

PLANNING ACT 2008

**APPLICATION BY MONA OFFSHORE WIND LIMITED FOR AN
ORDER GRANTING DEVELOPMENT CONSENT FOR THE MONA
OFFSHORE WIND PROJECT**

LAND TO THE EAST OF THE A548

COMPRISING

PLOTS 06/102 - 06/105 (INCLUSIVE)

**PLANNING INSPECTORATE REFERENCE NUMBER
EN010137**

MNOW-AFP079: MNOW-AFP129: MNOW-AFP130: MNOW-AFP131

SUMMARY OF CLOSING SUBMISSIONS

OF

GRIFFITH W. PARRY MRICS

**Griffith W Parry MRICS
Senior Consultant
Brown Rural Chartered Surveyors
4B Adams Court
Adams Hill
Knutsford
Cheshire
WA16 6BA**

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1.0 INTRODUCTION

- 1.1 Mona has materially failed to comply with many of the basic requirements of the enabling legislation and guidance that it is seeking to rely on for DCO powers to proceed with the scheme. The Objectors' primary submission is that there is no lawful basis to grant the Order and it should be refused;
- 1.2 The Promoter's main failings stem from
 - 1.2.1 Route **pre-determination** and thereby **pre-commitment**;
 - 1.2.2 **Total failure in consultation (as a result of the above)**;
 - 1.2.3 Failure to consider any or all "**reasonable alternatives**";
 - 1.2.4 **Including excessive and unnecessary land** in the Order;
 - 1.2.5 Seeking **excessive notice serving timescales**;
 - 1.2.6 Failing to demonstrate a **compelling case in the public interest** outweighing the harm done to the individuals affected;
 - 1.2.7 Merely **relying on precedent** Articles from historic DCOs to underpin the Mona Order rather than justifying their necessity for Mona in their own right;
 - 1.2.8 The Promoter is further Promoting an Order and developing land acquisition strategies (including use of unlawful temporary possession powers that seek to unilaterally absolve it of basic Parliamentary sanctioned landowner protections);
 - 1.2.9 Failing to identify and **manage impediments and properly secure funding**; and
 - 1.2.10 There being no lawful basis to take "temporary possession"
- 1.3 Notwithstanding the above, the Objectors have a neutral view on, and do not explicitly or implicitly wish to interfere with the confirmation of this Order beyond its impact on themselves and the Plots unless that is the only way that Robert Parry can continue to be able to implement his scheme.
- 1.4 The failures have, however, prejudiced the Objectors in managing to protect their position compared to what it would have been had they and the Plots been dealt with under the legal framework. This is both unfair and unlawful.
- 1.5 The Objectors have attempted to have the Plots excluded from the Order and have tried to explore other mitigations with the Promoter merely rebuffs these.
- 1.6 In light of the Promoter's belligerence, the Panel is therefore respectfully invited to recommend the exclusion of the Plots from the Order for the reasons to be outlined to follow.
- 1.7 If the Panel cannot agree to recommend the exclusion of the Plots in their entirety then the Panel is respectfully invited to recommend modification of the Promoter's application for the powers in order to mitigate the impact of the Mona Scheme on the Objector's proposals for the Property.

2.0 THE IMPACT OF MONA SCHEME ON THE OBJECTORS

2.1 Robert Parry is in the process of returning to live in the UK after a long period of living abroad. Over several years he has been developing plans for the 9.8ha Property now proposed to be affected by Mona. His proposals are outlined in the following figure where the Promoter's proposed limits are shown edged red:



2.2 The limits enclose some 5.83ha or 60.21% of the Property and obviously cuts through the most prime parts of the site. The proposed 30m sterilised permanent corridor extends to 345m will be 1/035ha or 10.69% of the Property.

2.3 If the Order is confirmed without modification, the Promoter will be able to occupy the Property for 14 years or more and leave behind a sterilised 30M corridor through the prime parts of the site causing catastrophic loss of Robert Parry's scheme.

3.0 HOW CAN THE HARM TO OBJECTORS BE MITIGATED?

3.1 The Optimum mitigation would be to remove the Plots from the Order. Reasonable alternatives are available and have been put forward by the Objector but been rebuffed. Were they to be taken up then 100% of the benefits of Mona could be achieved with virtually 0% harm to the Objectors.

3.2 Secondly mitigation could be achieved by modifying the Order to constrain Mona to occupy the southernmost part of the site, cross the AC pylon lines and egress the Property sooner. Further improvements could be achieved by reducing the limits of deviation to ensure more sensible, prudent land use and adding a constraint that the works have to be completed by a reasonable end date.

4.0 OBJECTORS PROGRESS WITH SECURING MITIGATION FROM THE PROMOTER

4.1 The Promoter is not prepared to enter into any agreements that impose any constraints on it whatsoever although its reasons for not doing so have changed over the period during which they have been in touch with the Objectors.

5.0 WHY SHOULD THE PROMOTER ACCOMMODATE THE OBJECTORS ?

5.1 The Promoter has materially failed to comply with many of the basic requirements of the enabling legislation and guidance. These failures mean that the Promoter cannot rely on the powers. The failures have also, prejudiced the Objectors position in managing to protect their position with regard to their land and this is unfair and unlawful.

5.2 The negative impacts of the Promoter's failings above on the Objectors are considered in more detail below:

5.2.1 **Predetermination** of the route since before December 2021 and prior to **consultation** thereby fettering itself and causing:

5.2.1.1 Failure to "*consult at a formative stage*" contrary to the Sedley Gunning requirements prejudicing the Objectors views and opinions to their detriment;

5.2.1.2 Failure in its "*duty to take account of responses to consultation and publicity*" prejudicing, the Objectors views and opinions to their detriment;

5.2.1.3 Failure in its duty to take the "*product of consultation conscientiously into account when the ultimate decision is taken*" also contrary to the Sedley Gunning Requirements prejudicing, the Objectors views and opinions to their detriment;

5.2.1.4 Failing to comply with its obligations under section 47 of the 2008 Act by claiming to have deposited consultation documents in libraries when no such documents were ever deposited.

5.2.1.5 Further failing to comply with its obligations under section 47 of the 2008 Act by "purportedly" depositing said documents in Llandudno library 13 miles from the point of landfall instead of Abergele Library some 1.1 miles from landfall. Also, "purportedly", at Rhyl Library 7.5 miles from the substation site instead of St Asaph library some 1.9 miles from the substation site;

5.2.1.6 General overall failure to achieve "*best practice in consultation*" as per guidance (Wales) and failing to provide a meaningful and accurate account in its Consultation Report as to "*how it has taken account the consultation feedback*";

- 5.2.1.7 At a very late stage in the process, the Promoter now introduces alternative facts claiming, erroneously, that a “reset” of the route selection process happened after the Bodelwyddan POI had been selected in march 2022.
- 5.2.1.8 If a “reset” had, in fact, taken place then, given the impossibility of the other points of landfall due to insurmountable constraints, surely any such “reset” would have taken the form of considering further additional alternative routes from Llanddulas East landfall to the substation site beyond merely sticking with Llanddulas East A and its 65% twin Llanddulas East B (100% identical from landfall to the Plots).
- 5.2.1.9 Further, if a reset had happened in March 2022, precisely when Dalcour Maclaren were instructed to, and did in fact make first contact, then Mona would have been at a truly formative stage then and the Objectors’ opinions and views would have fallen on fertile ground and been taken account of whereas the reality was that the Objectors instead faced dismissiveness, belligerence, and coercion in an attempt to dragoon them into signing the Heads of Terms.
- 5.2.1.10 Failure to consult meaningfully and with an open mind capable of being influenced due to “*pre-commitment*” giving rise to failure to consider any or “*all reasonable alternatives*” as it is statutorily obliged to do. Reasonable alternatives are available however, prejudicially to the Objectors, the Promoter refuses to consider them;

5.2.2 Excessive Land Take included in the Order

- 5.2.2.1 The promoter has failed to demonstrate that it has a “clear idea of how it intends to use the land which it is proposed to acquire” in accordance with Section 9 of its Guidance. It has compensated for this by instead merely drawing the limits of deviation excessively wide unnecessarily thereby causing detriment and prejudice to the Objectors.
- 5.2.2.2 Excessive **temporary** land take proposed merely for “*convenience*” rather than it being “*required*” or “*necessary*” for the “*accomplishment of Mona*” contrary to the Sections 122(2)(a) and (b) of the 2008 Act as clarified by the Sharkey case see sections 9.2.3 and 12 of the 7th August Submissions. This thereby occasioning inefficient and wasteful use of land unnecessary causing avoidable harm and detriment being prejudicial to the Objectors.
- 5.2.2.3 Likewise excessive land taken or affected **permanently** again merely for “*convenience*” as the Promoter’s agents confirmed in their email of 11 August 2022 i.e. that the excess land was required for “*ease of construction*” and for “*ease of maintenance*” rather than being “*required*” or “*necessary*”. The unnecessarily large, sterilised area causing additional unnecessary detriment and prejudice to the Objectors.
- 5.2.2.4 The Promoter sought to justify the inclusion of the excessive land on the grounds that it “*facilitated*” or was “*incidental to*” Mona under Section

122)2)b) of the 2008 Act, however the Promoter’s explanation of this directly conflicts with Section 11 of the guidance which. The differences were also put beyond doubt in Section 1 of Griff Parry’s November 4th Comments on Promoter Hearing Points.

5.2.3 impediments to the Scheme including securing funding

5.2.3.1 This issue has been subject to extensive exchanges during the examination process to which there is nothing to add other than in the unmodified Order, then the excessive notice periods and excessive land areas keep landowners in a long term head-lock whilst the Promoter tries to address the issues that will inevitably arise again putting the Objectors very much at risk of serious detriment if the Order is not modified.

5.2.4 Excessive Notice Serving Period and timescales generally

5.2.4.1 Contrary to guidance in both England and Wales, Article 21 of the Order seeks a window of 7 years by which to serve either temporary or permanent land notices

5.2.4.2 There have been several exchanges regarding this matter most recently in Griff Parry’s November 4th Comments on MONA DCO.

5.2.4.3 A window of only 3 years for notice serving was originally envisaged in Section 4 of the CPA 1965. Section 154 of the 2008 Act suggests 5 years or above may be permitted only in exceptional circumstances. Yet the Promoter is seeking 7 years and the only grounds given are precedent from other orders granted which as explained previously are not relevant;

5.2.4.4 Until the Promoter satisfactorily explains which provision from which primary legislation it is relying on to be brought into effect using Section 120)5)c) of the 2008 Act then the matter of the lawfulness of temporary powers remains unlawful as is explained in Griff Parry’s Deadline 6 submission on the Order.

5.2.4.5 Notwithstanding the above, the expediency test set down in Section 120)5)c) of the 2008 Act as clarified in subsequent caselaw requires a great many matters to be taken into account when determining that expediency and not least the impact of the matter (use of temporary powers) on the affected party.

5.2.4.6 Other impacts of using temporary powers in this DCO are summarised in the following table:

DISADVANTAGES TO LANDOWNER	BENEFIT TO PROMOTER
Temporary Possession Versus Outright Land Acquisition and Sale Back Later	

<p>Outright acquisition means that landowner “knows where they stand” and a capital payment is released putting the landowner in funds enabling the landowner to make alternative arrangements and have the luxury of taking the view that if the land becomes available for buy back then it will be a “bonus”. Temporary occupation does have minor benefit that landowner is guaranteed to get some of the land back although when and which land will inevitably be ambiguous .</p>	<p>Outright acquisition is a serious disbenefit to the Promoter having to release large capital sums for land purchase and disturbance being a drain on the scheme funding. Arguably this is justifiable on the basis of the severe disruption it intends to place on the landowners by putting them at a disadvantage instead.</p>
<p><u>Notice Periods</u></p>	
<p>Promoter can occupy the land long term on minimal 14 / 28 days’ notice - inadequate for any business.</p>	<p>Ability to take long term access on very short notice and no capital outlay.</p>
<p><u>Valuation Date</u></p>	
<p>No early or fixed valuation date on date of entry Losses due to temporary notice possibly lost from main claim.</p>	<p>No material impact.</p>
<p><u>Condition of the Property on the Valuation Date (and extent of the “scheme”)</u></p>	
<p>No clear and fair record of condition on the vesting date – i.e. condition changed (deteriorated) due to temporary notice and current case law “disregards narrower scheme”.</p>	<p>Can lead to lower compensation settlements - good for Promoter’s Budget.</p>
<p><u>Lack of statutory or judicial guidance as to compensation</u></p>	
<p>Lack of compensation code structure and framework leading to Imbalance in negotiating positions can lead to unequal negotiation and claimant not recovering full losses.</p>	<p>Can lead to lower compensation settlements - good for Promoter’s Budget.</p>
<p><u>Advance Payments (Under Section 52 of the LCA 1973)</u></p>	
<p>Landowner has no mechanism to recover an advance payment leading to negative impact on cashflow which can be long term.</p>	<p>Can greatly assist the Promoter’s cash flow.</p>
<p><u>Statutory Interest</u></p>	
<p>Advance Payments can only be made after entry is taken via NTE. Therefore no advance payment and no interest to make good for any delays for receipt of compensation leading to negative impact on cashflow.</p>	<p>Can lead to lower compensation settlements - good for Promoter’s Budget.</p>

<u>Long term occupation i.e. 6 years plus but no entitlement to occupiers basic loss</u>	
Landowner would have been assisted by Property & Basic Loss Payments in the event of outright purchase which is not applicable on temporary occupation.	Can lead to lower compensation settlements - good for Promoter's Budget
<u>Material Detriment / Section 8 of CPA 1965 and Sections 53-58 of LCA 1973</u>	
Mat Det process circumvented so landowners and occupiers lose right to claim.	No claims and settlements for material detriment - good for Promoter's Budget.
<u>Landowner Uncertainty</u>	
With limited cashflow / under-recovery of compensation and no visibility as to the length of occupation the landowner is in a very precarious situation.	Conversely Promoter can continue in full certainty of open ended and unfettered occupation - There appears to be neither a need nor any incentive on a Promoter to serve any notice to treat other than the notice period reserved by Article 21 of the current draft DCO.

5.2.4.7 It is therefore clear from the table above that the use of temporary powers strongly favours the Promoter very much to the detriment of owners and occupiers. Accordingly it is easy to see that such potentially harmful powers would never pass the “expediency test” set down in Section 120(5)c) of the 2008 Act and clarifying caselaw ⁽¹⁾ and therefore should not be included in the Order.

6.0 CONCLUSION

6.1 Section 6.0 above summarises how Mona’s failure to follow lawful process has already detrimentally prejudice the Objectors. It is also clear that the Order should not be confirmed until the unlawful issues are addressed.

6.2 A minor modification to the Order to use one of reasonable Alternatives “A”, “B” or “C” would almost entirely mitigate the impact on Robert Parry whilst still achieving 100% of the intended benefits of Mona. Likewise, Alternatives “D” or “E” in conjunction with reducing the limits of deviation to ensure that prudent and efficient use of the land has to take place together with reducing the notice serving period and giving a finite time period for temporary powers would go a substantial way to mitigate the impact on Robert Parry whilst again still achieving 100% of the intended benefits of Mona. The Promoter would be aware of this had it properly considered the impact on landowners as part of justifying its compelling case which has failed to do.

6.3 In light of the above the Objectors are respectfully requesting that the Plots be removed from the Order altogether. Reasonable alternatives are available and they simply have not been considered or if this is not possible then we respectfully request modification of the Order as indicated in the preceding text.

¹ Open Spaces Society v Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 241 (25 February 2021)

- 6.4 The Secretary of State should respectfully be asked to bear in mind its duties to make informed and impartial decisions under Section 25 of the Localism Act 2011 when it considers the requirements of Sections 104 and 106 of the Planning Act 2008. Section 104(4) particularly requires the Secretary of State to be satisfied that deciding the application in accordance with any relevant national policy statement would not lead to the United Kingdom being in breach of any of its international obligations such as those of the Aarhus Convention .
- 6.5 Further, the UK's important carbon zero ambitions are impressive and need to be supported however the Promoter's failures above are material failures of law and procedure which are arguably more important to uphold than meeting policy.
- 6.6 It is the Objectors opinion that to overlook these and confirm the Order without modification would be a serious breakdown in the rule of law. Not only that, it would also reward some fairly dubious practices on the Promoter's behalf giving rise to moral hazard and serving only to embolden every Promoter in the land to cut corners and engage in similar devious tactics in furtherance of their commercial aspirations.
- 6.7 The Objectors hope that the decision makers here will agree that the ends clearly do not justify the means deployed in this instance and come to the right decision accordingly.

Griffith Wynne Parry MRICS

Senior Consultant

The Brown Rural Partnership

Dated 14 January 2024

(Deadline 7)