

IN THE MATTER OF

**ELECTRICITY ACT 1989 (SECTIONS 36, 37, 62(3) AND SCHEDULE
8)**

**THE ELECTRICITY GENERATING STATIONS AND OVERHEAD
LINES (INQUIRY PROCEDURE (ENGLAND AND WALES)) RULES
2007**

**APPLICATION BY FFERM WYNT LLAITHDDU DATED 7TH MAY
2008 FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY
ACT 1989 TO CONSTRUCT AND OPERATE A 66.7MW WIND
TURBINE GENERATING STATION IN POWYS, MID WALES**

**OPENING STATEMENT AT THE INQUIRY INITIAL SESSION
ON BEHALF OF FFERM WYNT LLAITHDDU**

INTRODUCTION

1. The applicants are grateful for the opportunity to make an Opening Statement for the purposes of this Inquiry Initial Session. Given the initial nature of this session and the significant number of parties who will wish to address you in opening, we intend to be as economical as we can, both as to

the scope of matters to be covered in opening and the detail in which they are to be addressed.

2. The purposes of the Inquiry Initial Session are clearly set out in your Agenda [ID/8A]. Principally, these opening remarks relate to item 5.0, namely the interpretation and application of energy and planning policy.
3. Necessarily, it is not feasible to open the applicant's case on all of the matters which are programmed to be considered later in the year and during the course of next year. That is because the parties have not yet served their full statements of case, nor has the evidence been exchanged. However, we can say at this stage that we have been greatly assisted by the approach adopted by those who participate in the inquiry to bring certain concerns to your attention (objectors and consultees) and by the other applicants. The tone and transparency adopted to date bodes well for the future quality of the debates which are to be had. For our part, we intend to seek as much agreement as possible between now and September, and thereafter. Participation here is resource-intensive and we make it clear that we welcome discussions 'outside of the Inquiry' during the course of this week.
4. Next, we intend to turn to a brief description of the Llaithddu proposal. We do so only in bare outline and so that what follows can be understood in

context and so that interested parties who have not had the opportunity to read deeply into the inquiry documents understand where the Llaithddu scheme fits into the inquiry. After that introduction to the proposals, we turn to summarise our position in respect of those legal obligations and matters of energy policy which form the key legislative and policy framework for the decisions which the Secretary of State has to make. Having completed that summary we turn then to the particular matters which you have identified at point 5.0 of your Agenda.

THE PROPOSAL

5. The Llaithddu proposal has been developed and promoted via cooperation between a number of hill farmers whose land lies within the refined TAN 8 (Technical Advice Note 8) Strategic Search Area 'C' (SSA) which is preferred for windfarm development. The directors of Fferm Wynt Llaithddu realised that they could bring forward a windfarm within refined SSA 'C' and in doing so bring about significant community benefit. That is what they set about achieving.

6. The application site covers an area of about 660 hectares, positioned about 8 kilometres to the southwest of Newtown. It was proposed to erect some 29 wind turbines, each to produce 2.3MW. Of course, there would be related infrastructure associated with the turbines such as access tracks and a

control building, etc. The application site has the characteristics which are typical of those sought for designation as SSAs, namely:

- Being an extensive area with a good wind resource.
- Being in the upland area of Wales, well over 300 metres above ordnance datum.
- Being sparsely populated.
- Being impoverished or improved moorland.
- Having a general absence of nature conservation or historic landscape designation.
- Being unaffected by any broadcast transmission, radar or military restraint or constraint.

7. The proposal was the subject of the sort of consultation with both the public who might be affected and with statutory consultees which you would expect. The design has responded to consultation responses and you will have further information in that regard in the Supplementary Environmental Information ('SEI'). It is a carefully designed and worked up scheme via which the applicants have sought to bring forward a scheme to produce substantial renewable energy benefits with the minimal impact, in a location which is widely understood to be suitable for such a project.

LEGAL OBLIGATIONS AND ENERGY POLICY

8. The Statement of Common Ground, in whatever form it finally resolves itself to, will record the extensive background which exists so far as the UK's International obligations are concerned with climate change. Those International obligations are repeated in the UK's European obligations with the additional factor that those obligations have the force of European law. Hence, the objectives and targets which one sees in the Secretary of State's various statements of energy policy derive from legal obligations entered into at the EU level. We draw attention to this background because it is a particular feature of decisions in respect of renewable development. The pressing need to bring forward such proposals is articulated in a wide variety of ways. They are often neatly summarised in inspectors' decision letters in a few paragraphs, and that is all that is needed.

9. However, the way in which we organise public inquiries is to spend the time debating those matters which are in issue - about which there is disagreement. We do not spend our time considering in great detail in the oral sessions those matters which are common ground. It is necessary therefore for us to emphasise in Opening, as we will do next year in Closing, the very significant imperative which is expressed in the weighty International and European obligations.

10. One way to encapsulate the ideas which we seek to communicate here, as succinctly as possible, is to alight upon three of the recitals to Directive 2009/28/EC, on the promotion of the use of energy from renewable sources [CD/COM/21], namely:

“... the increased use of energy from renewable sources, together with energy savings and increased energy efficiency, constitutes important parts of the package of measures needed to reduce greenhouse gas emissions and comply with the Kyoto protocol to the United Nations Framework Convention on Climate Change, and with further community and international greenhouse gas emission reduction commitments beyond 2012. Those factors also have an important part to play in promoting the security of energy supply, promoting technological development and innovation and in providing opportunities for employment and regional development, especially in rural and isolated areas.

The opportunities for establishing economic growth through innovation and a sustainable competitive energy policy have been recognised. Production of energy from renewable sources often depends on local and regional small and medium sized enterprises (SMEs).

...

When favouring the development of the market for renewable energy sources, it is necessary to take into account the positive impact on regional and local development opportunities, export prospects, social cohesion and employment opportunities, in particular as concerns SMEs and independent energy producers.”¹

11. We are concerned here with this proposal with both renewable energy to address climate change as a result of greenhouse gas emissions and doing so via a scheme which aims to bring about local economic activity, of benefit to the local community with the consequent benefits in terms of social cohesion.

MATTERS FOR CONSIDERATION AT THE INQUIRY INITIAL SESSION

12. You have asked for clarification of certain matters. So far as Appropriate Assessment is concerned, we will provide a Note to the inquiry to address that issue. Similarly, so far as information requirements, particularly SEI, is concerned, we have prepared a note to update you in that regard.
13. Turning then to the matters which fall for discussion at the hearing session, we now set out a summary of the applicant’s position.

¹ See Recitals 1, 3 and 4 from the Directive.

14. By reason of Schedule 9 to the Electricity Act 1989 [**CD/COM/023**], the Secretary of State will have regard to the desirability of a number of matters when considering the application, namely:

- Preserving natural beauty.
- Conserving flora, fauna and geological and physiographical features of special interest.
- Protecting sites, buildings and objects of architectural, historic or archaeological interest.

15. Further, the applicant is to do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on such flora, fauna, features, sites, buildings or objects. Such is the key statutory decision making framework.

16. The key policy framework is, in the applicants' submission, to be found in the National Policy Statements, principally EN1 and EN3 [**CD/COM/01 and 02**]. The overarching National Policy Statement for Energy emphasises:

- The legally binding target to cut greenhouse gas emissions by at least 80% by 2050 (cf. 1990 levels).

- The move from 20% to 30% emissions reductions by 2020.
 - The need to make a transition to a low carbon economy with a safety margin of spare capacity to accommodate unforeseen fluctuations.
 - To meet emissions targets, the electricity being consumed will need to be almost exclusively from low carbon sources.
17. In the context of the discussion which is to be had in respect of the TAN 8 capacity figures, it is important to emphasise that the Overarching National Policy Statement as adopted by the Secretary of State is that need is no longer expressed in terms of specific targets and the urgency for new energy infrastructure to be consented is of itself a significant policy objective.
18. Energy policy is not a devolved matter. However, Powys County Council and others rightly draw attention to the ways in which the Welsh Government has expressed its own energy policy and produced policy statements which deal with spatial planning issues so far as renewables are concerned. In that context, it is plainly material to consider Planning Policy Wales (PPW) and its supporting Technical Advice Note, TAN 8.
19. When read as a whole, planning policy in Wales is supportive and welcoming of means to address climate change and reduce greenhouse gas

emissions. Further, it is supportive and welcoming of wind energy, including onshore wind. However, it seeks to ensure that such development comes forward in a way which is not damaging to the natural and historic assets which Wales enjoys. It is clear that the Welsh Government is committed to playing its part by delivering an energy programme which contributes to reducing carbon emissions². It seeks to optimise renewable energy generation as part of the overall commitment to tackle climate change, reduce greenhouse gas emissions and increase energy security³. Indeed, one sees in PPW a clear reference back to those matters which we canvassed above in that planning authorities are asked to ensure that development management decisions are consistent with national and international climate change obligations, including contributions to renewable energy targets and aspirations⁴.

20. The social opportunities that arise from renewable energy resources are recognised.

21. The Welsh Government accepts that the introduction of new, often very large structures for onshore wind needs careful consideration to avoid and where possible minimise their impact. Having regard to their impact, TAN

² See PPW at 12.8.1 [CD/COM/8]

³ See PPW at 12.8.8

⁴ See PPW at 12.8.9 at second bullet point.

8 has sought to identify appropriate locations for large scale windfarm development. We will contend that such findings are self evidently weighty material considerations as to the appropriateness of the application site to receive the Llaithddu windfarm.

22. The Alliance takes a contrary view on the basis of what is, if we may say so, a detailed and forensic review of the history of the SSA designations. Whatever the merits of those points, and we make no concession as to the merits of any of them, in the main they are not points which can advance to any helpful conclusion for any party in this inquiry because matters of policy are not open for debate at a public local inquiry. The SSAs were broadbrush indications of suitable locations for windfarm developments of this size. Those indications have been further refined by the respective local planning authorities. So far as SSA C is concerned, Powys have undertaken that exercise after careful study and consideration.

23. That leaves only the question of the amount of windfarm development which a particular Strategic Search Area may accommodate. Self evidently, the answer to that question is very much a function of the particular schemes which come forward.

24. Moreover, the expressions of capacity which were alighted upon some little time ago (2005) have to be understood in the context of more recent and weightier statements of policy. NPS EN-1 confirms an urgent need for new electricity capacity (particularly low carbon capacity) to be brought forward as soon as possible. To minimise risks to energy security and to ensure resilience it is prudent to plan for a minimum of 59GW of new electricity capacity by 2025⁵.
25. The interpretation of TAN 8 targets which is provided by the Minister for Environment and Sustainable Development, Mr John Griffiths, in his letter dated July 2011 [CD/COM/020], suggests a maximum installed capacity for each SSA, using MW figures.
26. This approach conflicts with the approach to targets which is set out in NPS EN-1 (see para 3.1.2). The need for additional renewable energy as expressed in NPS EN-1 is no longer defined by specific targets, but rather a much wider qualitative need to decarbonise the energy sector.
27. Further, you will have read the position statement on TAN8 SSA as appended to the SoCG between applicants (at Appendix 1). We need not repeat its contents.

⁵ See paragraph 3.2.23 of EN-1

28. Hence, so far as the capacity of a particular SSA C is concerned, it is of course material to assess the cumulative impact of proposals which fall for determination and to make an assessment as to whether or not those cumulative impacts are acceptable or not. However, it is that specific assessment upon consideration of the detail of the particular proposals which is to be undertaken and not for there to be a predetermined target in MW terms.
29. The net result of the policy conundrum which was set by the Minister, is to revert to a simple and familiar question which is the balancing exercise to be undertaken as between the weighty legislative and policy support and imperative on the one hand, and the degree to which the proposals give rise to harms which are more than those which are inevitable from such proposals and which arise from failures by an applicant do what he reasonably can to mitigate the impacts of the proposals.
30. In that balancing exercise, the TAN 8 SSA's weigh in favour of the proposals because they tell us where the good wind resource is and are relevant to any identified impacts because they tell us where such impacts are best accommodated. We then revert to the Schedule 9 considerations and upon consideration of those matters and the weight to be attached to

their assessed significance, the determination falls to be made but without reference to any predetermined numerical capacity limit.

31. That is the position which the applicants will argue for on this topic, during the course of the hearing session.

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4th June 2013

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**OPENING STATEMENT AT THE INQUIRY
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