



Mr A Blake
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Swindon
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Eich cyf : Your ref 271109.PINS, Cap.arb
Ein cyf : Our ref A-PP184-98-qA889389
A-PP184-09-qA725757
A-PP184-09-qA725759
A-PP184-09-qA725761
A-PP184-09-qA849869

Dyddiad : Date 21 February 2011

Dear Mr Blake,

TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78
APPEAL BY RWE NPOWER RENEWABLES LTD
FOR ERECTION OF 19 WIND TURBINES AND ASSOCIATED TRACKS AND
ANCILLARY INFRASTRUCTURE ON LAND AT GOPPA HILL, MYNYDD Y GWAIR,
SWANSEA

INCLOSURE ACT 1845 - SECTION 147
APPLCATIONS FOR EXCHANGES OF LAND AT MYNYDD Y GWAIR, SWANSEA

LAW OF PROPERTY ACT 1925 - SECTION 194
APPLICATIONS FOR CONSENT TO WORKS ON COMMON LAND
AT MYNYDD Y GWAIR, SWANSEA

1. Consideration has been given to the report of the Inspector, Stuart B Wild MRTPI MCIM, who reported on your

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- (i) appeal under section 78 of the Town and Country Planning Act 1990 for the erection of 19 wind turbines and associated tracks and ancillary infrastructure on land at Mynydd Y Gwair, Swansea;
- (ii) application under section 147 of the Inclosure Act 1845 for an Order to exchange 0.97 hectares of common land on Common CL68 for 6.64 hectares of exchange land at Blaen Gerdinen;
- (iii) application under section 147 of the Inclosure Act 1845 for an Order to exchange 20.55 hectares of common land on Common CL74 for 20.88 hectares of exchange land at Blaen Yr Olchfa Farm;
- (iv) application under section 147 of the Inclosure Act 1845 for an Order to exchange 10.44 hectares of common land on Common CL77 for 12.30 hectares of exchange land at Blaen Yr Olchfa Farm;
- (v) application under section 194 of the Law of Property Act 1925 for consent for the erection of temporary fencing enclosing an area of 900m² of Common CL74 around Scheduled Ancient Monument GM202 Penlle'r Bebyll Cairn; and
- (vi) application under section 194 of the Law of Property Act 1925 for consent for the erection of temporary fencing enclosing an area of 144m² of Common CL77 around Archaeological Monument MG62 Circular Mound.

2. On the 9 April 2010 you submitted to the Welsh Ministers, under separate cover from your section 78 appeal, applications for three exchange of land Orders under section 147 of the Inclosure Act 1845 and two applications for works on common land under section 194 of the Law of Property Act 1925 referred to above.

3. On 5 May 2010 a direction was issued by the Planning Inspectorate under the authority of the Minister for Environment, Sustainability and Housing that the section 78 appeal should be determined by the Welsh Ministers rather than by a Planning Inspector. The reason for the direction was because the most efficient and effective way of determining the appeal was for it to be decided in conjunction with the applications under the commons legislation, over which Inspectors have no jurisdiction.

4. Under the provisions of the Government of Wales Act 2006 the powers to determine appeals made under section 78 of the 1990 Act and applications under section 147 of the Inclosure Act 1845 and section 194 of the Law of Property Act 1925 have been transferred to the Welsh Ministers. In this case these functions are exercised by the Minister for Environment, Sustainability and Housing.

5. The Inspector visited the site on 23 July and 5 August 2010. His appraisal, conclusions and recommendations are set out in paragraphs 51-139 of his report, a copy of which is enclosed. The Inspector recommended that

- (i) planning permission should not be granted;
- (ii) the Orders under section 174 not be granted; and
- (iii) the consents under section 194 be granted.

6. The Inspector, in paragraph 28 of his report, refers to Planning Policy Wales, referenced as inquiry document CD57. Document CD57 is a copy of Planning Policy Wales Edition 2 (June 2010) which consolidated and replaced Planning Policy Wales (2002) and Ministerial

Interim Policy Statements (MIPPS) issued between 2002 and 2009, all of which were thereby cancelled. However, since the Inquiry into this appeal was held Planning Policy Wales Edition 2 (June 2010) has been amended and replaced by Planning Policy Wales Edition 3 (July 2010). Planning Policy Wales (Edition 3, July 2010) introduces changes to planning policy found in Chapters 4 (Planning for Sustainability), 7 (Supporting the Economy) and 9 (Housing) with regards to affordable and rural housing. The Minister recognises that the Inspector's report refers to the previous version of Planning Policy Wales but does not consider that the changes that have been made to Planning Policy Wales Edition 2 (June 2010) are such as to materially affect her decision on this section 78 appeal.

7. There has been discussion between the parties to the appeal and the Planning Inspectorate as to whether the Welsh Ministers have the jurisdiction to determine it. The Welsh Ministers do not have the jurisdiction to determine applications for electricity generating stations with a capacity of over 50MW. The prospective developers are aware of this and accept that the Welsh Ministers could not entertain such an application/appeal. In view of this, and as the application for the proposed development was made to the local planning authority and the appeal made to the Welsh Ministers, the Minister is satisfied that the appeal relates to a proposal which will not generate more than 50MW and, as such, may be determined by the Welsh Ministers.

8. The Minister has taken into account the environmental information as defined by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 in reaching her decision on the appeal.

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that planning applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise. With this in mind the Minister agrees with the Inspector that the proposal would be in conflict with criteria (ii) and (iii) of UDP Policy R11 and takes the view that, having regard to section 38(6), planning permission should be refused unless material circumstances indicate otherwise

10. The Inspector considered a wide range of issues arising from the proposed development and, setting aside its effect on the peat bog habitat, he was satisfied that the benefits of the production of renewable energy from this proposal would outweigh the conflict with the development plan and all the other material considerations. Subject to the following comments the Minister, also setting aside the effect of the proposed development on the peat bog habitat, agrees the Inspector's conclusions on the other issues raised by the proposed development.

11. One of the issues considered by the Inspector was the provision of renewable energy and in his report he commented on significant problems in Wales in reaching the 2010 targets, providing new grid connections for much of the capacity of SSAs in north and central Wales and almost inevitable problems with meeting whatever targets are set.

12. The Minister disagrees with the comments made by the Inspector at paragraphs 54, 82 and 83 of his Report, that there have been significant problems in reaching the 2010 targets. As set out in TAN 8 the Assembly Government announced the goal of annually producing 4TWh of electricity from renewable sources by 2010, with 7TWh being produced from renewables by 2020. Wales currently produces 3 terrawatt hours of electricity annually from renewable sources, and a further 5 terrawatt hours are either consented, under construction or within in the planning system.

13. Whilst the target date of 2010 for 800MW has not been achieved, there is substantial wind power capacity within SSAs, which exceeds 800MW and the Assembly Government is

on course to significantly exceed its original 2020 target of producing 7 terrawatt hours of renewable electricity annually by 2020. The 'A Low Carbon Revolution: Wales' Energy Policy Statement' sets out the actions that will be taken to accelerate the transition to an efficient, low-carbon-energy based economy in Wales.

14. The Minister considers that there are transport and grid connection issues associated with the development of wind energy developments within the Strategic Search Areas, particularly in Mid Wales but that the Assembly Government is working with relevant stakeholders in order to resolve these matters.

15. At paragraphs 86 to 91 of his report the Inspector considers the effect of the proposed development on the peat bog habitat and concludes that the risk of an unacceptable degree of harm to the peat habitat is sufficient to justify refusal of this proposal.

16. The Minister is aware that sections 40 and 42 of the Natural Environment and Rural Communities Act 2006 place a duty on the Welsh Ministers in carrying out their functions to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biological diversity in accordance with the United Nations Environmental Programme Convention on Biological Diversity 1992. The Welsh Ministers are required to publish a list of living organisms and types of habitat which in their opinion are of principal importance for this purpose. It is the duty of the listing authority to take, or to promote the taking by others of, such steps as appear to the authority to be reasonably practicable to further the conservation of living organisms and types of habitat included on any list published by the authority.

17. In the Countryside Council for Wales' written representations they have explained that the presence of deep peat under a semi-natural habitat cover of modified bog or of modified bog vegetation on shallower peat, indicates placement with the blanket bog priority habitat type of the UK Biodiversity Action Plan, a habitat also included within the Local Biodiversity Action Plan. Blanket bog is also included on the Welsh Assembly Government's list of habitats with principal importance and it is, therefore, the duty of the Welsh Ministers to conserve the peat habitat.

18. The Inspector has considered the possibility of relocating turbines but concluded that the consequences of this – for example moving turbines closer to others which, in turn, would have to be relocated and have effects which have not been considered – would be to significantly change the nature of the proposal and that such changes could not be brought about by a condition attached to a planning permission. The Minister agrees with that conclusion.

19. The Minister offers no comment on the Inspector's view that a relatively minor re-design of the layout might remove most, if not all, of the impact on the peat deposits as the consideration of such issues, and any application for planning permission that would need to be made should significant changes be proposed, must be for the local planning authority in the first instance.

20. Subject to the above comments the Minister agrees with the Inspector's conclusions and accepts that the development as proposed raises the risk of an unacceptable degree of harm to the peat habitat which is sufficient to justify refusal of this proposal.

21. In the light of the conclusions reached above the Minister accepts the Inspector's recommendation that planning permission should not be granted for the development proposed.

22. At paragraphs 120 and 122 to 137 of his report the Inspector considers the merits of the applications made under section 147 of the Inclosure Act 1845. The Minister makes no comment on the Inspector's conclusions about the possibility of taking land from one common and adding it to another (paragraph 131 of his report) as the power to take such action or its appropriateness are not matters before the Inspector or the Minister in the consideration or determination of these three applications. Nor does the Minister make any comment on the Inspector's conclusions in paragraph 132 of his report about alternative solutions in respect of the amount of land which is proposed to be removed from the commons. As the Inspector acknowledges, alternative solutions are not before him in the determination of these applications, nor are they before the Minister.

23. The Minister has noted the Inspector's conclusion that the West Glamorgan Commoners' Association would be the obvious choice to manage the exchange land but offers no comment on that conclusion. She acknowledges, however, the problems that would be faced by an organisation or group managing the land but takes the view that a lack of agreed management, either by groups or individuals, would bring problems which could affect the suitability of the quality of the exchange land.

24. Subject to the above comments the Minister agrees the Inspector's conclusions on the merits of the 3 applications made under section 147 of the 1845 Act and accepts his recommendation that the Orders applied for under section 147 be not granted. In reaching that decision the Minister acknowledges that the Inspector has not reached any conclusion specifically in relation to the convenience of location of the exchange land for CL77. From the evidence before her, however, the Minister is satisfied that, in the light of the hefting system on CL77 and the distance of the exchange land from that affected by the proposed development, the location of the land is not suitable as exchange land for that lost in CL77.

25. As to the applications made under section 194 of the Law of Property Act 1925, the Minister is satisfied that, in their own right, the proposed fencing would be acceptable. The need for the fencing is dependent, however, on the windfarm development proceeding. In the light of her decision not to grant planning permission for the windfarm development, the Minister considers it appropriate not to grant the consents sought under section 194.

FORMAL DECISION

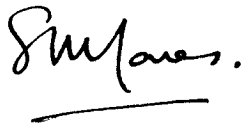
26. For the reasons given above, and in exercise of the powers and authority referred to in paragraph 4 above, the Minister for Environment, Sustainability and Housing hereby

- (i) dismisses the appeal under section 78 of the Town and Country Planning Act 1990 and refuses to grant planning permission for the erection of 19 wind turbines and associated tracks and ancillary infrastructure on land at Mynydd Y Gwair, Swansea;
- (ii) dismisses the application under section 147 of the Inclosure Act 1845 and refuses to grant an Order to exchange 0.97 hectares of common land on Common CL68 for 6.64 hectares of exchange land at Blaen Gerdinen;
- (iii) dismisses the application under section 147 of the Inclosure Act 1845 and refuses to grant an Order to exchange 20.55 hectares of common land on Common CL74 for 20.88 hectares of exchange land at Blaen Yr Olchfa Farm;
- (iv) dismisses the application under section 147 of the Inclosure Act 1845 and refuses to grant an Order to exchange 10.44 hectares of common land on Common CL77 for 12.30 hectares of exchange land at Blaen Yr Olchfa Farm;

- (v) dismisses the application under section 194 of the Law of Property Act 1925 and refuses to grant consent for the erection of temporary fencing enclosing an area of 900m² of Common CL74 around Scheduled Ancient Monument GM202 Penlle'r Bebyll Cairn; and
- (vi) dismisses the application under section 194 of the Law of Property Act 1925 and refuses to grant consent for the erection of temporary fencing enclosing an area of 144m² of Common CL77 around Archaeological Monument MG62 Circular Mound.

27. A copy of this letter has been sent to John Phillip Lock, Planning Control Manager, City and County of Swansea Council and to all interested persons.

Yours faithfully,



S M JONES
Deputy Head
Decisions Branch
Planning Division

Signed under authority of the Minister for the Environment, Sustainability and Housing,
one of the Welsh Ministers.

Enc: Leaflets 'H', 'HC', 'HC(147)' and 'HC(194)'