

MYNYDD Y GWYNT WIND FARM

Ref: EN010020

POWYS COUNTY COUNCIL NOTE ON WHETHER VARIOUS WORKS DESCRIBED IN ADDITION TO THE WIND TUBRINE GENERATORS CONSTITUTE ANCILLARY DEVELOPMENT INTEGRAL TO THE PROJECT

14th May 2015

The issue is whether the various works defined in the draft DCO are 'ancillary development integral to the project' or 'associated development'. That is really asking the question - whether something constitutes freestanding 'development' or not because the usual understanding of 'ancillary' would mean something so closely related as not requiring additional consent.

Section 115 of the Planning Act 2008 makes limited provision for consent to be given within a Development Consent Order for works which are not 'ancillary' to the project and which would comprise associated development.

Associated development as defined in s.115 of the Planning Act 2008 is development which is: (i) associated with development for which development consent is required (or any part of it); and (ii) not the construction or extension of one or more dwellings and which is within either ss (3) or (4). It is a very broad definition and gives promoters of NSIPs in England considerable flexibility to include ancillary works in their applications for development consent, even if they involve significant works in their own right.

However in Wales, such associated development is not included except for surface works, boreholes or pipes associated with underground gas storage by a gas transporter in natural porous strata. As a result, in Wales, a freestanding and separate application for 'associated development' has to be made to the local authority. According to para.5 of DCLG's Planning Act 2008: Guidance on associated development applications for major infrastructure projects published in April 2013 (the Guidance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192681/Planning_Act_2008_Guidance_on_associated_development_applications_for_major_infrastructure_projects.pdf), in deciding whether development should be treated as associated development, his policy is to apply the following four core principles:

- (1) there must be a direct relationship between associated development and the principal development: associated development should therefore either support the construction or operation of the principal development, or help to address its impacts;
- (2) associated development should be subordinate to the principal development rather than an aim in itself;
- (3) development which is only necessary as a source of additional revenue to cross-subsidise the cost of the principal development should not be treated as associated development; and
- (4) associated development should be proportionate to the nature and scale of the principal development.

Furthermore, in most cases, the Secretary of State expects associated development to be of a type that is typically brought forward alongside the principal development in question, or which is usually necessary to support a particular type of project. Annex A of the Guidance sets out examples of general types of associated development under the following four categories:

- a.access arrangements;
- b.connections to national, regional or local networks;
- c.development undertaken for the purpose of addressing impacts; and
- d.other works.

Annex B of the Guidance also sets out examples of associated development specific to certain types of major infrastructure project, which includes for example on and offshore generating stations, highways, airports and railways.

In each case, the examples given are not exhaustive. Provided a particular type of development meets the relevant statutory requirements, it will qualify as associated development even if it is not listed in the guidance. In particular, the guidance acknowledges that technological progress may mean that some types of associated development could not have been foreseen when the guidance was written. Equally, the inclusion of the types of development listed in the guidance does not mean that they should be treated as associated development as a matter of course. It will be necessary to justify the inclusion of associated development by reference to the principles referred to in above on a case by case basis.

The following list of works in the draft DCO would seem to within the general understanding – at least so far as guidance is concerned - of ‘associated development’:

Work No. 2 – temporary blade storage areas

Work No. 3 - Improvements to the site access road at its junction with the A44

Work No. 4 - An on-site electricity substation

Work No. 5 – A temporary construction compound

Work No.6 - An access track up to 6.9km between the site entrance

Work No 7. - A network of cables laid underground between the wind turbines, the meteorological mast and the substation for the transmission of electricity

Works 4 and 7 are in fact specific examples of associated development within the S of S guidance on onshore generating stations (Annex B). Access arrangements/junction improvements are also mentioned (Annex A) – Work 3.

Items 2-7 could be viewed as associated rather than ancillary. In other words, they constitute development in their own right which, because they are closely related to the Wind farm (even necessary for it) can be considered ‘associated’. This would mean that in Wales, there is no power for the S of S to grant consent within the DCO.

However, Powys County Council notes that in DECC's first Planning Act 2008 decision in Wales, namely the Brechfa Forest Wind Farm Order 2013, the Secretary of State included the sub station and access tracks within the Order. The Clocaenog Forest Wind Farm Order 2014 works packages also include similar works to those proposed in the draft DCO. In Wales the S of S has thus far taken the view that these would form ancillary development integral to the wider project and can be included within the DCO. This approach may be based upon the definition of the development itself. Section 14 of the Planning Act 2008 sets out the type of project which falls within the definition of a NSIP and uses the term "a project which **consists of** any of the following" ... The wind farm falls within the description at 14(1) "the construction of a generating station". It can be argued that the this wide description would cover the works set out in Schedule 1 Part 1 the draft DCO as such works are integral to the construction of the generating station and would be ancillary to that development rather than associated development. However this approach would be undermined if one identifies each individual turbine as being a "generating station"

Whether a specific proposal is "associated with" an NSIP for the purposes of s.115 of the 2008 Act will ultimately be a matter of fact and degree and is a question for the Secretary of State to determine as part of her determination of the promoter's application for development consent based upon legal advice.