



Department
of Energy &
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12 September 2014

Dear Mr Cole

PLANNING ACT 2008

APPLICATION FOR THE PROPOSED CLOCAENOG FOREST WIND FARM ORDER

1. Introduction

- 1.1 I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to advise you that consideration has been given to the report of the Examining Inspector, Wendy J Burden, appointed by the Secretary of State for Communities and Local Government under section 78 of the Planning Act 2008 ("the 2008 Act") as the Single Inspector Examining Authority ("the ExA") for the application ("the Application") dated 27 March 2013 by RWE Npower Renewables Limited, subsequently changed to RWE Innogy UK Limited ("the Applicant"), for a Development Consent Order ("the Order") under section 37 of the 2008 Act.
- 1.2 The examination of the Application by the ExA ("the Examination") began on 12 September 2013 and was completed on 12 March 2014. The Examination was conducted on the basis of written evidence submitted to the ExA and was discussed at hearings held on 12 September 2013 (Preliminary), 7 November 2013, 21 January 2014, 22 January 2014, 23 January 2014 (all at Denbigh Town Hall), 28 January 2014 (at Canolfan Cae Cymro Community Centre, Clawddnewydd), 29 January 2014 and 30 January 2014 (both at Denbigh Town Hall).
- 1.3 The Order, as applied for, would grant development consent for the construction and

operation of a wind farm to be situated in the Clocaenog Forest approximately 13km south of Denbigh and about 10km west of Ruthin with a gross electrical output capacity of up to 96MW, consisting of: up to 32 turbines on concrete foundations incorporating hard standing for cranes; cabling to connect the turbines to an on-site sub-station; a series of new tracks, improvements to and widening of existing tracks and public roads subject to widening; alternative sites for a sub-station compound; two anemometry masts; two civil construction compounds; four borrow pits; alternative locations for a temporary electrical compound; and ancillary works comprising the landscaping and clearance of vegetation.

- 1.4 Published alongside this letter is a copy of the ExA's Report within which is an Errata Sheet (Ref: EN 10013). References in this letter to "the Report" are to the ExA's Report subject to these corrections. The ExA's findings and conclusions are set out in sections 4, 5, 6 and 8 of the Report and its recommendation is at section 8.48 (see below).

2. Summary of the ExA's Decision

- 2.1 The ExA's recommendation (ER 8.48) is as follows:

"I recommend that the Order is made in the form set out in Appendix D."

3. Secretary of State's decision on the Application

- 3.1 The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in the Application. A copy of the Order is also published alongside this letter.
- 3.2 The Secretary of State's consideration of the ExA's Report and of representations received and not withdrawn in respect of the Application is set out in the following paragraphs. His consideration of representations received after the close of the Examination is also set out below. All paragraph references, unless otherwise stated are to the ExA's Report ("ER") and references to Requirements are to those in Part 3 of Schedule 1 of the recommended Order.
- 3.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in its Report. This letter should, therefore, be read with the Report and the Order. This letter with the aforementioned documents constitutes both the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and, when published or placed appropriately, the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").
- 3.4 In reaching this decision, the Secretary of State is satisfied that making the Order would be consistent with Energy National Policy Statements EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure) which set out a national need for development of new nationally significant electricity generating infrastructure of

the type proposed by the Applicant.

- 3.5 The Secretary of State is also satisfied that the project is consistent with the sustainability objectives of Planning Policy Wales ("PPW"). PPW also affirms the importance of the Strategic Search Areas ("SSA") identified by the Welsh Government as being the most appropriate locations for large scale wind farm development. This importance had originally been set out in the Welsh Government's Technical Advice Note 8 ("TAN 8") which set out indicative maximum capacities for electricity generation from wind farms in each of the identified SSAs. The proposed Clocaenog Forest wind farm would be located in SSA A, which has an allocated capacity of 212MW (a figure re-stated in a letter of July 2011 from John Griffiths, the Minister for Environment and Sustainable Development in the Welsh Government). The Secretary of State notes the ExA's view that the capacity of the Clocaenog Forest Wind Farm and other wind farms which have been granted consent since the issue of TAN8, would fall within the capacity set out in John Griffiths' letter of July 2011.
- 3.6 The ExA considered relevant and important policies in respect of the United Kingdom's international obligations as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) which transpose Council Directive 92/43/EC on the Conservation of Habitats and Species and of Wild Flora and Fauna ("the Habitats Directive") into UK law. The Habitats Directive provides for the designation of sites for the protection of habitats and species of European importance called Special Areas of Conservation and Council Directive 2009/147/EC on the Conservation of Wild Birds ("the Birds Directive") for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species, called Special Protection Areas ("SPAs") – collectively known as "European sites". The Secretary of State has taken these issues into account in assessing potential adverse impacts.
- 3.7 The ExA also considered in its Report the impacts of the Development in relation to the Renewable Energy Directive 2009/28/EC, noting that the UK Renewable Energy Strategy 2009 sets out how the UK proposes to meet the target for renewable energy set out in the Directive.
- 3.8 The ExA also considered the impact of the Development against the duties in the National Parks and Access to the Countryside Act 1949, the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000.
- 3.9 The Secretary of State has also had regard to the joint Local Impact Report submitted by Denbigh County Council and Conwy County Borough Council and to relevant local plans as well as to the environmental information as defined in regulation 2(1) of the 2009 Regulations and to all other matters which he considers to be important and relevant to his decision as required by section 104 of the 2008 Act. In making his decision under the 2008 Act, the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to his decision.
- 3.10 Finally, the Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has had regard to the purpose of conserving biodiversity and, in particular, to the United Nations Environmental

Programme Convention on Biological Diversity of 1992, when considering the application for development consent.

4. Secretary of State's consideration of the Application

- 4.1 The Secretary of State has carefully considered the Report, the representations made known to him in respect of the Application and all other material considerations. The Secretary of State's consideration of the main aspects of the Report is set out in the following paragraphs.

Landscape and Visual Amenity

- 4.2 The Secretary of State notes that there is general agreement, acknowledged in energy National Policy Statement EN-3, that large wind farms will have significant landscape and visual impacts during their construction and operation. In the case of the proposed Development, the Applicant indicates that the visual and landscape impacts of the wind farm would be significant within a distance of 5km from the nearest wind turbine, with moderate impacts noticeable up to 15km. There is general agreement with this analysis from local Councils (Denbigh County Council and Conwy County Borough Council) and Natural Resources Wales (albeit with some reservations – see below).
- 4.3 The Secretary of State also notes the Councils have concerns about the scale of the wind farm and a number of local organisations and local residents consider that the effects of the project would extend beyond the 5km radius of the site and impact on views from local protected landscapes, including the Snowdonia National Park.
- 4.4 The Secretary of State is aware that the wind farm site is within Strategic Search Area A (one of seven areas in Wales designated by the Welsh Government as being capable of accommodating large scale wind farm development) and that Welsh Government guidance for such areas is that significant landscape change deriving from wind farm development in these areas can be accepted. The ExA also notes (ER4.55) that the need for large scale wind farm development in the national interest means the changes generated within 5km of the wind farm would not be so harmful as to justify withholding consent.
- 4.5 Beyond 5km of the wind farm site, the physical impact of the wind farm on landscape character would decrease with distance from moderate to minor. The ExA considers (ER 4.60) that there would be no significant impact on the landscape character of either the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB) or the Snowdonia National Park.
- 4.6 The potential impacts of the wind farm on visual amenity were considered on residents living close to the wind farm (the Secretary of State notes that within a 5km radius of the wind farm site, there are 56 properties or groups of properties) and on viewers elsewhere in the vicinity of the wind farm. On the impacts on residential properties within a 5km radius, the ExA finds (ER 4.66) that there would be a significant effect from the project on its own and in combination with other operational and permitted wind farms within the area of Clocaenog. There would also be impacts on viewers further way from the project

but as with landscape impacts, these would decrease with distance. However, the ExA concludes (ER 4.79) that there would be harmful changes to the views westward from the AONB and there would be some negative impact on visual amenity as users of the Snowdonia National Park look towards the east and that these matters needed to be considered in the decision-making process.

- 4.7 In terms of mitigation and design, the trees in the Clocaenog Forest itself would offer some mitigation for viewers close to the turbines but, given the scale of the Development, the ExA concludes that it is not possible to screen the turbines (ER 4.80) to provide mitigation. The ExA does not consider that a reduction in turbine numbers or scale could be made without significantly reducing the generating output of the wind farm and undermining the purpose of the project. The ExA, therefore, concludes (ER 4.81) that such reductions do not offer potential mitigation in this case.
- 4.8 Instead, the ExA suggests (ER 4.82) that mitigation should come from the siting of turbines and good design, but acknowledges that the former is constrained by the forest setting and the need to maximise the generating output of the project. There would be significant differences in height between the Clocaenog Forest turbines and those in other nearby wind farms and, while the topography would mask some of the differences, there would still be a marked difference in scale between the different projects. In addition, the layout of the wind farm, when considered with others, leads to a number of clusters and tangles of turbines (ER 4.91). The ExA accepts the design of the wind farm has some benefits in reducing impacts but concludes that it provides little in the way of mitigation (ER 4.91).
- 4.9 Overall, the Secretary of State, while noting the potential visual and landscape impacts of the proposal, considers that the acceptance of significant visual and landscape impacts set out explicitly in the energy National Policy Statements, and in the designation of the Strategic Search Areas by the Welsh Government, is a matter which weigh in favour of granting consent for the Clocaenog Forest project.

Residential Amenity

- 4.10 The Secretary of State notes that a key consideration was the introduction of industrial noises from the turbines into a remote location where apart from forestry operations, the main sources of noise are from natural features such as streams and bird song. The turbine noise would be a significant change to the noise environment of people living in the location (ER 4.202) and would not be welcomed by those people. The ExA accepts (ER 4.203) that the increase in noise impacts should be recognised as being in conflict with the Conwy and Denbigh Local Development Plans.
- 4.11 On the visual amenity of properties, as indicated in paragraph 4.2 above, the Secretary of State acknowledges that the scale of modern onshore wind turbines means there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around them. He notes that the Applicant identified 11 properties within 2km of the nearest turbine for which there would be a major change of view. A further 5 groups of properties between 2km and 5km would also be likely to experience a major change to views (ER 4.205).

- 4.12 The Secretary of State also notes that the ExA was particularly focused on the potential impact of the wind farm on three properties in close proximity to the proposed locations of some of the turbines that form part of the Development (the minimum distances to the closest turbines from the respective properties are 0.8km, 0.82km and 0.91km). The ExA's view was that the three properties would be at risk of becoming unattractive places to live because of the visual impact of the project and the change to the noise environment arising from the wind farm (which would result from the introduction of turbines into what is currently a quiet environment). The ExA considers that the level of harm to residential amenity at the three properties in question "would not be in the public interest, and must weigh against the project". The ExA considers this harm in the context of the Human Rights Act 1998 and finds that the impact would amount to interference with the private and family life and home of the occupants of the three properties and would contravene Article 8 of the Act and Article 1 of the First Protocol of the Act.
- 4.13 The ExA notes no mitigation has been offered by the Applicant in relation to these impacts and does not consider any would be likely to be effective. Nonetheless, the ExA does conclude that when set against the public interest of developing projects such as Clocaenog Forest, there is a marginal weighting in favour of granting consent. In such circumstances, the interference with the human rights of the properties should be considered proportionate and justified.
- 4.14 The Secretary of State agrees that the arguments in this case and in respect of this particular issue are finely balanced. He agrees with the ExA's view that it is not possible to mitigate the impacts of the wind farm on the three properties in question. He considers the matter has been considered appropriately during the examination of the application and that residential amenity is not an issue of sufficient magnitude to justify the withholding of consent given the benefits of the Development. In these circumstances, he considers that the interference with the human rights of the occupants of the three properties would be proportionate and justified in the public interest.

Visual Impact on archaeological sites

- 4.15 The Secretary of State notes that there was consideration of the potential impact of the operational wind farm on the setting of a number of historic assets. While noting that the physical and landscape impacts on listed buildings in the vicinity of the Development are acceptable, he notes the ExA's consideration of the effects on the Twr yr Hill round barrow. This Scheduled Ancient Monument (SAM) would be located 150m from the closest turbine which would, given its open views, represent a change in its setting. While noting that the present setting of the barrow is largely man made, the aural and visual impacts of the turbine would detract from an appreciation of the monument in its setting.
- 4.16 The Secretary of State is mindful that the ExA's Report (ER 4.265) identifies five other Scheduled Ancient Monuments ("SAMs") for which there would be significant indirect visual impacts on their setting but for which there was no mitigation possible because of the scale of the proposed turbines. The ExA notes that the six SAMs are a small part of

a broader spread of such sites and that these other sites would not be affected by the Development. It is also noted that the impacts would end with the decommissioning of the wind farm (ER 4.266). However, the ExA concludes that, where the turbines are likely to distract from an appreciation of the qualities of a site, the impact is considered to be harmful and that the impact on the settings of the six SAMs is a matter which weighs against the Application.

- 4.17 The Secretary of State has carefully considered the impacts noted by the ExA. He feels that, while the impacts would be noticeable, they are not of such a scale as to preclude the grant of consent in this case given the contribution of the project to renewable energy targets.

Operational Noise

- 4.18 The Secretary of State notes that operational noise from wind turbines caused most concern for objectors to the Development (ER 4.114). He also accepts that excessive noise can have wide-ranging impacts on quality of life. As part of its consideration of the potential impacts of operational noise, the ExA considered the report "The Assessment and Rating of Noise from Wind Farms" (ETSU-R-97) (the "ETSU Report"). The ExA notes (ER 4.116) that there were questions about the validity of using the ETSU Report as the basis for an assessment of noise impacts. However, the ExA also notes that EN-3 provides a reference to the continuing adoption of the ETSU Report with any new good practice being taken into account in any assessment.
- 4.19 The ExA sets out (ER 4.117) that the Institute of Acoustics published in May 2013, the "Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise", after the Application was submitted. The document has been endorsed by the UK and Welsh Governments as relevant good practice. The ExA notes that the Applicant has demonstrated to its satisfaction that its assessment of wind turbine noise is consistent with that set out in the 2013 good practice.
- 4.20 The ExA's report considers in some detail (ER 4.118 – 4.121) the potential noise impacts of the Development. The ExA also considers the criteria to be used in determining daytime noise limits (ER 4.122 – 4.123).
- 4.21 In ER 4.125, the ExA notes that Clocaenog Community Council argued that the SSA in which the proposed development would be situated did not conform to the criteria for selection as the number and location of dwellings in its vicinity were not relatively dispersed and limited.
- 4.22 The Secretary of State notes that there is general agreement that the Clocaenog Forest is currently an area with low background noise levels, though there are some man made inputs arising through forestry operations and the Tir Mostyn and Foel Goch wind farm (ER 4.125 – 4.126).
- 4.23 There was a discussion about the relevance of BS4142 ("Method for rating industrial noise affecting mixed residential and industrial areas") to a consideration of noise levels. The Applicant argued that BS4142 had limited relevance to an assessment of wind

turbine noise but the Councils argued that it provides some guidance in comparing a new noise with background noise levels. The ExA's assessment is that the Development would introduce a significant increase in noise levels for a number of properties when assessed against current baselines. The ExA considers (ER 4.130) that, with noise impacts from the Development alone, 15 properties would experience major increases in noise levels with another 17 experiencing moderate increases. Taking the cumulative impact into account (from all operational and consented projects), there would be 38 properties with a major impact and 14 with a moderate impact. The ExA concludes (ER 4.131) from this that, under the terms of BS4142, there would be a considerable number of properties that experience increases in noise where complaints would be likely. However, the ExA does go on to say that the number of complainants needs to be considered in the context of the scale of the project and the energy generated.

- 4.24 The Secretary of State notes that there was considerable discussion of what should be an appropriate level for the daytime assessment of noise. The Applicant and the Councils proposed 40dB and 38dB respectively. After some deliberation, the ExA concluded that limiting the noise level to 38dB would constrain energy output and that this would be unreasonable and, therefore, agreed with the 40dB limit proposed by the Applicant.
- 4.25 The Secretary of State notes that a number of interested parties raised the issue of low frequency noise ("LFN") as causing a nuisance but which was not recognised as an issue by Government guidance. The Applicant argued that any LFN would be below perception levels and be unlikely to lead to adverse effects. The ExA determined (ER 4.143) that there was no evidence to indicate that there would be a problem in this matter and, therefore, the advice in EN-3 as to the weight to be accorded to this issue is to be followed.
- 4.26 The Secretary of State is aware that Amplitude Modulation ("AM") was another issue of concern to interested parties. He notes that the understanding of this issue is evolving. He notes that RenewableUK produced a report into AM which moved knowledge of the topic forward but that the report has not been endorsed by the Institute of Acoustics or Government. The report introduces the concept of another form of AM that is much more difficult to predict and, therefore, to mitigate but provides a model condition that might be used to alleviate any impacts. However, the ExA considers that the condition has not been endorsed by Government and does not, therefore, include it in the recommended Order submitted to the Secretary of State. The ExA does though (ER 8.24) indicate that the Secretary of State might wish to include a requirement in the Order in the event that he decides to make it. The Secretary of State has decided that he does not consider any of the suggested AM requirements would be appropriate because they do not represent established best practice or do not provide clarity on how they would be discharged.
- 4.27 The Secretary of State has considered this issue carefully. He concludes that, overall, noise impacts are not of such magnitude that they would justify the withholding of consent.

Private Water Supplies

- 4.28 The Secretary of State notes the importance of a clean, reliable water supply for both domestic and certain agricultural functions. He also notes that the ExA indicates strongly that this is a matter of great importance to a number of people living in the vicinity of the proposed Development, with about 85 properties within 2km of it reliant on a private water supply (ER 4.186).
- 4.29 The Secretary of State notes, however, that mitigation measures have been proposed and that no development could take place until the Construction Method Statement and all the supplementary plans needed to protect private water supplies have been approved by the Councils. The Councils, therefore, would have control over the content of the Emergency Response Plan to provide alternative water supplies in the event of disruption to existing sources. He notes further the ExA's conclusion that appropriate provisions would be put in place to ensure the supply of uncontaminated water would be secured for those properties and agricultural premises which depend on private water supplies (ER 4.194). He concludes, therefore, that the security of water supplies would be safeguarded by the measures that have been put in place and does not, therefore, believe this matter presents any grounds for refusing the application.

Grid Connection

- 4.30 The Secretary of State is aware that the Application contained no provision for connection to the electricity grid, a matter which was of concern to some parties. However, he notes that the ExA considered the issue in relation to the policy set out in section 4.9 of the Overarching National Policy Statement for Energy (EN-1) which accepts that not all applications for grid connections will be submitted at the same time as the applications for the development to which they will be linked.
- 4.31 The Secretary of State also notes that there was some concern about the lack of detailed information about the impacts of the grid connection (with two route options being considered – one to a northern connection point and one to a southern one, with the northern one being preferred by the relevant network operator, SP Manweb). However, he is aware that the grid connection will be subject to a separate consent application which will be subject to public scrutiny and that the ExA considered there were no obvious reasons why the grid connection might not be approved (ER 2.19). The Secretary of State agrees with the ExA's view on this matter.

Other Matters

Equality

- 4.32 The Secretary of State has considered the public sector equality duty under section 149 of the Equality Act 2010, and believes that deciding to grant development consent accords with that duty. The Secretary of State's assessment is that it is not likely that there would be a disproportionate impact in relation to any of the protected characteristics. He does not consider that his decision 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.

Overall Conclusion

- 4.33 The Secretary of State notes the ExA's conclusions in these other matters and finds no reason to withhold the grant of consent.

5. Findings and Conclusions in Relation to Habitats Regulations

- 5.1 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 he 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.
- 5.2 The Applicant submitted a "Report to Inform Habitats Regulations Assessment" which identified the following European sites for inclusion in the assessment of likely significant effects (ER 5.4 and 5.5):
- River Dee and Bala Lake Special Area of Conservation (SAC)
 - Berwyn and South Clwyd Mountains SAC
 - Llwyn SAC
 - Migneint-Arenig-Ddualt SAC
 - Migneint-Arenig-Ddualt Special Protection Area (SPA)
 - Berwyn SPA
- 5.3 The Secretary of State notes that during the examination, the ExA and PINS produced a Report on the Implications for European Sites. The ExA states that the Secretary of State is able to rely on this for the purpose of meeting the requirement of Regulation 61(3) of the Habitats Regulations (ER 5.12). The Secretary of State accepts this recommendation.
- 5.4 The Applicant undertook a screening exercise of the European sites, which showed that the only one with the potential to be affected by the Development would be the River Dee and Bala Lake SAC. The conclusions of the exercise were accepted by Natural Resources Wales and the Secretary of State sees no reason to take a contrary view.
- 5.5 In respect of the River Dee and Bala Lake SAC, the likely significant effects result from potential impacts from the Development alone on water quality, disturbance to otter and in-combination effects with other wind farms, forestry operations and the Legacy

connection proposal. The ExA notes (ER 5.33) the distance of the project from the SAC means that impacts on water quality impacts from the project alone means it is not likely to have a significant effect on the site's integrity subject to the securing and implementation of mitigation.

- 5.6 Turning to the potential impacts on otters, there was no evidence of examples of the animals being recorded in any water course within the application site and while it was possible that they could use the site occasionally, this was considered unlikely (ER 5.34). The ExA notes that, despite requests from Natural Resources Wales and the local Councils for further provisions to be included in the Order, the protections already in place in the Order would offer adequate safeguards for otter (ER 5.35). The Secretary of State agrees with this view.
- 5.7 There was general agreement that any in-combination impacts with other wind farms or forestry operations would be insignificant (ER 5.36 and 5.37).
- 5.8 The ExA concludes that subject to suitable mitigation measures as detailed within the Order being put in place, the Development, either on its own or in combination with other projects is not likely to have a significant effect on any European Protected Site (ER 5.38). The ExA further concludes (ER 5.41) that there is sufficient evidence to allow the Secretary of State to be satisfied that adverse effects on the integrity of any European site can be excluded. The ExA further offers that if the Secretary of State agrees with this conclusion, then he may be under no obligation to undertake an AA before determining the application.
- 5.9 The Secretary of State has carefully considered all of the information submitted during the Examination. He agrees with the ExA's analysis and, based upon the mitigation measures secured in the Order, is satisfied that the Development is not likely to have a significant effect upon any European sites.

6. The Request for Compulsory Acquisition ("CA") Powers

- 6.1 The Secretary of State notes the Applicant does not seek to permanently acquire any land or extinguish any rights and that there have been no objections to the laying of the cables nor to the interference with minerals or sporting rights. However, the relevant provisions in the Order are included as a precaution (ER 6.14 and ER 6.15).
- 6.2 He further notes that there were concerns about whether the laying of cables during the construction of the Development would interfere with the rights of residents to access their properties, but that the Applicant has allayed those fears (ER 6.16). There would be no interference with private rights during the operation of the wind farm (ER 6.17).
- 6.3 If CA rights are granted, then provisions in the Human Rights Act are engaged. However, the Secretary of State notes that the ExA considers (ER 6.18) that the interference with private rights is proportionate and justified in the public interest. The ExA also considers (ER 6.19) that proper notifications have been issued so all those affected have, therefore, had the opportunity to have a fair and public hearing in accordance with Article 6 of the Human Rights Act. The ExA took the view that there is

no doubt as to the Applicant's ability to fund any compensation that might be payable (ER 6.22) and concluded that the CA application met all the necessary requirements.

- 6.4 In conclusion, the Secretary of State notes that the Applicant has reached agreement with each of the affected landowners (including statutory undertakers) which obviates the need for compulsory purchase of land but has maintained the compulsory acquisition provisions in case of any unforeseen problems. The Secretary of State is satisfied that the ExA's analysis of the issues is correct and that the proposed provisions in the recommended draft Order meet the relevant requirements.

7. Transboundary Impacts

- 7.1 The applicant's Environmental Statement did not identify a likely impact on an area under the jurisdiction of any other EEA State. The Transboundary Screening undertaken by the Secretary of State for Communities and Local Government ("SoS CLG") under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) took the view that the proposed development was not likely to have a significant effect on the environment in another EEA State. The Secretary of State has considered the Screening prepared by SoS CLG and agrees with its conclusions.

8. Representations Received After Close of the Examination of the Clocaenog Forest Application

- 8.1 On 14 July 2014, Chris Ruane MP presented a petition to the House of Commons on behalf of his constituents requesting that the grid connection for the Clocaenog Forest wind farm should be undergrounded. Given that the grid connection will be considered on its merits at a future date, the Secretary of State does not think this is a matter which needs to be given any weight in his determination of the application for consent for the wind farm project.
- 8.2 Correspondence was received from an interested party to the Clocaenog Forest examination who raised the potential impacts of the proposed development on landscape, local residents (including from shadow flicker), wildlife, tourism, water springs, the risks of fire in the Clocaenog Forest and property values. The Secretary of State takes the view that the correspondence does not raise any issues which were not considered as part of the ExA's examination of the project. The ExA's examination, has, therefore, been taken as sufficient consideration of the matters raised.
- 8.3 Finally, the Planning Inspectorate also provided to the Secretary of State (with the ExA's report), a submission from RWE which provided an amended version of the DCO that the company provided to the ExA, in which typographical errors in an earlier version provided by the company had been corrected.

9. Secretary of State's Conclusion and Decision

- 9.1 For the reasons given in this letter, the Secretary of State agrees with the ExA that there is a case for granting consent for the Development given the contribution it will make to

the production of renewable energy and that this case is not outweighed by the potential adverse local impacts of the Development as mitigated by the proposed terms of the Order. As indicated in paragraph 3.4 above, the Secretary of State also accepts that the Development is consistent with EN-1 and EN-3.

- 9.2. The Secretary of State has therefore decided to accept the ExA's recommendation at ER 8.48 to make the Order granting development consent on the basis of the Recommendations set out in the draft Order submitted to him by the ExA (in Appendix A to the ER), but subject to the modifications outlined in paragraph 10.1 below. He confirms that, in reaching this decision, he has had regard to the local impact report submitted by Denbigh County Council and Conwy County Borough Council and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

10. Modifications to the Order

- 10.1 The Secretary of State has decided to make various minor drafting changes to the form of the draft Order set out in Appendix D to the ExA's Report which do not materially alter its effect, including changes to conform with current practice for the drafting of Statutory Instruments (for example, modernisation of language), changes in the interests of clarity and consistency and changes to ensure that the Order had its intended effect. That amended order is published alongside this letter.
- 10.2 For the reasons set out above, the Secretary of State has decided to make changes to the Order recommended to him by the ExA.

11. Crown Land

- 11.1 Section 135(2) of the 2008 Act requires consent from a relevant Crown Authority for inclusion of any provision applying in relation to "Crown Land". In the case of the current application, the Crown Land provisions apply to the Welsh Government. The Welsh Government indicated by way of a signature to endorse the contents of a letter from the Applicant.

12. Challenge to decision

- 12.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached in the Annex to this letter.

13. Publicity for decision

- 13.1 The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours sincerely

GILES SCOTT

Head, National Infrastructure Consents

Annex

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks from the date when the Order is published. The Clocaenog Forest Wind Farm Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/wales/clocaenog-forest-wind-farm/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge, you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London. WC2A 2LL (0207 947 6655).