

The Mid-Wales (Powys) wind farm inquiry, Session 3

Comments on the proofs of Andrew Croft and Martin Carpenter.

1. This note has been written by Dr Jonathan Edis BA MA PhD MIFA IHBC on behalf of CeltPower. It relates to terminology used in the proofs of Andrew Croft and Martin Carpenter for Session 3.
2. Mr Croft's heritage proof refers to "substantial harm" and "less than substantial harm" in a number of places, notably in paragraphs 2.2 and 3.3, and in most of the paragraphs between 4.12 and 4.24. In his paragraph 6.5 he lists historic assets that could "potentially" be the subject of substantial harm, and in later paragraphs he addresses specific impacts in more detail according to his assessment of the levels of harm in each case.
3. It seems, from the implication of paragraph 3.3, that Mr Croft's understanding of the terms substantial harm and less than substantial harm is derived primarily from the NPPF.
4. Mr Croft defines levels of harm in and after his paragraph 4.14. In paragraph 4.15 he suggests that total loss of setting could result in total loss of significance. This may be so, but only in cases where all or very much of the significance of the historic asset is bound up in its setting. In other words, the components of significance (architectural interest, historic interest, artistic interest and archaeological interest as defined in the NPPF) would in these cases have to be relatively subservient factors when compared to the setting of the historic asset, which is the surroundings within which significance is experienced.
5. Paragraph 4.18 is important in that it notes that policy in Wales is not based on terminology relating to harm. In paragraph 4.19 Mr Croft equates "significant

impact”, which is the term used in Welsh policy, to substantial harm. In paragraphs 4.20 to 4.25 Mr Croft develops that point to suggest that the applicants ES is an indicator of significant impacts, and that these can equate to substantial harm.

6. “Serious concerns” about impacts on historic assets are mentioned in a number of places in Mr Croft’s proof, notably at 4.24, at 6.72 (in relation to EN-5) and 7.3. There is clearly a difference between substantial harm and serious concerns.
7. Mr Carpenter’s planning proof adopts the terms used in Mr Croft’s proof, notably “substantial harm”, “less than substantial harm” and “serious concerns”, though he does not appear to use the term “significant impact” to the same extent as Mr Croft.
8. Recent case law has established that substantial harm equates to serious harm, and that substantial harm is a high level of harm “which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced”.¹
9. The same association between substantial harm and serious harm is made in the DCLG Beta website which contains Draft National Planning Policy Guidance:

“A key factor in determining whether the works constitute substantial (ie serious) harm is if the adverse impact goes to the heart of why the place is worthy of designation – why it is important enough to justify special protection.”² (emphasis added).
10. My understanding is that the Draft National Planning Policy Guidance is likely to replace the PPS5 Practice Guide, which currently remains in force.
11. Recent case law also confirms that there are two separate strands to assessment, one of which is the test of EIA significance and the other of which is harm within the meaning in the NPPF.³
12. Irrespective of whether the levels of harm identified by Mr Croft are accepted or rejected on a case by case basis, it is relevant that:

¹ Bedford Borough Council v SSCLG and Another [2013] EWHC 4344 (Admin), paragraph 25.

² Draft National Planning Policy Guidance.

³ Malcolm Alexander MacArthur and others v SSCLG and others [2013] EWHC 3 (Admin), paragraph 26.

- i. The terms substantial and less than substantial harm are not the basis for Welsh heritage policy;
- ii. That substantial harm equates to serious harm;
- iii. That, by definition, it follows that less than substantial harm is not serious harm;
- iv. That EIA significant impacts do not necessarily equate to substantial harm as it is described in the NPPF, and that there are two separate strands to the assessment;
- v. That serious concerns do not necessarily equate to significant impacts or substantial harm.