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Our Ref: EN010055

Date: 12 September 2013

Dear Mr Isherwood,

Wrexham Energy Centre project by Wrexham Power Limited.

Thank you for your letter and enclosures of 28 August 2013 regarding the granting of authorisation for access under Section 53 of the Planning Act 2008 (as amended). I note the concerns of the landowners that are detailed in your letter and I reply to each of the questions below.

1. *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?*

The information taken into account by the Secretary of State is described in the authorisations and recommendation reports which are available on the Planning Inspectorate's website from the link below:

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

As there are a number of documents on this website relating to a number of requests, I enclose an example of an authorisation and recommendation report. Each recommendation report summarises the written responses received at each point up to the determination of the authorisations. As summarised in the recommendation reports (see section headed 'Efforts to agree voluntary access') the affected landowners had either already stated that they were not willing to agree access under any circumstances or had initially permitted access but then subsequently withdrawn that permission. The objections to access appeared, on the basis of the information before the Planning Inspectorate, to be 'in principle' objections to Wrexham Power's development proposals with little or no scope for further negotiations between the parties. As an example, the attached

recommendation report records that the landowner advised in a phone call of 18 February 2013 that access would not be granted under any circumstances (see under headed 'Efforts to agree voluntary access'). This information was drawn from the information in Wrexham Power Ltd's Section 53 application. The landowners were provided with a copy of the application and asked to provide comment to the Planning Inspectorate. The comments received did not contradict the applicant's version of events in this respect.

In this context, the change to the guidance in terms of the matter of 'last resort' did not appear to affect the position because it seemed clear that the only way that the developer could obtain access was by way of a request under Section 53. To all intents and purposes the request was made as a last resort.

2. *Is a last resort the step that follows an initial offer?*

As stated above, the grounds for objection appeared, on the basis of the information before the Planning Inspectorate, to be 'in principle' objections to the project. The comments on the Section 53 application from the landowners' representative did not suggest that the landowner's refusal of access was anything other than unequivocal or that there were specific concerns related to the impacts of the surveys or incomplete negotiations about the payment of landowners' expenses that would be resolved through further discussions between the parties. The decision was made on the basis of those reports.

3. *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?*

The requirement for an applicant to undertake consultation under Section 42 of the Planning Act 2008 before submitting a Section 53 application was removed by the Localism Act 2011 with effect from 1 April 2012.

Authorisations for access under Section 53 of the Planning Act may be given for proposed applications for an order granting development consent, where access is required to comply with the requirements of EC Directives 85/337/EEC and 92/43/EC if the Secretary of State is satisfied that the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land. The Department for Communities and Local Government 'Infrastructure Planning (Fees) Regulations 2010 Guidance states that '*Applicants are expected to act reasonably, first seeking to obtain relevant information or permission to access land directly before seeking authorisation under these provisions. Specifically, applicants should only submit requests for those aspects of information, or access to parcels of land, where they consider they have been unreasonably refused that information or access*'. On the basis of

the information provided by the landowners and Wrexham Power Ltd, the Secretary of State was satisfied that these tests had been met for the purposes of an authorisation under Section 53 of the Planning Act. Wrexham Power Ltd will have to undertake a detailed consultation under Section 42 of the Act before submitting an application for development consent. The consequence of that consultation with statutory requirements will be a material factor in the decision whether to accept such an application.

4. *Who made the decision to remove the "last resort" test and was this intended?*

As stated in the email to Mr Whitby, DCLG revised the document 'Infrastructure Planning (Fees) 2010 Guidance as part of their ongoing review of planning guidance, following a public consultation. DCLG have advised us that the removal of the reference to the applications being a matter of last resort was carried out in response for requests from consultees to align the guidance more closely with the relevant legislation. As DCLG are the authors of this guidance you may wish to pursue any further queries with them.

5. *When the Guidance on Fees was revised in June, should the Planning Inspectorate have informed all parties, giving them an opportunity to review their position?*

The Planning Inspectorate was aware, having already been contacted by the landowners' representative, that the landowners had access to professional advice on this matter. Given the 'in principle' position of the landowners to the question of access to land, it was not considered that the change to guidance altered the 'in principle' decision on whether to grant access.

I trust that the information is of assistance. Please do not hesitate to contact me should you have any further questions.

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.