

**IN THE MATTER OF AN INQUIRY INTO PROPOSED WIND FARMS AT LLANBADARN FYNYDD,
LLAITHDDU, LLANDINAM, LLANBRYNMAIR AND CARNEDD WEN, AND A 132 KV OVERHEAD
LINE FROM LLANDINAM TO WELSHPOOL**

**OPENING ON BEHALF OF
POWYS COUNTY COUNCIL**

Introduction

1. Powys County Council (Powys) fully supports both the UK Government's and Welsh Government's energy policy and its targets for renewable energy reflective of the UK's international obligations¹. To minimise wider environmental harm, it supports the strategic approach to the location of windfarms contained in PPW and TAN8 of identifying strategic search areas (SSA's). Powys further endorse the recognition in the National Planning Policy Statements for Energy (NPS) and PPW that energy provision should be sustainable, as attractive as it can be², seek to avoid or minimise the impact on the environment, and should not compromise international and national statutory obligations for designated areas, species and habitats.
2. This balanced approach reflects the provisions of the Electricity Act 1989 which are the immediate statutory framework for the consideration of each of the applications

¹ As set out in the Statements of Common Ground

² EN-1 4.5.3

before the inquiry. The applicant's responsibility is to provide an economic and efficient generation of electricity whilst doing what they reasonably can to mitigate "any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects".³ There are of course a host of other statutory duties which the Secretary of State must comply with in reaching a decision on the applications, the principal ones are set out in the annex to this opening statement.

3. The fact that land lies within an SSA (refined or otherwise) does not lessen the responsibility on applicants either to choose acceptable sites or, having done so, to mitigate those impacts capable of mitigation. Whilst the TAN8 SSA approach has considerable merit, it is important not to lose sight of the fact that the identification of the SSAs was the product of a high level, broad brush, largely noise assessment driven process. Such broadly defined areas were never likely to provide an accurate guide as to what is acceptable or unacceptable in the context of individual schemes within the areas. Their importance lies firstly in identifying broad areas within which strategic provision is likely to be *least harmful* and secondly, in providing a broad measure of the likely cumulative capacity of the areas if the "least harmful" objective is to be attained.

4. If anything, the greater impacts of strategic windfarm provision require a closer and earlier attention to the discharge of the duty to mitigate than non-strategic

³ EA [CD/COM/023] sections 4-7 and Schedule 9 paragraph 1(2)

provision. In that context, it is disappointing that the applications before this inquiry have many significant outstanding issues to address which bear on the Secretary of State's duty to have regard to the extent to which they have complied with that duty.

5. Whilst the parties to this inquiry will have various and differing views on the interpretation, application and weighting to be given to policy at all levels, the essential duty of the Secretary of State in relation to each of the applications before this inquiry is to undertake an overall balance to establish where the advantage lies in the overall public interest. At present, PCC's advice to the Secretary of State is that when the balance is properly undertaken, none of the applications is worthy of being consented. As more is promised from applicants by way of evidence and assessment, this overall position will inevitably develop as the inquiry progresses. Some of the important considerations relating, for example, to cumulative landscape and socio economic impacts as well as grid infrastructure will require further assessment from all sides when additional information is made available.
6. Powys' position may therefore change as further information is provided and assessed and further agreements are reached, hopefully well in advance of the scheme specific sessions. For that reason, we concentrate in opening on matters of approach, the issue of the general need for renewable energy and provide a summary update of PCC's position on each of the applications.

7. Within that context, this combined public inquiry provides an important opportunity for both the individual and cumulative impacts of the proposed developments to be examined⁴. The importance of such considerations to those that live and work in Powys and elsewhere in Mid-Wales and to the future landscape and overall sustainability of the affected areas can hardly be overstated.
8. It is important that the planning system ensures that decisions take account of the views of affected communities and respect the principle of sustainable development⁵.
9. The Inquiry will additionally require the Secretary of State to assess and consider the implications of the proposals in the context an extensive range of other developments, consents and applications⁶ which are inevitably interlinked by virtue of cumulative impacts and potential power infrastructure requirements.
10. The context requires a strategic approach to be taken to decision making in light of both the acknowledged urgent need for nationally significant renewable energy infrastructure and the finite environmental capacities of the areas in which the proposals lie.

⁴ The Council takes no issue with the matters as identified by the S of S which should be addressed at the inquiry.

⁵ EN-1 2.2.4

⁶ See [OBJ-002-002-APP Windfarm Table], an updated version of which is attached to this opening as annex 2.

11. The accumulation of, and interrelationship between, effects from the combination of proposals on the environment, economy and community as a whole⁷ will therefore be key considerations to be addressed.

Structure of opening

12. We structure this opening as follows:

- (i) Initial submissions relating to legal considerations and approach to decision making.
- (ii) An outline description of the case in relation to each scheme.

Legal context and the overall balance

13. Each application before the combined inquiry requires consent pursuant to the provisions in either section 36 (windfarms) or 37 (overhead line) of the Electricity Act 1989 (the 'EA') in the context of a range of other statutory provisions⁸ which will also require consideration.

14. The EA provisions engaged at this inquiry require the Secretary of State in assessing the overall balance of advantage and disadvantage in the public interest to take into account and apply appropriate weight to relevant material factors which will include energy and planning policy at the national, regional and local level, environmental

⁷ The language of EN-1 [CD/COM/001] para 4.2.6

⁸ Deemed planning permission is required under s.90 TCPA 1990 ; See R (Tadcaster) v SoS [2012] EWHC 46 (Admin) [CD/COM/030] for the correct approach in the context of deemed consent provisions and the relevance of s.38(6) PACPA 2004; Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000/1927 esp at regs 3, 4 and Schedule 4. See further in Powys St of CG [OBJ-002-PLA-SOCC Statement of Common Ground – Policy – Powys CC version – clean copy] at section 5;

issues, local issues and the views of relevant authorities, statutory advisers and local people as well as the arguments put forward by the applicants⁹.

15. The balance is most usefully summarised in EN-1:

“In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the IPC should take into account:

- *Its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and*
- *Its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts”¹⁰.*

16. We highlight in opening some aspects of the approach to such a balance which we invite the Secretary of State to adopt.

17. We acknowledge from the outset that the fact that individual proposals will give rise to significant adverse impacts is not to be equated with the impacts being unacceptable so as to justify the refusal of consent without more. There will, to take one obvious example, almost always be significant landscape and visual impacts resulting from the construction and operation of modern onshore wind turbines¹¹.

⁹ The correct approach is set out in the October 2007 DECC guidance for s.36: “The consenting process for onshore generating stations above 50 MW in England and Wales – a guidance notes on section 36 of the Electricity Act 1989 – October 2007”.

¹⁰ See EN-1[CD/COM/001] at para 4.1.3

¹¹ A point recognised in EN-3 [CD/COM/002], para 2.7.48 and commonly by decision makers. See also EN-1 [CD/COM/001] para 3.2.3

18. However, it is necessary to undertake an overall balance so as to establish where the advantage lies in terms of the overall public interest. It does not follow from national policy that all and any significant landscape impacts are to be accepted. Powys has undertaken an appropriate balance and will keep matters under review in light of further information received.

19. Powys has updated the inquiry in relation to the overall position it has now been able to adopt in relation to each application since it objected to the various schemes¹². That updated position is based upon the additional information it has received from applicants together with an assessment of the current policy position.

General submissions by way of contextual approach

20. While we set out below in more detail the specific outstanding matters relating to each application, the key issues overall which remain of concern can be summarised as follows:

- (i) the consistency of the proposals with Government policy on the energy mix with particular reference to its contribution to the mitigation of climate change and maintaining a secure and reliable supply of energy;
- (ii) the extent to which the proposals are consistent with NPS EN-1, EN-3 and EN-5;
- (iii) the extent to which the proposals are consistent with Welsh Government and local policies, including PPW, TAN 8 and the Powys UDP;

¹² See amended outline statement of case at [OBJ-002-OSOC-2 Revised Powys Outline Statement of Case Final]

- (iv) the individual and cumulative impact of the proposals in terms of landscape and visual impact;
- (v) the individual and combined impact of construction traffic on the road network and surrounding areas;
- (vi) the individual and cumulative impact of the proposals in terms of socio/economic impact;
- (vii) the implications and requirements for the grid network;
- (viii) implications for noise (although this is limited to the type and adequacy of proposed conditions);
- (ix) ecology (upon which NRW will be assessing and providing evidence);
- (x) the overall balance.

21. The relevant policy considerations have been identified in the statements of common ground and statements of case which we do not traverse in opening.

22. With that in mind we address some limited points at the outset which provide a context for the various applications before the inquiry.

Approach to NPSs

23. Powys accepts that the relevant National Policy Statements¹³ should be afforded substantial weight¹⁴. They, along with relevant statutory and other policy provisions and material considerations, provide the context for the decision making.

¹³ EN-1[CD/COM/001]; EN-3 CD/COM/002; EN-5 CD/COM/003

24. In broad terms each of the windfarm proposals accords with EN-1 and EN-3 in so far as they seek to meet the need for a greater number of electricity generating schemes that utilise onshore wind energy.

25. EN-1 highlights in particular the role of renewable electricity generation in enabling the UK to source 15% of energy consumption from renewable sources by 2020¹⁵ and that the need for new renewable electricity generation projects is urgent¹⁶.

26. It is in that context that EN-1 indicates that the decision maker should start with a *'presumption in favour of granting consent to applications for energy NSIPs'*.

27. We make three contextual points in relation to the presumption:

(i) First, the presumption is stated¹⁷ *'to be subject to'* considerations set out in EN-1 para 1.1.2. That in turn provides specific reference to matters which include *'adverse impacts outweighing the benefits'*. The presumption is, in truth, inevitably circular and its importance is to ensure that the appropriate weight is accorded to the issue of national need rather than to dictate the conclusions of a properly undertaken exercise involving a balance which seeks to establish where the advantage lies in the overall public interest.

¹⁴ Powys st of cg [OBJ-002-PLA-SOCG Statement of Common Ground – Policy – Powys CC version – clean copy], p.6, para 2.1

¹⁵ EN-1 [CD/COM/001] at 3.4.1

¹⁶ EN-1 [CD/COM/001] at 3.4.5

¹⁷ EN-1 [CD/COM/001] 4.1.3

- (ii) Second, we have already referred to the statutory duty for reasonable mitigation in the context of the EA and these applications. The NPSs in fact also emphasise the importance of assessing the steps that have been taken to avoid, reduce or compensate for any adverse impacts as an integral part of weighing matters in the overall balance¹⁸.
- (iii) Third, whilst substantial weight should be given to the potential contribution of the proposals to securing electricity from renewable sources, in the context of the stated urgency of need that is tempered by the fact that it has subsequently become clear that the UK is now virtually certain to meet its overall target for installed on-shore wind capacity several years in advance of the target year of 2020¹⁹. There is now every likelihood that the target will be exceeded by some margin even allowing for a considerable attrition rate on the current pipeline. That is not to understate the continued urgency of need, but in terms of weight and balance it indicates there is no justification for accepting poorly located, poorly designed or inadequately mitigated proposals.

The relationship between National and Welsh Policy

28. Welsh national energy policy and in particular the policy and aspirations set out in PPW²⁰ and TAN 8²¹ are consistent with the UK Government policy statements.

¹⁸ For example, EN-1 [CD/COM/001] para 4.1.3, bullet point 2, para 1.7.2. bullet point 3, para 5.9.8, para 5.9.17, para 5.13.6

¹⁹ As is apparent from the UK renewable energy Roadmap [CD/COM/013], the 2012 update [CD/COM/015] and the latest figures published on the DECC Restats pages <http://restats.decc.gov.uk/app/reporting/decc/datasheet>. Note at EN-1 [CD/COM/001], p.16, footnote 16 it is anticipated that the policy at 3.1 and the weight accorded to it was dependent upon models of outputs that would inevitably change over time.

²⁰ 5th Edition Nov 2012 [CD/COM/008]

²¹ July 2005 [CD/COM/016]

29. Indeed, PPW 5th Edition (Nov 2012), which postdates the NPSs, reaffirms the relevance of TAN8²². EN-3 paragraph 2.2.1 emphasises the importance of policy as well as advice issued by the Welsh Government relating to renewables in the contexts of NSIPs. It does so in a textual context²³ which makes it clear that EN-3 has been drafted with Welsh Strategic Search Areas (SSAs) and refinements clearly in mind.

30. Two of the TAN8 SSAs are of particular relevance to the inquiry – B and C. The Welsh Government has indicated in TAN8 that the SSA boundaries are at a ‘*broad brush*’ scale²⁴. It is made clear that not all of the land within such areas is expected to be either technically, economically or environmentally suitable for major wind power proposals²⁵.

31. The prospect of local refinement being undertaken by planning authorities is anticipated by the TAN and in that context reference is made to land outside (but close to) the particular SSA being used for windfarm development if robust evidence exists to suggest the land is suitably unconstrained²⁶.

32. In the context of the broad brush boundaries and in the anticipation of refinement of such areas, TAN 8 provided indicative capacity targets for each SSA²⁷. Those

²² PPW [CD/COM/008] 12.8.2

²³ EN-3 [CD/COM//002] para 2.2.2

²⁴ TAN 8 [CD/COM/016], para 2.4

²⁵ TAN 8 [CD/COM/016] para 2.5

²⁶ TAN 8 [CD/COM/016] para 2.4

²⁷ Table 1, TAN 8 [CD/COM/016], p.5. Based on the assumption that the majority of technically feasible land for wind turbines in each area is used.

indicative targets were derived from evidence based assessments undertaken by Garrad Hassan in 2005²⁸. For SSA B the capacity was 290MW and for C 70MW. In policy terms, the identified capacities allowed a local discretion in identifying sites to ensure that the most appropriate and sustainable options were identified. TAN 8 in fact specifically envisages that capacity may be more or less than that indicated in policy.

33. In July 2011 the Welsh Government provided clarification on capacity levels in the form of a letter²⁹. It was issued with express reference to the newly issued NPSs (at that stage being considered by Parliament) and, in that context, expected all decision makers to respect the *'finite environmental capacity'* of the SSAs so that output *'should not exceed the maximum levels'*. The maximum level for SSA B was stated to be 430MW and for C 98MW³⁰.

34. Between 2006 and 2008 Powys undertook refinement work in relation to SSAs B and C broadly in line with the methodology set out in TAN 8 Annex D. This work formed the basis for the draft Interim Development Control Guidance (IDCG) published in 2008, although it has never been formally adopted. Nor was it incorporated into the 2010 Powys UDP³¹. Powys have set out in evidence the location of the various

²⁸ The TAN 8 [CD/COM/016] indicative capacity targets (table 1, 2.5) represent a 1/3rd reduction on the Garrad Hassan work (2005) – [CD/COM/031]

²⁹ CD/COM/020

³⁰ Again derived from the Garrad Hassan work as reviewed.

³¹ CD/COM/006

applications before this inquiry. As can be seen, they mostly fall within the refined areas B and C³² which resulted from the refinement work.

35. From this context the following flow:

- (i) It is clear that the SSAs were designed and created for windfarms of over 25MW in scale and in the context of an identified indicative capacity³³ for each area based on environmental considerations and with the intention of allowing local discretion in decision making.

- (ii) The objective was to secure provision of the *best* sites for windfarms applying a strategically focussed approach i.e. the most appropriate and sustainable sites having regard to all considerations.

- (iii) The SSAs are a crude but helpful tool in delineation, and TAN 8 necessarily anticipated some 'refinement' so as to allow the identified capacities to be most sustainably achieved. PPW similarly anticipates refinement in the context of its revised 2GW onshore wind ambition³⁴. It is not, nor has it ever been, anticipated by policy that the areas would need to or should accommodate all or any windfarm proposals which the renewable energy industry chooses to propose within them (whether within or beyond the capacity indicators).

³² Enplan/Carpenter statement for opening session [OBJ-002-PLA-SOC-2 Conjoined wind farms PI – Statement of M Carpenter on behalf of PCC May 1], p.34 – table.

³³ Each in fact reduced by around 1/3rd from the maximum identified in research

³⁴ PPW [CD/COM/008] para 12.9.4

(iv) The evidence based capacity indicators (TAN 8 and subsequently July 2011 WG) provide a guide from the Welsh Government as to what was and is anticipated by way of capacity in these areas - including the areas as refined having regard to the supporting evidence base. Beyond those capacity levels, the prospect of extensive additional windfarms in or adjoining such strategic areas is simply not anticipated in policy, nor importantly does it have a supporting evidence base to demonstrate that exceedances are sound having regard to the purposes of SSA designation.

(v) Moreover, the approach as to, for example, landscape change in TAN 8 - which accepts implicitly the likelihood of significant landscape change³⁵ within or immediately adjacent to the SSAs in the context of such identified capacities – cannot credibly be relied upon in policy terms by applicants who seek, at the very same time, to exceed the indicative limits to which the policy relates.

(vi) Powys does not argue that either of the sets of capacity indicators (TAN 8 or Welsh Government July 2011) require the Secretary of State necessarily to dismiss any application or combinations of applications which leads to the capacity levels being breached. Each individual application will require assessment in terms of impact. But equally, it is obvious that the SSAs as originally envisaged (or as subsequently refined) become an increasingly unreliable guide as to what might be acceptable the more the evidence based capacity levels are exceeded.

³⁵ TAN 8 [CD/COM/016] Annex D, para 8.4

- (vii) The capacity indicators are just that. They are not properly to be viewed as being policy 'targets'³⁶. Rather they are the considered view of the Welsh Government of what the environmental limits of its strategic approach to wind farm provision in Wales are. As such they are important and should be taken into account as envisaged by EN-3 when applicants work up proposals³⁷.
- (viii) Looked at cumulatively – as this inquiry is now able to do – the extent of the applications before this inquiry (and also awaiting decisions by other persons) is far beyond that anticipated by the TAN. Acceptance of such a cumulative impact would need to be, at the very least, preceded by a wholesale review of the SSAs and consideration of other areas in Wales or beyond to ascertain the soundness of the approach. The SSAs were simply never intended to incorporate the extent of what is now being proposed.
- (ix) By way of illustration, if one just considers the extent of what is proposed in Area C by the applications which require a decision from this inquiry it is clear that, taken alone, they would materially exceed the capacity levels indicated by the Welsh government. Taken together with other applications in the planning system there is some 375MW proposed³⁸ as against identified capacity levels of 70MW (TAN 8) and 98MW (Welsh Government July 2011).

³⁶ Which would in any event be inappropriate in terms of 3.1.2 EN-1 CD/COM/001

³⁷ At 2.2.1

³⁸ Enplan/Carpenter statement, [OBJ-002-PLA-SOC-2 Conjoined wind farms PI – Statement of M Carpenter on behalf of PCC May 1] p.34 - table

(x) There is no basis for suggesting that unless all the proposals are allowed the UK or indeed Welsh targets/aspirations for onshore wind development will not be achieved. Quite the opposite. Adhering broadly to the Welsh Government (July 2011) levels would comfortably allow the PPW aspiration for onshore wind in Wales to contribute 2 GW of energy in the context of provision to 2020/2025³⁹. And, even if there were a prospect of under delivery, any suggested failure to meet such 'targets' would not provide a reason for approving the schemes in these locations in any event⁴⁰.

36. In such a context it is obvious the inquiry will need to focus not only on the individual impacts of the proposals but also take a view on the applications cumulatively.

Grid

37. The Secretary of State will need to consider the implications of the developments individually and cumulatively on the Mid Wales connection project⁴¹. This and the issue of grid connections generally will be important considerations in the grant of the consents sought by the applicants within the context of the parameters set by the Inspector.

³⁹ Figure 12.1, p.167PPW [CD/COM/008]

⁴⁰ EN-3 [CD/COM/002] para 2.2.1, last 2 lines.

⁴¹ Cefn Coch, via Llansantffraid, to Lower Frankton in Shropshire has been identified as the route corridor option to connect wind farms in Mid Wales to the national electricity network. National Grid are proposing as part of the project overall, if the various windfarms gain consent (i) A new local 132,000 volt (132 kV) connections - These will take power from the wind farms to the new substation. These connections are being developed by Scottish Power Energy Networks and SSE Renewables (ii) New Substation – this will be developed by National Grid and is where all the power from the wind farms will be collected and converted to 400 kV (iii) A new national 400,000 volt (400 kV) connection – this will also be developed by National Grid and will take the power from the proposed new substation to an existing 400kV line where it will enter the national electricity network for use in homes and businesses

38. There are two essential reasons why this consideration is required. First, such connection proposals are inextricably linked to the particular windfarm proposals before this inquiry. The connection proposals, at the very least, fall within a description of being *'indirect, secondary'* or, *'cumulative'* effects of the developments proposed so that consideration of them is required as matter of law⁴² to ensure the correct procedures have been adhered to.

39. Second, the implications of such connections are potentially highly significant in terms of their impact on the environment. They are required only because of the wind farm proposals in the Powys area. The Welsh Government take the view⁴³ that the connection proposals could vary in nature and extent if the maximum capacities it has identified for Powys are materially exceeded.

40. If consent were to be granted for all or any of the windfarms without proper consideration of the resulting implications for the grid, the applicants for the subsequent grid consents would benefit from an established need without the implications of that established need for the grid having been questioned and examined i.e. without proper consideration of whether it should in fact be allowed to become *"established"*. It is accordingly important that the Secretary of State is able to understand – and therefore that the applicants have demonstrated – the

⁴² Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000/1927, regulation 4 and Schedule 4, part I

⁴³ The Welsh Gov letter July 2011 [CD/COM/020]

impact of power transmission from the sites⁴⁴ individually and cumulatively. That is currently lacking.

41. It is needed not just to assess whether or not there are '*obvious reasons*⁴⁵' for subsequent grid approvals to be refused, but more importantly so as to assess the extent of resulting harm resulting from the applications (or a combination of some rather than all of them) as part of the assessment of overall balance inherent in the grant of a s.36 consent.

The Applications

42. Powys continues to have objections to the applications. The Council has continued to approach the issues it has concerns about with a view to being constructive.

SSA C

Llandinam

43. Llandinam is a scheme that has undergone some significant evolution. It was originally an application for replacement of the existing 102 turbines with 42 turbines. By SEI produced in 2011 this was reduced to 39 turbines by the omission of turbines T22, T23 and T24. By the SEI produced in April 2013 turbines T19, T20, T21, T25 and T26 were removed from the scheme so now the scheme is for 34 turbines.

⁴⁴ See DECC 2007 guidance, p.11 and at para 3.17 – 3.59 esp; EN-1 [CD/COM/001] section 4.9 also refers to the need for information.

⁴⁵ The language in para 4.9.3 EN1 [CD/COM/001]

Celtpower has requested that the application be determined on this basis⁴⁶. The existing 102 turbines are of 45.5metres in height, whereas the proposed 34 turbines will be generally up to 121.3m to tip⁴⁷.

44. This evolution has responded to the significant criticisms raised by the Council and NRW of the original landscape impacts of the scheme. In particular the removal of the further five turbines in April 2013 has, the Council accepts, significantly reduced the impact of the scheme on the Caersws Basin historical landscape to the north of the scheme. Of course the Council recognise that this is a repowering so the landscape impacts of the existing Llandinam wind farm need to be borne in mind. In the circumstances the Council consider that the landscape and visual impacts of the Llandinam proposal itself are now acceptable.

45. The Council recognise this view will come as a disappointment to some of the other objectors to this inquiry and perhaps to other local residents. However, as set out above, the Council recognise that national policy directs large scale wind development to the strategic search areas, and it is not appropriate to argue that there should be no wind farm development in the SSAs in any circumstance. The Council consider that the responsible approach to wind farm development in these areas (which they adopt in this inquiry) is to accept that there will be wind farm development in these areas within their environmental limits, but to identify which

⁴⁶ PJ Frampton proof of evidence [CPL-PLA-PF-POE] at 1.7.

⁴⁷ PJ Frampton proof of evidence [CPL-PLA-PF-POE] at 1.8, note that T29, T30 and T43 will have a reduced height of 111.2m to tip.

proposals are least damaging in landscape terms. Plainly within the SSA C the Llandinam proposal as amended is, in itself, the least damaging for the reasons set out above.

46. Therefore the Council consider in terms of landscape and visual impacts, that the Llandinam proposal could, if the applicants were able to demonstrate that all other unacceptable impacts have been mitigated in line with the duties under Schedule 9 and EN-1 and EN-3 outline above, provide very significant generation within SSA C. Whilst it is accepted that the capacities of the existing turbines will need to be deducted for the purposes of this calculation, and whilst different figures have been given in different places for the proposed capacity which will need to be explored through the course of the inquiry, the Council consider that at least 70MW of additional installed capacity could be provided through development at the Llandinam site, which goes a significant way to meeting the Welsh Minister's 98MW indicative capacity for the area.

47. The Council say 'could be provided' because in order for consent to be given through this Inquiry process the Secretary of State would have to be satisfied that the duties to mitigate had been complied with. That may be where we are at the end of the Inquiry process but, and the Council regard this as unfortunate for a scheme which has been evolving for so long, that is not the position at the start of the Inquiry process.

48. The most significant outstanding issue within the Council's purview is whether it has been demonstrated that the turbines and any other necessary materials can be safely transported to the site without unacceptable impacts on the road network. Despite, the Council believe, being part of the strategic traffic management plan proposing bringing the loads from the north, it is currently proposed that Llandinam will be accessed from the South. This has led to unresolved concerns from the Welsh Government in relation to the impact of lowering of A483 at Crossgates Bridge, and from NRW in relation to the impact on the SAC of the bridge over the river Wye. Further, insufficient information has been provided in relation to: the local access road and the need for it to be widened, the widening of the B4567 and A481, and how the divergence through a quarry to access the A483 trunk road will be managed. This further information has been requested and the Council believe it is in the process of being produced. Unless these matters are resolved through the course of the inquiry the Council will invite the Secretary of State to conclude that in relation to the scheme in front of him the duties of mitigation have not been properly complied with and that the scheme will have unacceptable impacts.

49. In relation to the biodiversity impacts of this development, as set out in their updated outline statement of case⁴⁸ the Council will not themselves be calling evidence, given that NRW their specialist consultee and the UK and Welsh Government's statutory adviser on sustaining natural beauty, wildlife and the opportunity for outdoor enjoyment in Wales are themselves represented at the

⁴⁸ [OBJ-002-OSOC-2 Revised Powys Outline Statement of Case Final]

inquiry and calling evidence and given the need to make responsible use of inquiry time and avoid duplication of evidence. It is plain from NRW's letter of the 24th May 2013 that they are not satisfied in relation to the biodiversity issues that the duty to mitigate has been complied with.

50. Looking briefly at the remaining issues, the Council are satisfied that the noise consequences of this proposal will be acceptable provided that adequate conditions are offered by the developer. They do not anticipate calling and/or challenging noise evidence through this inquiry unless they consider the noise conditions being proffered are inadequate. This point is the same for all the windfarm schemes before the inquiry and will not be repeated in relation to each individual scheme.

51. The Council are still reviewing their original objection on cultural heritage grounds in light of the removal of five turbines earlier this year. They hope to be able to shortly confirm whether this objection is being pursued and if so on what grounds.

52. In relation to all the schemes, the Council is currently in the course of carrying out investigations in relation to the socio-economic impacts of the schemes, particularly in relation to impacts on tourism. The Council do not consider this to be a matter which is an objection to any individual scheme but are investigating the cumulative impacts of the proposals on tourism. Depending on the outcome of their research (and the Council are mindful of the guidance in EN-1 that positive evidence of harm should be provided) the Council propose to call evidence on this point as part of their cumulative case. This position pertains in relation to all of the windfarm

schemes so the Council not repeat itself when addressing each individual scheme in opening.

53. Finally in relation to Llandinam this inquiry will need to consider the impact of the necessary grid connection. The Llandinam scheme is of course a little different in that the grid proposal is before the inquiry. However, as set out below, the Council is expecting very significant further work to come forward in relation to the 132K overhead electric line connection. Without that work the Council is not in a position to be satisfied there will be no unacceptable impacts. Should the Council remain of the view that the grid proposals are unacceptable when the significant further work is provided, that will be a further reason why, at this time, the only proper recommendation to the Secretary of State is to refuse this scheme on the basis of failure to reasonably mitigate the harms caused by the scheme.

Llaithddu

54. The position in relation to Llaithddu is somewhat different in that the Council will demonstrate that the proposal as before the inquiry is unacceptable in landscape and visual terms. The Council are satisfied that some further development on the Llandinam ridge is acceptable in landscape terms having regard to the need, and take the view that some further development in this area could provide a significant contribution to the indicative capacity limits in TAN 8. However the Council cannot support the development currently before the inquiry because they consider the impact of the southern part of this development is unacceptable. It would

particularly increase the impact of turbines on Bwlch-y-Sarnau, its valley and a wide sweep of landscape to the south. Given that the indicative capacity limits could (subject to mitigation of other impacts) be reached by development on the northern part of this ridge, the Council will argue that even in the context of the general need for windfarm development these significant impacts should not be accepted.

55. There are other unresolved matters which would in any event lead the Council to invite the inquiry to recommend a refusal at this time. In relation to highways the Council are not yet satisfied they have been provided with sufficient information to demonstrate that access from the A483 road can be achieved to the site. Further the Welsh Government retain concerns about the impacts of the necessary work at the Crossgates Bridge for highway flow (as above). Very recently, on the 30th May 2013, significant further information was provided by the applicant but this has not addressed the Council's concerns and the Council has reverted to the applicants requesting further information.

56. In relation to biodiversity, the Council understand that NRW do not accept that the duty to mitigate has been complied with and maintain that this proposal will have unacceptable impacts on biodiversity assets⁴⁹.

⁴⁹ So far as Powys are aware, NRW's objections remain as set out in their updated objection letter of the 7th September 2012 [CON-003-OSOC-2-APP Llaithddu – CCW letter to DECC]. That is to say they object because of: (i) lack of specific mitigation to reduce the cumulative effect of the proposal when considered with the Llaithddu and Hirddywel proposals on the curlew population of the wider area and (ii) the lack of information about the effect of the grid connection alone and cumulatively with the existing and proposed windfarms in the area. They also consider the project would be likely to have a significant effect on the River Wye SAC either alone or in combination with other plans and projects.

57. The position in relation to noise and socio-economic impacts has been explained above.

58. Finally, the Council are in the process of investigating the position in relation to the grid. As set out above, the Council will invite the Inquiry to consider whether, by rejecting some of the proposals in front of it, the indicative capacity limits can still be met without the need for a seriously damaging form of grid infrastructure and a very significant and welcome contribution to Welsh, British and European renewable energy targets can be made without the spectre of steel lattice pylons traversing the countryside. This position is the same in respect of each of the wind farm developments and will not be repeated in relation to each individual development for the sake of brevity.

Llanbadarn Fynydd

59. The Council will show that in relation to Llanbadarn Fynydd the landscape and visual impact of the development is unacceptable. There is also the potential for further significant landscape and visual impact in accumulation taking into account the series of other proposals for wind farm development not before this inquiry in this eastern portion of the SSA including Neuadd Goch, Bryngydfa, and Garreg Llywd. In line with the approach set out above the Council have accepted that there will need

to be some wind farm development in SSAC in order to meet the capacity guidelines, but consider that capacity can be achieved (subject to resolution of other issues) on the Llandinam ridge. They also consider that in landscape terms the need identified through the capacity guidelines should be met on the Llandinam ridge in preference to developing to the east of the area. The Llandbadarn Fynydd Site occupies a separate landscape unit which the Council will show is of very considerable value. At present it is a feature of that unit that it is untouched by windfarm development. The Council will argue that in light of the capacity of the Llandinam ridge for development, moving windfarm development to the east will both exceed the indicative capacity limits for SSA C significantly and cause very significant landscape harm. Even taking into account the urgent need for wind farm development that we need to accept by virtue of EN-1, this damage to the landscape area to the east is unacceptable. This is an instance where development throughout the SSA would cause unacceptable landscape harm.

60. In any event the Council consider that the developer has not complied with their duty to mitigate harm in a number of other significant respects, which regardless of the landscape and visual position would cause them to invite a recommendation that the Secretary of State refuse this scheme. In highways terms, there remain significant concerns about the proposed use of the Vastre road as part of the route to access the site. It has not been demonstrated to the satisfaction of the Council that the very significant amounts of work required to the Vastre can be carried out without unacceptable impacts either in highways terms or landscape and visual terms.

61. The position in relation to noise, socio-economic factors and the grid has been set out above.

SSA B

Llanbrynmair

62. The position in respect of the two windfarms in SSA B is somewhat less developed because in relation to both Llanbrynmair and Carnedd Wen the Council is still awaiting further SEI which they anticipate will, amongst other matters, seek to demonstrate that the landscape and visual impact of these developments will be acceptable. In the absence of such further SEI the Council do not have a final position in relation to the landscape and visual impacts of these developments. While this is frustrating, it was anticipated by the inquiry timetable that there would be opportunity for further discussions between the parties. The Council will update the inquiry as soon as they are able to on whether they consider that their landscape and visual objections in relation to Llanbrynmair and Carnedd Wen can be considered resolved.

63. The Council will also at the same time consider whether the further SEI demonstrates that there will no longer be an unacceptable impact on cultural heritage.

64. In any event the Council will still be seeking a recommendation for refusal in relation to Llanbrynmair because they consider that the obligation to mitigate harm has clearly not been complied with. The most significant consideration is the highway impacts. Their concern is the decision made by the developer not to seek to share an access route with Carnedd Wen but instead to seek to access the site through the road from Llanerfyl. This is a very narrow attractive road passing through land evaluated as outstanding for scenic quality⁵⁰. The proposals will necessitate the removal of considerable lengths of hedgerow, woodland and trees along the route as well as a new access across farmland and other modifications. These works will have significant highways and landscape and visual impacts. Insisting in utilising this approach is simply not compatible with the developers duties under schedule 9 of the Electricity Act 1989 and given the much more sensible alternative should lead to rejection of this proposal.

65. The Council understand that NRW are not yet satisfied that the ecological impacts of this development have been appropriately mitigated⁵¹. This is another reason why, subject to further developments through the Inquiry, the Council will say that the only proper recommendation is refusal due to lack of mitigation.

⁵⁰ passing through LANDMAP Area MNTGMVS422 Lanerfyl Mosaic Farmlands evaluated as outstanding for scenic quality and high overall.

⁵¹ Powys understand that their objection remains as set out in their updated objection letter dated 12th October 2012 [CON-003-OSOC-5-APP Llanbrynmair – CCW letter to DECC], namely an objection based on lack of mitigation to avoid impacts on peat and peatland habitats and breeding curlew and the potential impacts on dormice.

66. The position in respect of noise, socio-economic impacts and the grid have been considered above.

Carnedd Wen

67. The landscape impacts of Carnedd Wen have been considered above. The Council cannot at this stage present a firm view on whether the landscape impacts of the scheme have been demonstrated to be acceptable, but hope to be able to do so very shortly and in good time for the opening of the SSA B portion of the inquiry in November.

68. The Council are, however, satisfied that through the significant additional work the developer has done they have demonstrated that this development can take place without unacceptable impacts on the highway network (whether that is the trunk road network or the local highway network). There will of course need to be detailed conditions to control this process and a section 106 agreement will be required to ensure compliance with the sTMP, but those will be negotiated through the course of the inquiry.

69. The position in respect of ecological matters is somewhat different as the Council understand it has not yet been demonstrated to the satisfaction of NRW that the

developer has complied with their duty of mitigation in this respect⁵² and therefore unless this can be resolved the Council will be inviting a recommendation of refusal on this matter.

70. The position in respect of noise, socio-economic impacts and grid is, once again, as explained above.

Llandinam 132 kV overhead line

71. The Council is in very great difficulty opening their case in respect of this aspect of the inquiry. They are in effect being asked to open a case on a scheme which they understand will be subject to very significant further work, the nature of which the Council do not yet know. The Council has plainly not had the opportunity to consider whether any evolved scheme can resolve their very substantial objections. The best that can be said is that the scheme as originally conceived gave rise to some very substantial objections. The Council considered it would be likely to have an unacceptable landscape and visual impact, and insufficient consideration had been given to the Council's policy of requiring such lines to be undergrounded. They were of the view that the scheme would give rise to unacceptable impacts on cultural heritage and the rights of way network. Relying on their expert advisers NRW the Council considered that that it had not been demonstrated that the impacts on

⁵² Powys understand that their objection remains as set out in their updated objection letter dated 16th February 2012 [CON-003-OSOC-4-APP Carnedd Wen – CCW letter to DECC], namely an objection based on lack of mitigation to avoid impacts on peat on freshwater lakes (although the latter is said to be avoidable by conditions).

ecology could be mitigated. Finally the original submission did not demonstrate that the need for the proposed line outweighed its adverse impacts.

72. The Council will consider closely the substantial further work anticipated and will update the inquiry at the earliest opportunity as to whether any of their outstanding concerns can be considered resolved.

CONCLUSION

73. Despite the acknowledged urgent need for wind farm development, there is no public interest justification for allowing the scale of development that is before this inquiry let alone the many other proposals due to be considered in the area.

74. There is absolutely no justification for accepting wind farm or grid development that will exceed the environmental capacity of the SSAs, or which has not taken reasonable steps to mitigate the harm it will cause. Such proposals are, in that sense, unsustainable and unacceptable.

75. The opportunity for this combined inquiry is to examine in a strategic manner these proposals. When the proposals are considered in that context the only proper response at this stage is a recommendation for rejection of all the proposals before the Inquiry.

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