

IN THE MATTER OF

The Infrastructure Planning (Examination Procedure) Rules 2010

Application by Mynydd y Gwynt Ltd for an Order Granting Development
Consent for the Mynydd y Gwynt Wind Farm

Deadline VII

COMMENTS BY MYG ON THE INTERESTED PARTIES' DEADLINE VI
SUBMISSIONS

POLICY

16th April 2015

Introduction

1. A number of interested parties have provided submissions in relation to policy. MYG's comments on these submissions are contained below.

NRW – Policy section of its summary of oral case

2. Paragraph 9 -NRW's submission is flawed as NRW has made no attempt to balance the planning considerations. The presumption in paragraph 4.1.2 of EN-1 applies to this development, but it is acknowledged to be a rebuttable presumption when the planning balance is undertaken.
3. Paragraph 12 - MYG does state that the proposal conforms with TAN 8 because TAN 8 does not confine large scale wind farm development to the Strategic Search Areas. But even if the proposal is considered – contrary to our argument – to not be consistent with TAN8, paragraph 2.2.1 sets out plainly that:

'Whether an application conforms to the guidance or the targets will not, in itself, be a reason for approving or rejecting the application.'

4. MYG has demonstrated in the written representations and the ISH how the proposals 'fit with the guidance' (TAN8). It is absurd to contend that an applicant is charged with both demonstrating how a proposal fits with the guidance and how it departs from the guidance. It is a matter for the judgement of the ExA – within the bounds of reasonableness – as to how this proposal fits or does not fit with Welsh National Planning Policy. If the ExA concludes that the proposal – contrary to our arguments – is in tension with TAN 8 as it lies outside a SSA, the weight to be given to this consideration should be set into context with the primary policy of the UK Government that:
 - Does not consider it appropriate for planning policy to set targets for or limits on different technologies (EN-1 paragraph 3.1.2).
 - If the ExA concludes that TAN8 does confine large scale wind farms to the SSAs then this provision would be in conflict with EN-3, which does not seek to direct applicants to particular sites for renewable energy infrastructure (other than the limited circumstances for off-shore wind) (EN-3 paragraph 2.13).

5. The overarching NPS makes clear that in circumstance of a conflict between 'any other documents' and an NPS, the NPS prevails for the purposes of the Examining Authority decision making, given the national significance of the infrastructure.
6. Paragraph 12 c) and d) – Read in the proper context paragraph 2.2.2 is self-contained – in that if the ExA consider any 'refinement boundary' is 'important and relevant to its decision' the ExA should be satisfied that the exercise undertaken by the LPAs for a refinement of the boundary has been undertaken in accordance with the relevant guidance. It is not suggested by the Applicant that MYG is within a 'refinement of the boundaries' of SSAD. The considerations of NRW at paragraphs 12 c) and d) are irrelevant to the decision-taking.
7. Paragraph 13 – These contentions are rejected in the written representations and for the reasons – supported by references in TAN8 and PPW – given orally at the ISH on planning policy.
8. Paragraph 14 – The functions of NRW are noted. It forms no part of the functions of NRW to seek to interpret Welsh Government planning policy, nor to advance a conclusion on the overall planning balance.

NRW – Note on the correct approach to relationship between EN-1 and 3, Welsh policy, Tan 8 the attribution of weight to these

9. This statement is another unsound attempt by NRW to elevate TAN 8 above the primary policy provided by the NPS. It would be absurd if in 2011 the Government published the NPSs with TAN 8 issued in 2005 -and not up-to-date in the context of energy security and UK national need for large scale energy projects - it was considered to be capable of being determinative of this or any other planning application for large scale Wind Farm development. The scale and urgency of need would be capable of being frustrated by policy considerations which were not based on prevailing circumstances. The Energy White Paper 2009 emphasised the need for a new direction in energy policy.
10. The provisions of TAN 8 have been taken into account in the preparation of the NPS - and one might assume in order to prevent the argument being made by

NRW- compliance with or non-compliance with TAN 8 is not a reason for approving or refusing a particular application.

11. As previously commented para 2.2.2 is a stand alone paragraph and is not relevant to the issues raised in this proposal - we do not argue that MYG is within a refined SSA boundary.
12. The remaining paragraphs seem to me to be a long winded and convoluted way of saying that the starting point for the presumption in favour of the development is a rebuttable presumption when the individual merits of a particular proposal are assessed. That is clearly set out at para 4.1.2 of EN-1, namely:

'That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.'

13. This calls for a balanced planning judgement for the ExA in the context of the primary policy provided by the NPSs .

Powys County Council

14. Paragraph 1 – PCC seek to steer the ExA away from the NPS providing the primary basis for decision-making. The NPS's have been prepared, taking into account Welsh Government planning policy as evidence from paragraph 4.1.5 of EN-1:

'The emerging NPSs have taken account of.....Technical Advice Notes in Wales where appropriate.'

15. The contention that less weight should be given to the NPS is misconceived.
16. MYG disagrees unreservedly with paragraphs 2 and 3.
17. Paragraph 5 – By definition of the scale MYG is a 'nationally significant infrastructure project.' Footnote 6 is rejected for the reasoning set out in the Written Representations. There is no 'target for installed on-shore wind capacity.' The EU binding commitment is 15% of the total energy (across the sectors of transport, electricity and heat) to be achieved from renewable sources by 2020 NOT 15% of renewable's share of electricity generation.

Figure 5 from the UK Renewable Energy Road Map Update 2013 clearly reveals that fulfilment of the 2020 target requires an accelerated provision of renewable energy productions within the remaining 5 years; with a greater reliance on renewable energy for electricity generation.

18. Paragraph 6 – The contention that there ‘is no obvious need for the development to meet the targets in the SSAs’ is of little significance given that fact that:

- i. The targets in TAN8 were to achieve the delivery of on-shore wind by 2010 – which has not been achieved.
- ii. In the context of SSA D – notwithstanding the policy encouragement for large scale wind farms in SSA, no planning application has been submitted in the decade following the publication of TAN8. TAN8 has failed to achieve the policy encouragement for the delivery of large scale wind farm development in SSA D.
- iii. The UK Government does not consider it appropriate for planning policy to set targets for or limits on different technologies (EN-1 paragraph 3.1.2).

19. Paragraph 8 – The presumption in favour of consent applies. Whether or not the proposal complies with the guidance in TAN8 cannot rebut this presumption, as compliance or otherwise is not a sufficient reason for approving or rejecting the application (EN-3 paragraph 2.2.1). The presumption in favour of granting consent is a rebuttable presumption – in undertaking the planning balance.

20. Paragraph 10 – The contention that Welsh policy is ‘in addition’ to the NPS is misconceived. The NPS have ‘taken account’ of TAN8. The submissions made by the First Minister in the Written Statement 17th June 2011 that:

‘In our view the TAN8 capacities should be regarded as upper limits and we call upon UK Government to respect this position when they finalise the Renewable Energy National Policy Statement.....’

was not incorporated into the NPS issued one month later in July 2011.

21. Insofar as PCC seek to suggest that TAN8 imposes maximum capacities, and that large scale windfarm development is to be confined to the SSAs – such a position is inconsistent with the UK Government policy statements for the reasons set out in the Written Representations and explained at the ISH on planning policy.
22. Paragraph 12 – For the reasons stated in the context of Written Representations made by NRW EN-3 paragraph 2.2.2 is not relevant to this application.
23. Paragraphs 13 – 14 – As stated in the Written Representations and in the oral submissions given at the ISH a proper reading of TAN8 is a spatial strategy of ‘concentration’ to the SSAs NOT of confinement of all large scale wind farms to the SSAs, i.e. that any large scale wind farm outside the broad brush areas of the SSAs is necessarily objectionable. Such an approach is inconsistent with the NPS, and where inconsistency exists NPS EN-1 paragraph 4.1.5 emphasises that the NPS prevails.

Cambrian Mountains Society

24. The Applicant has demonstrated in the Written Representations and in the ISH on planning policy that the spatial approach to large scale wind farm development is of ‘concentration’ to the SSAs not of exclusive confinement. The grant of consent for MYG as an acceptable wind farm development – considered against the primary policy basis of the NPS’s – which have ‘taken account of TAN8’ would not alter the planning context in which any future planning application would be determined.
25. The Applicant is not seeking to rewrite Welsh policy. In any event, this comment was specifically raised by PCC in the context of the assessment undertaken by MYG to contend that MYG would have been part of SSA D other than the errant assumption the site formed part of a TTA. MYG has endeavoured to make clear to the participants that the ADAS analysis is not relied upon when assessing the merits of this application.
26. The application respects TAN8 for the reasons given in the Written Representations and at the ISHs. The granting of consent would not result in the proliferation of wind farm development. The impacts are localised on an

area of land that has similar characteristics to areas of land that have been designated as SSAs.

27. The contention that allowing this application would ‘create a disturbing legal precedent that would open the floodgates to major applications throughout Wales’ is fanciful and misconceived. The contention fails to understand the established principles as to where precedents in planning decisions may be established. The granting of consent will not alter the planning context for any future application for a NSIP – namely the provisions of the NPS – as the primary policy basis, the preparation of which has taken account of TAN8.