

Mynydd y Gwynt Limited

Mynydd y Gwynt Wind Farm

Statement as to whether the proposal engages one or more of the matters set out in section 79(1) of the Environmental Protection Act 1990

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Required document as set out in Section 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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Introduction

1. This statement is submitted on behalf of Mynydd y Gwynt Limited (“the Applicant”) pursuant to Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (“Regulation 5(2)(f)”) and accompanies the Applicant’s application to the Planning Inspectorate for development consent to construct and operate an electricity generating wind farm comprising up to 27 wind turbines (“the Wind Farm”).
2. Regulation 5(2)(f) requires the applicant for a Development Consent Order to state whether the Wind Farm engages one or more of the matters set out in section 79(1) (statutory nuisance and inspections therefore) of the Environmental Protection Act 1990 (“the 1990 Act”), and if so how an applicant proposes to mitigate or limit them; this statement does this.
3. Whilst it is not expected that the construction or operation of the Wind Farm would engage section 79(1), the draft **Development Consent Order** (“DCO”) that accompanies the Application (**Document Reference: MYG-AD-2**) contains a provision at article 9 that would provide a defence to proceedings for statutory nuisance that are brought under section 82(1) of the 1990 Act should they be initiated against the Applicant or its successors in undertaking the construction of the Wind Farm.

Definition of a Statutory Nuisance under the 1990 Act

4. Section 79(1) of the 1990 Act states the following matters constitute “statutory nuisances” -
 - (a) any premises in such a state as to be prejudicial to health or a nuisance;
 - (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
 - (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
 - (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
 - (e) any accumulation or deposit which is prejudicial to health or a nuisance;
 - (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
 - (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
 - (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
 - (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; or
 - (h) any other matter declared by any enactment to be a statutory nuisance.

5. The Applicant considers that none of the matters specified in section 79(1) are engaged in relation to the construction and operation of the Wind Farm. However, whether section 79(1)(g) (noise that is prejudicial to health or a nuisance) is engaged needs to be explained in more detail.

Construction Noise of the Wind Farm

6. **Chapter 9** of the Environmental Statement (“ES”) that accompanies the Application (**Document Reference: MYG-ES-9**) outlines the residual noise impacts as a result of the construction of the Wind Farm. **Table 9.7** details the predicted noise levels during the construction of the Wind Farm and shows that, at its highest, the construction noise level will still be within the typical residual noise level for all areas. Given that the construction noise will not exceed the typical residual noise level the Applicant does not expect its impact to be significant, provided that good practice measures are employed. The mitigation to be implemented to achieve this is set out in **Paragraph 9.157 of Chapter 9** the ES.
7. The impact of the construction noise is reduced further by the proposed requirements number 9, 12 and 13 (contained in Part 2 of Schedule 1 to the DCO) which restrict working hours and require a construction method statement which will include a construction noise management plan.

Operational Noise of the Wind Farm

8. The ETSU-R-97 methodology is set out in national planning policy, and referenced in the National Policy Statement for Renewable Energy Infrastructure (“EN-3”), as the appropriate assessment methodology that should be adopted for noise assessment of wind farm developments. **Chapter 9** of the ES concludes that the resultant noise contribution from the Wind Farm will produce noise levels which are reasonable and within the relevant guidance for wind farms (i.e. ETSU-R-97).
9. Paragraph 2.7.57 of EN-3 states that the Planning Inspectorate should consider noise and vibration impacts according to paragraph 5.11 of National Policy Statement EN-1 (Overarching National Policy Statement for Energy) (“EN-1”). Paragraph 5.11 of EN-1 requires the Planning Inspectorate to satisfy itself that the noise from the operation of wind turbines is within acceptable levels as set out in ETSU-R-97.
10. The Applicant has sought to iteratively design the Wind Farm so as to achieve an acceptable noise impact on local residential amenity, whilst maintaining as far as possible the generation capacity of the development. The proposed mitigation measures are described in **Paragraphs 9.203 and 9.204 of Chapter 9** of the ES. This will be secured by the imposition of proposed requirements number 31 to 35 (contained in **Part 2 of Schedule 1 to the DCO**) and **Part 3 of Schedule 1 of the DCO** which defines limits on the operational noise from the turbines.

Amplitude Modulation

11. Amplitude Modulation (“AM”) of aerodynamic noise is a term used to describe a noise phenomenon experienced at a few unusual wind energy projects in the UK. The term AM indicates aerodynamic noise from wind turbines, but with a greater than normal degree of regular fluctuation at blade passing frequency, typically once per second.

12. A published report by Salford University (Ref 2007/033) confirms that at the time of the report (2007) AM has occurred at 4 wind farms out of 126 and may be occurring at a further 8 in the UK. Exactly what the cause of the effect is appears uncertain, however, the issue appears to have been resolved through wind turbine control at all sites in the UK, except one.
13. The circumstances that may give rise to increased levels of AM are not well understood and the potential for increased levels of AM to be present cannot be predicted, but the likelihood is low based on the experience of other operating wind farms and the report by Salford University.
14. Based on the current state of scientific knowledge, it is not possible to formulate a sufficiently precise requirement which objectively applies a penalty to control the potential for increased levels of AM. Accordingly, the Applicant has in **Article 9(4) of the DCO** inserted a provision which qualifies the protection afforded to the Applicant in respect of any proceedings for statutory nuisance arising from noise attributable to the operation of the Wind Farm. This gives effect to section 158(3) of the Planning Act 2008 and, if the Applicant's application for development consent is approved would place the Wind Farm in the same position as if it had been consented under section 36 of the Electricity Act 1989 and accompanied by a direction as to planning permission.