



The Planning Inspectorate Yr Arolygiaeth Gynllunio

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Susan Elan Jones MP
Houses of Commons
London
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Your Ref: E13/017.3

Our Ref: EN010055_1914300

Date: 25 July 2013

Dear Ms Elan Jones,

Thank you for your letter of 18 July 2013.

Your constituents' letter expresses concerns about the authorisation given to Wrexham Power Ltd (WPL) to access their properties to carry out ecological surveys. The authorisation was given under Section 53 of the Planning Act 2008, in connection with an application that WPL propose to make for a gas turbine power station with associated power lines and gas pipeline.

Under Section 53 of the Act, in those circumstances, the Secretary of State can authorise a person to enter onto third party land to carry out surveys and/or to facilitate compliance with the Environmental Impact Assessment Directive and/or the Habitats Directive. Before such an authorisation can be granted the Act requires that the Secretary of State has to be satisfied that the applicant is considering a "*distinct project of real substance genuinely requiring entry onto the land*".

In addition, non-statutory guidance produced by the Department for Communities and Local Government advises that "*Applicants are expected to act reasonably, first seeking to obtain ...permission to access land directly before seeking authorisation under these provisions*". "*Specifically, applicants should only submit requests for...access to parcels of land, where they consider they have been unreasonably refused that...access*" (The Infrastructure Planning (Fees) Regulations 2010: Guidance (June 2013)).

The Secretary of State is satisfied that the tests referred to above have been met. He is also satisfied that the detailed conditions attached to the authorisations will avoid any risk of detriment to landowners' property directly resulting from the surveys.

The representations made on behalf of your constituents by their professional representatives were carefully considered before the decision was made. The concerns raised in your constituents' letter are addressed in detail in the attached annex, numbered as in the letter.

The authorisation of access to land under Section 53 is purely for survey purposes and it is entirely separate from the future consideration of any subsequent application should it be made by WPL. If an application is submitted, the Act sets out rigorous requirements that any development consent must meet before it is accepted for examination. If an application is accepted it will be examined by an Examining Authority who will recommend to the relevant Secretary of State whether or not it should be granted, following a detailed and thorough examination.

Please be assured that the Planning Inspectorate will seek to facilitate discussions between WPL, the local authority, the community councils and representatives of the local community in the near future.

Please note that a suitably redacted version of this letter will be published on the Planning Inspectorate's website.

Yours sincerely

Mark Southgate

Mark Southgate
Director of Major Applications and Plans

Enc. Authorisation, Recommendation Report and Schedule of Correspondence for land parcel 1.

Annex – response to concerns raised in the letter from ‘Wrexham Residents Against Power Scheme’

An example of an authorisation and Recommendation Report is attached. The full set can be found here:

<http://infrastructure.planningportal.gov.uk/projects/wales/wrexham-energy-centre/?ipcsection=folder>

1. Reasons for granting access:

The reasons for granting access are given in the authorisation for each land parcel under ‘Reasons for the decision’ and also in the associated recommendation reports.

Although the delay to the project was mentioned in the ‘Reasons for the decision’, those reasons also set out the steps that WPL had taken to try to obtain access voluntarily, without success.

In the view of the Secretary of State, in line with the recommendations from the Planning Inspectorate, the requirements of Section 53 and the non-statutory guidance from the Department for Communities and Local Government were met.

As such there appeared to be no reason to request further information or further delay the issue of the authorisations, particularly as this would risk substantially delaying an application for the proposed project.

2. Changes to the DCLG Guidance and the Planning Inspectorate’s Advice Note 5:

WPL’s application for authorisation under Section 53 was made on 2 April 2013. The application refers to the Planning Inspectorate’s Advice Note 5 (April 2012) (‘AN5’), which provides advice on the process followed by the Secretary of State in determining a Section 53 authorisation request. AN5 refers to Fees Guidance produced in February 2010 by DCLG, which includes the guidance that requests under section 53 should only be made *‘as a last resort’*.

However, as recorded in the Recommendation Reports relating to each land parcel, the DCLG Fees Guidance was updated in June 2013, after the application had been submitted. It no longer makes reference to applications being made ‘as a last resort’. The published version of AN5 (April 2012) has not yet been updated to reflect changes to the DCLG Guidance. The Planning Inspectorate is in the process of revising it.

The current DCLG Fees Guidance is available here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204428/Planning_Act_2008_-_Fees_guidance.pdf

3. Advice within the Scoping Opinion issued in January 2013:

The quote referred to comes from paragraph 2.75 of the Scoping Opinion (available on the Planning Inspectorate website at

http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010055/1.%20Pre-Submission/EIA/Scoping/Scoping%20Opinion/130109_EN010055_Scoping%20Opinion.pdf)

The full quote from the Scoping Opinion states that *'It is noted that the description of the power plant provided within the Scoping Report is based upon a 'typical' example. The Applicant should ensure that the description of the proposed development is firmed up prior to the carrying out of environmental studies as these should be reflective of the development for which consent is being applied'*. It should be noted that the environmental studies referred to relate to a much broader suite of studies than the ecological surveys that were the subject of the Section 53 authorisations and would include issues such as air quality and the effects of the proposed development on the landscape. The applicant should ensure that their Environmental Impact Assessment (EIA) properly addresses these issues and this is likely to require some parameters of the project to be more tightly defined than in the Scoping Report they submitted.

However EIA is an iterative process with environmental information feeding into project design. In this case the proposed ecological surveys could be part of establishing whether the southern corridor is a viable option and are required for the applicant to meet the requirements of the Environmental Impact Assessment Directive and the Habitats Directive.

The Recommendation Reports review the information supplied by the applicant to the landowners and the comments and further information provided by the applicant and landowners. They show the dates that the Planning Inspectorate, on the basis of the evidence before them, concluded that the applicant had identified the area of land for which access was requested.

4. Number of landowners affected:

Each authorisation request related to a particular parcel of land. The Secretary of State only considers whether the request for access to that parcel meets the tests under Section 53 of the Act. Disputes about whether access has been agreed or not to other areas of land, or the proportion of landowners who had agreed access, were not relevant matters and so did not figure in the determination of the Section 53 requests.

5. Whether the project is of 'real substance':

Points 5 and 6 of the 'WRAPS' letter are addressed together to avoid repetition. The applicant requested authorisation for access under Section 53 of the Planning Act 2008. As stated above the tests that have to be met are those within Section 53 of the Act and the DCLG guidance. As outlined in the authorisation the Secretary of State is satisfied that the project is of sufficient substance.

If an application for development consent is ultimately made in respect of this project, it will need to be supported by substantial detail.

With regard to the grid connection this is a matter that the Planning Inspectorate considers is best addressed during the pre-application process. However the lack of a confirmed grid connection at this stage of the project's life would not be viewed as a reason for recommending that the Secretary of State refuse a request for access under Section 53 of the Act. The Planning Inspectorate recognises that the project is still being developed and would expect the applicant to be using the information

gathered from the ecological surveys to inform the final application, should one be submitted.

6. Alleged misleading information supplied by Wrexham Power Limited:

Any deficiencies in the informal consultation exercise referred to under point 7 are not relevant to the issues raised by the authorisation requests.

As stated in the Recommendation Reports, the Planning Inspectorate only took the direct consultation with the landowners into account when considering whether the requirements of Section 53 and the associated guidance had been met.

If an application for development consent is made, the Planning Inspectorate will need to be satisfied that pre-application consultation has been satisfactory before accepting the application for examination.

The merits or otherwise of the scheme are matters that would be dealt with during examination, should any application be accepted. They are not relevant matters for the request for access under Section 53.

7. Use of first names in correspondence to the Planning Inspectorate:

It is not uncommon for applicants and other bodies or individuals to address letters or emails to the Planning Inspectorate informally and does not imply a close relationship.

In the case of the covering letter for the Section 53 application, the solicitor writing it had never actually met the staff member in person although they had spoken by phone on a couple of occasions to establish the procedure for submitting a Section 53 application.