



Kings Chambers' Energy &
Infrastructure Newsletter Issue 1



Issue 1

Welcome to the very first Kings Chambers' Energy & Infrastructure Newsletter! In our first edition we focus on renewables and onshore wind in particular. Much has been said in the press recently about the ability of renewables to restart the economy so what role can onshore wind play as part of the generation mix? Is MHCLG likely to do a U-turn on the restrictive policies following the BEIS announcement in March? What can be done in the mean time and what are we expecting from the anticipated Energy White Paper?

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- Brian Denney: Repowering Existing Projects - A landscape perspective
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Vincent Fraser QC: A Fair Wind For Renewables



The confirmation in March that onshore wind and solar energy can participate in the latest round of the Contracts for Difference scheme is a recognition of the important role these forms of generation continue to play in meeting the government's climate change obligations and objectives at an affordable price. The consultation document refers to the fact that some such schemes have come forward without participation in the scheme, but cautions that there is a risk that they may not come forward at the rate and scale needed in the near-term to support decarbonisation of the power sector at low cost. It goes on to observe that such projects may in fact pay back more than they receive effectively providing a subsidy to the scheme [p.16 of [Contracts for Difference Strategy March 2020](#)]

The change of heart removes a considerable constraint on the development of new schemes, but it does not change the underlying planning policy background for onshore wind energy. In this respect the approach in England continues to contrast significantly with that in Wales and Scotland. There is no proposal to alter the stipulation in NPPF paragraph 154 that the impacts of a proposal have to be acceptable, or the qualification in footnote 49 that, except for repowering of existing wind turbines, proposals should not be considered acceptable unless they are in an area identified as suitable for wind energy development in the development plan, that the impacts identified by the local community have been fully addressed and the proposal has their backing. Announcing the consultation the Secretary of State stated that

“Local communities will have a more effective voice on developments that impact them, through proposals for tough new guidance on community engagement for developers of onshore wind across

Great Britain, also announced today. They will have a definitive say on whether projects are allowed to proceed. It will remain the case that no English onshore wind project can proceed without the consent of the local community" [Hansard 2 March 2020] Although the NPPF policy imposes particular restrictions it does not preclude development of new onshore wind proposals. Impacts are to be "addressed" not resolved or eliminated, and this involves taking into account mitigating factors and benefits; local people most vehemently opposed to a proposal do not have a veto, a planning authority has to make a judgment as to where the balance of opinion lies within the local community taking into account the representations received and assessing the weight and significance of any objections raised [see [Holder v Gedling Borough Council](#) [2018] EWCA Civ 214]. The March consultation document recognises that there is a significant ongoing need for further new onshore wind and solar energy projects (re-emphasised by the recent consent for the Cleve Hill Solar Park). This is important for proposals throughout the different jurisdictions, but for England to contribute toward the need for onshore wind it is important that appropriate opportunities are taken to advance proposals through the local plan process and to engage community support at an early stage. Further opportunities are provided by repowering which is discussed in Brian Denney's article below.

Brian Denney - Repowering Existing Projects - A landscape perspective



One of the main avenues through which the delivery of "new" wind energy projects can be achieved is through the repowering or life extension of existing projects. Although solar and other energy developments will ultimately follow the lead of wind energy in this regard and the principles are largely the same, it is the older wind energy projects that are at the forefront of these opportunities.

Many of the UK's earliest wind farms are already approaching an age where the possibility of repowering is both attractive and feasible, either through replanting or time extensions. Replanting with fewer, larger turbines with increased capacity is currently a more realistic option in Scotland and Wales, whereas time extensions may more often be the chosen approach in England. When one considers the relevant planning policies across the UK and their degree of support for wind energy,

the repowering of some sites may be severely constrained, especially by landscape and other environmental considerations. Understanding a site's landscape context in particular is key to understanding the consenting risk.

The Kirkby Moor wind farm near Grizebeck in Cumbria, constructed in 1993, is one of the oldest in the UK and the Hagshaw Hill wind farm near Douglas in Lanarkshire was Scotland's first wind farm, constructed in 1995. I have recently provided landscape consultancy services as part of the successful repowering of both of these projects and they are interesting case studies when considering repowering.

Kirkby Moor was refused planning permission for the repowering of the scheme with larger turbines in 2016, as was a subsequent application for a time extension, where there remained strong local objection. The site lies close to the boundary of the Lake District National Park and World Heritage Site. However, it was ultimately judged to be suitable for a time extension following a Public Inquiry (APP/M0933/W/18/3204360).

One of the key issues raised at this inquiry was whether time extension applications constituted 'repowering' under the NPPF in England (Para 154, Footnote 49). The Inspector concluded that they did and this finding has not been challenged. This is an important milestone case in this regard. The Inspector concluded that the proposals, being repowering, did not require to be in an area identified as being suitable for wind energy development in the Development Plan, or demonstrate that the planning impacts identified by the affected local community had been addressed and that the proposals had their backing. The lesson to be taken from Kirkby Moor is that even in a highly sensitive location the benefits of renewable energy can be demonstrated to outweigh the harms where an appropriate development is put forward and its impacts and benefits thoroughly assessed and articulated. Kirkby Moor demonstrates that with the right approach, the time extension of existing renewable energy developments in England is achievable, even in comparatively sensitive locations.

Repowering Scotland's oldest wind farm was a very different story. Hagshaw Hill was approved for repowering in February 2020 with 14 turbines up to 200m in height plus 20MW of energy storage. It had local support, with no objection from the Local Planning Authority. It was in a less sensitive landscape than Kirkby Moor and there was a cluster of wind farms developing in this location which had been deemed suitable for wind energy on a number of separate occasions. Considerable public engagement and discussion with the host Local Authority throughout the design process was key to understanding and mitigating the consenting risk.

If the industry is going to benefit from the opportunities that will increasingly be presented by repowering and time extension, it will be necessary for existing projects to be critically analysed and assessed at the design stage. Choosing the right approach and solution for the project through an understanding of the key environmental constraints, opportunities and risks to consent, will be paramount in achieving the desired outcome.

Stephanie Hall: Energising Energy Policy



What is the future for the UK's energy mix? EN-1 was published in 2011 and was recently summarised by Inspector Ware as follows: "*It is no part of national policy to attempt to reduce emissions by restricting the production of hydrocarbons in the UK, as was implied or stated by some objectors. Nor was such an approach suggested by the Committee on Climate Change²⁵ when dealing with the net zero 2050 position – and there is no policy which provides that a net zero carbon economy in 2050 would be hydrocarbon-free.*" [[Lodge Farm, Scunthorpe](#)] Instead, the current NPSs are best described as policies which promote the gradual transition towards using *more* renewables as part of the mix overall, and doing so by moving away from coal in particular, rather than policies which seek to eliminate fossil fuels. EN-1 states that "*the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security*". In doing so, it still provides a green light for gas and oil projects, as well as nuclear and renewables. It was against that background that the recent Drax DCO application succeeded and the challenge to its approval failed in front of Holgate J. In approving the scheme, the Secretary of State was found to have correctly interpreted EN-1 as establishing need and that substantial weight should be given to the scheme. Given the changes in broader policy aims and the increasing focus on climate change, it seems inconceivable that any new policy would do anything other than attempt to hasten the transition towards an even greater use of low carbon forms of generation. EN-6 declared nuclear to be a large part of this plan and 8 schemes were intended to be online by 2025. However, nuclear has proved tricky to get off the ground with a number of projects falling by the way side due to funding problems: [Wylfa Newydd](#), [Oldbury](#) and [Sellafield](#) have all suffered financial set backs. We therefore need to identify a more diverse range of generation to provide the energy security which EN-1 seeks and will no doubt be featured as an aim of any refresh of the NPSs. EN-1 recognises explicitly that onshore wind is the most well established and economically viable source of renewable electricity [3.4.3] but it is off-shore which has flourished recently, with the TCPA regime being steadfastly against smaller onshore schemes consented through the traditional planning application route. The funding door has now been re-opened by the BEIS announcement in March but it is policy which lags behind. As Vincent Fraser QC sets out above, the Government has recently dug its' heels in and reiterated the restrictive NPPF policy which requires impacts to be "addressed". So we are left with a review of the NPSs which must be welcome news given the need to pick up the pace towards renewables and the uncertainty over the viability of nuclear schemes. But the NPPF, which applies to smaller schemes, remains relatively hostile to schemes save for the repowering of existing sites. The

same dichotomy appears to be present for solar: the Secretary of State in the Cleve Hill decision gave substantial weight to the contribution from the scheme, despite the absence of a directly applicable NPS, yet solar schemes struggle for consent in the TCPA world as demonstrated by a slew of decisions where Inspectors have declined to view the contribution as amounting to very special circumstances (save for one recent [exception](#)). It is hoped that the balance can be restored and clear policy direction given to promote the right energy schemes, of all sizes, in the right places.

Key Points

- Maintaining renewable energy supply will require repowering and time extensions
- View your site and your project honestly and critically
- Consider advancing projects through local plans
- Think about your consenting regime and scale of project - NSIP success rates are attractive, even taking into account the more recent refusal at [Thanet](#) and other delayed schemes

Useful resources

- Not had enough wind? Check out the Kings Chambers Planning Podcast [No.9 - Winds of Change](#)
- In need of some bedtime reading? Have a read through the Cleve Hill Solar Park decision [here](#) and the Thanet decision [here](#)
- And finally, stalk our authors: [Vincent Fraser QC](#), [Brian Denney](#) and [Stephanie Hall](#) - [@StephPlanning](#)

