹ See further information from Historic England at <https://historicengland.org.uk/listing/what-is-designation/local/> last accessed 24th November 2017. The lists of heritage assets may include elements of the natural environment.

⁶² See, for example, the history of the AGLV in the Surrey Hills. *Surrey Hills Area of Great Landscape Value Review* (Chris Burnett Associates, 2007).

The most prevalent local landscape designation is an 'Area of Great Landscape Value', but the reasoning behind this designation can be unclear.⁶³ Local landscape designations have become increasingly unpopular with national government in recent decades, being viewed as a source of unnecessary restriction on development.⁶⁴ Today, essential information on landscape value is also often identified in Landscape Character Assessment (LCA). In England, LCA was first developed, in the early 1990s, by Natural England, the nature conservation agency.⁶⁵ This provided a national perspective, but local authorities are now also encouraged to create local LCAs to inform land use planning decisions.⁶⁶

LCA can be viewed as a form of classification of landscape according to differences in landform, landcover, water, infrastructure, dominant landcover and water view;⁶⁷ but also includes other landscape information such as the location of historical, spiritual, cultural, and geological landscape features.⁶⁸ Local LCA has thus been described as a process that acknowledges the importance of landscape everywhere,

⁶³ There is little information available about such local designations but see, for example, the discussion of the different types of designation in a document created for Waverley Borough Council. This also notes the existence of Areas of Historic Landscape Value and Areas of Strategic Visual Importance. *Waverley Borough Council Local Landscape Designation Review* (AMEC Environment & Infrastructure UK Limited, 2014). The problems of the designation of such areas were discussed in Planning Policy Guidance Note 7 Countryside Environmental Quality and Economic and Social Development, (1997).

⁶⁴ Planning policy published in 1997 made it clear that such designations should carry less weight than national designations and may 'unduly restrict acceptable development and economic activity.' Planning Policy Guidance Note 7 Countryside Environmental Quality and Economic and Social Development (1997) para 4.16. The approach in England is in sharp contrast to Scotland where detailed guidance can be found on local designations, produced by a partnership of the environmental and cultural heritage agencies. *Guidance on Local Landscape Designations* (Scottish Natural Heritage/ Heritage Scotland, 2004).

⁶⁵ Guidance from DEFRA and Natural England 2014 available at <https://www.gov.uk/guidance/landscape-and-seascape-character-assessments> last accessed 24th November.

⁶⁶ See guidance from Natural England, Tudor C. *An Approach to Landscape Character Assessment* (Natural England, 2014). Planning policy issued, in 2004, supported local LCAs as the most appropriate means of identifying areas of landscape outside nationally designated areas that are highly valued locally. *Planning Policy Statement 7 Sustainable Development in Rural Areas* (Office of the Deputy Prime Minister, 2004) para 24. There is little reference to LCAs in planning policy today see n.82 below.

⁶⁷ Brabyn L. 'Classifying Landscape Character' (2009) 34 *Landscape Research* 299-321.

⁶⁸ Brabyn *ibid*.

at any scale; involves an understanding of how the landscape is perceived and experienced by people; and provides an integrating spatial framework to consider how a multitude of variables come together to give us our distinctive landscapes.⁶⁹

Local authorities are also encouraged to involve local people at every stage in the local LCA process.⁷⁰ Thus, LCA has the potential to provide a locally focused, holistic approach to the identification of natural and cultural heritage values relevant to landscape.

The LDP and its policies for siting development is important in planning decisions, but decision-makers have broad discretion to take other 'material considerations' into account; a material consideration being widely defined as 'anything that relates to the use or development of land'⁷¹. This discretionary approach might be thought to facilitate a holistic perspective on issues related to the natural and cultural heritage of the local landscape. However, there is a necessity for rationality in decision-making subject to public law principles. This dictates that there is clear evidence that all, but only, relevant considerations are taken into account.⁷² This encourages a deconstructive approach to the way in which 'material considerations' are identified and contemplated in the decision-making process, i.e., the relevant issues are considered separately along with the 'weight' or significance to be attributed to each.

⁶⁹ Tudor n.66 above, 12.

⁷⁰ For further consideration of the way in which the public are involved in LCA see Butler A., 'Landscape Character Assessment as an Approach to Understanding Public Interests within the European Landscape Convention' (2014) 39(3) *Landscape Research* 219-236.

⁷¹ *Stringer v Minister of Housing* [1970] 1 WLR 1281 and *Tesco v SS for the Environment* [1995] 1 WLR 759.

⁷² On public law principles and decision making see further for example Endecott T, *Administrative Law* (Oxford University Publishing 2015).

A local perspective in land use planning is assured by the presumption in favour of the LDP and also the opportunities that exist for local communities to raise issues further to their statutory rights to participation in the process.⁷³ However, there are several legal constraints on the local approach. First, ‘nationally significant’ natural/cultural heritage assets and landscapes designated in law form an important material consideration in planning law. Secondly, the Government’s advisors on cultural heritage and the environment, Historic England and Natural England, must be consulted on applications affecting nationally designated assets in these respects.⁷⁴ Thirdly, there are robust provisions to protect flora, fauna and habitats designated in EU law.⁷⁵

The National Planning Policy Framework (NPPF) has a crucial role in guiding local land use policies and decision-making in England. It includes reference to the conservation of both the natural environment and cultural heritage, which are dealt with separately.⁷⁶ The NPPF emphasises the importance of legal designations with respect to cultural heritage assets and endangered wildlife and habitats;⁷⁷ but also adopts a strong commitment to numerous non-statutory designations of ‘nationally significant’ cultural heritage, the most auspicious of which are registered parks, gardens and battlefields.⁷⁸ These are documented in a National Heritage List maintained by Historic England.⁷⁹

⁷³ On the presumption in favour of the LDP see n 59-60 above. On rights to participation in land use decision making see further Town and Country Planning (Development Management Procedure) (England) Order 2015/595 Regulation 33.

⁷⁴ Development Management Procedure) (England) Order 2015/595, schedule 4 para 1.

⁷⁵ See n. 48 above the Habitats Directive, Article 6.

⁷⁶ National Planning Policy Framework (Department for Communities and Local Government, 2012) (NPPF), chapters 11 and 12.

⁷⁷ The NPPF states that ‘Substantial harm to or loss of a grade II listed building’ should be exceptional and to a scheduled monument or grade I and II* listed buildings should be wholly exceptional (NPPF *ibid.* para 132). European wildlife sites are protected in law as noted at n.48 above. On the protection

The NPPF also recognises that a landscape perspective is relevant to both the natural and historic environment and should form part of the strategic priorities in LDPs.⁸⁰ Protecting ‘valued’ landscapes is, however, viewed only as a means to enhance the natural environment;⁸¹ whilst there is nothing specific about landscape in the section on the conservation of the historic environment.⁸² Finally, there is a strong policy against ‘major development’ in nationally designated landscapes in the NPPF which means that the focus for such development is on ‘local landscapes’ outside these areas.⁸³

The way in which the natural and cultural heritage relevant to local landscape is identified in land use planning decisions is essential in providing substance to those values. This is explored with reference to decision-making by Planning Inspectors in planning appeals.

of SSSIs the NPPF states that development should not normally be permitted if it will have an adverse impact (NPPF *ibid.* para 118).

⁷⁸ NPPF *ibid.*, paras 132, 135 and 139. In the NPPF grade I and II* registered parks and gardens and battlefields are treated the same as assets subject to legal designation para 132.

⁷⁹ See further <https://historicengland.org.uk/advice/hpg/hpr-definitions/n/1312822/> last accessed 24th November 2017.

⁸⁰ NPPF *ibid.*, para 156.

⁸¹ A landscape perspective is considered important in addressing biodiversity protection and contributing to ecological networks (NPPF *ibid.*, para 109, 113 and 117). Landscape is also mentioned in the following contexts: identifying aged veteran trees (Annex1); limiting light pollution in ‘dark landscapes’ (para 125); assessing the value of the Green Belt (para 81); considering the value of Community Forests (para 92); protecting and enhancing underdeveloped coastline (para 115); and, understanding the impacts of climate change (para 99).

⁸² Conversely LCA is only referred to in the context of gathering information for the evidence base in this regard (NPPF *ibid.*, para 170). Landscape is also referred to, however, within the definition of a ‘heritage asset’ (NPPF *ibid.* Annex 1) see further n. 105 below.

⁸³ NPPF *ibid.* para 116.

5. Exploring the Approach to the Natural and Cultural Heritage of the Local Landscape in Land Use Planning Decisions

The aim of this study is to reflect upon the way in which decision-makers identify the natural and cultural heritage relevant to the local landscape and the challenges they face in adopting local and holistic perspectives, and a broad interpretation of these values. In order to do so, the study began by considering the approach of Planning Inspectors in 30 recovered appeal cases, in England, involving wind farm development of two or more wind turbines decided between October 2013 and June 2015.⁸⁴

5.1 Methodology

Wind development provides the focus for this investigation because such cases usually raise issues related to landscape and concerns for wildlife and/or cultural heritage.⁸⁵ Wind development has caused significant controversy in England, and there is a large body of literature considering issues related to the planning process in this respect. This literature has focused on assessments of the ‘impacts’, ‘effects’ and ‘acceptability’ of such development.⁸⁶ Before any of these judgements are made, the decision-maker must establish baseline evidence of the ‘sensitivity’ of the landscape and/or heritage assets within it.⁸⁷ In doing so, a narrative emerges around

⁸⁴ For an explanation of recovered planning appeals and the relevance of these dates see n.91 below onwards.

⁸⁵ Lee (2017) has also noted that cases of wind development often raise issues related to landscape, n. 5 above, 4.

⁸⁶ See further n. 13-14 above. Environmental Impact Assessment is an important tool in this regard and understandably at the centre of this debate, particularly from a legal perspective Environmental Impact Assessment in the UK has been introduced in response to European Union law. Where a developer makes an application for wind farm development of more than 2 turbines that is likely to have significant environmental effects the application must be accompanied by an environmental statement. The environmental statement must include information about the environmental effects of the proposed development and provide some consideration of the ‘significance’ of those effects. Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment implemented by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011/1824.

⁸⁷ There is clearly an important relationship between baseline evidence in the LCA and the first stage of decision making in EIA which identifies the ‘sensitivity’ of the landscape. See further guidance from

the natural and cultural heritage relevant to the local landscape which is the focus for this investigation.⁸⁸

The study involved a review of the reports of Planning Inspectors appointed by the Secretary of State (SS) to hear planning appeals. Most land use planning decisions are made by local authorities, but a refusal to grant planning permission can be appealed to the SS.⁸⁹ The SS appoints a Planning Inspector (the Inspector) to reconsider all the evidence in the original case and come to a decision as to whether to allow the development. The Inspector provides a detailed report outlining the relevant evidence and his deliberations upon this. Recovered planning appeals are those that the SS decides on personally, following the report of the Planning Inspector, because, for example, they are considered to involve complex issues or to be particularly contentious.⁹⁰ The 30 cases in this study were recovered by the SS further to a policy to carry out a systematic consideration, during a two-year period, of the way in which the government's planning policies on wind energy were being applied.⁹¹

the Landscape Institute, *Guidelines for Landscape and Visual Impact Assessment* n. 14 above This is evidenced in the Wind Prospect case where a study of the sensitivity of the landscape to new development had been carried out as part of the local LCA.

⁸⁸ Planning is, by its very nature, a process that focuses on an uncertain future in considering the potential 'impact' and 'effects' of proposed development. The approach in this paper however, focuses our attention on the narrative that is created in the 'present' around the value and sensitivity of the landscape.

⁸⁹ S78 Town and Country Planning Act 1990. The decisions in the cases discussed here were taken by the local authority because they involved small wind farm development. It is important to note however, that during the relevant period any energy development creating more than 50MW in England would have been decided by the SS in the first instance under a separate planning regime that exists under the Planning Act 2008. Decisions on such projects have since also been returned to local authorities under the Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016 and the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016.

⁹⁰ Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 SI 1997/420 For the SS policy providing guidance on which appeals might be recovered see further Written Ministerial Statement 30 Jun 2008 Hansard col 44WS. These decisions are available at <https://www.gov.uk/government/collections/planning-applications-called-in-decisions-and-recovered-appeals> last accessed 24th November 2017.

⁹¹ House of Commons Written Statements 10 October 2013 Local Planning and Renewable Energy Developments Secretary of State for Communities and Local Government (Mr Eric Pickles) 10 Oct 2013 column 30-31 WS. In April 2014, this policy was extended for a further 12 months a decision, House of Commons Written Statements 9 April 2014 Local Planning and Renewable Energy Developments Secretary of State for Communities and Local Government (Mr Eric Pickles) 10 Oct

Considering the 30 recovered planning appeal cases during the relevant period provided a useful way of identifying a set of wind farm cases in which the potential ‘impacts’ of the development had made it ‘unacceptable’ in the first instance.⁹² As such, the Planning Inspector’s report on appeal was thought likely to include a full discussion of issues relevant to natural and cultural heritage of the local landscape.⁹³ The objective was to explore the narratives that emerged in these cases in this respect with a view to considering the challenges that might arise in adopting local, holistic and broad interpretations of this heritage.

As the aim of this exercise was not to draw firm conclusions from these narratives, two case studies have been chosen for discussion in this paper for illustrative purposes only – the Wind Prospect and Next Generation cases.⁹⁴ These cases were chosen because, in the Wind Prospect case, the ‘main considerations’ were identified by the Inspector as ‘cultural heritage’ and ‘landscape’ and in the Next Generation the ‘main considerations’ were ‘wildlife’ and ‘landscape’.⁹⁵ It was thought necessary to refer to two cases because it was not possible to identify a case in

2014 column 12-14 WS. In 2015, the incoming Conservative Government signalled a significant weakening of the drive on wind energy with the reduction in subsidies for onshore wind. House of Commons: Written Statement (HCWS40) Department for Energy and Climate Change (Angela Rudd) on 18 Jun 2015. The onshore wind subsidy was withdrawn from 1st April 2016

⁹² On the definition of these terms see n.14 above.

⁹³ Thus the study was not concerned with the final conclusions of either the Inspector or the SS, but these are noted with respect to the case studies for information only at n. 94 below.

⁹⁴ Appeal by Wind Prospect Developments Ltd: Thornholme Fields, Rudston Road, Burton Agnes Application ref: dc/11/03999/stplfe/strat pp-01552442 (Wind Prospect case) and Appeal by Next Generation Limited Land to The South Of Poplar Farm, Puriton Road, West Huntspill, Highbridge, Somerset (Application REF: 52/10/00018) (Next Generation case). Next Generation para 6 and Wind Prospect para 4.7. In both the Wind Prospect and Next Generation cases the appeals were allowed by the Inspector on the grounds that the wind farm would not have ‘significant effects’ on the cultural heritage, wildlife and landscape interests identified. In both cases the decision was overturned by the SS whose assessment of the potentially ‘harmful impacts’ was very different. Interesting questions arise in both cases, therefore, around the different ‘knowledge’ also used to make a judgement on the ‘impact’ and ‘effects’ of the development at these stages in the decision-making process. This is however, beyond the remit of the current investigation.

⁹⁵ In an appeals case, the full discussion of issues in the original decision is narrowed down to the ‘main considerations’ by the Inspector.

which there was an in-depth discussion of both cultural heritage and wildlife concerns alongside landscape. In addition, the conditions of local residents (including visual impact) and public visual impact were also identified in the respective cases as a main consideration.⁹⁶

In both the Wind Prospect and Next Generation cases, the LDP included policies to encourage renewable energy development providing this did not have ‘a significant adverse impact’ or ‘unduly harm’ cultural and environmental interests or residential amenity (respectively).⁹⁷ At the same time, in both cases the development did not fall on a site specifically allocated to wind development in the LDP. Therefore, the application had to be assessed by reference to the relevant policies in the LDP and any other material considerations.

The outline of the narrative in these cases explores the following: the challenges encountered in taking a ‘holistic’ view of the relevant issues.; the way in which ‘national’ and ‘local’ perspectives on value of natural and cultural heritage and landscape emerge, and the relationship between the two; and the way in which value is attributed to heritage assets and aspects of landscape formation from a historical, scientific and aesthetic viewpoint. This account addresses not just the substance of the narrative, but the way in which it was constructed. The contribution of different forms of ‘knowledge’ to land-use planning decisions around landscape has been

⁹⁶ Next Generation case para 6 and Wind Prospect case para 4.7.

⁹⁷ The LDP in the Wind Prospect case included saved policies of the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire (2005) (the Joint Structure Plan) and the saved policies of the East Yorkshire Borough Wide Local Plan (1997) (the Local Plan) (Wind Prospect case, para 4.1). The specific reference to renewable energy development and its impacts was found in the Local Plan (Wind Prospect case, para 4.7). In the Next Generation case the LDP included both the Sedgemoor District Core Strategy (the Core Strategy) and saved policies from the Sedgemoor Local Plan 1991-2011 (the Local Plan) (Next Generation case, para 5). The Core Strategy included the provision outlined here (Next Generation case, para 6).

explored in the work of Lee.⁹⁸ She refers to four different types of ‘knowledge’: prior institutional knowledge’ or pre-existing designations;⁹⁹ expert or technical knowledge; lay knowledge claims, i.e., those of the public and local residents; and professional planning knowledge, in this instance that of the Inspector. This framework will be adopted in the following discussion around the construction of the narrative in the two case studies.

5.2 The Wind Prospect Case – Cultural Heritage and Landscape

The Wind Prospect case involved an application for six wind turbines in the East Riding area, in the North of England, by Wind Prospect Development Ltd.¹⁰⁰ The development took place in an area of the Yorkshire Wolds. This is a broad crescent of rolling chalk hills and valleys, south of the North Yorkshire Moors.¹⁰¹

In the Wind Prospect case, the strategic framework for decision-making was provided by a Joint Structure Plan for Kingston upon Hull and East Riding of Yorkshire (the JSP).¹⁰² The local policies guiding the protection of natural and cultural heritage and landscape in this plan were framed around two key concepts: ‘Sense of Place’ (referring to the need to protect settlement character and diversity

⁹⁸ Lee (2017) see n 5. above.

⁹⁹ Lee refers to the importance of pre-existing landscape and World Heritage designations, but this could equally be applied to legal designations relevant to wildlife and cultural heritage. Lee (2017) *ibid.*

¹⁰⁰ Wind Prospect case n. 94 above.

¹⁰¹ For general information on the Yorkshire Wolds see further <http://www.yorkshire.com/places/east-yorkshire/the-wolds/the-wolds-essentials> last accessed 24th November 2017.

¹⁰² Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire (2005) which forms part of the LDP see n. 97 above. Structure plans used to be created where there was a division between County and District Councils in England. Two counties might also create a Joint Structure Plan. These have been phased out since the Planning and Compulsory Purchase Act 2004, but some saved policies such as those in this case may be retained. See further Moore V A *Practical Approach to Planning Law* (Oxford University Publishing 2012) 30-31.

as well as safeguarding and enhance landscape quality); and 'Protecting Natural and Built Environment Assets' (including safeguarding and increasing biodiversity, protecting and enhancing important natural environmental assets and safeguarding important built, historic and archaeological features).¹⁰³ Thus, in line with the legal frameworks for designation and the NPPF, the JSP creates some fragmentation of issues around the protection of the natural and cultural heritage and landscape, although the connections made between the 'character of settlements' and landscape quality is a notable exception.¹⁰⁴

The main considerations in this case were identified by the Inspector as the harmful impacts on the character and appearance of the surrounding landscape and the setting, and thereby the significance, of heritage assets. The living conditions of local residents, including through visual impact was also included along with some other matters such as noise and shadow flicker.¹⁰⁵ As outlined above, this breakdown of the key issues is necessary for rational decision making, but immediately creates a deconstruction of concerns relevant to the natural and cultural heritage of landscape.¹⁰⁶

¹⁰³ JSP *ibid.* 121.

¹⁰⁴ JSP *ibid.*, 122. In particular, the JSP referred to links between listed buildings and conservation areas as part of the 'character of settlements'.

¹⁰⁵ Wind Prospect case, para. 10.4. It is important to note that the definition of 'heritage assets' in this paper is very different to that used in planning. In this paper 'heritage assets' is used to denote physical assets of relevance to cultural or natural heritage. The NPPF defines a heritage asset as "A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest." NPPF n. 76 above, Annex 1. These are distinguished in this paper as assets and sites that are specifically relevant to cultural heritage.

¹⁰⁶ See n. 72 above.

5.2.1 Cultural Heritage

In the Wind Prospect case, law and policy designations were important in identifying the cultural heritage assets of most significance in the local landscape.¹⁰⁷ The main emphasis in the Wind Prospect case was the ‘harm’ to ‘listed buildings’ in the area. This was identified as a significant issue by the local council (the Council) which, notwithstanding the plethora of heritage assets in the area, concentrated on the impact of the potential development on 20 such buildings in the village of Burton Agnes.¹⁰⁸ Many of these were set around Burton Agnes Hall which is an Elizabethan stately home that is over four hundred years old and remains in the ownership of the original family.¹⁰⁹ In contrast to the local authority, English Heritage (the name of the statutory agency responsible for heritage prior to Historic England) also drew the attention of the Inspector to a number of designated ‘scheduled monuments’.¹¹⁰ This included Rudston Beacon and associated barrows at Woldgate whose condition is currently poor and declining.¹¹¹

The Inspector also referred to the ‘setting’ of listed buildings as required by law. It was noted by the Inspector that much of the significance of listed buildings can be

¹⁰⁷ It is notable that Lee also considered such ‘prior institutional knowledge’, in the form of landscape designations to be important in the assessment of the character and qualities of landscape’ see Lee (2017) n. 5 above.

¹⁰⁸ Wind Prospect case, para 10.43 and 10.54.

¹⁰⁹ Burton Agnes Hall was built between 1598 and 1610 by Sir Henry Griffith and has remained in the ownership of the Griffith family for more than four hundred years. It has been described as the ‘the perfect English house’ and as one of the twenty best English houses alongside Windsor Castle, Buckingham Palace and Chatsworth House. <http://www.burtonagnes.com/Home.html> last accessed 24th November 2017.

¹¹⁰ Wind Prospect case para 10.43, 10.51 10.56-57 and 10.75. English Heritage was a statutory consultee on planning applications that may have significant effects on designated cultural heritage assets just as Historic England is now. See n.74 above.

¹¹¹ Wind Prospect case, para 10.43. A barrow is defined in the Collins English dictionary as “a heap of earth placed over one or more prehistoric tombs, often surrounded by ditches”. The principal vulnerability of the barrows at Woldgate is considered to lie in arable farming. See further <https://historicengland.org.uk/advice/heritage-at-risk/search-register/> last accessed 24th November 2017.

gained from their setting rather than being 'locked in their fabric'.¹¹² At the time of the planning appeal inquiry, the law in this area was in something of a state of flux.

However, the Court of Appeal subsequently made it clear that the duty in planning law meant that this was an issue to which 'considerable importance and weight' should be attached.¹¹³ The attention given to the issue of the setting of listed buildings in the courts, based on what is essentially a provision that is decades old, highlights the fact that the value of such assets in the landscape might also rely on their place within it. The Inspector focused on the aesthetics of the arrangement of the buildings and the gardens, particularly in guiding views from Burton Agnes Hall in considering the impact of the proposed development on this.¹¹⁴

Despite a lack of statutory recognition of the importance of the setting of 'scheduled monuments', the Inspector also considered the relationship between the barrows at Woldgate and the local landscape. It was suggested by English Heritage that 'the Woldgate ridge serves as a significant focus for the complex of prehistoric monuments and that the relationship of the ridge to the landscape remained 'readable' despite changes resulting from evolving agricultural practices and settlement patterns.¹¹⁵

¹¹² Wind Prospect case, para 10.81. "Designated heritage assets take on a wide variety of forms. It is fair to observe that most will have the majority of their significance locked in their fabric rather than their setting, but there are others, like follies or eyecatcher's for example, where a much greater degree of significance might derive from setting. Clearly a wind turbine that seriously intruded into the setting of a designated heritage asset of that nature could all but destroy its significance and as a result cause substantial harm." This is particularly important because the development will rarely impact directly on the 'asset' or site, but will often have implications for the way in which it interacts with its surroundings.

¹¹³ East Northamptonshire DC v SS for Communities and Local Government: Barnwell Manor Wind Energy v East Northamptonshire DC (2014) EWCA Civ 137

¹¹⁴ Wind Prospect case paras 10.63-10.66. He concluded that "Visibility of the wind farm from and in juxtaposition with the Burton Agnes Hall asset means that there will be an impact on the settings of the individual assets within (para 10.69). On the law on the setting of listed buildings see n. 52 above.

¹¹⁵ Wind Prospect case, para 10.75. The Inspector concluded that as the topographical features of the landscape would not change the relationship between the landscape and these assets would remain readable. Wind Prospect case 10.76.

Aside from listed buildings and ancient monuments, the Inspector noted the existence of historic hedgerows, but the importance of their relationship to the landscape was not discussed despite the obvious connections.¹¹⁶ In addition, the Inspector referred to 'recorded archaeological remains'. These do not enjoy ancient monument or other legal status and are not included in the National Register of Historic Interest, but their regional and local significance was highlighted in the JSP.¹¹⁷

Conservation areas can play an important role in bringing together national and local perspectives on the cultural heritage relevant to the local landscape¹¹⁸ This was very evident in the Wind Prospect case where part of the landscape surrounding Burton Agnes Hall had been designated as such. The Inspector considered the significance of the Conservation Area to lie in the way in which it provided a 'setting' for the relevant listed buildings, including the Hall;¹¹⁹ and the value of this 'setting' was seen to lie in the way it provided an aesthetic perspective in this respect.¹²⁰

Lee has noted that 'prior institutional knowledge' in the form of legal designations can be particularly important in the assessment of the character and qualities of landscape.¹²¹ This appears to also be true of the assessment with regard to the value of cultural heritage assets in this case. However, the approach to the relationship between designated assets and the landscape was also influenced by the 'expert knowledge' of English Heritage and the 'professional planning knowledge' of the Inspector. In addition, the Council, which may be seen to represent the views of local people, was particularly influential in emphasising the listed buildings.

¹¹⁶ Wind Prospect case, para 10.42.

¹¹⁷ JSP see n. 97 above, 142.

¹¹⁸ See n. 54 above

¹¹⁹ Wind Prospect case para 10.73

¹²⁰ Ibid.

¹²¹ Lee (2017)

Local representations clearly provide a ‘community centred’ view of the importance of cultural heritage assets to the local landscape and contribute ‘lay knowledge’ to the construction of the narrative on this.¹²² In the Wind Prospect case, the evidence from local people focused mainly on the impact of the proposed development on their own residential interests. However, they also drew attention to the opinion of English Heritage on the aesthetic impact of the proposed development on the setting of Burton Agnes Hall.¹²³ Thus, this nationally designated ‘asset’ was attributed value by local people, but only from this singular viewpoint. Most strikingly, there was no mention of cultural heritage assets of ‘local significance’ by the community or the Inspector.

5.2.2 Landscape

The Wind Prospect case provides an example of an area in which a ‘Local Landscape Designation’ exists – the Wolds Area of Landscape Protection. This was a designation in the LDP that had been carried forward over many years.¹²⁴ As outlined above, this is not uncommon, but makes it difficult to establish the grounds for identifying its particular value.¹²⁵ The idea that the landscape had been designated for its aesthetic qualities was put forward by the Council on the basis that this could be implied from a similar local designation in the neighbouring borough of Ryedale.¹²⁶ That approach was considered untenable by the Inspector.¹²⁷ Instead,

¹²² Ibid.

¹²³ Wind Prospect case, 6.11.

¹²⁴ Wind Prospect case, para 4.10.

¹²⁵ It has been noted that these designations often lack any reference to criteria-based policies to be taken into account when considering development which is essential role to the role of development plan in guiding decision making. See further Local Plans: Planning Practice Guidance (DCLG, 2016) and comments by the Inspector at, para 10.20.

¹²⁶ Wind Prospect case, para 5.22.

the Inspector focused on the local LCA – the Yorkshire Wold Regional Landscape Character Area.

The local LCA referred to the landscape as open high rolling farmland, the key characteristics of which were ‘the elevated rolling landform of the Yorkshire Wolds dip slope dominated by the sky; large and very large rectilinear arable fields; fragmented hedgerows that are severely clipped; and very few trees resulting in an open landscape.’¹²⁸ The aesthetic qualities of these topographical features of the landscape formed the basis of the Inspector’s consideration of the value of the landscape. He concluded that ‘the grand scale of the landscape and the long-distance views, dominated by the sky, would serve to allow a relatively comfortable absorption of the proposal’.¹²⁹ It is not clear whether this narrow focus on the aesthetic qualities of the formation of landscape was reflected in the local LCA itself or created by the singular perspective of the Inspector on this evidence. This is important in reflecting on the relevant ‘knowledge’ basis for this aspect of decision-making.

The Inspector also referred to the importance of the ‘character of settlements’ and their relationship to the landscape; which had been identified as a key issue in the JSP.¹³⁰ This provides an important link between cultural heritage in the built environment and that in the formation of landscape. The Inspector concluded that although there was a ‘clear and readable relationship’ between the relevant villages and the surrounding landscape, the same point could be made about historic

¹²⁷ Wind Prospect case, para 10.21.

¹²⁸ Wind Prospect case, para 10.18.

¹²⁹ Notwithstanding the recognition that these were the very qualities of the landscape that had been identified in the local LCA as being particularly sensitive to wind turbine development (para 10.28)

¹³⁰ See n. 97 above.

settlements anywhere. He noted that no changes would be made to the physical qualities of the landscape to affect this, such as soils, the terrain and sources of water.¹³¹ As in the case of landscape formation, therefore, the Inspector was keen to highlight issues related to the topography of landscape.

5.2.3 Local Residents and the Wider Community

Residential amenity was also highlighted by the Inspector as a main consideration in this case. Clearly the views of local residents provide a local perspective, but the focus on 'residential amenity' potentially necessitates an individualistic view. The evidence provided by local people focused on the 'visual impact' of the development on their personal properties and the surrounding area, once more perpetuating the focus on the aesthetic value of landscape formation.¹³² Similarly, wider community concerns relating to recreation and heritage matters were framed in this way. In particular, the evidence referred to the opposition of a world-renowned local artist, David Hockney, whose paintings of East Yorkshire landscapes are widely celebrated.¹³³ This is possibly a reflection of the longstanding and enduring

¹³¹ Wind Prospect case, para 10.32.

¹³² Wind Prospect case section 6. Private interests are not normally a material consideration in land use planning cases, as the system exists to protect the public interest. Nor is a 'right to a view' recognised in English law. However, 'visual amenity' is an important material consideration and where effects on the visual amenity of residential properties are very severe it can be thought harmful to the public interest to allow the development to proceed. There is no set test in law or policy with regard to the assessment of deprivation of outlook, but the public interest threshold is usually judged to be something like an 'overwhelming and oppressive impact'. This is usually referred to as the Lavender Test – with reference to the definition provided by the inspector in the North Devon (Langdon) Inquiry. See further discussion at para 10.86. Where this is in existence it carries significant weight. The Inspector acknowledged that the views from residential properties and villages would change, but that this would not have a significant impact on living conditions.

¹³³ Wind Prospect case para 6.17. These formed the basis of an exhibition at the Tate Modern in 2007. See further <http://www.tate.org.uk/about/press-office/press-releases/david-hockney-east-yorkshire-landscape> last accessed 24th November 2017.

relationship between art, landscape and public perceptions of the value of landscape formation.¹³⁴

5.2.4 Summary

The narrative that emerges in the Wind Prospect case, around the cultural heritage relevant to the local landscape, clearly emphasises ‘heritage assets’ of ‘national significance’. Nevertheless, the ‘place’ of some of these assets in the local landscape was also very significant. Although historical considerations were important, the aesthetic value of these assets was also a strong theme in this narrative. Landscape formation is considered separately and from a very local perspective, but also with an emphasis on its aesthetic value. ‘Prior institutional knowledge’, or law and policy designations, were important in constructing a narrative around the cultural heritage assets and their place in the local landscape, whilst the LCA was of particular note in the context of landscape formation. Nevertheless, all forms of ‘knowledge’ were relevant in the construction of this narrative.

5.3 The Next Generation Case – Natural Heritage and Landscape

The Next Generation case involved an application for planning permission for 4 wind turbines by Next Generation Ltd on land in Somerset, in the West of England. The site in question was situated in the Somerset Levels and Moors. This is an extensive

¹³⁴ See n. 46 above on the Romantic appreciation of landscape.

area of low lying land that is considered to provide a unique, flat landscape that in its natural form creates a landscape of rivers and wetlands.¹³⁵ Much of it has however, been artificially drained, irrigated and modified to allow for productive farming.¹³⁶ It is an area that was subject to significant flooding, in 2014; the appropriate response to which has caused much controversy.¹³⁷

A Core Strategy set out the strategic framework for decision-making and included objectives relating to the ‘conservation and enhancement of the natural assets and heritage of Sedgemoor’.¹³⁸ This appears to provide a more holistic perspective on the relevant matters than in the Wind Prospects case. However, within the document, the issues are further separated under the following headings: ‘natural resources’; ‘wildlife and habitats’; ‘the historic environment’; and, ‘landscape character’. Thus, in reality, there is greater fragmentation than in the Wind Prospects case.¹³⁹ The main considerations in the Next Generation case were landscape character, wildlife and public visual impact.¹⁴⁰

5.3.1 Natural Heritage

In the Next Generation case, the proposed wind development site was within 2km of a significant area of the Seven Estuary subject to designations under UK, EU, and even international law.¹⁴¹ Such sites are rarely directly affected by major

¹³⁵ What are the Somerset Levels? BBC News 7 February 2014.

¹³⁶ BBC news ibid.

¹³⁷ BBC news ibid.

¹³⁸ This forms part of Core Strategy as outlined at n. 97 above.

¹³⁹ This formed part of its theme on ‘Enjoying and Achieving’. Core Strategy n. 97 above, 23-24.

¹⁴⁰ Next Generation case para 4.

¹⁴¹ Next Generation case, para 26. This area of the Severn estuary was subject to protection under the RAMSAR Convention as a Special Protection Area/Special Area of Conservation under EU law under the EU Birds and Habitats Directives. The site was also part of the Bridgewater Bay Site of

development in light of their legal protection and the fact that there are strong planning policies against this.¹⁴² However, a key concern in this case was the impact of the proposed development on the flight paths and breeding habits of endangered bird species and bats protected under UK and EU law.¹⁴³ This was discussed at length, and with reference to evidence submitted pursuant to the requirements of EU law with respect to the Habitats Directive.¹⁴⁴ An environmental statement had also been produced pursuant to EU law on Environmental Impact Assessment which was also addressed in considering the potential impacts on voles and bats.¹⁴⁵ The emphasis on these protected species was reflected in the Core Strategy;¹⁴⁶ which also paid special attention to the issue of ‘Bats in the Landscape’ given the existence of an EU protected species – the horseshoe bat - and areas of relevant habitat.¹⁴⁷

It is notable, however, that the Core Strategy identified a number of local issues with reference to the Somerset and Sedgemoor Biodiversity Action Plans and non-statutory Nature Reserves.¹⁴⁸ In addition, the evidence base for the Core Strategy included a Green Infrastructure Strategy.¹⁴⁹ ‘Green Infrastructure’ is defined as ‘a strategically planned and delivered network comprising the broadest range of high

Special Scientific Interest designated under s28 Wildlife and Countryside Act 1981. On the law on protected species see n. 48 above

¹⁴² On the law on protected species see n. 48 above and on the NPPF see n.76 para 118.

¹⁴³ Next Generation case para 27. see n. 48 above

¹⁴⁴ Next Generation case para 27 – 34. A Habitats Regulation Assessment was carried out to assess the impacts on these species. The Habitats Regulations have been made pursuant to the EU Habitats Directive see n. 48 above.

¹⁴⁵ Next Generation case para 35-38.

¹⁴⁶ This highlighted the importance of the maintaining and enhancing biodiversity with specific reference to wildlife sites and species subject to international and national designation. This was noted by the Inspector in the Next Generation case, para 8.

¹⁴⁷ Core Strategy n.97 above 110. Relevant additional planning guidance also referred to Bats and Wind Turbines.

¹⁴⁸ Core Strategy *ibid.* 109.

¹⁴⁹ Sedgemoor Green Infrastructure Strategy (2011) <https://www.sedgemoor.gov.uk/1261> last accessed 8th December 2017.

quality green spaces and other environmental features'.¹⁵⁰ Thus, Green Infrastructure can provide a local focus on issues related to the protection of 'natural heritage'.

Despite the inclusion of more 'local' considerations on wildlife protection in the Core Strategy, there was no expression of concern for this by the Inspector, the local authority or local people.¹⁵¹ The value of wildlife in both the relevant law and Core Strategy was also clearly confined to a scientific assessment related to the protection of biodiversity. Yet, many of the endangered bird species referred to in this case might also be considered to provide an important connection to the cultural heritage of the Somerset Levels.¹⁵²

5.3.2 Landscape

In the Next Generation case, a national and local LCA were referred to. The national LCA identified the 'Somerset Levels and Moors', as 'a flat open landscape of wet pasture, arable and wetland divided by ditches, raised rivers/levees with main roads and causeways flanked by houses and dramatic and prominent hills'.¹⁵³ Meanwhile, a local LCA, also emphasised the distinctiveness of the 'flat' landscape.¹⁵⁴ In contrast to the Wind Prospect case, as well as referring to the topographical features

¹⁵⁰ Green Infrastructure Guidance (Natural England, 2009), 7.

¹⁵¹ Instead the Local Huntspill Windfarm Action Group focused on challenging the relevant evidence in the environmental statement on the protection of 'nationally significant' wildlife See further n. 161 below.

¹⁵² See further the Somerset Ornithological Society <http://somersetbirding.org.uk/news/category/bird-news> last accessed 24th November 2017.

¹⁵³ Next Generation case para 14.

¹⁵⁴ The Sedgemoor Landscape Assessment and Countryside Design Summary (referred to in the Next Generation case para 8). This noted that the development site was in an area characterised by "flat low-lying fields defined by ditches which generally have a sinuous alignment resulting in an irregular field pattern with boundaries marked by hedgerows and trees". Next Generation case, para 15.

of the landscape, the Inspector made note of its more ethereal qualities: ‘The Levels are described as retaining a sense of quiet, unspoilt, rural charm and forming an important component of a distinctive Somerset Landscape.’¹⁵⁵

However, as in the Wind Prospect case, the Inspector’s main focus in identifying the value of the local landscape was the aesthetic qualities of the topographical features of the landscape identified in the local LCA. Thus, in assessing the impact of the proposed development he concluded that, although the nature of the view would be altered, ‘the very significant and very broad scale of the sky and the Levels landscape would allow these features to remain the dominant visual and physical characteristics of this area.’¹⁵⁶ At the same time, the Inspector drew attention to the lack of a local landscape designation. The lack of such a designation might appear to indicate a lack of value attached to the landscape (although this was not made explicit by the Inspector and nor is it supported in policy).¹⁵⁷

Of particular interest, was also the attention given to Brent Knoll. This was highlighted as a ‘significant natural feature’.¹⁵⁸ This is a small hill in an otherwise flat landscape and is steeped in history, myth and legend with an Iron Age fort on its summit.¹⁵⁹ Brent Knoll might, therefore, be considered to be particularly important in bringing together the natural and cultural value of a ‘heritage asset’ with landscape

¹⁵⁵ Next Generation case, para 16.

¹⁵⁶ Next Generation case, para 22. It is notable that the landscape impact assessment carried out as part of the EIA process featured very little in this decision. This judgment is specifically noted to have been made with reference to the Inspector’s experience as well as his consideration of the photomontages provided.

¹⁵⁷ Next Generation case, para 22.

¹⁵⁸ Next Generation case para 23.

¹⁵⁹ See further <http://www.visitsomerset.co.uk/dbimngs/Brent%20Knoll.pdf> last accessed 24th November 2017.

formation. However, the discussion in this case centred on the ‘setting’ of this feature in the landscape and the effect on the views from it.¹⁶⁰

5.3.3 Local Residents and the Wider Community

Local people in the Next Generation case had formed a Huntspill Windfarm Action Group which focused on challenging the relevant scientific evidence on the protection of ‘nationally significant’ wildlife and issues related to ‘Outlook’.¹⁶¹ ‘Public visual impact’ also formed one of the main considerations in this case and local resident’s concerns regarding visual amenity.¹⁶² It is also notable that the Inspector recognised more generally that local people had expressed ‘clear affection and passion for the landscape’.¹⁶³ However, he was not more explicit about the source of that affection.

5.3.4 Summary

The narrative that emerges in the Next Generation case around natural heritage assets is focused on the protection of ‘nationally significant’ wildlife, to which value is attributed exclusively from a scientific perspective. This narrative emerged despite some attention to more local concerns in the Core Strategy. Scientific evidence on the protection of wildlife also formed the focus for the local community with respect to natural heritage, rather than its connection to the landscape or more cultural concerns around the value of wildlife. ‘Prior institutional knowledge’ was once more

¹⁶⁰ Next Generation case para 23.

¹⁶¹ The evidence related to wildlife protection was discussed by the Inspector in paras 29, 31, and 33-34 and on Outlook at paras 52-55.

¹⁶² These views were considered under sections on ‘Outlook’ at paras 52-55 and ‘Property Values’ at para 61.

¹⁶³ Next Generation case, para 22.

significant in underlining the narrative around natural heritage assets and there was very little space to consider other forms of 'knowledge'. Landscape was treated separately and attributed value from an aesthetic perspective as in the Wind Prospect case. Also of note, was the significance attached to a 'natural feature' of historic and cultural value, but its place in the landscape was nevertheless judged from an aesthetic perspective.

6. Discussion

The discussion that follows is not intended to draw firm conclusions from the Wind Prospects and Next Generation cases, but to use them to reflect on the challenges that might arise in attempting to adopt local, holistic and broad interpretations of natural and cultural heritage values in the local landscape.

First, it is interesting to note from these case studies the problems that were encountered in taking a 'holistic approach' to issues relevant to the natural and cultural heritage of landscape. This fragmentation is necessitated by the need for rationality in decision-making, but such an approach is also adopted in legal frameworks that support decision-making, with a few notable exceptions. Interesting questions also arise around the role of the NPPF and local planning policies in this respect.

Secondly, the case studies highlight the difficulties that might arise in adopting a local perspective on the value of natural and cultural heritage relevant to landscape;

where law and policy frameworks focus only on concerns of 'national significance'. This includes understanding how heritage assets of 'national significance' might be valued locally as well as those that are only of importance to local communities. It was interesting to note how the narrative in this regard is 'framed' by law and policy frameworks and the opportunities to shape that narrative that are presented by the inclusion of other forms of 'knowledge', such as the evidence of local people, the local council and statutory agencies. On landscape formation, the use of local policy designations and LCA in eliciting approaches to the protection of these values is also of particular interest.

Thirdly, the case studies help us to reflect on the way in which we value natural and cultural heritage assets and their relationship to the landscape, as well as the formation of landscape itself. There are a number of different perspectives that might be taken, such as historical, cultural, scientific and aesthetic perspectives, but legal designations generally adopt a narrow view. The role of the NPPF and local planning policies in helping decision-makers to think more broadly about these values is interesting, as well as the contribution of other forms of 'knowledge'.

7. Conclusions

Local landscapes have value in reflecting natural and cultural heritage that may be derived from their physical formation, but also the inextricable links to 'heritage' assets and their place in the landscape. These values are given substance in law and legal decision-making, but the complexities of this task clearly present a significant challenge to law. This study has sought to outline the conceptual

framework for this debate and then use two case studies to provide an opportunity to consider the challenges that may be encountered in creating processes that account for these values. In conclusion, the following provides some thoughts on the ways in which a research agenda might be established to provide further thought to these issues.

First, it is necessary to consider the impact of legal designations, planning policy and the necessity of rationality impact on the ability of decision-makers to adopt holistic perspectives on the heritage values of local landscapes. For lawyers, the construction of 'material considerations' in planning decisions within public law parameters will be of particular interest in this respect.

Secondly, some attention should be given to the means of valuing the natural and cultural heritage relevant to landscape from national and local perspectives, and the relationship between the two. The systems of designation in English law are focused on matters of 'national significance', but these assets and landscapes may also hold significant value for local people. There is little opportunity in law or policy to identify specific 'heritage' assets or 'landscapes' for designation at the local level. Formal designation may not, however, provide the best means of adopting a local perspective. Certainly, in land use planning decisions there are other forms of knowledge, such as the LDP, LCA and evidence from councils and communities that may prove more appropriate in helping adopt a local perspective.

Thirdly, is the need to consider the way in which we attribute value to the natural and cultural heritage relevant to the local landscape in substantive terms, i.e., with reference to scientific, historical or aesthetic concerns. In particular, the notion of

natural heritage requires further attention.¹⁶⁴ Should this encompass cultural as well as scientific perspectives? What assets, sites and aspects of land formation should be considered relevant? What about the enduring connections between landscape, natural and cultural heritage and natural beauty? Natural beauty lies at the heart not just of national designation, but conceptions of the value of landscapes everywhere. It may be unpopular in academic and even government circles, but is not necessarily diminished in the public view.¹⁶⁵

Of particular interest, and relevance to all three concerns, is the use of local LCA in the land use planning process. This is a form of ‘prior institutional knowledge’ that is nevertheless informed by experts and the public, or at least this is encouraged by the guidance.¹⁶⁶ It has the potential to foster holistic and local perspectives as well as a broad interpretation of the natural and cultural heritage values relevant to the local landscape. It may also be considered as an interesting example of a ‘collaborative governance’ approach to the development of policy on the protection of the local landscape.¹⁶⁷ From a legal perspective, it is particularly interesting that LCA has

¹⁶⁴ Although it is an unfamiliar term in English law natural heritage has provided the framework for the operation of Scotland’s environmental protection agency, Scottish Natural Heritage (SNH), since 1999. In this legislation natural heritage is defined with reference to flora and fauna, geological and physiographical features, and natural beauty and amenity. See further Natural Heritage (Scotland) Act 1991 ss1 and 3. This is a broad definition that undoubtedly makes connections between scientific and aesthetic interpretations of natural heritage, but still fails to identify this with cultural perspectives. It has, indeed, been noted by SNH, that the natural heritage of Scotland has cultural and historic dimensions which must also be considered because there not much that is pristine about the natural heritage in Scotland. See further Sustainable Development and the Natural Heritage: The SNH Approach (Scottish Natural Heritage, 1992).

¹⁶⁵ The Welsh Government, for example, is currently considering new legislation to refresh the purposes of the designated landscapes which currently exist under the same legislative provisions as those that apply in England. See further *Future Landscapes Delivering for Wales: the Review of Areas of Outstanding Natural Beauty and National Parks* (Welsh Government, 2017).

¹⁶⁶ See n. 67-70 above.

¹⁶⁷ Collaborative governance can be described as “[A] governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus-oriented and deliberative, and that aims to make or implement public policy or manage public programs or assets.” Ansell C and Gash A ‘Collaborative Governance in Theory and Practice’ (2008) 18(4) *Journal of Public Administration Research and Theory* 543, 544.

gained significant traction in land use decision-making despite lacking a statutory basis, and this might also be an avenue for further exploration.

Perhaps most importantly, this investigation has highlighted the need for lawyers to be more involved in academic debate and practical discussions around the appropriate responses to the protection of local landscape values. Law is often perceived to be a blunt instrument unsuited to tackling complex challenges; yet it is increasingly being called upon to address such societal issues.¹⁶⁸ Lawyers have considerable skill in developing institutional architectures that will undoubtedly prove particularly useful in this context.¹⁶⁹

¹⁶⁸ See the discussion in the context of ecosystems collaborative governance in Karkkainen B 'Collaborative Ecosystems Governance: Scale, Complexity and Dynamism' (2002-2003) 21(2) *Virginia Environmental Law Journal* 189-244, 235 onward.

¹⁶⁹ See further the discussion in relation to the development of legal frameworks for sustainable natural resource management in Jenkins V 'Sustainable Natural Resource Management: Lessons from Wales' *Journal of Environmental Law* forthcoming 2018.