

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 62.1MW WIND TURBINE GENERATING
STATION IN POWYS, MID WALES**

**CLOSING STATEMENT
ON BEHALF OF FFERM WYNT LLAITHDDU**

INTRODUCTION¹

1. The structure of these submissions is:
 - A. To describe the proposal, its design and the reasons for it;
 - B. To describe the nature of the objections to the scheme and the means by which they have been successfully resolved;
 - C. To address each of the matters upon which the Secretary of State wishes to be informed;
 - D. To identify the role of conditions;
 - E. To analyse the evidence which has been presented and heard in the prevailing policy context and provide conclusions.

¹ Where found in these submissions, emphasis has been added

2. We firstly acknowledge the courtesy which has been extended to us by the Inquiry and the parties. In particular, the Alliance and other community groups have marshalled the cases for individuals in a manner, if we may say so, which has been both effective and efficient. We take their case seriously and seek to respond appropriately. Where we deal solely with the positions adopted by PCC and statutory bodies, we mean no disrespect to the Alliance point of view, but propose to deal with their points separately, where necessary.
3. We do not rehearse the evidence, nor do we seek to summarise it without reference to the way in which the evidence evolved orally. Rather, we have sought to set out the most relevant matters in a way which can be incorporated substantially unaltered into your Report as a tolerably succinct set of submissions.

[A] THE PROPOSAL

[Key documents: Design Statement, April 2008, p 7 at A.10 [FWLC-BAC-004]; ES 2008; Session 1 Proof of Evidence of David Harries]

4. The 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 wind farm development. The directors of Fferm Wynt Llaithddu ('FWL')² are hill farmers and experienced developers of wind farms on a community basis in Wales. Their faces appear on the application documentation. Those are not stock images but are the people who are concerned with this application. They realised that they could bring forward a wind farm within refined SSA 'C' and in doing so bring about significant community benefit³. The aim is to retain over half of the project value in the local economy. That is what they set about achieving.

² Fe-(e as in bet)-rm Wint-(as in mint) Ll-'l'-th-(as in think)-thee

³ Design Statement, April 2008, p 7 at A.10 [FWLC-BAC-004]

5. 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. Infrastructure would be 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.

6. The proposal was the subject of the sort of consultation which you would expect, with both the public who might be affected and with statutory consultees. Both FWL and the Llaithddu farmers were concerned to produce the best possible planning application, with sensitivity to the local community. Accordingly, FWL has sought to:

select and site turbines to minimise environmental impact;

site turbines at least 1km from non-participating dwellings;

work to local planning guidelines;

respond to feedback from statutory and non-statutory consultees⁴.

7. The design has responded to feedback from the community and professional consultees, as the history shows⁵:

⁴ See § 15 of the Proof of Evidence of David Harries

⁵ Design Statement, April 2008, p18 at B.45 to B.62 [FWLC-BAC-004]

Early 2006	<p>Scoping and consultation on initial design of a 70MW scheme. Ministry of Defence identified the value of part of the site as a tactical training area. As a result, a ‘gateway’ was designed into the scheme which allows tactical training to continue throughout the area.</p>
Early 2007	<p>Proposed layout amended to take account of: noise sensitive dwellings; settlements in proximity to the southern part of the scheme; a ridge used as a soaring slope for Red Kites; a Scheduled Ancient Monument (Fowler’s Armchair).</p> <p>The height of the southern turbines was reduced to 64 m to hub/99.5 m to tip.</p>
October 2007	<p>Exhibitions within the community to present the draft final design (30 October in Pant y Dwr Village Hall; 31 October in Llanbadarn Fynydd Village Hall (the Wellingtonia Centre); 1 November in Llandinam Village Hall). Turbines were relocated to: (i) minimise effects on bridleways, at the request of PCC; (ii) to provide ecological mitigation, at the request of CCW (now NRW), and; (iii) to site infrastructure and turbines to take account of heritage effects, at the request of Clwd Powys Archaeological Trust (CPAT).</p>
7 May 2008	<p>Application made, anticipating mobilisation to site in 2010 and commissioning in the third quarter of 2011</p>
15 May 2008	<p>The Application was registered</p>
Summer 2008	<p>Consultation responses on the application and ES were received</p>
5 March 2010	<p>Meeting between PCC, Capita Symonds, FWL and RPS at which it was agreed to revise the layout and to provide additional viewpoints for the LVIA</p>
August 2010	<p>PCC received the Review of Landscape and Visual Impact Assessment and SEI by its consultants, Capita Symonds</p>

June 2012	PCC received the addendum report on LVIA by Capita Symonds resulting in advice that the revised arrangement reduced stacking and had balanced and equal spacing and a good relationship of turbines to the horizon. The effects upon Fowler's Armchair were considered to be resolved.
25 September 2012	Report to PCC Cabinet
2 October 2012	PCC Cabinet Executive received a report for decision on the conjoined inquiry
14 June 2013	SEI
24 June 2013	Letter from FWL to DECC confirming that Option 2 in the SEI was the basis on which the application was to be determined, namely the 27 turbine scheme

8. The community consultations were important. The majority of attendees supported the application. A good proportion of the attendees changed from 'concerned' to 'support', having seen the detail of the scheme. PCC's officers were encouraging. Mr Steve Packer, Senior Planning Officer for PCC (now retired) described the application as exemplary⁶.
9. The candidate turbine was chosen specifically to avoid the need to carry out improvement works to County highways and to yield visual and noise benefits. The Enercon E70 wind turbine does not have a conventional gearbox and so is unusually quiet and has significantly shorter blades than other machines with a similar capacity. This resulted in a generating capacity of 66.7MW as a 29 turbine scheme. This was a conscious choice not to use 3MW turbines and a choice made to minimise effects. As Mr Harries explained in evidence, entirely unchallenged⁷, the Enercon E70 was at this time unique but significantly more expensive than alternative machines which were and are available on the market. He explained that the particular candidate turbine was

⁶ See §23 of the Proof of Evidence of David Harries.

⁷ [FWLC-COMM-POE-Harries-SSAC]; It is to be emphasised that no party asked Mr Harries any questions.

chosen because of low environmental impact in noise and visual terms and because of its greater efficiency. On the later point, he drew attention to the Carno 2 turbines which are each rated at 1.3MW, being 1MW less than the Enercon E70, but being of similar size

[B] RESPONSES AND OBJECTIONS

[Key documents: Cabinet Report of PCC dated 25 September 2012, p 3- 87 [FWLC-BAC-006]; Session 1 Proof of Proof of Evidence of David Harries]

10. The responses and objections to the application from statutory consultees were⁸:

CADW/CPAT - A comprehensive Environmental Statement dealing appropriately with the impact on the historic environment. Request to reduce impact on the setting of Fowler's Armchair.

WAG - Significant liaison had taken place during the years between 2007 and 2012, but WAG still did not agree the Transport Management Plan.

Environment Agency Wales - no objection but observations on mitigation measures during construction.

Civil Aviation Authority - no objection.

Ministry of Defence - no objection.

CCW - objected on the basis of: (i) impact on curlew cumulatively with the Llandinam scheme; (ii) lack of information on the landscape and visual effects of grid connection, both alone and cumulatively; (iii) increased sediment loading on the River Wye SAC. CCW checked the carbon balance calculation in the ES and agreed it at 75,336 tones of CO2 per year, being (175,200 MWh/y x 0.43).

⁸ Cabinet Report of PCC dated 25 September 2012, p 3- 87 [FWLC-BAC-006]

PCC - objected on the basis of: (i) the transportation route; (ii) local traffic impacts; (iii) cumulative landscape impact (following CCW); (iii) impact on curlew (following CCW); (iv) insufficient information in respect of hydrology and peat resource (following CCW); (v) insufficient information in respect of adverse noise impacts.

11. Officers of PCC did not articulate any concluded view on the proposal. The Report to Cabinet contained no recommendation. No officer of the Council has given evidence at the Inquiry so it has not been possible to establish what recommendation would have been made.
12. Hence, at the time that the decision to hold an inquiry was taken, the Llaithddu proposal faced objection from: (i) the WG on transport grounds; (ii) CCW on effects on curlew cumulatively with Llandinam, cumulative effects with grid infrastructure and sediment load to the SAC, and; (iii) via its Outline Statement of Case⁹, PCC added that in the light of concerns expressed by CCW regarding cumulative impacts and lack of mitigation, it objected on landscape and visual impact grounds.
13. That position evolved during the course of the inquiry process, as we shall explain. It is an important evolution in the context of a statutory decision-making framework which focusses on minimising effects.

⁹ [OBJ-002-OSSC-Outline Statement FINAL - 21.01.13]

[C] THE SECRETARY OF STATE'S MATTERS

Matter 14 - Grid¹⁰

[Key documents: Grid Connections Options Review]

14. We deal with issues arising from grid infrastructure at this stage for two reasons. Firstly, it is convenient to understand the likely associated infrastructure before turning to issues of effect, impacts and mitigation. Secondly, it is quite clear that the consequences of consenting wind farms in SSAs has informed much objection to the proposal and has also been significant in influencing ministerial views, principally the Griffiths letter¹¹.
15. The impact of concerns about the necessary infrastructure is illustrated by the CCW letter of objection which stated¹² *“In common with our position on similar current applications within SSA C, CCW objects to this application because there is insufficient information to allow the potential impacts from the overhead grid connection to be assessed. We advise that the proposed grid connection has the potential to have significant environmental impacts along and cumulatively with other grid connections and wind farms.”*
16. However, the starting point here is Section 4.9 of EN-1. The connection of a proposed wind farm to the electricity network is a consideration for applicants. It is a matter for the applicant to ensure that the necessary infrastructure and capacity will be in place to accommodate the renewable energy which will be generated. This is reflected in TAN8 (Annex C) §2.13: *“There is currently very restricted capacity for further wind power developments in North and Mid Wales (Scottish Power / Manweb network) and the re-enforcement of the network through the construction of new high voltage distribution and transmission lines is vital to the realization of any significant*

¹⁰ the potential for the proposed developments to be connected to the electricity grid network (DECC document ‘The consenting process for onshore generating stations above 50MW in England and Wales: a guidance note on Section 36 of the Electricity Act 1989 refers’)

¹¹ Minister for Environment and Sustainable Development, Mr John Griffiths, in his letter dated July 2011 [CD/COM/020]

¹² [FWCL-BAC-006]

additional generating capacity as well as providing a stronger, more reliable network for electricity users in the western mid Wales area. The Assembly Government strongly supports the principle of this scheme.”

17. The role of the decision maker is to be satisfied that there is no obvious reason why a grid connection would not be possible¹³. Further, the decision maker must be satisfied that there are no obvious reasons why the necessary approvals for grid connections are likely to be refused¹⁴.
18. Via the SEI of January 2014, the reasonable options for grid connection have been explored and assessed at an appropriate level of detail to inform the decision maker about the indirect, secondary and cumulative effects of the proposal.
19. Llaithddu could either connect to the 400kV grid eastwards using the proposed 132kV line to Welshpool and beyond, or westwards to Cefn¹⁵ Coch at SSA B¹⁶. PCC object to the western route, but the eastern route is broadly supported by the Council. At Session 3, PCC accepted that the Llandinam¹⁷ 132kV overhead line (with the undergrounding section) would be acceptable in landscape and visual terms when considered cumulatively with Llandinam wind farm and Llaithddu wind farm¹⁸. PCC’s case is that no more than 160MW of generating capacity should be permitted in SSA C¹⁹.
20. There is currently no National Grid network (i.e. 275 kV or 400 kV network) in or near the mid Wales SSAs, so all existing generation is connected to the SP Manweb

¹³ §4.9.1 EN-1

¹⁴ §4.9.3 EN-1

¹⁵ Kevn (Kevin without the i) Co (as in ‘coco’) ch (soft and aspirated as in the Scottish loch)

¹⁶ Figures 29, 30 in Appendix 2 to Mr Goodrum’s Session 4 Proof

¹⁷ Ll-and-ee-nam

¹⁸ PCC Statement of Case for Session 4 at §4.2.1 [OBJ-002-SOC-S4 Powys CC Session 4 Cumulative Effects]

¹⁹ PCC Statement of Case for Session 4 at §9.1 [OBJ-002-SOC-S4 Powys CC Session 4 Cumulative Effects]

network at voltages up to and including 132 kV. Generation in mid Wales in excess of local requirements is therefore exported via the 132 kV network, and a significant proportion of its export potential has already been utilised. There are two principal 132 kV circuits into the area from the supergrid substation at Legacy (near Oswestry): one to Welshpool and the other to Newtown.

21. The Welshpool to Oswestry circuit is the only 132 kV circuit able to connect new generation. SP Manweb currently plans to connect 90 MW of wind generation (from Llandinam) to this circuit, which is the maximum that can be accepted at present due to constraints on the SP Manweb network above Welshpool. However, SP Manweb has provisionally considered that, with reinforcement of their network, up to about 160 MW of generation (i.e. 70 MW more than at present) could be accepted.

22. The upshot is²⁰:

The two largest wind farms in SSA C (Llaithddu and Llandinam repowering) total 164.4 MW (SOR3) or 182 MW (application). Since up to 160 MW of generation could be connected at Welshpool following upgrades by SP Manweb, essentially any two of the wind farms in SSA C could be connected via a 132 kV HDWP circuit to Welshpool. This assumes the possibility of generation being constrained at times of minimum system load, if those two wind farms were to be Llaithddu and Llandinam repowering. Based on the SOR3 figure, it is likely that very little, if any, restriction on generation would be required in practice, but might be unacceptable for the higher level of generation proposed in the application.

23. For the remaining wind farm in SSA C, there would need to be another 132 kV circuit to connect to the National Grid. That would be likely to be a connection to a 132 kV hub substation in SSA B, which would be needed for the wind farms in that area. Depending on which two wind farms connect to Welshpool, up to 80 MW of generation would need to be connected via a 132 kV circuit to SSA B. In order to ensure acceptable power flows on their 132 kV network, SP Manweb would not

²⁰ Grid Connections Options Review at p7, §3.1.1

normally operate with these two circuits electrically connected in SSA C, therefore two of the wind farms would export via the Welshpool circuit, and the third via SSA B.

24. Overall, it is clear that there is a variety of means by which the SSA C wind farms may be connected to the grid. In EN-1 terms, there is no reason to conclude that connection to grid infrastructure would prove to be an obstacle to development of the wind farms. Hence, there is no preliminary issue or inhibition to the schemes, when the terms of EN-1 are applied to the facts as heard at the inquiry. There are further questions as to cumulative effects as between grid infrastructure and the wind farms which are very much focussed on landscape and visual effects. We deal with those under Matter 4, below.

MATTERS 1-3 (POLICY)

[Key documents: EN-1; EN-3; Planning Policy Wales; TAN 8; Minister for Environment and Sustainable Development, Mr John Griffiths, in his letter dated July 2011 [CD/COM/020; OBJ-002-PLA-SOCG Statement of Common Ground – Policy – Powys CC version – clean copy; Proofs of Evidence from the parties for the Policy Session]

Matter 1 - Consistency with Energy Policy²¹

25. There is now a broad range of international obligations and accords which record the Government's commitment to addressing climate change through energy policy and the use of renewable forms of energy. That is a feature of energy policy which attracts no controversy because it sets the goals and the objectives without identifying the means and the location of the infrastructure to achieve those ends. However, when coming to examine the fine detail of effects on a particular view point or, for example, the setting of Fowler's Armchair, the decision maker has to recall binding goals, their importance, and the discipline of linking the policy imperative to the reality of its implementation.

²¹ the extent to which the proposed developments are consistent with the objectives of the Government Policy on the energy mix and maintaining a secure and reliable supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals;

26. Those international obligations translate to domestic law. The policies to which we turn shortly are in place to give effect to those legal instruments and are consistent with them. We touch only upon the Climate Change Act 2008. The Climate Change Act 2008 created a new legal framework for the UK to reduce, through domestic and international action, greenhouse gas emissions to at least 80% below 1990 levels by 2050. The UK government is required to set five-year carbon budgets, which place binding limits on greenhouse gas emissions and define the trajectory towards the 2050 target.
27. Following advice received in December 2008 from the independent Committee on Climate Change, the UK government announced the level of the first three carbon budgets (2008- 2012, 2013-2017, and 2018-2022) and published its response to the Committee on Climate Change's advice alongside the Budget on 22 April 2009. The levels of the first three carbon budgets were approved by Parliament in May 2009, and are now set in law. The fourth carbon budget (2023 -2027) became law at the end of June 2011. It requires greenhouse gas emissions to be reduced by at least 50% in the fourth budget period, relative to 1990 levels.
28. The question which is posed by Matter 1 is whether the proposal would be consistent with Government energy policy. It is a given that the proposals before this inquiry would make a significant contribution to the objectives of the Climate Change Act 2008. Nobody in their closing submissions has contended otherwise. In the context of Wales it is especially important to deliver at least the stated capacities from the Strategic Search Areas (SSAs) since it is to these areas that the Welsh Government has directed strategic wind farm developments (i.e. over 25MW).
29. We return to the impact of these points below. They are the 'big picture'. If that canvas is going to be completed, in the urgent timeframe which has been identified, it is not feasible to concentrate solely on one corner.

Matter 2 - Consistency with NPSs²²

30. We will return to the question of consistency with NPSs when we have considered the benefits and effects of the proposal. However, we emphasise the key policy framework which is to be found in the National Policy Statements²³. 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.

31. PCC took a fair and balanced approach to summarising the effect of EN-1²⁴:

Part 3 of EN-1 explains the need for new nationally significant energy infrastructure projects.

3.1.1 The UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.

3.1.2 It is for industry to propose new energy infrastructure projects within the strategic framework set by Government. The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.

3.1.3 The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this

²²the extent to which the proposed developments are consistent with the policies relating to generation of renewable energy contained within the relevant National Policy Statements for Energy Infrastructure: Overarching National Policy Statement for Energy (EN-1) July 2011 and National Policy Statement for Renewable Energy Infrastructure (EN-3) July 2011

²³ Principally EN1 and EN3 [CD/COM/01 and 02]

²⁴ Policy SoCG at §2.5 [OBJ-002-PLA-SOCG Statement of Common Ground – Policy – Powys CC version – clean copy]

Part.

3.1.4 The IPC should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008.

32. Likewise, we agree with PCC that²⁵:

EN1 para. 3.4.5 is directly relevant in the current context:

The urgency of need for new renewable electricity generation

3.4.5 Paragraph 3.4.1 above sets out the UK commitments to sourcing 15% of energy from renewable sources by 2020. To hit this target, and to largely decarbonise the power sector by 2030, it is necessary to bring forward new renewable electricity generating projects as soon as possible. The need for new renewable electricity generation projects is therefore urgent.

33. 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.

34. Need is an important feature of the decision in respect of renewable schemes generally and in the context of PCC's objection. I referred Mr Russell-Vick to the *Swinford* decision in xx²⁶. Mr Woolcock considered '*...that NUON is correct that even were it the case that smaller or fewer or differently laid-out turbines might have a lesser impact, that is not a reason for refusal. What is relevant is not whether, following various design iterations, the appeal scheme has adverse effects, but whether any such remaining adverse effects would be outweighed by the benefits.[..] I do not consider that there is any requirement to assess alternative sites or configurations of the*

²⁵ §2.15 of OBJ-002-PLA-SOCG Statement of Common Ground – Policy – Powys CC version – clean copy

²⁶ CD-CPL-INS 002/003 in particular at §§228-230 IR

proposed wind farm.”

35. Lastly on this matter, we draw attention to EN-3 as to effects and design:

2.7.48 Modern onshore wind turbines that are used in commercial wind farms are large structures and there will always be significant landscape and visual effects from their construction and operation for a number of kilometres around a site.

2.7.49 The arrangement of wind turbines should be carefully designed within a site to minimise effects on the landscape and visual amenity while meeting technical and operational siting requirements and other constraints.

36. In due course we shall turn to the significant effects of the wind farm but note here that there is no objection from PCC on the matters referred to in §2.7.49.

Matter 3 - Consistency with Welsh and Local Policy²⁷

37. 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 not least because the policy context in Wales is more welcoming of sustainable energy production than in England.
38. 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

²⁷ the extent to which the proposed developments are consistent with Welsh Government and local policies: including Planning Policy Wales, Edition 4 (2011); Technical Advice Note 8: Planning for Renewable Energy (2005); and Energy Wales: A Low Carbon Transition (2012); and Powys Unitary Development Plan (adopted March 2010)

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 emissions²⁸. It seeks to optimise renewable energy generation as part of the overall commitment to tackle climate change, reduce greenhouse gas emissions and increase energy security²⁹. 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 aspirations³⁰.

39. WG and, in turn, PCC, accept 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 8 has sought to identify appropriate locations for large scale wind farm development. Such findings are self evidently weighty material considerations as to the appropriateness of the application site to receive the Llaithddu wind farm. As we have acknowledged, TAN 8 SSAs are expressly ‘broad brush’ and do not short circuit scheme-specific assessment but when it comes to locational questions - where to consent and where to exclude - it provides a the policy framework.
40. In closing, NRW stated its position like this: *“NRW considers that the UK and Wales Government policy on onshore wind are compatible and that the spatial approach and targets set out in TAN 8 are working to meet the objectives of National Policy Statements EN-1 and EN-3. NRW wholly endorses the objectives of both Governments to increase dramatically renewable energy capacity, with much of that new capacity being via onshore and offshore wind in the short to medium term. Equally, NPS recognises that impacts on the environment should be minimised and that renewable provision should not compromise international and national statutory obligations for*

²⁸ See PPW at 12.8.1 [CD/COM/8]

²⁹ See PPW at 12.8.8

³⁰ See PPW at 12.8.9 at second bullet point.

designated areas, species and habitats. TAN 8 Annex D sets out environmental issues, including ecology and landscape/visual effects, to be taken account of in development control decisions. The finite environmental capacity of the SSA's is also recognised by the Wales Government First Minister's Statement on 11/6/2012³¹.

41. On the basis of that understanding, and as we note further below, NRW considers that the Llaithddu proposal is acceptable, subject to appropriate conditions.

42. 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 designations³². 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 broad brush indications of suitable locations for wind farm 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.

43. That leaves only the question of the amount of wind farm development which a particular Strategic Search Area may accommodate. The answer to that question is very much a function of the particular schemes which come forward. The TAN 8 targets are about environmental capacity. That was their function and purpose. They are, however, to be understood in the context of the over-arching obligations and policies (Matters 1 and 2 above) and not in isolation. This must be correct as a matter of interpretation of policy but it is also correct as a matter of history and practicality. Turbine designs have improved and are substantially more efficient than in 2005, when TAN 8 was issued. That point is of actual significance for the Llaithddu application because its design approach was to optimise output from turbines of materially smaller scale than those assessed in the TAN 8 studies.

³¹ NRW Closing Submissions at §6.1; 28 May 2014 PM

³² Alliance Closing Submissions Section 1 - ALL-10 being particularly emphasised

44. Further, if a substantial renewable energy benefit may be obtained from within a Strategic Search Area without exceeding its environmental capacity, it would not be a rational understanding of the TAN 8 indicative targets to turn it away on the simple basis that it exceeds the TAN 8 target.
45. 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. 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 2025³³.
46. The interpretation of TAN 8 targets which is provided by the Griffiths letter³⁴ suggests a maximum installed capacity for each SSA, using MW figures. 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.
47. Hence, so far as the capacity of a particular SSA 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.
48. 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

³³ See paragraph 3.2.23 of EN-1

³⁴ Minister for Environment and Sustainable Development, Mr John Griffiths, in his letter dated July 2011 [CD/COM/020]

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 to do what he reasonably can to mitigate the impacts of the proposals.

49. 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.
50. So far as the PCC UDP is concerned, Policy E3 adds little to the main issues but is in any event fully addressed in the FWL Planning Balance Evidence³⁵.

Statutory Framework

51. By reason of Schedule 9 to the Electricity Act 1989³⁶, 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.

52. 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,

³⁵ FWLC - Planning Balance - Parker; S38(6) of the Planning and Compulsory Purchase Act 2004 does not apply, but the policy is a material consideration

³⁶ [CD/COM/023]

features, sites, buildings or objects. Such is the key statutory decision making framework.

MATTER 5 - TRANSPORT³⁷

[FWLC-Highways-SOCG-SSA-C; FWL-CPL-SOCG-TRANS-S4; The Proofs of Evidence from Mr Buchan and Mr Durgan; The TMP]

Local Transport Issues

53. PCC are content that the Llaithddu scheme "can be safely accessed, without unacceptable effects on other local road users or on the very rural character of the affected local roads" and both the applicant and PCC agree that any improvements required to local roads can be managed by appropriate conditions and agreements.³⁸
54. There has never been any doubt about the deliverability of those measures because all of the land required for the improvements is within the ownership of those members of the community who are associated with the Llaithddu scheme. FWL³⁹ have the consent of all those who own land surrounding the highway to carry out the necessary works, and so what was originally a matter of concern for PCC has fallen away.
55. PCC confirmed in closing that in light of the evidence now before the Inquiry, they no longer object to any of the SSAC proposals by reason of their impact on the local road network⁴⁰. In Llaithddu's case roads C2025 and U2835 provide access to the site from the A438. The local road network also encompasses access roads from the port at

³⁷ the individual and combined impact of construction traffic on the surrounding locality, including transportation access routes and traffic management, taking into account the cumulative impact with other wind farms in the Powys area which have already been granted planning permission or where planning permission has been applied for

³⁸ [FWLC-Highways-SOCG-SSA-C]

³⁹ [FWL TRA 012]

⁴⁰ PCC Closing para 283

Newport and the A479 between Bronllys⁴¹ and Llyswen⁴², but no objection has ever been raised in that regard.

56. The mitigation measures proposed will not alter the character of the road, as agreed by Mr Williams on behalf of PCC⁴³ and reiterated in closing⁴⁴. The works proposed are not major works, and FWL will be guided by the Council who have expressed a desire to grasscrete (or similar) the widened part of the road so that grass can grow through giving the appearance of a narrower carriageway once the development phase is complete. The works proposed will strengthen the verges and widen the road precisely to avoid HGVs coming into conflict; those verges will be remain strengthened should any future AIL be required to be delivered to site but the road will appear in the same way it does now.
57. There will be 26 passing places along the road to the site which, will undoubtedly be a benefit to all road users as Mr Williams agreed during his evidence in chief. Monitoring of the local road network secured by condition would ensure the benefits remained⁴⁵, and the presence of a ready supply of road repair material on site means that any defects could be quickly and effectively attended to.
58. FWL welcomes a coordinated approach to mitigation works should both FWL and Llandinam receive consent. They have signed an agreement to that effect⁴⁶, and proposed a condition to secure a common set of works. If Llandinam begins construction first, which is highly likely given the earlier grid connection date, then no additional highway works will be required for the Llaithddu scheme.

⁴¹ Bron (roll the r, 'on' as in 'switch on') llys (ll - an l with a th in front of it, y - as the 'i' in pita, s - as in 'this')

⁴² Llys (ll - an l with a th in front of it, y - as the 'i' in pita, s - as in 'this') wen (like win but with an e as in 'bet')

⁴³ **OBJ-002 (PCC) - Transport- POE-Williams- SSAC para 23 POE**

⁴⁴ **PCC Closing para 290**

⁴⁵ **FWLC/TRANSPORT/POE/BUCHAN/SSA-C para 5.2.7**

⁴⁶ **[FWL-CPL-SOCG-TRANS-S4 transport SOCG session 4, para 1.10]**

59. The local road network has been tried and tested and has been found to be capable of accommodating both construction traffic generated by the Llaithddu scheme and the delivery of AILs in much the same way as the trunk road network. Mr Buchan's proof confirms at paragraph 5.3 that the access road has been used previously (without improvement) to serve the existing Llandinam wind farm which is home to some 103 turbines. Furthermore, the test run that was undertaken by Scottish Power in May 2010⁴⁷ demonstrates that the access from the A483 to site can be successfully used for the Llaithddu scheme, particularly given that the test components were 45m long and 4.5m diameter. The Enercon Blade is 33.3m and was selected for the very reason that it could be transported more easily on the roads of Powys than other larger blade.

Strategic Highway Issues

60. It may be thought to be surprising that government in both Westminster and Cardiff have: (i) identified the urgent need to deliver renewable energy at a strategic scale via onshore wind, and; (ii) identified those locations in Wales which are preferred for such development, and yet the question should then arise "Is it feasible to construct such wind farms?". However, that is what has happened. WG has made objections and is a party to the inquiry, albeit that no representative has ever appeared. The issue between FWL and WG has always been whether the proposal to bring abnormal indivisible loads along the strategic highway network can be done in a safe and appropriate manner that can be adequately managed via conditions imposed on a consent. WG have now agreed that is so⁴⁸ - it can be adequately managed.
61. Until late in the inquiry process, the WG has required quite extraordinary levels of information as to the effects of delivering AILs upon the strategic road network. It objected to the scheme when it was before PCC, became a party to the inquiry and provided a statement of case and persisted with its objection until shortly before the

⁴⁷ FWL-TRA-10 Llaithddu Transport Management Plan, p.20, para.4.3

⁴⁸ CON-001-POE-S4-FWLC WG letter dated 25 February 2014

relevant session⁴⁹. Mr Buchan confirmed the level of work undertaken to secure agreement on highways matters. The TMP extends to well over 200 pages, and there has been a great deal of correspondence on the matter as can be seen from the Correspondence Summary.⁵⁰ Further, there have been on-site meetings, and test runs on both the local and trunk roads to which representatives of both PCC and the WG were invited, demonstrating the helpful and constructive way in which FWL have engaged on this particular issue.

62. Even in the context of that engagement the WG persisted in their objection despite it being obvious that their concerns as to the strategic highway network were resolvable by means of conditions and appropriate management of AIL transport on the trunk roads. This is so because:

The route from Newport docks (the port of entry) to the local road network in the vicinity of the application site is the shortest practicable route which is compliant with AIL transport legislation;

The route requires no significant infrastructure works, in part because of the deliberate choice of turbine by FWL in order to ease its transportation;

The route is predominantly on trunk roads, and for the majority of its length - the category of road that is expected to cope with such loads.

The great majority of the route was actually used for the delivery of similarly sized Carno 2 components;

While there may be some limited disruption and delay as a result of the transportation of AILs, the route is proposed to be used only by the FWL and Llandinam Developments and as such avoids cumulative effects with other

⁴⁹ Session 4 on cumulative effects

⁵⁰ FWL TRA-06

schemes.

63. WG are also satisfied in respect of two particular issues which arise in respect of the strategic highway network and which the Alliance have drawn attention to in their closing submissions:

Castle Square, Builth Wells, and;

Crossgates Bridge.

64. In respect of Castle Square, it should be noted that:

Significantly longer blades, nearly 6m longer than those proposed by FWLC have been modelled as being capable of transiting Castle Square.

Furthermore, construction of the Carno 2 wind farm involved components measuring over 30m were moved through Builth Wells without incident ;

The TMP⁵¹ demonstrates that the blade movement is accomplished without having to overrun the traffic island to the west of Castle Square. If this island was to be utilised (and there is no engineering reason why it should not be) the clearances would be very greatly increased; there is however no need nor justification for this; and

The width test run⁵² was carried out with a width of 4.2m and was unproblematic. It was sufficient to demonstrate to representatives of the WG and Powys County Council - those who were there specifically to observe and record and potential problems - that no further test run would be required.⁵³ Accordingly, so there can

⁵¹ [FWL TRA-10] - see Drawings SPA001 and SPA001-2 in Appendix A

⁵² [FWL TRA-09]

⁵³ [FWL TRA-10 Email dated 11 May 2012 given in Appendix A]

be a great deal of confidence that movement of FWLC components through Castle Square will be successful and without incident.

65. So far as the Crossgates Bridge is concerned, the evidence (that should not be obscured by a rogue inaccurate reference⁵⁴) demonstrates there is ample clearance which is well beyond the minimum that would be necessary to avoid risk of bridge strike. In any event, one observes that nearly all routes to wind farm developments in mid-Wales require that AILs pass beneath bridges. In respect of Crossgates, there is the additional material consideration that the Llandinam proposal would also use the Crossgates Bridge and would require additional works (works which would not be required by the FWL proposal) which would provide still further clearance. Llandinam and FWL agree that it is most unlikely that the FWL scheme would come forward before Llandinam⁵⁵.
66. Hence, on the likely order of construction, FWL would have the benefit of those construction works at Crossgates Bridge.
67. The Alliance have also raised concerns about the trunk road network and cumulative impacts. However, the case has simply been misunderstood⁵⁶.
68. Moreover, the only site that could be constructed concurrently with Llaithddu is Llanbadarn Fynydd⁵⁷. The cumulative traffic impact of both wind farm developments is a maximum of 11% increase in total flow (for the peak month of construction), it is short term, and as such, is not considered to be significant in environmental impact

⁵⁴ Alliance Closing para 10.42 but see FWL-TRA-014 - Session 4 Clarification Note

⁵⁵[FWL-CPL-SOCG-TRANS-S4 transport SOCG session 4]

⁵⁶ Mr Durgan relied on the out of date information contained within Chapter 12 of the 2008 ES, and although he recorded having seen the more recent June 2013 TMP, there are a number of inaccuracies as a consequence including the level of anticipated traffic increase, and the routing of HGVs and AILs. The construction period is cited as being two years rather than the period of 17 months given in the SEI, and Mr Durgan assumed a higher increase in traffic than will be experienced in reality. More recently, FWL have confirmed that concrete batching will take place on site which will reduce the number of HGV movements required so that the total daily average vehicle movements at the height of construction will be 114 rather than 122. It should be remembered that fewer turbines are proposed now than were initially anticipated, and that the height of the construction stage lasts only 2 months. For the remaining 14 months, the vehicle movements are far less than 100 per day, and for 9 months of the 17, are less than 20 a day.

⁵⁷ Ll-Anne-bad-arn Ver-nith- Ll (an L with a th in front of it) an (as in 'and') bad (as in bad/evil) arn (roll the r) Fyn (sounds like vin) ydd (ith - as in 'the')

assessment terms.⁵⁸

69. It is FWL's case that in respect of the cumulative impact of AIL deliveries, there are a number of constraints in construction of wind farms that provide a natural limit on the volumes and timings of deliveries:

It is only FWL and CeltPower that are proposing to use the AIL route from the south and they have different gird connection dates;

The availability of suitable delivery vehicles, specialist haulers, and crange as well as turbine supply lines, and road conditions all act to constrain the number of deliveries that can take place at any one time.

70. FWL and CeltPower have reached agreement that in the unlikely event that the construction of Llandinam is delayed such that it coincides with the proposed commencement of Llaithddu's construction, neither intends to run AIL deliveries at the same time as the other, nor do they consider it possible in practice⁵⁹.

71. In conclusion, the proposed development can be accommodated on both the local and the trunk road networks without significant or long term adverse impact on the safety or amenity of other road users or the character of the local roads. The use of planning conditions can and will protect the interests of all parties. The proposed routes are agreed to be acceptable for all construction traffic, whether alone or cumulatively, and also, for AIL deliveries.

MATTER 8 - SOCIO-ECONOMIC EFFECTS⁶⁰

72. In their original reasons for objection, PCC reserved the right to raise objections on other grounds including socio-economic impacts. In their updated outline statement of

⁵⁸ [AD/FWLC/050A-C 2013 SEI, Chapter 9, Table 9.27]

⁵⁹ [FWL-CPL-SOCG-TRANS-S4 transport SOCG session 4, para 1.10]

⁶⁰ the individual and combined social and economic impact of the proposed developments, including on tourism;

case⁶¹ they noted that:

“In relation to socio-economic impacts, the Council are in the process of investigating socio-economic impacts and at the moment propose to call evidence on the impact of the proposal, individually and cumulatively with the other applications before this inquiry and in the planning process, on tourism and other economic factors, and to demonstrate that the Applicant’s assessment of the socio-economic impacts in their ES is inadequate. If the Council provide such socio-economic evidence it will be presented in the timetabled session 4 (March/April 2014) in conjunction with the other individual and cumulative socio economic points relating to other proposals.”

73. By an addendum to that statement of case PCC confirmed that they had researched the socio-economic position and noted the policy approach to socio-economic impacts in EN-1. PCC’s position is:

“The Council have now concluded their investigations and has concluded that, given the siting of the proposals within SSA’s and given that the proposals are for nationally important infrastructure projects, there is insufficient evidence to support an impact on socio-economic interests of sufficient magnitude to give rise to a refusal of some or all of the projects on this ground. In the circumstances PCC do not intend to call evidence on the socio-economic impacts of these developments and do not intend to pursue an argument that they should be refused on that basis.”

74. FWL agrees.

75. There are generic and specific benefits which would flow from consenting of the scheme. Those benefits will include, but of course will not be limited to, the local economic benefits. FWL accept that financial benefits to the community in the form of a community trust fund are not benefits which the decision maker may lawfully take

⁶¹ [OBJ/002/OSOC/2]

into account. An offer of a financial contribution which fails the tests in 13/97 or by analogy with CIL is not a material consideration is to be disregarded. However, the Government (in TAN 8 and elsewhere) and PCC consider community benefits to be a welcome and a fully justifiable component of a wind energy development and its relationship with its host community.

76. The scheme does not need such a material consideration to make it acceptable, but it remains important that a public inquiry has a full understanding of the whole proposal, particularly where the applicant's case is that the scheme responds to a variety of community concerns which have informed the detail of the proposal.
77. The Llaithddu farmers wanted to ensure that members of the community were involved where it was fair to do so. It is a typical feature of sites like this that some farmers with land close to the turbines miss out on any direct benefit, as their land is not required for the development of the wind farm scheme. In this case, the farmers' group included some who would not be putting their land in the scheme because it was felt to be fair that they should be⁶². We draw this to your attention because it is said against FWL (and other schemes) that *"if the large scale wind farm developments go ahead with the infrastructure proposed, it is akin to a reverse up to date Robin Hood. Reverse because the schemes will rob the poor; Mid Wales does not have a great economic base, and giving to the rich via subsidies which the local economy does not benefit from."*⁶³ This is simply not so. Great care has been taken to include the community and return the benefits of the scheme to it, as we have explained above and as Mr Harries explained in evidence and upon which he was available to be asked questions, but was not. His evidence is important because it shows the decision maker that significant objection to the proposal is misinformed and thus misconceived. In fact, when you come to consider the extent of truly local objection, i.e. people who live near the Llaithddu scheme including in the Afon Marteg Valley you will find such level of objection to be modest and the support to be significant. We do encourage you

⁶² Proof of Evidence of David Harries at § 10

⁶³ Closing submissions of Robert Robinson FRICS AILCM on behalf of North Montgomery Local Government Forum, p 6, given on 28 May 2014, AM.

to undertake that exercise.

78. There are other land owners who are not part of the farming group but who live close by. Those people are involved too and in the most practical and fundamental of ways. One person lives in a house with no mains electricity - on consent being granted, a supply will be laid to that house.

MATTERS 7, 12 & 13 - Protected Species and Habitats⁶⁴, Hydrology⁶⁵ and Peat⁶⁶

Curlew

[Key documents: FWLC-SoCG-003 with NRW on Ecology and Ornithology; FWLC-SoCG-004 with NRW on Peat Resource; FWLC-005-Habitats Note 5 June 2013; FWLC-SOCG-005; CPL-VATT-FWLC-PS-HYDRO-S4-Position-Statement-SSA-C-Applicants-Hydrological-Session-4-Cumulative-Effects; Schedule of Conditions]

79. The position during the Initial Inquiry Session was that NRW considered that Llandinam repowering “will make the most significant contribution to the cumulative effect of the three schemes, including Llaithddu and Hirddywel” and “does not accept the view that there would be no significant effect for the existing curlew populations from either the Llandinam or Llaithddu schemes.” We were surprised by that position having regard to the scheme amendments and mitigation proposed and the reaction we had from NRW officers during early 2012. There was further helpful dialogue after the Inquiry Initial Session. This resulted in a SoCG which records that “The method of the surveys was discussed and agreed with CCW/NRW.”⁶⁷ Four or five pairs of curlew were recorded, all of them outside the site boundary. All were over 600m from

⁶⁴ the individual and cumulative impact of the proposed developments on biodiversity, including the ecological functioning of European Protected Sites (e.g. the River Wye Special Area for Conservation (SAC), Berwyn Special Protection Area (SPA) and South Clwyd Mountains SAC); impacts on European Protected Species under the Conservation of Habitats and Species Regulations 2010 (as amended) (“the Habitats Regulations”); and the likely effectiveness of proposed mitigation measures

⁶⁵ the impact of the proposed developments on hydrology and hydrogeology, to include impacts on sensitive water features (streams, ponds, wetlands); impacts on private water supplies; fisheries and watercourses; and impacts on groundwater; and the likely effectiveness of proposed mitigation measures;

⁶⁶ the impact of the proposed developments on peat

⁶⁷ [FWLC-SoCG-003 with NRW on Ecology and Ornithology at § 5.3]

proposed turbines⁶⁸.

80. After receipt of NRW's Outline Statement of Case there was formal amendment of the proposal to delete two turbines. This permits implementation of the mitigation requested by NRW in respect of curlew. The amendments, the draft Habitat Management Plan (HMP) and the Breeding Birds Protection Plan (BBPP)⁶⁹ reduce the cumulative effects of the Llaithddu proposal to an acceptable level when considered with other schemes⁷⁰.
81. In common with curlew, NRW now agrees that there will be no significant effect on any other species⁷¹. This position has been updated. Overall the surveys carried out in 2013 /14 confirm that the bird assemblage and usage of the site is very similar to that recorded in 2006 and the results of the original assessment, that the proposed wind farm with agreed mitigation will have no significant impacts on the birds using the site, remain the same. The site displays the usual paucity of species and numbers typical of an upland site in Mid-Wales during this time of year⁷².

Peat

82. NRW has never advanced a case specifically against the Llaithddu proposal on the basis of its impacts on either peat or the historic landscape⁷³. The Alliance case simply refuses to pay any attention to the evidence. As in so many other respects, there is no mention at all of evidence (often unchallenged) which demonstrates the contrary case. On this issue the Alliance exemplify this approach by alleging peat impacts and impacts on the SAC without referring to a single document or piece of oral evidence⁷⁴.

⁶⁸ The Alliance did not provide a proof of evidence which specifically addressed ecology in respect of SSA C

⁶⁹ [FWLC-SoCG-003 with NRW on Ecology and Ornithology at Appendix 2 and 3 respectively]

⁷⁰ [FWLC-SoCG-003 with NRW on Ecology and Ornithology at § 7.4]

⁷¹ [FWLC-SoCG-003 with NRW on Ecology and Ornithology at § 7.5]

⁷² Updated Protected Species Report May 2014 [FWLC -016-Updated Protected Species Report] at §3.36

⁷³ [CON-003-004; the NRW opening Statement at §3.2 and 3.3]

⁷⁴ Alliance Closing Submissions Section 10 at §§ 10.8 to 10.13 at p57-58

83. So far as peat is concerned, further surveys, micrositing of turbines and the amendment of the route of on-site access tracks resolved NRW's initial concerns. The subsequent deletion of turbines 1 and 2 further reduced peat impacts. It is now agreed that, subject to a condition on the submission, agreement and implementation of a Peat Management Plan, there is no impact on peat on the majority of the site and the impact elsewhere is acceptable⁷⁵.

84. ES Chapter 5⁷⁶ set out Soils and Agriculture Land Use Assessment. At the time there was no requirement for a detailed assessment of peat as a soil resource. However, CCW then published specific guidance on the assessment of peat resource and peatland habitats in connection with wind farm developments⁷⁷. Hence, a Peat Survey methodology was agreed with CCW in January 2011 and the survey was undertaken⁷⁸. By letter dated 13 December 2011 FWL were thanked for their constructive consideration of the issues and CCW agreed peat mitigation and turbine micrositing.

85. The June 2013 SEI⁷⁹ included assessment of specific amendments to the wind farm including amendments agreed with CCW regarding peat resource:

Micrositing of Turbines 1, 12 and 24

Alternative permissive route to the east of Turbines 1 to 3

Condition setting out changes to siting of Turbines 3 and 5

86. A further site visit was undertaken in May 2013 to examine soil profiles for those amended turbine locations set out in Options 1 and Option 2 in the SEI.

⁷⁵ [FWLC-SoCG-004 with NRW on Peat Resource]

⁷⁶ [FWL-BAC-003]

⁷⁷ 2010 "Guidance Note Assessing the Impact of Wind farm Developments on Peatlands in Wales"

⁷⁸ Peat Resource Report was submitted to DECC and sent to Powys County Council (PCC) and CCW in April 2011 (Refer to June 2013 SEI Appendix 2.1 [FWL-BAC-010] for copy of Peat Resource Report)

⁷⁹ [FWL-BAC-010] - refer to SEI para 1.1.2 and SEI Table 2.5. Total volume of peat disturbance calculated as 18,689 cubic metres.

87. The SoCG agreed with NRW⁸⁰ regarding Peat Resource records:

The peat resource work undertaken in 2011 and 2013 has confirmed that there are no significant areas of land within the development footprint that comprise moderately (>50cm) or deep (>1m) peat resources. On the southern part of the site the soils are predominantly non-peaty and where peat resources are encountered these are predominantly shallow (<50cm in depth).

The impact on peat is localised, with little or no impact on peat for the majority of the site.

NRW raise no objection to the proposal on the grounds of the effects on peat resources

88. We invite you to find accordingly.

Hydrology

89. So far as the River Wye Site of Special Scientific Interest and Special Area of Conservation is concerned, NRW and FWL have agreed that the impacts of the Llaithddu scheme will not give rise to a 'likely significant effect'. We have set out the tests to be applied under the The Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") in a Note on Appropriate Assessment⁸¹.

90. The River Wye catchment as a whole is in excess of 4000 km², of which the sub-catchments in which the Llaithddu site is situated constitutes less than 1%. Having considered the assessment of construction impacts on the SAC and the SEI, NRW is

⁸⁰ [FWL-SOCG-004]

⁸¹ [FWLC-005-Habitats Note 5 June 2013]

content that suitable conditions which secure, amongst other things, a Construction Environmental Management Plan, would ensure that there would be no likely significant effect on the SAC when the Llaithddu scheme is considered alone⁸². So far as in combination effects are concerned, the first question remains ‘in combination with what?’ Grid connection agreements which are in place suggest that simultaneous construction of SSA C consented wind farms is unlikely. In any event, even on a ‘worst case’ scenario, and after very careful consideration, the hydrological specialists instructed by the three applicants in SSA C will say that there is no likely significant effect on the SAC.

91. We note and respect the views advanced by the Alliance and others, for example via the evidence of Dr Rodda⁸³. That amounted to no more than a critique of the ES and presented no independent or free-standing evidence. What the evidence of Dr Rodda did not do was explain why issues of runoff could not be appropriately managed and such management secured by condition. A full reply to the points was provided by Mr Bagley⁸⁴.
92. So far as cumulative effects are concerned, it is the considered view of three hydrologists⁸⁵ that either alone, collectively or in combination with the other developments in the catchment, there will be no significant change to the hydrological processes of the River Wye either in terms of water quality or water quantity. In respect of water quality, the large scale of the sub-catchment, the large volume of water in the catchment, the relatively small proportion of the sub-catchment occupied by each scheme, and, importantly, the spatial positioning of each of the schemes within the sub-catchment relative to each other, to any other proposed wind farm scheme or any other activity, and to the likely receptor locations mean that, without mitigation, there will be either no additional sedimentation effect or a negligible effect within the

⁸² [FWLC-SOCG-005 at §6.3]

⁸³ [ALL-SSAC-POE-02 Hydrology] - Dr Rodda did not appear at the Inquiry

⁸⁴ [FWLC-007 Note on Hydrology]

⁸⁵ [CPL-VATT-FWLC-PS-HYDRO-S4-Position-Statement-SSA-C-Applicants-Hydrological-Session-4-Cumulative-Effects]

SAC. Nonetheless mitigation measures are proposed.

93. NRW has confirmed its position as to both ‘likely significant effect’ and the mitigation which is proposed (which is very much standard practice and easily achievable by all three proposed wind farms) thus⁸⁶:

NRW considers that the proposals would not have a likely significant effect on the River Wye SAC alone or in-combination with other plans or projects taking into account the mitigation measures that have been embedded within the proposals and the suggested conditions that have been agreed between the applicants and NRW. It will be important for the SoS to satisfy himself that:

(a) the mitigation measures proposed in the ES and SEI are delivered as part of suitable planning conditions [the schedule of conditions does indeed achieve this];

(b) the generic principles and measures in the draft mitigation measures are translated into suitably designed and appropriate site specific measures, for example in [the] final Construction Environmental Management Plan and Pollution Prevention Plans [we can confirm that such is the intention of FWL and so much is capable of being secured by an agreed condition];

(c) that measures are in place to ensure that the final mitigation measures are assessed and approved by appropriate bodies [NRW took an active part in the discussion of conditions both outside and within the Inquiry and have secured this outcome];

(d) that measures are in place to ensure that there is compliance with and necessary monitoring and enforcement of all final mitigation measures in the planning conditions [the deemed consent would be subject to the usual enforcement mechanisms available to the planning authority and there has been no suggestion that PCC is anything other than equipped to discharge its enforcement duties].

94. Overall, we will submit that this body of evidence and agreement demonstrates that the

⁸⁶ [NRW- Closing Submissions]

application scheme succeeds in conserving flora, fauna and geological and physiographical features of special interest⁸⁷.

MATTERS 6 & 9 - NOISE⁸⁸ & HUMAN HEALTH⁸⁹

[Key Documents: ES 2008; SEI; FWLC 002 SoCG Noise; Schedule of Conditions]

95. There never has been any real objection to the scheme on an acoustic basis. Even the Alliance's closing submissions appear accepting of the use of conditions to address this issue⁹⁰. The 2008 ES⁹¹ and 2013 SEI⁹² record the assessments of the potential noise impact of the operational turbines, and the cumulative noise impact of the proposed neighbouring wind farms. The assessments followed the guidance contained within ETSU-R-97. The conclusions of those assessments were that the proposals:⁹³

Will meet the Lower Absolute Amenity Hours Noise Criterion in respect of operational noise levels at associated and non-associated receptor locations;

Night-time Operational Noise Levels will meet the ETSU-R-97 night-time noise criterion;

Cumulative noise predictions indicate that levels will meet the Lower Absolute Amenity Hours Noise Criterion;

Night-time operation cumulative noise levels will meet the night-time noise criterion specified within ETSU-R-97; and

⁸⁷ Schedule 9 to the Electricity Act 1989 [CD/COM/023]

⁸⁸ the individual and combined impact of noise generated during construction and from the operation of the proposed developments taking into account the cumulative impact with other wind farms in the Powys area which have already been granted planning permission or where planning permission has been applied for

⁸⁹ the potential impact of the proposed developments on human health

⁹⁰ Alliance Closing Submissions, Section 7, §13, p44

⁹¹ Chapter 10

⁹² Chapter 8

⁹³ SEI page 108

An assessment of the potential noise associated with construction of the wind farm indicated that noise associated with such activity will be limited to acceptable levels.

96. The cumulative effects are agreed with the Environmental Health Officer of PCC⁹⁴. The Inquiry is fortunate to have particular experience and expertise amongst the parties' witnesses. As a result, agreed conditions have been arrived at which deal with the individual and cumulative effects of the schemes. So far as concern has been raised in respect of the effects of amplitude modulation⁹⁵ those concerns are misplaced for the reasons explained in Mr Hayes' Note on the topic. It is, however, acknowledged to be a developing area of expertise upon which you have been provided with ample material.
97. Notwithstanding that observation, in light of the recent RenewableUK December 2013 Paper on 'Wind Turbine Amplitude Modulation: Research to Improve Understanding as to its Cause and Effect', a Joint Proof of evidence was drafted on behalf of all applicants⁹⁶. The statement provides an overview of EAM and included a Joint Statement at Appendix A which made the following points:
98. A level of AM often referred to as 'blade swish' is recognised as a typical feature of wind turbine development;

At some wind farms, that characteristic blade swish turns into a higher level 'whooping sound' audible at considerably greater distances than could ordinarily be perceived;

⁹⁴ FWLC 002 SoCG Noise

⁹⁵ [OBJ772-Noise PoE-Weller-SSA C]

⁹⁶ [APPLICANTS-NOISE-POE3-BULLNORE-S4]

Excessive AM (EAM)⁹⁷ can occur at any planned wind farm;

EAM can lead to increased annoyance in people exposed to the sound;

There is an indication it is occurring at some wind farms;

It is now possible to develop an objective test and methodology for identifying, quantifying and regulating EAM;

As a result of the research ReUK have proposed a planning condition which the Institute of Acoustics has welcomed while noting that it requires a period of testing and validation before it can be considered good practice.

99. Accordingly, there has been discussion both at, and outside of the Inquiry as to what condition to attach to any consent granted in respect of this and the other schemes before the Inquiry. FWL are content to accept a condition that prevents operations of the turbines unless and until a scheme for assessing and regulating EAM has been submitted to and agreed with PCC in line with appropriate guidance in force at that time.

MATTER 11 - AVIATION⁹⁸

100. We make no submissions in this regard save to observe the lack of objection from those who may be concerned and the fact that the scheme specifically accommodates the tactical training requirements of the MoD.

⁹⁷ Also described as OAM (Other Amplitude Modulation) in the ReUK report.

⁹⁸ the individual and combined impact of the proposed developments on aviation

MATTERS 4 & 10 - LANDSCAPE AND VISUAL⁹⁹ & CULTURAL HERITAGE¹⁰⁰

[Key Documents: June 2013 SEI; January 2014 SEI; Proofs of Evidence and Appendices (Sessions 1 and 4) of Colin Goodrum, Philip Russell-Vick and Dominic Watkins]

Landscape and Visual - Approach and Structure

101. By its decision dated 25th September 2012, the Council adopted a position, namely “*In the light of concerns expressed by the Countryside Council for Wales (now NRW) regarding cumulative impacts and lack of mitigation, it is considered that the landscape and visual impact of the proposal is unacceptable.*”

102. It has to be observed and emphasised that NRW’s case before this Inquiry in respect of the Llaithddu scheme is entirely silent on the topic of landscape. In closing, NRW explained:

...NRW’s remit is limited by its role as the statutory advisor to the Welsh Government on sustaining and enhancing the natural resources of Wales. This has meant restricting its involvement to specific areas within that remit, broadly landscape, habitats and species.

....

NRW has no outstanding objections to any of the individual wind farm schemes within SSA C¹⁰¹.

103. The Alliance’s case is uncompromising. It advances the ambitious and brave case that no combination of proposed wind farms before the Inquiry is acceptable in

⁹⁹ the individual and combined landscape and visual impact of the proposed developments taking into account the proximity to Snowdonia National Park (Strategic Search Area B); and cumulative impact with other wind farms in the Powys area which have already been granted planning permission or where planning permission has been applied for;

¹⁰⁰ the impact of the proposed developments on cultural heritage

¹⁰¹ NRW Closing Submissions at §§ 1.1 and 2.2 respectively; given 28 May PM

principle¹⁰².

104. In the absence of any continued objection by NRW, the applicants are now invited to meet the Council's case as it has developed and which seems to have two limbs: (i) in respect of indicative capacity limits, and; (ii) in respect of landscape and visual impact of a part of the Llaithddu scheme. As to (i) there is evident concern as to the consequences in terms of grid infrastructure if certain 'tipping' points are reached. As we explain, we do not consider that this issue need arise nor is it central to the matters for decision.
105. The primary remaining issue is the PCC case on those turbines situated to the south. However, it is an issue to be considered in the context of the scheme's merits as a whole because the scheme was designed and brought through the consenting process as a whole. The statutory framework for decision taking is focussed upon the extent of mitigation of impacts and here the scheme design is one which successfully mitigates its effects across the whole scheme. So, consistent with that fact, the landscape and visual effects are considered as a whole.
106. The history of assessment of suitability of the site and its vicinity also points to a consideration and assessment of the scheme as a whole. This is seen in the various ways in which landscape character assessments have defined the various characters of the area. That history of assessment is of some importance and is the starting point for these submissions. It is helpful to the decision maker as independent assessment of suitability and also whether or not to exclude particular areas from future large scale wind farm development.
107. Hence, these submissions start by summarising the position adopted by PCC as to the suitability of the site, namely the 'Arup' studies of 2006 and 2008. We then turn to the LANDMAP character assessments and the scheme-specific advice received and adopted by PCC.

¹⁰² See the conclusions to Mr Watkins' proof [ALL-SSAC-POE-04]

108. Having done so, we then consider the substantial areas of common ground between the landscape architects who have given evidence and the reasons for the narrow area of disagreement by reference to the LVIA materials.
109. We then deal with cultural heritage in the above context. We do so because there is agreement with PCC and statutory consultees as to acceptability in cultural heritage terms. So far as there remains an issue raised by the Alliance in respect of Fowler's Armchair, that is founded in visual terms and is most conveniently considered within the overall context of the visual case.

Suitability and Exclusion

110. The following is not contentious¹⁰³.
111. SSA C and its surrounding area was considered via a number of zones. The scheme falls within Zones 8, 10 and 11. Zone 15 is also very close by. The Zones were assessed and ranked for their suitability by Arup in two studies, in 2006 and 2008. In accordance with the methodology which is anticipated and advised in TAN 8¹⁰⁴, they contain useful, relevant evidence which can be used as guidance in assessing the acceptability of the scheme. The result of the assessment does not amount to a definitive or absolute answer as to whether a particular scheme is acceptable in landscape and visual terms, but it does provide a ranked assessment which informs the decision taker as to areas of exclusion, and conversely as to inclusion. The aim of the detailed assessment was to identify *the preferred sites* [which] *will be the ones that have the lowest landscape impact*¹⁰⁵. In other words, Arup's brief was to map the best locations for wind farm development¹⁰⁶.

¹⁰³ xx Mr Russell-Vick Day 11, 4 October 2014

¹⁰⁴ See Annex D at p 57 of TAN 8 for the methodology proposed

¹⁰⁵ Arup 2006 [COM 17 and also COM 10A], p7, last bullet point

¹⁰⁶ Arup 2006, p6 at §1.2

112. The approach is a relative assessment. Hence, the outcomes of the studies are relevant because, if onshore wind farms are going to be permitted within identified, chosen areas, the decision maker is inevitably concerned with relative effects, to a degree.
113. The second Arup study, in 2008, had a still greater focus on landscape effects than the 2006 study. It was more detailed and concerned with identification of the boundary of the Strategic Search Area. For its visual assessment, it assumed 125m¹⁰⁷ turbines rather than 99.5m (64 m to hub/99.5 m to tip), per the Llaitthdu application. It considered environmental constraints in the manner envisaged by the advice in TAN 8 and produced criteria for spatial decision making between the zones within the SSAs and between the SSAs. The result was a ranking of the relative environmental, technical and landscape performance of the various parts of the SSAs.
114. The purpose of the local planning exercise was to achieve a finer grain of development allocation within the SSA, taking into account landscape, visual and cumulative impacts¹⁰⁸. The purpose is to be emphasised. When using the SSAs and the fine grain of the assessments they are to be understood as being for the purpose of development allocation, as TAN 8 expressly states.
115. The assessments of the zones of particular interest demonstrate that there are no ‘absolute’ constraints such as impacts upon national trails¹⁰⁹. The result of the assessment was to rank the zones overall thus:

Zone 8	Ranked First (Highest)
Zone 10	Ranked Thirteenth
Zone 11	Ranked Sixteenth
Zone 15	Ranked Ninth

116. PCC accepts and has no objection to turbines located in Zone 11, to the north (ranked

¹⁰⁷ See App G, p 6 to the Arup 2006 study

¹⁰⁸ See TAN 8 Annex D, p58 at §1.2

¹⁰⁹ Arup 2006 at p 17, 4th row of the table.

sixteenth). Rather, PCC's case is focussed on Zone 8 (ranked first and highest). Zone 8 lies to the south of Zone 10.

117. The SSA C Local Refinement Report from Arup in 2008¹¹⁰ excluded some areas of SSA C. The function and purpose of the report was to do exactly that: exclude areas which were unsuitable for wind farm development from the SSA. After this process of local refinement, Zones 8 and 10 were found to be suitable and not excluded from the SSA.

Visual Effects

118. There is much common ground on the assessment of landscape and visual effects. The Llaithddu scheme was designed in the knowledge that the site had been identified by PCC as suitable for large scale wind farm development. As explained by Mr Goodrum¹¹¹, and as has not been contradicted, it has been designed sensitively in response to local landscape character and landform, sensitive landscape and visual receptors, and other environmental and technical reasons.
119. As canvassed in evidence, it is instructive to consider just how much of the compass is agreed not to receive any significant effect from the Llaithddu application. Effects to the north and west of the northern part of the proposed wind farm would be limited by the presence of the existing P&L turbines and the screening effects of landform. Effects to the north east would be Medium magnitude up to approximately 4km, reducing to Low, Negligible or no effect beyond due to the effects of distance, forestry or screening.
120. To the south east, effects would reduce rapidly to Negligible magnitude or no effect beyond approximately 1km except where there are small areas with visibility where effects could be as high as Medium magnitude. To the south east, south and south west

¹¹⁰ [COM 10A and 18]

¹¹¹ Proof of Evidence of Colin Goodrum at §2.3.3

effects would be of High magnitude up to approximately 1km in all directions except where commercial forestry provides a buffer. Effects would be of Medium magnitude up to approximately 4km to the south west and east where not screened or buffered by forestry or other elements in the landscape.

121. The southern group form either: (i) on FWL's case, an attractive composition on the elevated land of Brondre Fawr Hill, responding positively to the landform pattern^{112,113}, or; (ii) on PCC's case, a threatening, isolated addition to the landscape, too close to Bwlch y Sarnau which would loom over the valley and be visually dominant¹¹⁴. Having identified that clear disagreement between FWL and PCC we turn from the prose to the LVIA assessments. PCC has chosen to set out its closing submissions by reference a scale of 'faint' to 'dominant', following the approach of its landscape witness. We prefer to consider significance by reference to Minor-Major significance and reproduce by way of summary, Table 1 from Mr Goodrum's proof, which we understand to be agreed with PCC.

¹¹² per Mr Goodrum - see especially Viewpoint 34 in SEI Volume 4 Appendix 7) and illustrate the proposed view in Figures 10_WF_34 and 10_PM_34

¹¹³ Figures 10_PM_2, 4, 5 and 34 (SEI Volume 3 section 3)

¹¹⁴ See PCC Closing Submissions at §161, p75 of 481

Summary of Viewpoint Assessment from Selected Viewpoints

VP No	Visual Receptor	Approx. distance	Sensitivity	Magnitude	Significance
1	Minor Road at David's Well The southern part of the wind farm would be visible as a line extending along the ridge of high land and the northern part would be visible as a continuation to the north, albeit not as close to the receptor. Effects of the southern part of the wind farm would be the same as for the wind farm as a whole.	1.4	Low	High	<u>Moderate to Major</u>
2	Minor Road West of Bwlch y Sarnau The southern part of the wind farm would be visible as a line extending along the ridge of high land. The northern part would be largely screened by landform. Effects of the southern part of the wind farm would be the same as for the wind farm as a whole.	2.2	Low	High	<u>Moderate to Major</u>
4	Glyndwr's Way, South of Bwlch y Sarnau Effects of the southern part of the wind farm would be the same as for the wind farm as a whole.	2.5	High	Medium to High	<u>Major to Moderate</u>
5	Minor Road East of Pantydwr Effects of the southern part of the wind farm would be the same as for the wind farm as a whole.	4.4	Low	Medium	Moderate to Minor
7	Junction with B4518 near Sun Inn, St. Harmon Effects of the southern part of the wind farm would be the same as for the wind farm as a whole.	6.1	High	Negligible	Minor
10	B4518 South of St Harmon Effects of the southern part of the wind farm would be the same as for the wind farm as a whole.	7.7	Low	Low	Minor

VP No	Visual Receptor	Approx. distance	Sensitivity	Magnitude	Significance
13	Near Glyndwr's Way on B4518, Llyn Clywedog The southern part of the wind farm would not cause any effects. All effects would be caused by the northern group.	11.6	High	Negligible to Low	Minor to Moderate
34	Glyndwr's Way, Bwlch y Sarnau Effects of the southern part of the wind farm would be the same as for the wind farm as a whole.	1.8	High	High	<u>Major</u>
36	Glyndwr's Way, Fron Top Effects of the southern part of the wind farm would be the same as for the wind farm as a whole.	6.5	High	Low to Medium	Moderate

122. There is no suggestion that this assessment is wrong, or underplayed.
123. The scheme would cause a limited number of significant effects. That small number of significant effects is based on agreed, representative view points and an agreed ZTV. That small number is to be seen in the context of the totality of the agreed representative view points and their assessments. We invite you to take a balanced view of that overall assessment. When that is done we anticipate that you will see why PCC reached the stance which was reported to Cabinet, supported by its own independent advice.
124. If you wish to examine the worst case¹¹⁵, then VP34 illustrates that, lying just outside the settlement edge, where effects would be greatest. The character of Bwlch y Sarnau would neither be defined by the scheme nor would they be otherwise dominated in the manner sought to be argued now by PCC. Moreover, the agreed ZTV¹¹⁶ demonstrates

¹¹⁵ We submit that you are not concerned with the worst case, but with seeking to identify the effects as best possible from all of the materials and your site view.

¹¹⁶ Figure 18 in Appendix 1 of Mr Goodrum's proof

that intervening landform would screen the wind farm from a large proportion of this settlement.

125. Further, there is an interesting ‘baseline’ question for you if you follow the invitation from PCC to consent Llandinam. This is because you will then assess the Llaithddu scheme against the repowering scheme and not the existing P&L wind farm¹¹⁷. We submit that such assessment is likely to be material and requires consideration.
126. At the time of the Cabinet Report there had been 111 letters of objection and 241 letters of support for the proposal “which emphasised the level of support from the neighbouring communities for the scheme”.
127. Cumulative effects created by Llaithddu wind farm on users of two main road routes (A483 and A470) passing through the study area would be limited. These roads generally pass along valley bottoms close to Llaithddu, and enclosing landform vegetation would restrict views of Llaithddu wind farm. Llaithddu wind farm also lies on slightly lower ground and east of higher ground on which Hirddywel and Llandinam would be located and would generally be less visible from these routes.
128. Further, it is agreed that there are no significant cumulative effects between SSA B and C. For the seven proposed wind farms within SSA C, Mr Goodrum considered them in terms of those on the eastern and western sides of the valley. In particular, he noted the Llaithddu Option 2 and Llandinam wind farms provide a good combined arrangement¹¹⁸.

Character

129. The application site does not lie within, or near to, any landscapes of national importance. The Shropshire Hills Area of Outstanding Natural Beauty and Snowdonia National Park are located more than 12km and 31km away from the site respectively. These distances provide adequate separation between the protected landscapes and the

¹¹⁷ See para 163 of PCC Closing Submissions at p76 of 481

¹¹⁸ Noting, of course, that Llaithddu was designed in advance of any knowledge of the Llandinam CeltPower scheme

proposed Llaithddu wind farm individually which would ensure preservation of their character and special qualities¹¹⁹.

130. There is a general consensus, based on an established pattern of appeal decisions, that significant effects on landscape character arising from wind farms are generally confined to the immediate vicinity¹²⁰. Such effects are generally agreed as being of High magnitude within up to 1km of turbines (where the turbines may become the dominant characteristic of the landscape), reducing to Medium within up to 4km (where the turbines may become one of the key characteristics of the landscape) and decreasing further thereafter. The scale of the development, the nature and sensitivity of the receiving landscape, and local ‘barriers’ in the landscape (such as breaks of topography, woodlands, settlements, and roads or rivers) will determine the exact extent of effects for each development, but in practice significant effects are highly unlikely beyond 10km. We do not understand that general approach to be in dispute.
131. There are two landscape character areas which would host the wind turbines: M32 – Waun Ddubarthog¹²¹, and; R17 – Bwlch-y-Sarnau Uplands. Overall effects on the character areas would not be significant for these summary reasons.
132. The southern group of proposed turbines would give rise to effects of High magnitude which would extend up to approximately 1km to the west, east and south. This would extend down the slopes of Brondre Fawr¹²² to the eastern edge of the Afon Marteg¹²³ valley to the west, to Bailey Hill (where there is already a small single turbine¹²⁴) to the south, and down the eastern slopes of Brondre Fawr to David’s Well and Red Lion Hill to the east, except where there are existing plantations. Extensive parts of this area

¹¹⁹ SoCG - FWLC-006-Landscape

¹²⁰ Mr Goodrum’s Proof of Evidence at §5.3.9

¹²¹ Whine Theebarth-(as in think)-og

¹²² Brondr-ay Vour

¹²³ Av-(av in have)-on Mart-egg

¹²⁴ A small single turbine is located at Bwlych y Sarnau (which can be seen on the right hand side of wireframes and photomontage from Viewpoint 34). The turbine lies approximately 1.2km south of T29 on Bailey Hill

are characterised by large scale commercial forestry plantations which would reduce the magnitude of effect due to their large scale commercialisation of the landscape and by screening the turbines where the plantations have not been felled.

133. The presence of existing P&L turbines is a defining characteristic of M32¹²⁵. The character of the remaining landscape character areas in the detailed assessment area (within 15km) would not be affected to any significant degree and the character of the wider study area (within 35km) would be unaffected.

134. R17 – ‘Bwlch-y-Sarnau Uplands’ is turbine host area for the southernmost turbines. The Special Qualities (Key Landscape Characteristics) are given as:

“Large upland mass affected by coniferous woodland plantations of a large scale and extent

Strong visual influence of the large-scale wind farm developments on nearby upland areas with, consequent effects on long views out from this area

The northern section of this LCA has a distinct and relatively unusual landscape type for the study area, upland area displaying the small to medium scale irregular field patterns and hedgerow boundaries more typical of the mid-Montgomeryshire region”

135. Visual and Sensory Characteristics are defined as:

“The northern area is characterised by an upland area of small to medium scale irregular field patterns and hedgerow boundaries, with strong visual links towards Waun Ddubarthog Wind Farm to the north east and Bryn Titli¹²⁶ Wind Farm to the west. In the south is an area of upland hills, plateau and ridges which have had

¹²⁵ Mr Goodrum’s Summary Proof of Evidence at §1.6.3. & 1.6.4 & Main Proof: 5.3.1; 5.3.7 - PCC do not object on the basis of landscape character effects within SSAC

¹²⁶ Br-in Tit-ley

more than half of there (sic) area planted with large-scale coniferous woodlands. Regular straight boundaries form incongruous harsh lines in the undulating landscape. Dark conifer clad hillsides result in rather bland but brooding landscapes in places.”

136. This area extends from the west of the site, beyond the existing P&L wind farm, and to the south and east where it wraps around the bottom part of the site and hosts the five southern proposed turbines.

137. The northern part broadly corresponds to LANDMAP visual and sensory aspect area 438 which would experience Negligible magnitude effects. The southern part of R17 broadly corresponds with LANDMAP visual and sensory aspect area 125. This has a Moderate overall evaluation (as well as Moderate evaluation for scenic quality, integrity, character and rarity) with the justifying text saying:

“rather unattractive & unnatural landscape due to extensive conifer forests which are not particularly well related to topography and stifle underlying intrinsic characteristics”.

138. LANDMAP aspect area 125 is assessed as experiencing High magnitude effects within approximately 1km (except where screened by plantations where it would be lower) and overall effects of Low to Medium magnitude. It is to this vicinity that PCC directs its objection, i.e., a rather unattractive and unnatural landscape.

139. Further, part of the LCA is covered by SSA C zone 8 and 9 within PCC’s second TAN 8 study (with the southern five turbines lying in zone 8). Zone 8 is defined as medium-low landscape character sensitivity to large scale wind farm development.

140. Overall the area is considered to be of Medium sensitivity to the proposed development.

Public Rights to Way (PRoW)

141. With respect to recreational routes, users of certain parts of the PRoW network within approximately 6km of the wind farm would experience significant visual effects. The

main routes affected to 'major or 'major to moderate' degree would be those bridleways and footpaths crossing, or situated immediately adjacent to, the site from which uninterrupted views of the proposals would be available. This would include a short stretch (approximately 2km) of Glyndwr's¹²⁷ Way at Bwlch y Sarnau which is likely to be exposed to major or major to moderate visual effects. This is agreed in the landscape SoCG¹²⁸.

142. The June 2013 SEI included an updated assessment of effects on access land, public rights of right (PRoW) and non motorised users arising from construction, operation and decommissioning of the proposed project. A further 'Note on Recreation' was submitted to the Inquiry in October 2013¹²⁹ which summarised the current scheme in relation to PRoW and included details of mitigation. The note addressed the consultation that had been undertaken with the British Horse Society, subsequent to the submission of the SEI, and responded to the BHS Statement of Case¹³⁰. Following discussions in 2012 PCC withdrew its holding objection on this issue.¹³¹

143. The main routes affected to 'major or 'major to moderate' degree would be those bridleways and footpaths crossing, or situated immediately adjacent to, the site from which uninterrupted views of the proposals would be available. None of the other publicly accessible routes, either locally or in the wider study area, would be affected to any significant degree. Long distance trails such as Glyndwr's Way, Offa's Dyke, The Severn Way, The Shropshire Way and the National Cycle Network Routes would not be affected to a significant degree by the proposed wind farm.

144. The use of the Prince Llewelyn Ride was recorded between 7th August and 15th

¹²⁷ Glin-doo-r's

¹²⁸ Proof of Evidence of Colin Goodrum at §1.7.5.

¹²⁹ FWLC-011

¹³⁰ OBJ-313-British Horse Society-Statement of Case-Llaithddu

¹³¹[D/FWL/BAC/007] page 16

September 2013¹³². The bridleway was monitored at the junction of Bridle Way No. LD 755 and No. LD 756 north of Fowler's Armchair. Horses and their riders were observed on the PRoW on just 3 days during the period of over 5 weeks.

145. Following discussion with PCC Countryside Services and BHS, a package of mitigation measures has been developed to include:
146. An alternative permission bridleway at a distance of more than 200 metres from the turbines so that there is a choice for users of the PRoWs depending on their preference. The Note on Recreation confirmed that all permissive routes fall within the ownership of participating landowners and so there is no uncertainty as to delivery, even where the proposal fall outside of the application boundary.
147. The June 2013 SEI takes into account the 2013 BHS Guidance and sets out mitigation measures as follows:

That conflict between vehicles and non-motorised users on the PRoW is minimised;

That additional links are provided to improve the connectivity of the bridleway network;

The provision of £72,500 to improve the local PRoW network; and

The provision of facilities to allow horses to become accustomed to turbines, such as familiarisation days with controlled turbine movement.

Residential Amenity

148. There are no issues in respect of impacts on particular properties. None have been raised by PCC at any stage and neither the Alliance nor any individual has made a

¹³² Explanatory Note FWLC-010

representation as to effects upon the amenity of a particular dwelling or group of dwellings .

Independent Advice

149. Capita Symonds prepared a full report on the Llaithddu proposals¹³³. One issue raised by PCC's landscape consultants was clustering of turbines at the southern end of the wind farm (5 turbines) when viewed from Bwlch y Sarnau. Hence, the layout of the southern five turbines was revised and wireframe views of the submitted and revised scheme submitted¹³⁴. The revision has been assessed¹³⁵. The visualisations from Viewpoint 34 illustrate that the layout of the southern turbines will provide a balanced and equal spacing with no 'stacking' seen on the horizon from Bwlch y Sarnau and this was accepted by PCC's landscape consultant¹³⁶.

150. PCCs Planning Officer reported the landscape consultant's conclusions with approval¹³⁷. Such concerns as had been identified were addressed and it was concluded¹³⁸:

“Overall, in our opinion, the developer has addressed or clarified many of our concerns and the efforts made to refine the design of the scheme have resulted in a considerable improvement in the appearance of the southern arm of the scheme where it will be seen largely in isolation on the skyline. It is now recommended that the scheme be approved in terms of landscape and visual matters.”

151. Until the inquiry process was well under way, PCC's position was that no further amendment was required. FWL were given no indication by PCC that the scheme was

¹³³ Capita Symonds full report is [FWL-LAN-0022]

¹³⁴ Submitted with a covering letter dated 26 March 2013 (see SEI Volume 4 Appendix 2)

¹³⁵ LVIA by Colin Goodrum (see Viewpoint 34 in SEI Volume 4 Appendix 7) and illustrate the proposed view in Figures 10_WF_34 and 10_PM_34 in sections 2 and 4 of SEI Volume 3

¹³⁶ Proof of Evidence of Colin Goodrum at §2.5.11

¹³⁷ [FWL-BAC-007]

¹³⁸ Quoted in Proof of Evidence of Colin Goodrum at § 2.5.4.

anything other than acceptable. As Mr Russell-Vick put it, when FWL saw the Council's recorded position "I assume your clients looked at that and thought 'job done'".

Conclusion on LVIA

152. Mr Goodrum is an experienced landscape architect, particularly in respect of onshore wind proposals. He took an independent and balanced view which was not easily accepting of the LVIA work which had gone before. His considered and detailed approach was not undermined in any way in cross examination. His analysis and opinion should carry significant weight.
153. He considers that the development is well designed. The presence of existing P&L turbines is a defining characteristic of the local area. The design responds particularly well to the scale and pattern of the landform and the character of the landscape, following the pattern of high land at Waun Ddubarthog and Brondre Fawr, and the simple, exposed, open and windswept location. It will present itself as an attractive composition, in keeping with the scale and form to the landscape. When seen from the surrounding landscape the southern turbines in particular would form an attractive composition extending along the ridge top. The scheme would cause some significant but limited effects on sensitive landscape and visual receptors. Mr Goodrum's firm opinion is that these effects are acceptable. He considers that in landscape and visual terms it is a very good scheme and should be consented¹³⁹.
154. NRW, the WG advisor on landscape matters, summarised its approach to landscape issues during the closing session¹⁴⁰: *"waiting for perfection is ridiculous – re Area C we don't object to any of the schemes – we advise on nature conservation and landscape not on targets. We wouldn't treat these targets as overriding. In particular Area C is already has a wind farm landscape so addition of new turbines doesn't significantly alter landscape. There is also the issue of cumulative impact but given my*

¹³⁹ Proof of Evidence of Colin Goodrum at §2.3.3

¹⁴⁰ Closing Session - Planning Balance; 20 May 2014

position that overall contribution to the 2GW target it is important, individual schemes that are acceptable are approved.”

155. The focus upon Bwlch y Sarnau and the Marteg Valley is one which should be seen in the context of the whole of the LVIA, its agreed VPs and ZTV. Along with the impact of intervening vegetation, the particular geography of the settlement on the nose of the ridge and the agreed absence of any unacceptable impact on any dwelling, we submit that the effects, though significant, have been over stated by PCC.

156. In summary on this topic, via detailed and carefully considered evidence, it has been demonstrated that the Llaithddu scheme:

has been designed sensitively in response to local landscape character, landform and visual receptors;

which design responds particularly well to the scale and pattern of the landform and character of the landscape at Waun Ddubarthog and Brondre Fawr;

which will itself present as an attractive composition;

which design, after responding to feedback provided on behalf of the Council, was considered acceptable by landscape consultants appointed by the Council to give their independent and expert opinion;

which would cause some significant but limited effects which are acceptable, and; is a very good scheme which should be consented.

Cultural Heritage

157. We touch briefly on historic landscape and specific assets. In respect of the former, a detailed assessment was carried out using the ASIDOHL¹⁴¹ methodology produced by Cadw/NRW. This was carried out at the request of CPAT despite the fact that the application site does not fall within any of the designated historic landscapes of special or historic importance. The nearest such areas are the Caersws Basin Landscape of Special Historic Interest (a minimum of 4km to the north) and the Clywedog¹⁴² Landscape of Special Historic Interest (a minimum of 7km to the west). The outcome is agreement between the statutory consultees that the effect on historic landscape is acceptable.
158. Fowlers Armchair is an ancient monument. When seen in the field, it is far from obvious that it is an ancient monument. As a result of consultation with Cadw and CPAT on the setting of Fowlers Armchair the application has been amended as set out in the revised planning application of June 2013. These involved the movement of Turbine 17, and also envisages providing access to the monument, fencing it from the existing nearby bridlepath, providing a stile and the provision of an information panel. PCC take no point on Fowler's Armchair. It may be recorded that:

PCC raised no issue in this regard in its Outline Statement of Case;

PCC raised no issue in this regard in its Full Statement of Case;

PCC's Opening Statement was silent on the topic;

Mr Russell-Vick gave no evidence in respect of Fowler's Armchair;

PCC called no cultural heritage evidence in respect of the Llaitthddu proposal;

¹⁴¹ Assessment of the Significance of Impacts of Development on Historic Landscape

¹⁴² Cl-oh-ed-og-(as in frog)

PCC asked no questions of Mr Le Quesne who gave detailed oral evidence on cultural heritage issues;

PCC were careful to avoid any adverse comment on this topic in the Closing Submissions.

159. The Alliance case was advanced by Mr Kibble.¹⁴³ The case was put rather higher in closing by reference to the Bryn Llywelyn, Llanllwni, Pencader decision¹⁴⁴. We draw attention to the case being advanced by the Council, namely an adverse impact on the setting of SAMs and associated historic landscape impacts, put this way:

Under the historic landscape layer (CRMRTL42421) Mynydd Llanllwni is evaluated as outstanding. Again the relevance of the moorland is noted “Mynydd Llanllwni is open moorland with Bronze Age barrows a distinctive feature”. There is no quibble about its quality – the assessor notes “this area scores highly in all evaluation categories. It is a good example of an upland landscape with nationally important components.” The LANDMAP landscape habitats aspect layer also considers Mynydd Llanllwni (CRMRTLH112) to be outstanding – again for the quality of its heath¹⁴⁵.

160. FLW do not face such a case nor a factual matrix which is at all analogous to that decision. Rather, the important conclusion derives from the third bullet point to Sch 9 of Electricity Act 1989¹⁴⁶ which has been amply satisfied because the scheme protects sites, buildings and objects of architectural, historic or archaeological interest. We say this having regard to amendments made to the scheme, early in its development, which the statutory consultees do not suggest does anything other than minimise impacts. So far as the historic environment is concerned, the two principal heritage consultees have

¹⁴³ [ALL-SSAC-POE-05]

¹⁴⁴ Appeal refs APP/M6825/A/12/2189697, APP/M6825/X/13/515763 & APP/M6825/X/13/515764 Powys CC core document

¹⁴⁵ See §260 of the Decision, *ibid*

¹⁴⁶ [CD/COM/023]

confirmed their agreement to a SoCG¹⁴⁷. That document records the satisfaction of both CPAT and CADW with the revised relationship between T17 and the SAM and as to the mitigation proposed.

161. Part of that mitigation includes the provision of an interpretation board. That might be thought to be of little moment until one recalls the question asked of Mr Le Quesne by Mr Truman. He asked "*I went there on Monday and what I saw was a circular mound on the ground and a scattering of stones and a large rock - what was I looking at?*" Mr Le Quesne explained that the circular mound is not the monument. This exchange illustrated just how unclear the SAM is as a feature to be 'read' in the field. It is not visible at any great distance, being located in a saddle, and not legible even when you are adjacent to it. Mr Le Quesne's view was that it was important to put resources into the understanding of the monument but that construction of the turbines would not cause any harm and was in any event reversible¹⁴⁸.
162. Of course, the historic environment is all-pervading in Wales. For the reasons explained above in respect of landscape and visual effects, if there were a preferable location for such renewable energy projects on historic environment grounds, TAN 8 would have directed us to it.

¹⁴⁷ [FWLC-007-(Hist Env)]

¹⁴⁸ Answers to Mrs Davies' questions; Day 6 of the Inquiry (AM), 5 September 2013

[D] CONDITIONS

163. The schedule of conditions is very largely agreed. Those conditions are necessary to address matters of legitimate environmental concern. Through a very long process of dialogue with statutory consultees, a suite of conditions has been agreed which entirely addresses the following the issues:

- Construction effects
- Archaeology
- Effects upon protected species
- Ecological effects generally
- Hydrology
- Peat
- Shadow Flicker
- Drinking water supplies

164. Likewise, there is a schedule of conditions to address both local and strategic highways effects. There remains some dispute as to how best to frame those conditions. However, the key fact is that there is agreement that those conditions will provide for appropriate traffic management. However, those conditions address a somewhat unrealistic worst case. They are highly likely to apply to circumstances which do not reflect the concerns articulated by opponents to these and other proposals.

165. Grid connection timing makes it almost certain that Llandinam would be built out before Llaithddu. Overlap in AIL movements is not a realistic scenario in any event. Moreover, such improvements to the strategic and local highway network as are undertaken for the Llandinam scheme would further benefit the Llaithddu scheme, albeit that they are not required.

[E] ANALYSIS AND CONCLUSIONS

166. We approach this analysis by reference to:

The type of development proposed and the framework which the Secretary of State has invited us, and Parliament required, to take to such decisions;

The 'long view' of the evolution of this proposal and the consequential range of agreements which has resulted between the applicant and those who are charged with scrutiny of the proposals by reference to environmental issues, which we acknowledge to be of importance;

The totality of the scheme, its benefits and the means by which its effects are agreed to be mitigated;

The totality of the evidence - not some of it.

167. Even the most casual reading of the over-arching policy documents to which we have referred in respect of Matters 1-3 yields a strong impression of the urgency attached to the delivery of the infrastructure which the Llaithddu scheme would provide. The policy ambition is to provide a step change and a steep rate of change. It is therefore something of a surprise that the scheme has been in the consenting system since 2006 without decision. We do not complain. Rather we point to the position which has been arrived at now and the opportunity to deliver development, in a real tangible way, which meets those policy objectives, now. In other words, if it takes eight or nine years to equip the decision maker with the material to consent nationally important infrastructure, required to address issues which are as serious as climate change and energy security for the nation, then the reasons advanced for turning away deliverable capacity need very careful scrutiny.

168. As EN-1 indicates, and PCC acknowledge, the decision maker should start with a

*presumption in favour of granting consent to applications for energy NSIPs*¹⁴⁹. That is a further means by which the national policy seeks to explain that it is necessary for the infrastructure to be delivered and acknowledges that such delivery will produce environmental change. The Schedule 9 requirement is that such environmental effects are minimised. That is necessarily a holistic assessment. Hence, we come to the phrase ‘planning balance.’ In this sphere of decision making, it is a balance which acknowledges two important starting points: (i) need and urgency, and; (ii) inevitability of effects in locations which are not the norm for substantial development proposals. WG has gone to the trouble of identifying those areas in which to search for sites for such schemes, to avoid proliferation and to avoid the more sensitive sites. In a world of relative assessment, the planning balance starts from a position of informed relative acceptability and a presumption in favour of the proposal.

169. The position today is significantly different to that which was announced in the various Outline Statements of Case. The WG and PCC, supported so far as necessary by NRW, CPAT and Cadw, now agree that there is policy compliance and the statutory requirement to ‘do what [an applicant] reasonably can to mitigate’ has been met, as have all other statutory requirements, in respect of:

All ecological effects including effects upon protected species, including curlew
Effects upon peat;

Hydrological effects arising from construction and operation particularly in respect of there being no likely significant effect upon the Wye Valley SAC;

Noise;

Effects upon residential amenity;

Cultural heritage effects;

¹⁴⁹ PCC Closing Submissions at §938, p 448

Local traffic and transport effects;

Strategic highways issues.

170. That was not the position when this Inquiry process commenced. The balance of considerations is therefore fundamentally and radically different at the end of the Inquiry process. Through the substantial work undertaken by the parties, largely outside the Inquiry, the environmental effects of the scheme are very largely agreed to be acceptable, subject to the point taken by PCC in respect of the southernmost turbines.

171. This balance of considerations is achieved by the scheme as a whole. We deal with that point in three ways. Firstly, we draw particular attention to:

Provision of ecological mitigation outside of the ‘northern’ turbine area;

The fact that the scheme was consulted on as a whole and the community was involved as a whole;

There is no formula for participation and community benefit which attaches to the northern area.

172. Secondly, we draw attention to the factual context within which PCC’s objection is now advanced. The following facts are germane:

The TAN 8 SSA studies, refining the SSA areas on behalf of PCC were accepted and adopted by PCC, ranking the now disputed area highly;

PCC took and accepted scheme specific advice which is contrary to the position now adopted;

PCC's current position was prompted by CCW/NRW. NRW now considers that the scheme is acceptable in all respects in which it is competent, which of course includes landscape.

173. While it is entirely open for PCC to run its case contrary to the above positions, and we deal with those points on their merits, it is notable that PCC do not address this factual context in the direct way which is called for. The combined professional views and assessments of Arup (accepted by PCC), Capita Symonds (accepted by PCC), RPS (the ES and SEI) NRW (not addressed by PCC) and Mr Goodrum are highly material.
174. Thirdly, we deal with the impact (and suggested remedy for) the refusal of consent which PCC now invite on the basis of its limited landscape objection. We pointed out to PCC that there is no such thing as a partial s36 consent for a generating station less than 50MW. PCC agree with that proposition. They suggest that a part of the scheme could be consented under the Town and Country Planning Act 1990¹⁵⁰. It is boldly asserted (without any evidential support) that such an application would be consented in ample time to benefit from a 2019 grid connection date. That bare advocate's point is misconceived and discloses a failure by PCC to engage in the reality of the consent process and the delivery of renewable projects. It is startling that such a point is made when it is known that this application has taken eight or nine years to reach the decision maker, that objections have been taken by PCC to each and every scheme in SSA C, the fact of active local opposition and publicly expressed political opposition to wind farm proposals in Powys.
175. PCC have given no consideration to: (i) the cost associated with the grid connection contract (existing); (ii) the cost of a further grid connection contract; (iii) most importantly, the community acceptability of the benefits and burden which would result given the radically different land ownership situation. In summary, a TCPA would not meet the pressing need for renewable energy, whereas the application

¹⁵⁰ §995 of the PCC Closing Submissions at 468 of 481

scheme would. It is not accepted that the late identification of an alternative scheme and approach is realistically available by reference to the above factors.

176. The Alliance approach to landscape issues has remained uncompromising throughout. That is not a criticism but it is an accurate characterisation of the position which has been adopted. The overriding difficulties with that position are that it: (i) pays no attention to policy imperatives and associated acceptance of landscape change; (ii) does not deal with the relative assessment of LVIA which is not said to be anything other than objective and independent analysis; (iii) amounts to a de facto no-go area; (iv) does not deal with the policy approach of strategic search and concentration rather than dispersal of the necessary infrastructure. As we say, it is important to have regard to all of the features of the proposal and all of the evidence.

177. Let us examine the position if you accept the PCC case on landscape impact in its entirety and find against the whole of Mr Goodrum's evidence. Even in such circumstances, which would not be consistent at all with the way that the evidence came out at the Inquiry, but taking that scenario we submit that the balance weighs in FWL's favour:

there are no other issues which, after full consideration and agreement through the inquiry process, remain live;

the case against the proposal at the point causing the inquiry to be heard has diminished considerably - the balance to be struck is a fundamentally different one to that contemplated by our opponents at the outset of the Inquiry process;

all issues save LVIA are resolved as between FWL and statutory parties;

the 'tipping point' grid issue has been shown to be less significant than PCC feared;

The LVIA case against the proposal is heavily dependent on environmental capacity by reference to the TAN 8 limits. Those are out of date for the reasons we have set out. So far as they are of any relevance, we do not accept that Llandinam re-powering is a contribution to SSA C targets.

There are significant material benefits as identified by PCC in respect of those schemes which it supports, e.g. Llandinam. Economic and local employment opportunities also derive from the income by which landowners will facilitate agricultural diversification and provide long term security for farming operations. We agree that, taken together, the renewable electricity, economic and employment benefits are considerable¹⁵¹.

178. So, you have before you a scheme which is widely acknowledged to provide benefits to which substantial weight should be given. It is similarly acknowledged to be well designed with mitigation measures which address the environmental capacity of the area. The location of the scheme is one which avoids the dispersal of such schemes throughout Wales and which need not give rise to the sort of grid infrastructure which has prompted such strong objection, even if more than just the Llaithddu scheme were to be consented in SSA C.
179. We ask that you commend the application to the Secretary of State, subject to appropriate conditions to secure the environmental protection which PCC and the Alliance properly seek.

Richard Kimblin
Thea Osmund-Smith

No. 5 Chambers
London • Birmingham • Bristol

30th May 2014

¹⁵¹ See PCC Closing Submissions at §980 re Llandinam and §988 re Llaithddu

IN THE MATTER OF

APPLICATION BY FFERM WYNT LLAITHDDU DATED
7TH MAY 2008 FOR CONSENT UNDER SECTION 36 OF
THE ELECTRICITY ACT 1989 TO CONSTRUCT AND
OPERATE A 62.1MW WIND TURBINE GENERATING
STATION IN POWYS, MID WALES

CLOSING STATEMENT

ON BEHALF OF FFERM WYNT LLAITHDDU

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