



Appeal Decision

Hearing held on 5 and 6 February 2014

Site visits made on 6 and 13 February 2014

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 14 July 2014

Appeal Ref: APP/Y0435/A/13/2200186

Lodge Farm, Wolverton Road, Castlethorpe MK19 7ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Phillip Sawbridge of JAJ Sawbridge & Sons against Milton Keynes Council.
 - The application Ref.13/00195/FUL is dated 31 January 2013.
 - The development proposed is the installation, operation, and decommissioning of a medium scale 3 bladed wind turbine with a maximum tip height of 99.5m including access, substation and underground cabling.
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Preliminary Matters

1. The hearing commenced on 5 February 2014 and, after a very full examination of the issues, was adjourned to the site, the following day. Discussions about various matters raised the previous day, and by the site visit itself, were completed on 6 February 2014 but despite visiting the appeal site, and the dwellings most affected, the site visit was not, largely due to the inclement weather which severely restricted visibility. As agreed, I returned to the area when I took in all the points set out by the parties, and the heritage assets, designated and non-designated identified, on an unaccompanied basis. My second visit took place on 13 February 2014.
2. After the hearing closed, I reverted to the main parties to elicit comments on a suggested micro-siting condition which I have noted. I also sought views on the Court of Appeal judgement in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137. I have taken the judgment of the Court of Appeal, and the comments received from the parties about it, into consideration in dealing with the appeal.
3. On 6 March 2014, PPG¹ was published by the Department of Communities and Local Government. I have taken into account the content of the guidance but in light of the facts of this case, it does not alter my overall conclusions.
4. The hearing was very well attended and a lot of people expressed their views about the various issues raised by the proposal. At times during the hearing it was difficult to record the names of all contributors to the discussion but I have attempted to do so faithfully in the appearances section of my decision. I can but apologise to anyone that I might have missed.

¹ Planning Practice Guidance

5. In the lead up to the Hearing, Castlethorpe Parish Council requested a written ruling as to whether the environmental information submitted with the application is sufficient to meet the requirements of the Environmental Impact Assessment Regulations. However, it is clear from their screening opinion that the Council did not consider that the proposal constitutes EIA development and as such, an ES² was not required.
6. That conclusion was subsequently confirmed by the Planning Inspectorate in a further screening opinion. Having analysed the proposal, I have no good reason to disagree with those conclusions and have dealt with the appeal accordingly.

Decision

7. The appeal is dismissed and planning permission for the installation, operation, and decommissioning of a medium scale 3 bladed wind turbine with a maximum tip height of 99.5m including access, substation and underground cabling at Lodge Farm, Wolverton Road, Castlethorpe MK19 7ES is refused.

Main Issues

8. Having considered their position following the appeal against non-determination, the Council confirmed that had it been empowered to do so, it would have granted planning permission for the proposal, subject to conditions. As such, the Council offered no resistance at the Hearing, or subsequently. Nevertheless, two local groups who sought and attained status as Rule 6 parties raised a wide range of issues that were fully explored, at the Hearing, and in correspondence following its conclusion.
9. Having considered very carefully that wide range of issues, including the impact on the landscape, and biodiversity, birds and bats in particular, it is my conclusion that the appeal turns on the effect of the proposal on (1) the living conditions of local residents, through visual impact especially; and (2) the setting and thereby the significance of a range of designated and non-designated heritage assets. That analysis needs to take account of the benefits of the proposal and it is those that I turn to first.

Reasons

Benefits

10. Government policy on renewable energy is expressed, most succinctly, in the Framework³. Paragraph 93 explains that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability, and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development.
11. Paragraph 98 sets out that applicants for energy development are not required to demonstrate the overall need for renewable or low carbon energy. Moreover, it must be recognised that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. Most importantly, a proposal should be approved⁴ if its impacts are, or can be made, acceptable.

² Environmental Statement

³ The National Planning Policy Framework

⁴ Unless, of course, material considerations indicate otherwise

12. In a broadly similar vein, the PPG⁵ explains that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change, and stimulate investment in new jobs and businesses. It continues, mirroring the approach set out in paragraph 98 of the Framework: Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.
13. The wind turbine proposed would have a total height to tip of no more than 99.5 metres with a maximum hub height of 73 metres. It would have an installed generating capacity between 500 and 800 kW. According to the figures put forward on behalf of the appellant, Lodge Farm Business Centre uses about 300,000 kWh of electricity per year, at present. With the expansion proposed, for which planning permission was granted in 2001⁶, the business centre would use up to 700,000 kWh per year.
14. It is estimated that the wind turbine proposed could produce 1,400,000 kWh of renewable energy per year making the expanded business centre self-sufficient, with the excess exported into the National Grid, and/or used to charge electric vehicles.
15. Some contributors questioned why such a large wind turbine was needed if it would produce more than the business centre required. However, while a larger wind turbine would have greater environmental consequences, I see no reason why, viewed in isolation, producing renewable energy in excess of that required by the business centre should be seen as a disadvantage. Export of any excess produced to the grid would help meet wider energy objectives. In the light of paragraph 93 of the Framework, and the PPG, the renewable energy produced by the wind turbine, whether used by the business centre, or more widely through the National Grid, attracts significant weight in favour of the proposal.
16. On top of that, the wind turbine would produce financial savings and/or an income stream that would assist in securing the ongoing viability of a rural enterprise. Paragraph 28 of the Framework strongly supports the development and diversification of agricultural and other land-based rural businesses in order to support a prosperous rural economy. This must be considered an added benefit of the proposal.

Living Conditions

17. LP⁷ Policy D1 resists development proposals where there would be unacceptable visual intrusion, or unacceptable pollution from noise or other emissions. LP Policy D5 is broadly supportive of renewable energy projects unless there would be significant harm to the amenity of residential areas.
18. I note too that LP Policy D5 says that wind turbines should be sited at least 350 metres from dwellings but I place little weight on that given the more up-to-date approach on separation distances espoused in the PPG.
19. One of the core principles of the Framework is to always seek a good standard of amenity for all existing occupants of land and buildings.

⁵ Planning Practice Guidance

⁶ 01/01057/FUL (partly implemented and therefore extant)

⁷ The Milton Keynes Local Plan 2001-2011 adopted December 2005

20. The evidence shows that the proposed wind turbine could operate well within the parameters set out in ETSU-R-97⁸. Notwithstanding concerns expressed about amplitude modulation, it is clear that subject to appropriately worded conditions, noise from the wind turbine would have no significant impact on the living conditions of nearby occupiers. Given the analysis put forward on behalf of the appellant, I have reached a similar conclusion in terms of shadow flicker.
21. My attention was drawn to a series of dwellings around the site of the proposed wind turbine where, it is said, the visual impact of the proposal would be unacceptable. I visited a number of those dwellings, and the vicinity of others, in the course of my site visits. Obviously, the wind turbine proposed would be visible from many dwellings that surround the appeal site. However, it is incorrect to conflate the ability of a residential occupier to see a wind turbine from their dwelling, or garden, with a harmful visual impact. It is a long-established principle of the planning system that there is no right to a view.
22. On my analysis, there are but three dwellings where the wind turbine would be sufficiently close to raise issues in terms of visual impact. The first is the farmhouse at Lodge Farm. The occupiers thereof have a financial interest in the proposal and it might be argued that, as a consequence, their tolerance threshold would be different - that is the way ETSU-R-97 works in terms of the potential impacts of noise. Having said that, there is some force in the point put forward on behalf of the Parish Council: that it would not be in the public interest to affect living conditions at the farmhouse to the point where it would become an unattractive, but not necessarily uninhabitable place to live.
23. Nevertheless, while the wind turbine would be only about 250 metres to the north-west, the dwelling is mainly oriented towards the east. The wind turbine proposed would not figure in any significant view from the dwelling or garden and as such, despite its proximity, its visual impact would fall well within reasonable bounds. The utility of the farmhouse as a place to live would be largely unaffected by the presence of the wind turbine.
24. The situation at Nos.1 and 2, Lodge Farm Cottages would be very different. The wind turbine would be located about 486 metres south (roughly) of the rear of the dwellings. Their frontage is to the north, away from the site of the proposal, but the rear of the dwellings, and their private gardens, would face almost directly towards the wind turbine. The proposal is promulgated on the basis that it could attain a height of up to 99.5 metres. At the upper end of that range, despite the presence of some existing screening, in my judgement, the wind turbine would appear as a dominant and oppressive presence in what are main views from the gardens, in particular, to the south. That overbearing presence would have a significant detrimental impact on the living conditions of the occupiers of these dwellings.
25. The appellant has submitted a completed UU⁹, designed to allow the householders to augment planting and provide further screening. I accept that this need not involve planting a tall hedge to blank out views of the wind turbine. However, I am not at all convinced that the residents affected would wish to insert any more planting on their boundaries given the southern aspect. I reach that conclusion because planting of any height that would be useful in screening terms, would lead to a significant increase in overshadowing.

⁸ ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms*

⁹ Unilateral Undertaking

26. On that overall basis, I conclude that the proposal would fail to accord with LP Policies D1 and D5, and the Framework, in this regard. The temporary and reversible nature of the proposal would do little to alleviate the harmful impact given that 20 years is a significant proportion of the average human lifespan.

Heritage Assets

27. A plethora of heritage assets, some designated, in various forms, and some non-designated, have been brought to my attention.
28. Section 66(1) of the Act¹⁰ sets out that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision-maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Court of Appeal in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137 set out, put simply, that special regard to the desirability of preservation means that avoiding harm to a listed building, or its setting, is a factor that is not only one of considerable importance, but also one that attracts considerable weight in any balancing exercise.
29. LP Policy HE5 states that planning permission will be refused for any form of development that would adversely affect the setting of a listed building or group of listed buildings. LP Policy HE1 says that planning permission will be refused for development proposals that would have an adverse impact upon a SAM¹¹, or its setting. LP HE6 requires development proposals that affect the setting of a conservation area to preserve or enhance the character or appearance of the area. It is important to note, however, that the setting of a SAM is not protected by Statute and neither do I detect anything in Section 72(1) of the Act to suggest that the setting of a conservation area is to be preserved or enhanced in the exercise of planning functions.
30. The setting of a designated heritage asset is defined in the Framework as the surroundings in which a heritage asset is experienced. EH¹² say that setting embraces all of the surroundings from which the heritage asset can be experienced, or that can be experienced from, or with, the asset¹³.
31. There would be inter-visibility between the proposed wind turbine and some of the listed buildings, SAMs and conservation areas referred to, and places where they would be seen in conjunction. On that basis, the proposed wind turbine would have something of an impact on the settings of some of the designated heritage assets referred to.
32. However, many of the heritage assets that have been brought to my attention derive, at most, a vanishingly small degree of significance from their wider landscape settings. As such, the wind turbine proposed would have no materially harmful impact on their settings, or thereby their significance. I include in that many of the dwellings in settlements that are listed buildings. There are other heritage assets that are far too distant from the proposed wind turbine for their settings, and thereby their significance, to be affected to any extent worthy of detailed consideration.

¹⁰ The Planning (Listed Buildings and Conservation Areas) Act 1990

¹¹ Scheduled Ancient Monument

¹² English Heritage

¹³ Paragraph 2.2 of EH publication 'The Setting of Heritage Assets'

33. Nevertheless, there are heritage assets that have been referred to where there would be an impact on setting, and, as a consequence, significance, as a result of the proposal. On my analysis, these are the Church of St Simon and St Jude, Castlethorpe, a Grade I listed building, the adjoining remains of Castlethorpe Castle, a SAM, and the encompassing Castlethorpe Conservation Area, to the north-west of the site. To the east of the proposed wind turbine is a water tower associated with the railway. This is a non-designated heritage asset.
34. To the south of the site are the Motte and Bailey Castle, deserted village and monastic grange at Old Wolverton and the Wolverton Iron Trunk Aqueduct that carries the Grand Union Canal. These are SAMs. To the north of the appeal site, is the Church of St James the Great in Hanslope, a Grade I listed building.
35. Dealing with these in turn, the Church of St Simon and St Jude in Castlethorpe, while prominent close-up, because of its elevated site, does not possess a wider landmark quality. The same is true of the remains of Castlethorpe Castle. As such, while the wind turbine may well be visible in conjunction with, or from, both, the degree of separation would be such that the harmful effect on the setting of either would be marginal.
36. There would be views from the Castlethorpe Conservation Area of the wind turbine proposed and of the conservation area with the wind turbine in the foreground and perhaps, background. However, it is clear that the historic core of the village grew up around the church and the castle and in those parts of the conservation area, there would be at most, the odd glimpse of the wind turbine, some distance away. On that basis, while there would be something of a harmful impact on the setting of the conservation area as a result of the proposal, it would be very small.
37. The Water Tower alongside the railway is much closer to the site of the proposed wind turbine. Being relatively tall, and having a distinctive shape, it does possess a landmark quality that the wind turbine would compete with. However, the most important facet of the setting of the water tower is its relationship with the railway. The competing presence of the wind turbine would not change that and so, the harmful impact of the juxtaposition of the two would be limited.
38. I take a similar view in relation to the Wolverton Iron Trunk Aqueduct. The wind turbine would be visible from it, despite the extensive screening effect of trees and shrubs, but it is a functional structure and the most important element of its setting is the manner in which it carries the canal across the river below. The presence of the wind turbine would distract, to a degree, from an appreciation of that, but it would be so distant that the harmful impact on the setting of the aqueduct would be minimal.
39. Some views across the Motte and Bailey Castle, deserted village and monastic grange at Old Wolverton would take in the wind turbine in the middle distance. The presence of the wind turbine would act as a distraction that would take something away from an appreciation of the SAM. However, the wind turbine would not be so close that it would make appreciation difficult or detract from the experience of the place to any significant degree.
40. The Church of St James the Great in Hanslope has a relatively tall spire which gives the church a distinct landmark quality viewed close-up or further afield. The spire is a very prominent feature in the landscape.

41. In some views where the spire currently features, the wind turbine would act as a modern, moving competitor for attention. For example, in views across the landscape towards the church from Old Wolverton, or the aqueduct, the presence of the wind turbine in the foreground would supplant the existing supremacy of the church spire as a feature in the view. However, there are many views of the spire where the wind turbine would not feature at all so its landmark quality would not be extinguished to a significant degree. On that basis, the proposal would only have a moderately harmful impact on the setting of the church.
42. On that overall basis, it is clear that the proposal would fail to accord with LP Policies HE1, HE5 and HE6. However, the central question, for the purposes of the Framework, is the extent to which those harmful impact on the settings of the heritage assets identified, bears on their significance. Significance is defined in the Framework as the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.
43. The PPG says that depending on their scale, design, and prominence, a wind turbine within the setting of a heritage asset may cause, in the language of the Framework, substantial harm to the significance of the asset. However, in *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin), it was accepted that substantial harm is an impact which would have such a serious effect on the significance of an asset that its significance was either vitiated altogether, or very much reduced.
44. Obviously, the SAMs affected derive the predominant part of their significance from their archaeological and historic interest. Similarly, the main element of the significance of the listed buildings referred to, and the Water Tower, lies in their intrinsic fabric and design, which covers all four elements of significance. As I have referred to above, setting contributes to the significance of all these heritage assets, to varying degrees, but only a relatively small part. The conservation area derives most of its significance from the buildings and spaces within it. It is also correct to note that the impact on setting, and thereby significance, of all would be both temporary¹⁴ and reversible.
45. In that overall context, I conclude that the harm caused to the significance of the SAMs, the listed buildings, and the conservation area would be less than substantial. Paragraph 134 of the Framework says that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Obviously, in terms of the listed buildings affected by the proposal, that balancing exercise needs to take account of the statutory provisions of the Act, and the Court of Appeal's elucidation of those provisions. Paragraph 135 of the Framework says that in weighing applications that affect directly or indirectly non-designated heritage assets (in this case the Water Tower), a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
46. I return to these considerations in my final conclusions below.

¹⁴ The wind turbine is intended to be in place for 20 years

Other Matters

47. There was some discussion at the Hearing about the potential impact of the proposal on birds and bats. Having considered carefully the submissions put forward, I agree with the appellant that there is unlikely to be any significant impact as a result of the proposal. I see no divergence from LP Policies NE1 or NE2 that seek to protect Nature Conservation Sites and protected species, or the Framework in this regard.
48. In terms of the landscape impact, bearing in mind other man-made features in the landscape nearby, like the railway, and the canal, I accord with the analysis of the appellants that there would be no significantly harmful landscape impact as a result of the proposal and note that what impact there would be would be both temporary and reversible. I see no divergence from LP Policy NE4 that requires proposals to respect the particular character of the surrounding landscape, or the general approach of the Framework in this regard, therefore.
49. Points too were made about the potential impact of the wind turbine on tourism. I can well appreciate that the area is attractive and likely to draw visitors but there is no good evidence that the proposal would have any depressive impact on numbers visiting the area.
50. Much time was spent at the Hearing discussing the relationship of the proposed wind turbine with public footpaths. The Council's SPD¹⁵ talks of maintaining a separation distance of fall-over distance (that is the height of the wind turbine to blade tip) plus 10-25%. Both the Parish Council and Care4Castlethorpe expressed strong doubts about whether this can be complied with and, in their post-event correspondence, the Council suggested that fall-over distance plus 25% should be preferred.
51. However, it is important to keep this matter in perspective. The likelihood of a properly constructed wind turbine falling over seems to me very small indeed and the degree of risk to users of public footpaths correspondingly tiny. In that context, and bearing in mind the approach of the PPG to the safe separation distance from a building, fall-over distance plus 10% seems to me ample. The appellant is willing to accept a Grampian condition to deal with the exact position of the wind turbine relative to the footpaths and from what I saw there is a reasonable prospect that a separation distance of fall-over distance plus 10%, could be achieved without the site of the wind turbine being brought much closer to Nos.1 and 2, Lodge Farm Cottages. The issue of public safety is not one that weighs against the proposal, therefore.

Final Conclusion

52. The benefits the proposal would bring forward in terms of helping to ensure a secure energy supply, and reducing greenhouse gas emissions to slow down climate change, are matters of significant weight. On top of that, the proposal would help sustain a rural enterprise.
53. These benefits could be brought forward without any significant harm to the landscape, biodiversity, tourism, or public safety. However, at the upper end of the height promulgated, the visual impact of the wind turbine would have a significant detrimental effect on the living conditions of occupiers of Nos.1 and 2, Lodge Farm Cottages.

¹⁵ Wind Turbines Supplementary Planning Document and Emerging Policy 2013

54. Moreover, it would have a harmful impact, to varying degrees, on the settings, and thereby the significance of the Church of St Simon and St Jude, Castlethorpe and the Church of St James the Great in Hanslope, both Grade I listed buildings, the remains of Castlethorpe Castle, the Motte and Bailey Castle, deserted village and monastic grange at Old Wolverton, and the Wolverton Iron Trunk Aqueduct, all SAMs, and the water tower associated with the railway, a non-designated heritage asset.
55. The approach set out in the Framework, put simply is that these temporary and reversible, harmful impacts on significance should be balanced against the public benefits of the proposal. However, on the basis of the recent judgement of the Court of Appeal, the harm that would be caused to the settings of the listed buildings is a matter to which considerable importance and weight should be attached.
56. The PPG makes it clear that the need for renewable energy or low carbon does not automatically override environmental protections. In balancing these conflicting considerations, and attaching considerable importance and weight to the harm that would be caused to the setting of the listed buildings affected, in my judgement, the benefits of the proposal are insufficient to outweigh the harmful impacts on living conditions and on the heritage assets affected. On that basis, in the parlance of paragraph 98 of the Framework, the proposal is not, and cannot be made, acceptable.
57. For the reasons given above I conclude that the appeal should be dismissed.

Paul Griffiths

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr D Hardy LLB(Hons) BCL(Hons) Oxon	Eversheds
Mr S Rice BSc(Hons) MRICS	S B Rice Consulting Ltd
Mr M Purdom BA(Hons) PG Dip LA CMLI	Influence-cla Ltd
Mr E Evenden BSc(Hons) MRIA	PD Acoustics Ltd
Dr P Shepherd BSc(Hons) PhD MCIEEM	BSG Ecology
Mr P Sawbridge	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Sakyi BA(Hons) PDUP	Senior Planning Officer (Appeals)
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FOR CARE4CASTLETHORPE:

Mr L Dunwoodie	Local Resident
Mr D Barker	Local Resident

FOR CASTLETHORPE PARISH COUNCIL:

Mr J Croucher MTP MRTPI	DLP Consultants Ltd
Dr D Simpson BSc(Hons) PhD (Bris) MCIEEM	Aspect Ecology
Councillor P Ayles	
Councillor A Geary	

INTERESTED PERSONS:

Bryan Crampton	Local Resident
Brian Moorhead	Local Resident
Janet Brady	Local Resident
John Price	Local Resident
Dan Coetzee	Local Resident
Stewart Tate	Local Resident
Victoria Harvey	Resident of Leighton Buzzard
Mary Crampton	Local Resident
Samantha King	Local Resident
Steven Bradbury	Local Resident
Pam Williams	Local Resident
John & Eileen Price	Local Residents
Russell Forgham	Local Resident
Jeannette Green	Local Resident
Iris Bentley	Local Resident
Christina Hart	Local Resident
Steven Patrick	Local Resident
Gerard & Susan Smith	Local Residents
Mary Stacey	Local Resident
Jeremy Elvin	Local Resident

Richard Sawbridge	Local Resident ¹⁶
Colin King	Local Resident ¹⁷
Neil Carter	Local Resident ¹⁸
Sharon Oughton	Local Resident ¹⁹
Jan Taylor	Local Resident ²⁰

DOCUMENTS

- 1 Council's Letters of Notification
- 2 Note on Amplitude Modulation
- 3 Wind Turbines Supplementary Planning Document and Emerging Policy 2013
- 4 Unilateral Undertaking dated 5 February 2014
- 5 Site Visit Itinerary
- 6 Bundle of post-Hearing documentation from the Council including relevant policies and entries in the Statutory List
- 7 Bundle of post-Hearing correspondence about micro-siting condition
- 8 Bundle of post-Hearing correspondence about the Court of Appeal judgement in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137

PLANS

- A 0000-01: Proposed Site Plan
- B 0000-02: Existing Site Plan
- C 40.00.275-0: Wind Turbine Plans and Elevations
- D SBRC-LFWF-SP01: Site Access Details
- E Sub/2013: Fortress Wind Turbine Electrical Equipment Housing
- F Unnumbered: Proposed Construction Compound

¹⁶ Accompanied Site Visit Only

¹⁷ Accompanied Site Visit Only

¹⁸ Accompanied Site Visit Only

¹⁹ Accompanied Site Visit Only

²⁰ Accompanied Site Visit Only