



The Planning Inspectorate Yr Arolygiaeth Gynllunio

Meeting note

File reference	EN010020
Status	Final
Author	James Bunten
Date	29 May 2014
Meeting with	Mynydd y Gwynt Ltd (the applicant)
Venue	The Planning Inspectorate offices, Bristol
Attendees	<u>For The Applicant</u> David Harries – Aaron and Partners (A&P) Keith McKinney – A&P William Little – Environmental Planning Solutions <u>The Planning Inspectorate</u> Simone Wilding – Head of Service Emre Williams – Case Leader Andrew Luke – Infrastructure Planning Lead Justin John – Legal Advisor Laura Allen – Senior EIA and Land Rights Advisor Karen Jones – EIA and Land Rights Advisor James Bunten – Case Officer
Meeting objectives	Meeting with the applicant to provide feedback following the decision to withdraw the Mynydd y Gwynt Wind Farm application
Circulation	All above

Summary of key points discussed and advice given:

Welcome and introductions

Following introductions, the Planning Inspectorate (PINS) advised on its openness policy that any advice given would be recorded and placed on the National Infrastructure Planning Portal website under section 51 of the Planning Act 2008 as amended (PA 2008). Any advice given under section 51 does not constitute legal advice upon which applicants (or others) can rely.

The applicant had submitted an application (including accompaniments) for development consent on April 24th 2014 (“the April Application”). The applicant subsequently issued a letter withdrawing the April Application on May 22nd 2014 (“the Withdrawal”), prior to a decision (under s55 of PA 2008) on whether or not to accept the application having been made.

The purpose of the meeting was for PINS to provide impartial advice to the applicant on ways that PINS felt the April Application documentation could be improved, if the applicant intended to submit a modified suite of application documents at a later date. This was based on PINS' consideration of the April Application prior to the Withdrawal. PINS explained that it is for the applicant to determine whether to address the issues raised by PINS at this meeting, but advised that under-prepared applications risk being subject to a decision not to accept them for examination or, if regarded as being of a standard satisfactory for acceptance, may lead to longer, more complex and less efficient examinations; and therefore higher costs for the applicant and other parties involved.

Draft Development Consent Order (dDCO) accompanying the April Application

PINS advised that a number of issues had been identified within the dDCO. It was noted that the majority of the issues identified in the dDCO were not evident in the pre-acceptance version of the dDCO on which PINS provided feedback at a meeting held 10 December 2013. It was also apparent that some amendments made to the dDCO since 10 December 2013 were not, in the April Application documents, explained by clear reasoning. The applicant stated that changes had been carefully considered, but that they would consider the advice provided by PINS in relation to these matters.

PINS made the following observations on the dDCO submitted with the April Application:

- If made, the DCO would be a statutory instrument (SI) and should conform to SI drafting conventions. References within the dDCO to e.g. other legislation should include footnotes with citation references. However, the dDCO did not. PINS advised the applicant to review the dDCO against the Statutory Instrument Practice manual – 4th Edition (November 2006)(HMSO/Office of Public Sector Information) and to insert the necessary footnotes;
- Although the applicant proposes that the development consent sought should be given to (and various provisions of the dDCO refer to) "the undertaker", there is no definition of who the undertaker (i.e. the applicant) is;
- The description of the authorised development included at Part 1 of the Schedule to the dDCO, makes reference to unspecified "associated development". The PA 2008 does not permit "associated development" for this type of development in Wales (s115). Indeed, the application form submitted in April 2014 itself stated that no consent was sought for associated development. The Planning Statement submitted with the April Application refers to elements "associated" to particular works, and a number of proposed dDCO requirements also refer to elements "associated" to particular works (e.g. Proposed Requirements 6, 18 and 22). The applicant is advised to carefully consider the use of the term "associated development" and whether or not any is intended (the applicant stated that it is not intended) and the consistency of statements made in various documents;
- Given that the PA 2008 does not permit "associated development" for this type of development in Wales, the explanatory memorandum to the dDCO should provide a clear explanation justifying the need for each element of the works

and why they are considered to be an integral part of the NSIP proposal, if that is the case;

- The dDCO makes reference to noise "Guidance Notes" in Part 3 of the Schedule to the dDCO. Part 3, however, does not contain the guidance notes. Instead it states that it is intended that the guidance notes published at the time of examination be set out in this Part. The applicant explained the reason for this, being that a change to the current guidance notes is anticipated in the near future. PINS advised that, in order for parties to fully understand what the dDCO is seeking consent for and to be able to make representations thereon, the most current industry standard guidance notes at the time of application submission should be included in the dDCO. If the expectation is that these could change during the examination period, should an application be accepted, then this could be noted in the explanatory memorandum to the dDCO;
- The dDCO appears to use what is, in effect, the same definition for "authorised development" and "authorised project". No explanation for the use of the two different phrases has been identified. PINS advised that the applicant consider whether both phrases are necessary, and if they are then the applicant should provide a clear justification and explanation;
- The works plan shows a proposed "settlement pond". The dDCO, however, does not make reference to a settlement pond. It is not clear whether this is an existing feature or e.g. proposed as part of the surface water drainage system proposed to be submitted and approved under requirement 27 of the dDCO. If part of the latter then its appearance on the works plan may be superfluous. PINS advised that the applicant provide clarity on this matter and if necessary amend the relevant plans;
- PINS advised that in all cases where the dDCO provisions cross-refer to other numbered dDCO provisions that the numbers provided correspond accurately with those other provisions. The dDCO should also be reviewed for any other typing errors;
- PINS also highlighted some inconsistencies in the wording used in the description of the authorised development provided at Part 1 of the Schedule with the wording used in the works plan. For example, Part 1 refers to a "meteorological mast", but the works plan refers to an "anemometer" only. To ensure clarity as to what the development comprises, the applicant was advised to check that application documents are consistent in the way that the development is described;
- Those parts of the works in Part 1 of the Schedule which relate to cable routes and access tracks do not expressly define (in writing) their respective commencement and termination points, but coloured routes are shown on the works plan and proposed article 3(2) of the dDCO links the works to the lines or situations shown on that plan. PINS suggested that it may be advisable to expressly define those points in writing within Part 1 of the Schedule, to number each separate work in Part 1 of the Schedule and to repeat the corresponding numbering on the works plan. A&P stated that they believed the clearest way setting out the works required was by means of a detailed scaled plan incorporated by reference but that they would consider it further and seek to make improvements;

- PINS advised that wording at the end of Part 1 of the Schedule seeking consent for unspecified “other works as may be necessary or expedient” did not, in PINS’ view, meet the requirement of s37(3)(a) of PA 2008, which requires an application to “specify the development to which it relates”. PINS advised that greater specificity was required in this drafting;
- PINS advised that definitions of plans in the dDCO should refer to specific plan numbers shown on relevant plans, rather than application document list reference numbers;
- PINS advised that the applicant revisit the definition of “the decision-maker” to take account of s103 of PA 2008 as currently in force;
- PINS advised that the applicant may wish to consider whether or not the words “comprising the Works” were superfluous in Article 6.

Consultation Report

PINS advised that whilst the Consultation Report submitted with the April Application includes statements setting out how the applicant has undertaken its consultation, in some places it lacks evidence to substantiate these statements. In resubmitting an application, in order to allow PINS to form its own view (under s55(3)(e) of PA 2008) on whether or not the applicant’s consultation has been carried out in accordance with the requirements of the PA 2008, evidence should be included in the Consultation Report to demonstrate how the applicant has met the pre-application consultation requirements. For example, it would be helpful to include a copy of the published SoCC and notices of it that appeared in the newspapers, to which the consultation report makes reference. PINS highlighted that PINS advice (Advice Note 14) and in particular DCLG Application Form Guidance (June, 2013) includes guidance on this subject, including that copies of all notices must be submitted with the application including the date and issue that the notices were published.

PINS highlighted that there were a few anomalies regarding the PA 2008 s42 consultation with reference to the start and end date, as set out in the Consultation Report. In addition, the correspondence received following a request under Regulation 5(5) of The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009, did not make it clear for PINS to form its own view on the applicant’s s42 consultation. The applicant explained that they had extended the consultation period in order to include responses received late in the consultation period from bodies such as the Aberystwyth Ramblers Group. PINS advised that the Consultation Report and application documents should not give conflicting start and end dates for the same purported consultation periods and any changes there had been in dates should be fully explained.

PINS noted that the Consultation Report as submitted did not make clear a full list of bodies consulted, as a number of bodies stated to have been consulted within the report had not been listed in the appended annex. For example, PINS noted that the consultation report states that a response was received from Public Health England, yet they were not listed as a s42 consultee in the appended annex. PINS emphasised that the Consultation Report needs to be clearer on which statutory bodies were consulted and if bodies identified by PINS in its list prepared under Regulation 9 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (Reg 9

List) were not consulted a clear justification should be provided (e.g. Passenger Focus and Electricity Network Company Ltd). It was noted, however, that the Reg 9 List was prepared by PINS applying a precautionary approach and that the applicant may have good reasons for not having consulted some bodies listed on it. If so, those reasons should be explained.

PINS advised that the Consultation Report should clearly demonstrate that the approach as set out in the SoCC was adhered to and if the consultation did not comply with the approach set out in the SoCC in any respect a clear justification for why this was the case should be presented in the Consultation Report.

There was discussion regarding the applicant's consultation with Powys County Council (PCC) on the draft SoCC and how the applicant had demonstrated that regard had been had to the comments received. PINS advised that the Consultation Report should be expanded to better explain how regard had been had to the comments received from local authorities on the draft SoCC.

PINS also advised that the Consultation Report should clearly explain how the applicant had regard to issues raised by persons who responded to the applicant's consultation.

PINS explained that part of the criteria for acceptance is whether the applicant has had regard to DCLG guidance during the pre-application stage. PINS advised that a section in the Consultation Report, noting where specific guidance had been applied and how, would be helpful.

Environmental Statement submitted with the April Application (ES)

PINS noted that the ES includes the phrase "permanent for construction" and queried this terminology as ambiguous. The applicant advised this meant that the works would be temporary, lasting for the duration of the construction period. PINS requested that this wording is expressed more clearly in the ES.

PINS identified uncertainty around whether the 'worst-case scenario' for visual impact and noise had been assessed, as the EIA would appear to be based on the assessment of the 3MW turbines, and not the 3.3MW turbines which are also included in the applicant's envelope of assessment and the dDCO. The applicant advised that with construction being some years off it was not practical to make a final choice of turbine at this stage. Accordingly two representative turbines, of 3 and 3.3MW had been modelled. If the larger capacity turbine was used then it would be in shorter towers so overall height would be unchanged. In other respects, however, the worst case has been modelled, whichever turbine is responsible for it, which is not in all respects the smaller capacity turbine. PINS advised that this should be better explained in both the ES and the Habitat Regulations Assessment (HRA) Report.

PINS raised the issue of data currency in respect of ecological surveys, identifying that it was not clear from the ES why certain surveys had been updated (eg for otter and water vole), and others had not. The applicant explained that the updated otter and water vole surveys were included in the event that a licence may be required from Natural Resources Wales (NRW). PINS advised that the ES and where appropriate the HRA Report, should clearly explain why the applicant has identified the need to update some surveys and not others. PINS also noted that NRW had provided comments in response to the s42 consultation, but advised that it would be helpful to clarify the

content of these comments; furthermore it was advised that any correspondence received from NRW regarding the currency of ecological survey data should be clearly presented in the ES and where appropriate, the HRA Report.

There was further discussion regarding the applicant's pre-application consultation with NRW. The applicant noted that three otter surveys had been conducted with no holts identified, and concluded that no otter populations would be disturbed by the development. The applicant noted that they did not consider that a European Protected Species (EPS) licence was required, but they are in discussions with NRW on this point.

PINS queried whether existing noise sources at the site, such as the rally complex, had been taken into account in the EIA. The applicant advised that the relevant guidance had been applied in assessing the scheme, and that this comprised an assessment of the worst case noise effects, which was without the rally complex in use. PINS advised it would be beneficial to clearly explain how existing noise sources had been taken into account (if at all), or where they have not been, to provide a clear justification and clearly reference the relevant sections in any guidance relied upon.

Habitats Regulations Assessment accompanying the April Application (HRA)

PINS noted that the applicant's HRA Report included a separate No Significant Effects Report (NSER) as an appendix to the HRA Report, which appeared to duplicate the information in the HRA Report. Therefore, to avoid duplication and to assist the reader, PINS suggested that the applicant consider amalgamating these documents to produce a NSER. PINS advised there was some confusion regarding the screening out of European sites. The applicant explained that of the five sites identified within the 10km study area, three were excluded from the assessment and two were taken forward for further consideration (screening). The applicant noted that they had agreed the 10km study area with NRW, who also agreed that the development would not affect the sites that had already been excluded. PINS noted this could be explained better in the HRA and where agreement had been reached with NRW on the conclusions for the three European sites excluded from further consideration, this should be clearly stated and where possible, refer to and provide evidence from NRW supporting this statement e.g. a letter from NRW.

PINS advised that the distance to the nearest Special Protection Area (SPA) was inconsistent and advised that it would be helpful to only state the closest point (4km). PINS also highlighted other inconsistencies, such as the names of European areas alternating between English and Welsh, which could be corrected by using both names and the need to identify separately the full name of European sites, particularly where a site has multiple designations i.e. a SPA and a SAC and the name of each designation may be different, for example, Elenydd-Mallaen SPA and Elenydd SAC. PINS also flagged that care should be taken to ensure that the correct terminology is used, for example, when referring to Appropriate Assessment, a discrete stage in the HRA process, as opposed to referring to the entire HRA process.

PINS also raised the issue of the data currency in respect of ecological surveys referred to in the HRA Report and referred the applicant back to the comments made by PINS earlier in respect of this issue discussed in the context of the ES. To avoid duplication, the applicant may wish to consider cross-referring to the relevant section

in the ES which explains the applicant's approach to consideration of the data currency of the ecology surveys, and where possible, supporting evidence from NRW.

PINS also referred to the earlier discussion on the ES, regarding the explanation of the 'worst case scenario' with regard to the turbine models assessment in the HRA and the need to clarify how the 3.3MW turbine fits within the 3MW turbine parameter assessed.

It was also noted that it would be helpful to include a plan showing rivers, catchment areas and European sites in order to demonstrate the presence or absence of any environmental pathways.

PINS also queried whether the proposed development would require any water abstraction as the wording provided in the HRA Report was not consistent on this point. The applicant confirmed that abstraction would not occur and that the Report would be amended to reflect this prior to resubmission.

PINS queried whether the in-combination assessment had considered impacts arising from development other than neighbouring wind farms. The applicant confirmed that where relevant this had been taken into account, noting that NRW had raised the issue of forestry felling. However it is the applicant's view that felling would not occur in the same catchment area and therefore an in-combination effect with felling is not likely. PINS suggested that this could be more clearly explained in the Report, including presenting the criteria used to identify the 'other plans and projects' to be considered within the in-combination assessment and how the final list of other projects had been selected. This should also include a list of the projects identified within the study area considered but not taken forward into the in-combination assessment, with clear justification of the decisions. PINS asked if the applicant had consulted NRW and the relevant local planning authorities to identify and agree the 'other plans and projects' for consideration in the in-combination assessment. Where such discussions have occurred, these should be clearly documented in the HRA Report.

PINS queried to what extent the grid connection had been considered as part of the HRA in-combination assessment. The applicant responded that this issue had been raised by NRW. In the applicant's view the grid connection was outside of their control and therefore there is a limit to the extent to which it can be assessed. PINS advised that as the applicant had identified in the ES a high level assessment of the proposed grid connection, the applicant should set out clearly to what extent the grid connection has been considered in the HRA and any correspondence with NRW agreeing this approach should be included within the NSER.

The applicant queried whether the screening matrices for all of the European sites identified within the HRA Report should be completed and appended to the HRA Report. PINS noted that at present the applicant had only completed the screening matrices for the two European sites given further consideration and that matrices had not been provided for the other three sites which had been considered and screened out of further consideration. PINS advised that matrices should be completed for all European sites identified within the HRA Report. PINS also explained the expectation that the footnotes provided within the screening matrices for each European site identified will clearly refer the reader to where the supporting statements, justifying the applicant's conclusion with regard to each feature of that site, can be found in either the HRA or ES, if appropriate, by reference to the exact page and paragraph

number where this information is provided. PINS also advised that the screening matrices should be provided in both Word and PDF format.

PINS further advised the applicant that where they have identified mitigation in the HRA Report which is relied upon to conclude no likely significant effect on a feature of a European site, the HRA Report should clearly identify how this mitigation would be secured and delivered through the dDCO, for example, reference to the relevant draft Requirement. This information should be presented in a table format within the HRA Report.

PINS asked if the applicant had received any correspondence from the Royal Society for the Protection of Birds (RSPB) in relation to the propose development. The applicant advised that they had initially engaged with RSBP with regard to the SPA. However, the RSPB contact had since left the organisation and they had not been provided with an alternative contact to continue discussions. PINS advised that if RSPB engage at pre-examination by submitting a Relevant Representation, further discussions during Examination may be needed.

PINS queried whether any bodies had been approached with regards to entering into Statements of Common Ground (SoCG). The applicant confirmed that they intend to enter into a SoCG with NRW.

PINS advised they are happy to review a draft of the HRA Report (NSER) before submission, with a view to providing any appropriate procedural advice. The applicant queried whether the HRA and the Flood Risk Assessment (FRA) should be appended to the ES, as provided with the submitted application, in addition to providing a separate identical stand-alone copy. PINS advised that it was not necessary to append the HRA Report to the ES and would instead be preferable to provide it as a stand-alone document. In relation to the FRA, if the ES is referring to the assessment and conclusions recorded in the FRA, then the FRA should be appended to the ES and it is then not necessary to provide a separate stand-alone copy. PINS highlighted that duplication should be avoided if possible.

Plans

PINS advised that the submitted land plan did not comply with the statutory requirements as the scale was smaller than 1:2,500. The applicant explained that they had elected to apply an alternative scale due to the large areas without features within the application boundary, which would result in many plans showing very little. PINS advised that if a smaller scale is used, an explanation should be included in the relevant application documents.

There was discussion regarding the printing size of the plans as the land plan was submitted at A3 although the key specifically refers to the scale if printed at A4 size. The applicant noted that the land plan wouldn't distort if printed at a different paper size and that it included a scale bar which would allow accurate scaling at any paper size. The applicant explained that the A4 size was referred to in the key as they expected interested persons, if printing the plans, would print at that size. However, they had supplied them to PINS at A3 size as they felt that allowed for easier viewing. PINS advised that for the avoidance of any doubt and for ease of reference the applicant may wish to consider revising the key so that, in addition to the applicable scale at A4, it also states the applicable scale at A3 if they continue with this approach.

AOB

PINS advised that the applicant should have regard to all relevant CLG Guidance and PINS Advice Notes.

The applicant asked whether the same PINS team would be assigned again if the application is resubmitted. PINS confirmed that, resources permitting, it would aim to assign the same team, but that this could not be guaranteed. PINS emphasised that advance notice of a realistic resubmission date would be helpful and offered A&P the opportunity to submit draft documentation for comment prior to resubmission