

# Town and Country Planning Act 1990 - Section 77 Call in Denbighshire County Council Proposed Windfarm at Tir Mostyn/Foel Goch, Nantglyn near Denbigh by Windjen Power Ltd

File ref: App/R6830/X/01/514033

## Procedural Matters

### Contents

### The Case for the Applicants - Windjen

1. A pre-inquiry meeting was held in Denbigh on 2/08/01. At that meeting I identified the main issues as firstly the impact of the proposal on the visual character of the area; to take into account the effect locally, the effect on more distant views, and to consider any cumulative effect with other turbines existing and proposed. Secondly the effect on birds, particularly black grouse, bearing in mind the adjacent SSSI and its flora and fauna.
2. Other issues would cover the wide range of normal windfarm issues including noise effects on local properties, noise effects on the locality generally, access/traffic particularly during the construction period, use of rights of way for walkers, general public safety matters, together with any effect on archaeological remains. The nature and routing of any power lines to connect the site to the nearest appropriate substation whilst not formally part of the application would be an inevitable consequence of the proposal and should be addressed.
3. The inquiry opened at the Town Hall in Denbigh on 4/12/01 and continued on 5, 6, 7, 11, 12, 13 & 18/12/01. Welsh translation facilities were made available and were used by participants on the opening day and during the evening session on the 13/12/01.

4. Denbighshire County Council supported the proposal and two Councillors gave evidence on the opening day. The Council took no further part in the cross-examination of witnesses during the inquiry. However they provided a programme officer, Mr W Price, and he and Mr I Weaver from the Planning Department were present throughout the inquiry. They were most helpful both to myself and all the inquiry participants. Mr A O Phillips, the Chief Planning Officer joined Mr Weaver on the afternoon of 13/12/01 for the discussion on conditions and planning agreements. The applicants presented evidence in support of the proposal. The Campaign for the Protection of Rural Wales (CPRW) were opposed to the proposal. They had assembled a coalition of bodies and individuals who were all opposed to the proposal. The list of appearances gives details of those who gave evidence at the inquiry. This was most helpful in saving inquiry time by avoiding unnecessary repetition of similar objections. I shall refer to this coalition as CPRW throughout this report but it should be born in mind that the collective case covers the range of interests represented in the coalition. The Countryside Council for Wales (CCW) were opposed to the proposal. Some of their points of view were similar to those of CPRW but the two advocates generally avoided repetition in cross-examination of other witnesses. Again this was helpful in saving inquiry time. Friends of the Earth Cymru (FOE) gave evidence in support of the proposal. In addition a number of individuals gave evidence at the inquiry, some for and some against the proposal.
5. Mr J S K Mainwaring wished to raise a legal point which I allowed him to do after I had heard the Council's evidence on the first day. I comment on this separately below. In addition he wished to participate in the cross-examination of witnesses. I was unclear as to whether he was supporting or opposing this proposal. However he expressed the wish to put questions to the applicant's witnesses and I advised him that if he proceeded on that basis I would not permit him to put questions to witnesses opposing the proposal. It became clear that he wished to debate the whole issue of wind energy rather than restrict questions to this particular proposal. In the event Mr Mainwaring decided not to give verbal evidence but restricted his evidence to a written submission. At the close of the inquiry Mr Campbell on behalf of CPRW wished me to record his objections to Mr Mainwaring's conduct.
6. In addition to the evidence given by witnesses during the inquiry I have taken into account the written submissions made to the Planning Inspectorate and directly to the Inquiry. I have also had regard to the written representations made to the Council before the application was called-in.

7. Between the date of the pre-inquiry meeting and the inquiry, negotiations had been continuing between the applicants and CCW and others concerning mitigation measures to accommodate the needs of the black grouse. The intention was to prepare a section 106 Planning Obligation to cover these matters. A draft agreement was reached between the parties prior to the close of the inquiry (Doc 16). On the basis of this agreement detailed evidence concerning black grouse was not given by Dr Percival on behalf of the applicants, and Dr Osley and Sian Whitehead on behalf of CCW. The parties were confident that the final signed agreement would be available by the end of February before my report was submitted. I shall proceed on that basis but I comment at the appropriate stage in the report of what might be done if the agreement is not signed by the date of the consideration of my report by the National Assembly.
8. Mr Kelly was taken ill just before the inquiry and was unable to present his proof of evidence on behalf of CCW. Mr Locock confirmed his agreement with the contents of Mr Kelly's evidence which was formally submitted by Mr Locock. CPRW did not call H Sutcliffe, J Perry, E Pomfret and A Lloyd Jones to give their evidence. Those proofs of evidence were submitted to the inquiry as written representations. Mr Skuse produced a supplementary proof to cover the views of the Joint Advisory Committee of the Clwydian Range AONB which would have been covered by H Sutcliffe.
9. No expert witness was called to give detailed evidence on predicted noise levels. The National Assembly wrote to the applicants on 9/05/01 requesting further information to that included in the environmental statement (ES). That was included in a letter from Hayes McKenzie to Windjen dated 7/6/01 and forwarded to the Planning Inspectorate on 24/07/01. None of the major parties raised detailed noise objections. I shall comment on the aspect of general noise impact and possible impact on local residential properties below on the basis of the written evidence particularly ES Addendum 4 - Acoustic Assessment June 2000 and the additional information included in the letter dated 24/07/01.
10. As a result of the proposed mitigation measures for the black grouse the detailed location of some of the turbines was varied both before and during the inquiry. To avoid any possibility of interested persons being unaware of these changes, further publicity was given to the amendments (Doc 6 & 7). I am not aware of any further new representations having been made as a result of that publicity. In any event the changes were within the application site boundary and relatively minor given the scale of the proposal. The application was called in for determination and hence is still an application under consideration. The changes were, in my view, within the general description of the proposal as submitted to the Council for consideration. The end result is that the proposal (Doc 19) now has the turbines grouped closer together on the southern parcel of land although some turbines are now proposed slightly higher up the slope. The Council did not object to the amendments as such (Doc 11). No party at the inquiry made any representations regarding the admissibility of the amendments. It is clear that all the main parties were well aware of the nature of the proposal both as submitted and as finally

placed before the inquiry.

## **Site Visits**

11. I made extensive site inspections in connection with the inquiry. On 2/10/01 I made an accompanied inspection of the application site and its immediate surroundings. Later that day I made an unaccompanied visit to the Offa's Dyke footpath at Moel Famau to judge the views from the east. I made extensive visits in the Llyn Brenig, Clocaenog Forest and Moel Hiraethog areas on 14/12/01. On 19/12/01 I viewed the site from the area around Nantglyn and Saron and from the Archaeological Trail on the east side of Llyn Brenig. During these inspections I viewed the site from all the viewpoints in the ES and in Mrs Guthrie's evidence, from the additional viewpoints suggested by Mr Campion and from the hunting lodge above the Sportsman's Arms. I also took in the views from the immediate vicinity of the homes of all the witnesses objecting to the proposal who gave evidence or had written in to the inquiry and who lived within about 5km of the site. In connection with other recent appeals I had previously visited the site at Moel Maelogen, which has approval for 3 turbines, the single turbine at Hafotty Uchaf, which I understand has permission for 2 additional turbines, and the site of the proposed windfarm at Moel Hiraethog, the application for which was subsequently withdrawn.

## **Legal Submissions**

12. On the first day of the inquiry Mr Mainwaring raised a legal procedural point. In essence he was challenging the decision to call in the application for determination by the National Assembly. He maintained that he could find no compelling reason for the call in. The proposal had been extensively reported on by the Planning Officer and the Planning Committee had fully considered all the appropriate aspects of the proposal. The effect of the proposal on the landscape was a subjective assessment which should be left to local democracy.
13. The legal point concerning whether the call in was appropriate is a matter for the National Assembly. However, I could see no evidence of any procedural errors in the call in process. Consequently I informed Mr Mainwaring that I would report his views but that the inquiry would proceed.

## **Statement of Common Ground**

14. The applicants had prepared a draft Statement of Common Ground (Doc 8). This was generally acceptable to the Council (Doc 9) as regards 8.1 planning policy framework, 8.2 planning history and 8.3 description of the development proposals and the site and its surroundings. They were seeking further advice as regards 8.4 landscape and visual assessment methodology and 8.5 ornithology and other ecology.

15. At the opening of the inquiry I referred to the statement of common ground and asked participants to express any reservations they had when giving evidence. There was no disagreement registered with sections 8.1, 8.2 and 8.3 which I shall treat as agreed documents.

### **The proposal**

16. Details of the proposal are included in Document 8 section 8.3. The application is for full planning permission for the erection of 25 wind turbines, access tracks, substation building, two monitoring masts (each 40m in height), the excavation of borrow pits, and a temporary site compound. The turbines would have a hub height of 49m and a rotor diameter of 52m, giving a blade tip height of 75m.
17. Although the application is for full planning permission much of the detail is illustrative. This is not unusual in proposals for a wind farm. Details which require subsequent approval can be the subject of appropriate planning conditions.
18. In this case the only detailed plan which forms part of the application as it was before the inquiry is the layout plan. In view of the ongoing discussions outside the inquiry between the parties concerned with the effect of the proposal on the black grouse, the detailed siting of some of the turbines was subject to amendment throughout the inquiry period.
19. At the close of the inquiry a revised site layout plan Figure 2A (Doc 18) was handed to me showing the presently proposed location of the turbines. That plan did not show the revised position of one monitoring mast. The applicants agreed to forward a final plan, Figure 2B, together with a list of co-ordinates of the turbines and masts after the close of the inquiry (Doc 19). It is on the basis of Figure 2B that I shall consider the proposal.

### **The Site and Surroundings**

20. Details of the site and surroundings are included in Document 8 section 8.3. The site is located just inside the boundary of Denbighshire County close to its boundary with Conwy County Borough. It lies to the east and north east of Llyn Brenig, a reservoir created in the 1970s to control the flow of the River Alwen. The reservoir is almost surrounded by modern forestry plantations, of which the Clocaenog Forest to the east is much the more extensive. To the north of the site is the B4501 which runs south west from Denbigh to the A5 at Cerrigydrudion, while a minor country road forms the eastern boundary for much of the site, leading from the B4501 down to the B5105 on the southern edge of the Forest.

21. The site itself comprises three separate parcels of land, with the northern and central ones touching at one point. From north to south the distance between the most northern and most southern turbines is about 3.5km. The northern parcel would contain the access off the B4501, the construction compound, switchroom and 8 turbines. The central parcel would contain 7 turbines and a monitoring mast. The southern parcel would contain 10 turbines and a monitoring mast.
22. The northern parcel is the largest and comprises some 90ha of open grassland rising sharply from the B4501 in a south easterly direction to the minor road along the ridge. The land to the north east and north west is farmland while to the south west and south east is mainly forest plantations. On the opposite side of the minor road to turbines 1 and 2 is an area of open grassland and an area of recently felled plantation. The highest point in this parcel is about 455m AOD. Footpath 67 extends along the southern boundary of this parcel from the minor road and along the northern boundary of the central parcel before extending down towards Llyn Brenig to the west.
23. The central parcel is a roughly triangular shape of 35ha of grassland with plantations on all sides. The westerly point adjoins the corner of an open area of heather moorland which extends up to the top of Tir Mostyn at 492m AOD. The parcel slopes up from the minor road along its eastern boundary at 441 m AOD to a little over 470m AOD.
24. The southern parcel is some 1.4km to the south of the central parcel and extends to 63ha of grassland and rising up from the minor road along the eastern boundary to a height of 516m AOD just to the east of the top of Foel Goch 519.78m AOD. To the east lies an area of plantation. To the north west an area of mainly recently felled plantation. To the south is open ground extending down the hillside to a small area of plantation most of which has been felled. To the west the parcel adjoins an open area of heather moorland which is included within the Moel Hiraethog SSSI.
25. The exact positions and heights of the turbines are shown on the table attached to document 19, they range from 423.4m AOD to 504.8m AOD.
26. Residential properties within 3km of the site are shown on plan in document 27, figure 22. It can be seen that there are dwellings in the area. The main concentrations are around Nantglyn about 3km to the north and around Saron about 2.5km to the north east. There is a scattering of isolated dwellings particularly in the valley to the north. However only 3 occupied dwellings lie within 1km of the nearest turbine.

## **Planning Policy**

27. The planning policy background as regards the Development Plan and UK and Welsh national policy is set out in document 8, section 8.1. At the time of the inquiry the statutory Development Plan consisted of the Clwyd Structure Plan First Alteration and the Glyndwr Local Plan. As regards emerging development plans the Second Alteration to the Clwyd Structure Plan did not progress beyond the deposit in April 1995 and the publishing of Proposed Changes later in that year before it was overtaken by changes resulting from the reorganisation of the local government structure. It has since been overtaken by the preparation of the Denbighshire County Council Unitary Development Plan (UDP) and therefore I attach no significant weight to the policies in the Second Alteration.
28. The UDP had reached an advanced stage of the statutory process at the time of the inquiry. It had been the subject of a public inquiry and the Inspector's report had been submitted to the Council (Doc 12 CD/7-11 & 15). It was anticipated that the final stage to formal adoption would take place early in 2002. Subsequent to the inquiry the Council forwarded a copy of the Proposed Modifications dated February 2002 (Doc 70). This document was not seen by the parties to the inquiry. However, in my view it is a document in the public domain and is a material consideration which should be taken into account by the Assembly in reaching the final decision. In these circumstances, where there is any significant difference in the effect of the policies, I consider it appropriate for the National Assembly to attach greater weight to the policies of the emerging UDP than to those of the about to be superseded Structure Plan First Alteration and Local Plan.

### **Planning History**

29. Details of the history of the planning application and its amendments are outlined in Document 8 section 8.2. There is no previous planning history on the application site.

### **Other Agreed Facts**

30. The Head of Planning Services' report to the Planning Committee on 1/11/01 (Doc 3) was agreed by all the main parties as being a model of its kind. It thoroughly presented all the consultations and policy issues against which the Committee had to consider the proposal. Whilst different parties had their own views on the merit of the recommendation to refuse planning permission, in my view the report remains as an excellent and concise source of the background facts and information regarding this proposal at the date of the Committee meeting.

### **The Main Issues**

31. At the pre-inquiry meeting I identified the main issues as follows. Firstly the impact of the proposal on the visual character of the area; to take into account the effect locally, the effect on more distant views, and to consider any cumulative effect with other turbines existing and proposed. Secondly the effect on birds, particularly black grouse, bearing in mind the adjacent SSSI and its flora and fauna.
32. The withdrawal of the proposal to erect a similar large windfarm on the Moel Hiraethog site in Conwy had reduced the potential cumulative effect of windturbines to this proposal and the smaller sites at Moel Maelogen and Hafotty Uchaf. The negotiations concerning mitigation measures for the black grouse resulted in this aspect not being the subject of evidence at the inquiry but it remains an issue to be addressed. In addition the publication in February 2001 of Part 2.2 of the Register of Landscapes, Parks and Gardens of Special Historic Interest In Wales identified Mynydd Hiraethog Denbigh Moors as a Landscape of Special Historic Interest (Doc 34 app RSK2). At the inquiry the effect of the proposal on this historic landscape was dealt with as a main issue.