



The Planning Inspectorate Yr Arolygiaeth Gynllunio

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Mr Stephen Whitby
Wrexham Residents Against Power

Our Ref: EN010055_1917054

Date: 1 August 2013

By email

Dear Mr Whitby,

I am responding to your email of 18 July 2013 addressed to my colleague Tracey Williams. Your email raises a number of issues, which I deal with under the headings below.

Before doing so, though, it is important to stress that the authorisation of access to land for survey purposes is a stand-alone process governed by Section 53 of the Planning Act 2008. It is entirely separate from the future consideration of any subsequent application made by WPL.

If an application for development consent is ultimately submitted, the 2008 Act sets out rigorous requirements that it must meet before it can be accepted for examination. If an application is accepted it will be examined by an Examining Authority who will carry out a detailed and thorough examination before recommending to the relevant Secretary of State whether or not it should be granted. There will be a full opportunity to make representations to the Examining Authority on the merits or otherwise of the project.

Reasons for granting access

The reasons for granting access are given in the authorisation for each land parcel under 'Reasons for the decision' and also in the associated Recommendation Reports. Although the delay to the project was mentioned in the 'Reasons for the decision', those reasons also set out the steps that WPL had taken to try to obtain access voluntarily, without success.

In the view of the Secretary of State, in line with the recommendations from the Planning Inspectorate, the requirements of Section 53 of the Planning Act and the non-statutory guidance from DCLG were met. As such there appeared to be no reason to request further information or further delay the issue of the authorisations, particularly as this would risk substantially delaying the proposed project.

Apparent bias in favour of private business

I appreciate that the landowners may be disappointed by the decision to grant the authorisation, but I do not accept that this was due to a bias towards private business. The representations made by both WPL and the professional representatives of the landowners were very carefully considered before a decision was made on whether the authorisation was justified under Section 53.

With regard to your query about the number of Section 53 requests received in the last twelve months, I have assumed that you mean the 12 months prior to the date of your email. For the period from 19 July 2012 to 18 July 2013, the Planning Inspectorate received 18 requests for authorisations under Section 53 of the Planning Act. Of these, 6 are yet to be determined, 2 have been withdrawn and 10 have been granted.

The Scoping Opinion

You will probably be aware that the Scoping Opinion is available on the Planning Inspectorate website:

http://infrastructure.planningportal.gov.uk/wp-content/uploads/projects/EN010055/1.%20Pre-Submission/EIA/Scoping/Scoping%20Opinion/130109_EN010055_Scoping%20Opinion.pdf

It was prepared by the Planning Inspectorate on behalf of the Secretary of State, and was not an 'instruction' by a Government Minister. As noted in paragraph 1.5 of the Opinion, it sets out what information the Secretary of State considers should be included in the Environmental Statement (ES) for the proposed development; the ES would be one of the essential documents supporting any eventual application for development consent.

Paragraph 2.75 of the Scoping Opinion stated that:

'It is noted that the description of the power plant provided within the Scoping Report is based upon a 'typical' example. The Applicant should ensure that the description of the proposed development is firmed up prior to the carrying out of environmental studies as these should be reflective of the development for which consent is being applied'.

The environmental studies referred to relate to a much broader suite of studies than the ecological surveys that were the subject of the Section 53 authorisations. They would include issues such as air quality and the effects of the proposed development on the landscape, which would be more affected by the actual form of the proposed development. The Scoping Opinion sought to advise the applicant to ensure that their Environmental Impact Assessment (EIA) submitted with any subsequent application properly addressed these issues; this was likely to require some parameters of the project to be more tightly defined than in the Scoping Report they submitted.

EIA is an iterative process with environmental information feeding into project design. In this case the proposed ecological surveys could be part of establishing whether the southern grid connection corridor was a viable option. The surveys would certainly be required for the applicant to meet the requirements of the Environmental Impact Assessment Directive and the Habitats Directive.

Government guidance

Under Section 53 of the Act, the Secretary of State can authorise a person to enter onto third party land to carry out surveys and/or to facilitate compliance with the Environmental Impact Assessment Directive and/or the Habitats Directive.

Before such an authorisation can be granted the Act requires that the Secretary of State has to be satisfied that the applicant is considering a "*distinct project of real substance genuinely requiring entry onto the land*". The Secretary of State was satisfied that was the case.

The 2008 Act provides no further restriction on the power of the Secretary of State to grant authorisation. However, the Department of Communities and Local Government (DCLG) has produced relevant non-statutory guidance about the exercise of the power. That is given in guidance relating to the fees to be charged for applications under Section 53 (The Infrastructure Planning (Fees) Regulations 2010).

Wrexham Power Ltd's application for authorisation under Section 53 was made on 2 April 2013. The application refers to the Planning Inspectorate's Advice Note 5 (April 2012) ('AN5'), which provides advice on the process followed by the Secretary of State in determining a Section 53 authorisation request. AN5 refers to Fees Guidance produced in February 2010 by DCLG, which includes the guidance that requests under section 53 should only be made '*as a last resort*'.

However, as recorded in the Recommendation Reports relating to each land parcel, the DCLG Fees Guidance was updated in June 2013, after the application had been submitted. It no longer makes reference to applications being made '*as a last resort*'. It advises that

"Applicants are expected to act reasonably, first seeking to obtain ...permission to access land directly before seeking authorisation under these provisions". "Specifically, applicants should only submit requests for...access to parcels of land, where they consider they have been unreasonably refused that...access" (The Infrastructure Planning (Fees) Regulations 2010: Guidance (June 2013).

The current DCLG Fees Guidance is available here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204428/Planning_Act_2008_-_Fees_guidance.pdf

The published version of AN5 (April 2012) has not yet been updated to reflect changes to the DCLG Guidance. The Planning Inspectorate is in the process of revising it.

The applicant requested authorisation for access under Section 53 of the Act. As stated above, the tests that have to be met by the applicant are those within Section 53 of the Act and the current guidance from DCLG. As outlined in the authorisations, and in line with the advice from the Planning Inspectorate, the Secretary of State is satisfied that the tests have been met.

Limitations of consultation

As noted above, in connection with the Section 53 application, the representations

made by both WPL and the professional representatives of the landowners were very carefully considered before a decision was made.

The Recommendation Reports review the information supplied by the applicant to the landowners and the comments and further information provided by the applicant and landowners. They show the dates that the Planning Inspectorate, on the basis of the evidence before them, concluded that the applicant had identified the area of land for which access was requested.

If an application for development consent is ultimately made in respect of this project it will need to be supported by substantial detail. This will include evidence of the consultation undertaken by the applicant; with their application the applicant must demonstrate that they have taken account of consultation responses provided by the local community and others, including the local authority(s), land owners and statutory consultees.

Once an application has been submitted, the Secretary of State has 28 days to decide whether or not to accept it for examination. One of the factors to be considered is whether or not the developer's consultation process has been adequate; the Secretary of State will have regard to any report on the adequacy of consultation produced by the relevant local authority(s) and compliance with the statutory consultation requirements.

Other projects

It is not uncommon for applicants and other bodies or individuals to address letters or emails to the Planning Inspectorate informally and does not imply a close relationship.

With regard to the other projects that the Planning Inspectorate is processing, details of the applicants for National Infrastructure Projects are included with the information that the Planning Inspectorate publishes on our National Infrastructure Planning webpages (<http://infrastructure.planningportal.gov.uk/>). Details of appellants/applicants and agents for appeals and called in planning applications are also similarly made available for appeal proposals under the Town and Country Planning Acts (<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>).

Please be assured that the Planning Inspectorate will seek to facilitate discussions between WPL, the local authority, the community councils and representatives of the local community, including WRAP in the near future.

Please note that a suitably redacted version of this letter will be published on the Planning Inspectorate's website.

I trust that this information is of assistance.

Yours sincerely

Simone Wilding

Head of Service
National Infrastructure

On behalf of:
Mark Southgate
Director of Major Applications and Plans

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.