

Mark Isherwood AM

Welsh Conservative Member for North Wales

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30 AUG 2013

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Eich cyf / Your ref:
Ein cyf / Our ref: MI/JW
28th August 2013

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Mark Southgate
Director of Major Applications and Plans
The Planning Inspectorate
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Temple Quay House
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Bristol
BS1 6PN

Dear Mr. Southgate,

Re: Wrexham Power and Use of Section 53

I have been copied on both your e-mailed attachment to Mr. Stephen Whitby (reference EN010055) dated 21st August 2013 and the previous e-mail on this subject regarding the granting of authorisation for access under Section 53.

It is noted that it was yourself who set out the decision on behalf of the Secretary of State for Communities and Local Government to the affected landowners in early July and that your e-mail to Mr Whitby indicates that you are satisfied this decision was made correctly.

I understand that the landowners are concerned that your decision was based on information they were unaware of and which did not yet exist when they made their own decisions.

Please provide a response to the following 5 questions:

1. In making your decision in June, what consideration was given to the fact that the landowners had acted in the reasonable belief that Section 53 could only be used as a "last resort" at the time of their own decisions?
2. Given that the landowners had reasonable grounds for believing the obligation for use of Section 53 was as a "last resort", is a "last resort" the step that follows an initial offer? I understand that the first and only offer to contribute towards the land agent costs was made on 19 March.
3. I understand that the 2008 Planning Act includes a requirement for a high level of consultation in the early stages and that use of section 53 requires compliance with section 42. Would it appear necessary or reasonable for a land owner to receive a comparable level of information to that provided for similar projects such as the Legacy to Oswestry project? I am advised that the Legacy to Oswestry project is adjacent to the proposal by Wrexham Power and that it was proposed by Scottish Power. I am further advised that Scottish Power have statutory powers and that although they would seem



to have required less consultation under the 1989 Electricity Act, significantly more information was made available prior to their contact with landowners.

4. The answer to Mr Whitby's question regarding who made the decision that Section 53 was no longer only to be used as a "last resort" is not clear from your response. Who made the decision and was this intended?
5. I am advised that the Guidance on Fees was revised in June. When this occurred, should the Planning Inspectorate have informed all parties, giving them an opportunity to review their position?

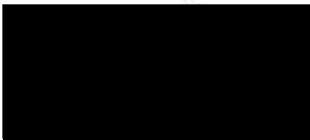
Concern has been expressed to me that it is difficult to envisage a satisfactory outcome to this episode, other than for the developer, and that landowners are already "out of pocket" and facing the prospect of further expenditure, although access has already been granted and intrusion on their property for environmental studies cannot be undone.

The view has also been expressed to me that the Planning Inspectorate could be faced with expenditure defending legal action, which may not be a good use of public funds, where a review of these events by a judge using the "Clapham Omnibus" test may find that the required standard of care has not been met, that the test for obviousness has been failed and that the landowners have not been unreasonable in these circumstances.

I would therefore be grateful if you could give your attention to the above matters and provide a response accordingly.

Thank you.

Yours sincerely



Mark Isherwood AM
Shadow Minister for Communities and Housing

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Send via email

Our Ref: EN010055

Date: 21 August 2013

Dear Mr Whitby

Proposed Wrexham Energy Centre by Wrexham Power Limited

Thank you for your email of 2 August 2013 to Steffan Jones. I am replying as the Director responsible for this matter. Please accept our apologies for the delay in replying.

The Department for Communities and Local Government has been undertaking a 'light touch' review of the suite of guidance documents for the major infrastructure planning regime. Details of the consultation can be found here:

<https://www.gov.uk/government/publications/planning-act-2008-infrastructure-planning-fees-regulations-2010>.

As previously stated, the revised version of the 'fees guidance' was published in June 2013. The publication of the DCLG guidance is carried out independently of the Planning Inspectorate and we do not have any advance warning of the date that revised guidance will be published.

At the time that Wrexham Power Ltd submitted their request for authorisation under Section 53 you are correct that the previous version of the DCLG guidance was still in place at that time, as reflected by Advice Note 5. However, by the time the Secretary of State determined your requests, the revised version (June 2013) of the guidance had been published. The requests for authorisation were, therefore, considered against the DCLG guidance current at the time of the determination; this was the June 2013 version of the 'fees guidance'. This is not unusual - where an authority takes a planning decision, for example, they must decide it in accordance with the policy that is extant at the time of decision, even if that policy is different to that which applied when the application was made.

In reaching his decision, the Secretary of State considered that the applicant had acted reasonably in taking steps to secure agreement with relevant landowners, that access was reasonably required now in order to enable relevant surveys to take place at the appropriate time of year, and that accordingly Authorisation was justified and proportionate in the wider public interest in this particular instance.

The advice notes produced by the Planning Inspectorate are based on the legislation and government policy current at the time they are produced. They are revised when

necessary to reflect changes in legislation or policy. Advice Note 5 is currently under revision to reflect the changes in the DCLG 'fees guidance'. The Advice Note Change Register will be updated when the changes to Advice Note 5 have been completed.

With regard to your query, I can confirm that of the 10 authorisations granted between 19 July 2012 to 18 July 2013, 7 relate to the requests from Wrexham Power Ltd.

With respect to the e-mail of 19 of June that you refer to, I understand that you have now received a response to this e-mail and indeed have since written to the Planning Inspectorate in response to that letter.

Yours sincerely,

Mark Southgate

Director of Major Applications and Plans

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.