



Department
of Energy &
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7 September 2015

Dear Sirs

**ELECTRICITY ACT 1989
TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION FOR CONSENT TO INSTALL AND KEEP INSTALLED A 132kV
OVERHEAD ELECTRIC LINE CONNECTION FROM THE RE-POWERED
LLANDINAM WIND FARM TO WELSHPOOL SUBSTATION IN POWYS, MID
WALES**

I. The Application

- 1.1 I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to refer to the application dated 2 December 2009 for consent under section 37 ("section 37 consent") of the Electricity Act 1989 ("the 1989 Act") to install and keep installed approximately 35km of new 132kV Overhead Line from the repowered Llandinam Wind Farm to Welshpool Substation in Powys, Mid Wales ("the Development"), and for deemed planning permission under section 90(2) of the Town and Country Planning Act 1990.
- 1.2 The application for section 37 consent was published by the Applicant in accordance with the Electricity (Applications for Consent) Regulations 1990 ("the 1990 Regulations") and served on the relevant persons.
- 1.3 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 as amended ("the 2000 Regulations") an Environmental Statement ("ES") was submitted

with the application. Supplementary Environmental Information (“SEI”) was produced in December 2010. This SEI included two amendments to the proposed Development where the overhead line was moved outside the 100m tolerance corridor at two locations. An updated ES was submitted on 29 October 2013. The application has been considered by the Inspector and the Secretary of State on the basis of the October 2013 update. The ES describes the Development and gives an analysis of its environmental effects, and has been disseminated publically in accordance with the 2000 Regulations.

II. Public Inquiry

- 2.1 Following an objection from Powys County Council (“the Council”), to the application, the Secretary of State was obliged to cause a public inquiry into the application to be held under Schedule 8 to the 1989 Act.
- 2.2 The Council also objected to 5 wind turbine generating station applications made under section 36 of the 1989 Act (the schemes known as “Carnedd Wen”, “Llanbadarn Fynydd”, “Llaithddu”, “Llanbrynmair”, and “Llandinam Repowering”). The Secretary of State was therefore also obliged to hold a public inquiry under Schedule 8 to the 1989 Act into those other applications. The Secretary of State took the view that the proximity and possible cumulative impact of the proposals made it appropriate to use the power conferred by section 62(3) of the 1989 Act to direct that the inquiries into all 6 applications should be combined.
- 2.3 The Secretary of State appointed Mr A D Poulter BArch RIBA an Inspector from the Planning Inspectorate (“PINS”) to preside over the conjoined public inquiry. The public inquiry (“the Inquiry”) was governed by the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 2007 (“the Inquiries Procedure Rules”).
- 2.4 When the Public Inquiry was announced the Secretary of State issued a statement of matters to be considered at the Inquiry. Those matters are set out in the Inspector’s Report of the Inquiry (“the Report”) at paragraph 13.
- 2.5 The Inquiry commenced on 4 June 2013 and concluded on 30 May 2014. An introductory meeting was held on 28 November 2012 and a pre-Inquiry meeting was held on 18 and 25 February 2013. During the Inquiry, Mr Poulter (“the Inspector”) was assisted by Mr Emyr Jones BSc(Hons) CEng MICE MCMI also an Inspector from PINS in the matter pertaining to the 132kV overhead line application. The Inspector submitted his Report to the Secretary of State on 8 December 2014. A copy of the Report and annexes is available at: <https://itportal.decc.gov.uk/EIP/pages/recent.htm> (click on ‘More Information’ to view documents).

- 2.6 Welsh translations of the decision letters in respect of all the applications considered at the Inquiry and the Inspector's report are also, or will shortly be, published at <https://itportal.decc.gov.uk/EIP/pages/recent.htm>, or are available on request.

Mae cyfieithiad Cymraeg o'r llythyrau penderfynu ar gyfer pob un o'r ceisiadau a ystyriwyd yn yr Ymchwiliad ac adroddiad yr Arolygydd wedi'u cyhoeddi, neu i'w cyhoeddi'n fuan, yn <https://itportal.decc.gov.uk/EIP/pages/recent.htm>, neu maent ar gael drwy wneud cais.

III. Summary of the Inspector's Recommendation

- 3.1 The Inspector's recommendation in respect of this application as noted in his Report is "Application F" : *"That if it is decided that section 36 and deemed planning permission be granted to Application C (Llandinam Repowering), section 37 consent and deemed planning permission be granted in part, and subject to conditions. If it is decided to grant section 36 consents which would not take the installed capacity in SSA C beyond 160MW, I would recommend that further SEI be sought with a view to informing a decision as to whether consent should be conditional upon the line being upgraded to a higher capacity"*.

IV. Secretary of State's consideration of the Inspector's Report

- 4.1 The Secretary of State has considered the Inspector's Report and all other material considerations including compliance with Government and Welsh planning policy, viable alternative proposals, the use of Heavy Duty Wood Pole ("HDWP") structures to support the line, and the installed capacity in Strategic Search Area ("SSA") C. Her consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Report.
- 4.2 **The Secretary of State does not agree with the Inspector's recommendation as set out in his Report [paragraphs 731-732]. The Secretary of State has therefore decided to refuse consent for this application as applied for.** The Secretary of State's conclusions and reasons are set out below.

Need and Relevant Policy for the Proposed Development

- 4.3 The proposed Development would provide a new standalone 132kV overhead line connection to facilitate the export of additional electricity generated from the consented re-powered Llandinum Wind Farm to the local electricity distribution network. The Secretary of State agrees with the Inspector that whilst the proposed Development would meet that need, so would some of the alternative proposals for that connection which the Inspector considered in his Report.

- 4.4 Had this application been made under successor legislation, the Planning Act 2008, it would be classified as a Nationally Significant Infrastructure Project (“NSIP”). As the Inspector has noted, although not an NSIP, the energy National Policy Statements (“NPSs”) are material to the consideration of this application.
- 4.5 Welsh national planning policy is set out in Planning Policy Wales (“PPW”) (Current Edition 7, July 2014). PPW is supplemented by Government Circulars, ministerial letters and a series of Technical Advice Notes (“TANs”) – the latter includes TAN8 which provides technical advice to supplement PPW. TAN8 confirms the Welsh Government’s view that connections from individual turbines to a substation should be via an underground cable, and that any connection from a substation to the nearest part of the distribution network should be achieved by a standard three wire overhead system on wooden poles. TAN8 acknowledges the additional expense of undergrounding electricity connections compared to a wood pole overhead power line, and that undergrounding would likely be justified only for limited lengths and/or in special circumstances. The Secretary of State agrees with the Inspector that Welsh Government policy and guidance should also carry considerable weight [paragraph 552] in deciding whether to issue consent for the proposed Development.
- 4.6 Having considered the comments of the Inspector set out in paragraphs 40-59 of the Report, and in particular the conclusions on the application in paragraphs 72-75, the Secretary of State agrees with the Inspector that there is a clear conflict between the proposed Development and existing Government, Welsh Government and local planning policy (in terms of the Powys Unitary Development Plan (adopted 2010) (“UDP”).
- 4.7 With regard to PPW, the Inspector notes [paragraphs 706-714] that if the proposed Development were to be sited along a different route, identified as Route D in his Report, then it would not have the same adverse effects or not have them to the same extent, as the route proposed in the current application.
- 4.8 The Inspector considered that the proposed overhead line would not be routed so as to minimise its impact on the landscape and natural and built environment of Powys. As a result, the Inspector considers that the proposal conflicts with the UDP when read as a whole. The Secretary of States agrees with the Inspector on these points relating to non-compliance with Welsh Government policy and Powys local development policy.
- 4.9 In relation to undergrounding, the UDP, at C12, recognises that there could be overriding reasons for overhead lines not to be undergrounded. In this case there are no overriding practical or technical reasons not to underground the overhead line, but it would not be economically feasible to do so for the whole length of the route.
- 4.10 NPS EN-1 (the Overarching NPS for Energy) sets out a presumption in favour of granting consent to applications for energy NSIPs given the

urgency of the need for this type of infrastructure. The Inspector has concluded that the proposed Development would provide an efficient and economical means of connecting a new generating station to the transmission or distribution network but that in regard to siting, operational and other constraints, EN-1 also requires that harm to the landscape should be minimised and reasonable mitigation provided where possible. Because an overhead line along an alternative route from the repowered Llandinam Wind Farm to Welshpool would not have the same adverse effects or not have them to the same extent, he is of the view that the application route does not minimise harm to the landscape and its benefits do not outweigh the visual effects of the scheme.

- 4.11 EN-1 additionally states that substantial harm to Scheduled Ancient Monuments (“SAMs”) should be ‘wholly exceptional’ and consent should be refused unless it can be demonstrated that this is necessary in order to deliver substantial public benefits that outweigh that harm. The Inspector identified harm to three SAMs as well as one non-designated asset he considered should be subject to the same policy considerations as a designated asset. Whilst the proposed Development would have public benefits in connecting a source of renewable energy to the electricity grid, the Inspector was not satisfied that this was sufficient to outweigh the identified substantial harm.
- 4.12 The Secretary of State agrees with the Inspector’s conclusions regarding EN-1.
- 4.13 The Secretary of State agrees with the Inspector that the proposed Development would provide critical infrastructure for the delivery of renewable energy, as defined in EN-3 (the NPS for Renewable Energy Infrastructure), which itself is key to the Government’s obligations and objectives in relation to energy and climate change.
- 4.14 Overhead lines are generally compatible with the Applicant’s statutory duty (in section 9 of the Electricity Act 1989) to develop and maintain an efficient, coordinated and economical system of electricity distribution and to have regard to the preservation of amenity. However, EN-5 (the NPS for Electricity Infrastructure) notes that at particularly sensitive locations, the potential adverse landscape and visual impacts may make an overhead line unacceptable in planning terms. The evidence submitted to the Inspector leads him to conclude that the area south of the Glog and north of Kerry Hill should be considered such a particularly sensitive location. The landscape features and dominant visual impact of the HDWP overhead line across that area would, in his view, be unacceptable in planning terms. By failing to avoid altogether this major area of highest amenity value, the Inspector considered that the proposed route does not comply with the Holford Rules on the siting of overhead transmission lines, and on minimising the potential landscape impact of such infrastructure. These rules (formulated in 1959 by Lord Holford, when advisor to the then Central Electricity Generating Board) are specifically referred to in EN-5. For the reasons indicated above, the

Inspector considered the proposed Development to conflict with policies relating to electricity networks infrastructure.

- 4.15 The Secretary of State agrees with the Inspector's conclusions on the Development conflicting with the relevant provisions of current NPSs. This, though, leads the Secretary of State to conclude that the Development should not be consented. In reaching that conclusion, the Secretary of State has had full regard to the possibility of an alternative route that would have less severe environmental and visual impacts.
- 4.16 The Secretary of State does not consider that the proposal recommended by the Inspector alters this position, and does not consider undergrounding the current proposal to be a satisfactory alternative where there is an alternative and less environmentally and visually intrusive route.

Landscape and Visual effects

- 4.17 The Secretary of State notes the Inspector's consideration of the impact of the Development on landscape and visual impact [paragraphs 402-416 and 417-420].
- 4.18 The Secretary of State notes there is agreement between the Inspector and both the Council and Natural Resources Wales ("NRW") that the landscape sensitivity is highest in Section B and that both the Council and NRW consider that the effect of the proposed line would be of major significance. The proposed HDWP overhead line would be an uncharacteristic feature when set within the context of the landscape of this area. The Applicant however considers that the landscape and visual effects in Section B are insufficient to justify undergrounding. Visual effects along other parts of the proposed route are more moderate reducing to minor.

Cultural Heritage

- 4.19 The Secretary of State notes the Inspector's consideration of the impact of the Development on cultural heritage assets [paragraphs 441-447]. The Applicant's 2013 ES identifies residual significant effects relating to indirect visual effects upon the site and/or setting of a number of cultural heritage assets, comprising SAMs as well as the non-designated asset at Black Gate Enclosure, conservation areas and other assets. The Applicant and the Inspector agree there would be substantial harm to the SAMs in Section B including a Bronze Age burial ground and to parts of two early medieval cross dykes, over which the line would cut across this boundary feature and alter the open rural setting.

Cumulative and In-Combination Effects - Grid Connections

- 4.20 The Secretary of State notes the Inspector's consideration of cumulative and in-combination effects for grid connections [paragraphs 502-506 and 510]. If all three Section 36 schemes in SSA C were to have been approved there would be a need for an additional 132kV connection serving SSA C including two identified routes connecting at Cefn Coch

via the Mid Wales Connection Project. There is disagreement about the degree of likely landscape and visual effects and effects on cultural heritage assets or whether such effect would be acceptable in policy terms. The construction of the overhead line would add to the amount of general construction traffic generated by the proposed wind farms but it is considered this would not give rise to any likely significant effects on trunk road traffic or transport either on its own or cumulatively with other development.

Cumulative Impacts and Combined Effects of All Schemes

4.21 The Secretary of State notes the Inspector considered a range of issues relating to the cumulative and combined effects of all the proposed developments before the Inquiry, taking into account other schemes in the Powys area which have already been granted planning permission or where planning permission has been applied for. The key impacts were: landscape and visual effects; the impacts of construction traffic; construction and operational noise; and impacts on biodiversity, including the ecological functioning of European sites and European Protected Species (“EPS”). He also considered social and economic effects (including on tourism), human health, cultural heritage, aviation, hydrogeology and impacts on peat, as well as the potential for the wind farms to be connected to the grid network. These impacts were considered for proposed developments both within the two SSA’s B [Paragraphs. 378-395] and C [Paragraphs 244-262] and between them [Paragraphs 498-559]. Except where highlighted in this decision letter, the Secretary of State sees no reason to disagree with the Inspector’s reasoning and conclusions on cumulative impacts and combined effects of all schemes.

V. Secretary of State’s consideration of the Planning Conditions

5.1 The Secretary of State has considered the Planning Conditions for the Application as set out in the Inspector’s Report. The Secretary of State accepts that the conditions proposed by the Inspector would mitigate a number of potential impacts from the Development if it were to be consented. However, in relation to the visual and landscape impacts, and the potential harm to SAMs in the area, the Secretary of State takes a different view on the planning balance in consideration of all relevant matters, including consequences of refusal.

VI. Findings and Conclusions in Relation to Habitats Regulations

River Wye Special Area of Conservation (“SAC”)

6.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (“the Habitats Regulations”) requires the Secretary of State to consider whether the proposed Development would be likely to have a

significant effect on a European Site as defined in such Regulations. If such an effect is likely, then the Secretary of State must undertake an Appropriate Assessment (“AA”) addressing the implications for the European Site in view of its conservation objectives. The AA should take into account the impacts of the proposed project alone and also in combination with other plans and projects. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons for overriding public interest apply.

- 6.2 The Secretary of State considers that a likely significant effect arising from the proposed Development, when considered both alone and in combination with other plans or projects, cannot be excluded in relation to the River Wye SAC. The Secretary of State therefore considers that an AA is required under the Habitat Regulations to consider the effects of this Development, both alone and in combination alongside other operational, consented and reasonably foreseeable projects (subject to a current planning application), as regards to the potential for an adverse impact upon the integrity of European designated sites.
- 6.3 A copy of the Secretary of State’s Habitats Regulation Assessment is available at <https://itportal.decc.gov.uk/EIP/pages/recent.htm> and has been prepared on the basis of the Inspector’s Report and advice from NRW. As regards the assessment, the Secretary of State agrees with the Inspector, and with NRW, that, with the mitigation measures secured in the consent, the Development will not have an adverse effect, either alone or in combination with other plans or projects, upon the integrity of the River Wye SAC. The Secretary of State is also satisfied with the Inspector’s recommendation that under the Habitats Regulations there is no reason why a viable alternative route could not be utilised if required.

VII. Secretary of State’s consideration of issues raised following the close of the Inquiry

- 7.1 Following the close of the Inquiry, a number of representations have been received by the Secretary of State. Some relate purely to timing of decisions and therefore require no further consideration. Some representations also make reference to the Government’s manifesto commitments (i.e. the Government’s Manifesto commitment and proposed Energy Bill to ensure that future decisions on consent for such onshore wind farms would not be taken by the Secretary of State, and also cuts in subsidies for onshore wind). Ministers have decided that in relation to this particular decision, and the other mid-Wales decisions considered in the conjoined inquiry, that they should continue to take these decisions given the stage to which they have progressed. Subsidy cuts are not a relevant planning matter and have not formed part of this decision. However, in so far as representations raising other specific

matters relating to the proposed developments are concerned, such as construction traffic, biodiversity, heritage sites, landscape and visual impacts, tourism and the local economy, the Secretary of State considers they have already been addressed by the Inspector in his consideration of the Inquiry and subsequent Report, and are not further addressed in this letter.

VIII. Secretary of State's Decision on Re-opening the Public Inquiry

- 8.1 Rule 21 of the Inquiries Procedure Rules allows (and in certain circumstances requires) the Secretary of State to re-open the Inquiry. The Secretary of State does not consider that the Rules require the Inquiry to be re-opened or for there to be any reason to exercise a discretion under the Rules to re-open it.

IX. Equality Act 2010

- 9.1 The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:
- (a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 - (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
 - (c) the fostering of good relations between people who share a protected characteristic and those who do not.
- 9.2 The Secretary of State has considered the potential impacts of granting or refusing the Application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the protected characteristics.
- 9.3 The Secretary of State does not, therefore, consider that either the grant or refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

X. Human Rights Act 1998

- 10.1 The Secretary of State considers that there is no proposed interference with the human rights of individuals and that the grant of development consent would not be unlawful under section 6(1) of the Human Rights Act 1998.

XI. Secretary of State's Conclusion and Decision on the Application

- 11.1 The Secretary of State has considered the views of the Inspector, the Council, consultees and others who have made representations, the matters set out above and all other material considerations. For the reasons given in this letter, the Secretary of State does not agree with the Inspector that consent for the proposed Development should be granted either with conditions and partial refusal between points A and B as indicated on Plan A attached to the Inspector's Report, or to be subject to further SEI with a view to inform her decision later, as to whether the Secretary of State's consent for the Development should be conditional upon the proposed overhead line being upgraded to a higher capacity.
- 11.2 In reaching this decision, the Secretary of State has considered the balance between environmental protection and the delivery of necessary renewable infrastructure and the statutory requirements placed on the Applicant to deliver this Development. The Secretary of State accepts that refusal of this application would cause delay to the delivery of urgently needed renewable energy. However, the Secretary of State considers that there would be major adverse landscape and visual effects were the proposed Development to be consented, and that substantial harm may be caused to cultural heritage assets.
- 11.3 Of the alternatives to the overhead line Development applied for, the Inspector considers one of those alternatives, identified in his Report as Route D, could result in significantly less harm overall to cultural heritage assets and in visual impact terms than the proposed Development, and thereby achieve a greater degree of compliance with Welsh Government and UDP policies.
- 11.4 The Secretary of State agrees with the Inspector that on the evidence available, that the alternative identified as Route D is a viable route that could result in significantly less harm on the landscape and heritage assets and greater compliance with Welsh Government policies. On this basis, the Secretary of State agrees with the Inspector that the Applicant has not had sufficient regard to its statutory duties under Schedule 9 of the 1989 Act in bringing forward the route applied for. It is also for the Secretary of State to balance the proper application of policy in EN-5 in regards to undergrounding. That policy gives examples of possible undergrounding in residential areas and designated landscapes, whereas the proposed undergrounding section for this Development is in undesignated landscape.
- 11.5 The Secretary of State considers that the Inspector's recommendation to refuse consent for the overhead line applied for in part, subject to conditions and with the omission of the section between points A to B on Plan A attached to his Report, does have some merit and it would appear to be technically feasible for undergrounding of that part of the proposed Development to be facilitated. The Secretary of State notes that this recommended part-undergrounding option would satisfy the

Council's greatest concerns on landscape and visual effects to some extent in the identified area. However, the Secretary of State does not consider it appropriate to require undergrounding in whole or in part, especially given the option of a viable alternative with less environmental and visual impact.

- 11.6 Given that the Secretary of State is refusing the application, the requirement for an additional SEI is not considered further.
- 11.7 **On the basis of the above reasoning, the Secretary of State has decided to refuse consent under section 37 of the Electricity Act 1989 for the proposed Development.**
- 11.8 In deciding what material to publish in Welsh, the Secretary of State has taken into consideration her duties under the Welsh Language Act 1993 and the Department's Welsh language scheme – which is available at:

<https://www.gov.uk/government/organisations/department-of-energy-climate-change/about/welsh-language-scheme>

XII. General Guidance

- 12.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such application must be made as soon as possible. Parties seeking further information as to how to proceed, including time limits, should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).

Yours faithfully

Giles Scott
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