

## **SECTION B – MATTERS FOR INFORMATION**

### APPEALS DETERMINED

#### **a) Planning Appeals**

**Appeal Ref:** A2014/0001                      **Planning Ref:** P2008/0024

**PINS Ref:** APP/Y6930/A/13/2209942

**Applicant:** Wind Ventures UK Ltd

**Proposal:** Revised Scheme For Wind Energy Development Comprising 9 (Previously 14) Turbines With A Maximum Height To Blade Tip of 125m, Access Tracks, Cable Trenches, Substation, Anemometer Mast, Crane Hardstanding. Temporary Construction Compound and Associated Infrastructure

**Site Address:** Farmland adjoining forestry East of Crynant and South of Seven Sisters, Neath (known as Hirfynydd Wind Farm)

**Appeal Method:** Public Inquiry

**Decision Date:** 4<sup>th</sup> September 2015

**Decision:** Dismissed

The main issues in this appeal concerned:

- the nature and degree of subsidence likely to be caused to the wind turbines by underground mining operations;
- the viability of designing and managing the wind turbines to accommodate the likely subsidence;
- whether or not suitable arrangements could be put in place to indemnify the mining operator and the Coal Authority in respect of their statutory liabilities for damage caused by subsidence due to mining activities so that future mining operations would not be unduly restricted;

- other effects caused by the proposed wind turbines, particularly landscape and visual impacts, ecological effects and effects on ancient monuments; and
- the benefits of the renewable energy that would be produced.

Members will recall that this was a complex appeal which was the subject of protracted Inquiry proceedings, including adjournments and ongoing Hearing sessions in advance of a 'new' Inquiry formally opening and being heard at Inquiry during July and August 2015.

Given the complexities of the case and discussions between the Council, Appellants, Coal operator (Energy Build) and Coal Authority, the Inspector noted in his decision that the key issue concerned that of indemnification, and at the Public Inquiry the Appellant indicated that, if that could not be adequately achieved by the Section 106 Unilateral Undertaking or by condition, the Appellant would accept that it would not be appropriate to grant planning permission.

Members have previously been provided with a full copy of this decision, and therefore the following summary comprises the conclusions reached by the appointed inspector: -

"52. In reaching my overall conclusions I have taken into account the Environmental Statement and the additional environmental information submitted at both the application and appeal stages. I have concluded above that environmental and community impacts would not be significant and, with the proposed mitigation measures, would not count against the proposal.

53. The key factor in this appeal is the effect on the prospects for the mining of coal beneath the site. It is common ground amongst all parties that the techniques proposed for mining beneath the site would be likely to give rise to subsidence of the ground above and that this would be likely to cause settlement of the proposed wind turbine foundations and tilt of the superstructures. The parties are also agreed on the maximum amount of tilt that might occur and, as the mining would involve 2 quite separate coal seams with potential for more than one mining wall to affect each turbine, that each turbine might be affected by more than one tilt event. I have also concluded that it is feasible to design foundations capable of

allowing tilt events to be rectified by some sort of jacking operation, albeit at some additional cost.

54. The jacking operations may or may not require the turbine superstructures to be dismantled and then re-erected, and cost estimates for these events can only be fairly speculative at this early stage. However, there is no dispute that the costs involved would be substantial.

55. Under coal mining legislation the liability for subsidence damage lies with the coal operator or, in the event of default, with the Coal Authority, and it is standard practice for the Coal Authority to require a cash deposit from the coal operator to indemnify the Coal Authority against that possible liability. In this case, the Appellant has tried to indemnify the future coal operator and the Coal Authority against any such liability by means of a Section 106 Unilateral Undertaking supported by a Deed of Indemnity, an Insurance Policy, a Letter of Appointment and a Power of Attorney. However, my conclusion on this key issue is that there is a risk that this would be seen as a means of circumventing the statutory liabilities involved such that a Court would find it unlawful on public policy grounds. Other shortcomings also reinforce my conclusion that the Section 106 Undertaking may be unenforceable and so would provide little help to the mining company in alleviating its statutory liability for subsidence damage.

56. For similar reasons I have also concluded that the problem would not be overcome by a negatively worded planning condition, which the Appellant has suggested as an alternative to the Section 106 Undertaking. Without this indemnification, the Coal Authority would be likely to require substantial cash deposits from the mining company if it wished to mine the coal using the most efficient long wall methods. Consequently, the mining operator would be constrained in its operations and would probably resort to pillar and board methods, which are much less efficient and would involve much less of the coal being exploited. This would be contrary to Welsh Government policy that mineral resources should be protected against other development that would sterilise the minerals or hinder their extraction. It would also be contrary to Unitary Development Plan Policy GC2 and draft Policy M1 of the emerging Local Development Plan.

57. I have balanced this harm and policy conflict against the benefits and policy support for renewable energy development. However, I consider the strong policy support for safeguarding access to an important mineral like coal, which can only be mined where it occurs, to substantially outweigh the benefits of the proposed scheme. Indeed, the Appellant also indicated that in these circumstances (i.e. neither the Section 106 Undertaking nor the suggested planning condition being satisfactory) it would not claim the benefit of the balance.

58. I have taken into account all matters raised but nothing outweighs the considerations that have led me to this main conclusion. For the reasons given above I conclude that the appeal should be dismissed”.

NOTE:

This is an especially pleasing decision, within which the Inspector has upheld the Authority’s view in full, despite the acknowledged benefits of renewable energy in this location.

Members should also note that Officers are currently in the process of seeking an award of costs against the appellant based on ‘unreasonable behaviour’ during the appeal, which it is claimed has cost the Council significant wasted expenditure, including on external specialist consultants. A decision on this application will be reported to members when received.

**Appeal Ref:** A2015/0005      **Planning Ref:** P2014/1165

**PINS Ref:** APP/Y6930/A/15/3129001

**Applicant:** Mr Mark Davies

**Proposal:** Retention of two storey demountable buildings used in association with the existing waste transfer facility

**Site Address:** Unit 1 Brunel Industrial Estate, Cwmavon

**Appeal Method:** Written representations

**Decision Date:** 12 October 2015

**Decision Code:** Dismissed

As the works were undertaken prior to the submission of the application, the appeal sought retrospective permission under section 73A of the 1990 Act.

The main issue concerned the effect of the development on the character and appearance of the surrounding area.

The Inspector noted that the 2 prefabricated cabins in question are stacked one on top of the other, near the entrance and alongside the side boundary of a waste recycling and transfer station. He also noted the site context, which while including siting of a profile-sheet clad canopy structure over a conveyor belt which is elevated above large skip containers, sited a similar distance back from the roadside boundary and of a similar overall height to the cabins, nevertheless saw most other structures markedly lower in height.

The Inspector noted that this was a prominent corner plot site, with steeply rising wooded hillsides forming the backdrop to the site when viewed from most nearby public vantage points. He also noted the presence of a modern housing estate of two storey houses on the opposite side of London Row to the appeal site.

The site itself, including the machinery, skips and mounds of waste material was noted to be unsightly but the effect of screening, most notably the site's tall roadside screening wall and fence, limits the visual impact on its surroundings. From the houses on the other side of the road this screening is supplemented by tall, dense tree canopies within their rear gardens. The height and stark, utilitarian appearance of the cabins, however, combined with their proximity to the highway and the side boundary, means that they are a prominent, insensitive feature that detracts from the character of the area. He stated that this impact could not be effectively mitigated through any additional screening measures.

Accordingly, while noting that the site is a long-established industrial unit, the additional visual impact caused by the cabins was unacceptably harmful to the character and appearance of this mixed use area which includes a significant residential element. This harmful impact means that the scheme conflicts with the aim of policies GC1 and ENV17 of the Neath Port Talbot Unitary Development Plan.

Matters raised by the appellant in respect of a lack of space in the site, and purported health and safety benefits by providing a vantage point for a supervisor to oversee the whole site but found that none of these matters justifies permitting the identified harm.

NOTE:

Contact will now be made with the owner to ensure the unauthorised development is removed, and enforcement action instigated in the event that such works are not undertaken.