

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref:
Ein cyf/Our ref: qA1197418

Ms Emma O’Gorman
Squire Sanders (UK) LLP
2 Park Lane
Leeds
LS3 1ES

14 May 2015

Dear Ms O’Gorman

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY RES UK AND IRELAND LIMITED - ERECTION OF 23 WIND TURBINES,
WIND MONITORING MAST, ACCESS TRACKS, CRANE HARDSTANDINGS, WATER
CROSSING, CONTROL BUILDING, SUBSTATION COMPOUND, CAR PARK, OFFSITE
ROAD IMPROVEMENTS, TEMPORARY COMPOUNDS, BORROW PITS, MASTS &
WELFARE FACILITIES AT LAND AT GARREG LWYD HILL, BETWEEN FELINDRE &
LLANBADARN FYNYDD, LLANDRINDOD WELLS, POWYS - APPEAL NO: 2209593**

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY RES UK AND IRELAND LIMITED - HIGHWAY UPGRADES AND
ASSOCIATED WORKS ON 3RD PARTY LAND BETWEEN NEWTOWN AND THE
PROPOSED GARREG LWYD HILL WIND FARM TO FACILITATE DELIVERIES OF
ABNORMAL INDIVISIBLE LOADS AND THE CONSTRUCTION OF A NEW TRACK AND
UPGRADED TRACK FROM CWM Y BERLLWYD ACROSS THE PROPOSED
LLANBADARN FYNYDD WIND FARM TO ACCESS THE PROPOSED GARREG LLWYD
HILL WIND FARM AT LAND BETWEEN NEWTOWN AND GARREG LWYD HILL,
LLANDRINDOD WELLS, POWYS – APPEAL NO: 2209595**

1. Consideration has been given to the report of the Inspector, Kay Sheffield BA (Hons) DipTP MRTPI, who held a public inquiry into appeals made under section 78 of the Town and Country Planning Act 1990 on 27 November 2013 against the refusal of Powys County Council to grant planning permission for:

- i. the erection of 23 wind turbines, wind monitoring mast, access tracks, crane hard standings, water crossing, control building, substation compound, car park, off site road improvements, temporary compounds, borrow pits, masts and welfare facilities on land at Garreg Lwyd Hill, between Felindre and Llanbadarn Fynydd, Llandrindod Wells, Powys (“Appeal A”); and

- ii. highway upgrades and associated works on third party land between Newtown and the proposed Garreg Lwyd Wind Farm to facilitate deliveries of abnormal indivisible loads and the construction of a new track and upgraded track from Cwm y Berllwyd across the proposed Llanbadarn Fynydd Wind Farm to access the proposed Garreg Lwyd Hill Wind Farm ("Appeal B").

2. On 25 February 2014 a direction was issued stating that jurisdiction over the appeals was being recovered by the Welsh Ministers for their determination rather than by a Planning Inspector. The reason for this direction was because the proposal is for major development which could have wide effects beyond the immediate locality. Under the provisions of the Government of Wales Act 2006 the power to determine appeals made under section 78 of the 1990 Act has been transferred to the Welsh Ministers and, in this case, that power is being exercised by me, the Minister for Natural Resources.

3. The appeals were dealt with by an independent Planning Inspector through the public inquiry procedure. The inquiry sat for 7 days on 15-17 and 21-24 October 2014. Accompanied site visits were made on 22 October and 11 and 12 November 2014 and unaccompanied visits were made on 22 July, 14 October, 20 October and 18 November 2014.

4. A Pre-Inquiry Meeting (PIM) was held on 22 July 2014. Prior to the meeting your client put forward a proposal to reduce the number of turbines from 23 to 17. The matter was discussed at the PIM where Powys County Council ("the Council") and others present raised no objection to the appeal being considered on the basis of 17 rather than 23 turbines. I have therefore considered Appeal A on the basis of the amended scheme.

5. The Inspector's conclusions of the inquiry are set out at paragraphs 146 – 273 of her report, a copy of which is enclosed, and those paragraphs are reproduced at Annex A to this letter. The Inspector recommended that:

- i. Appeal A (wind farm) be allowed and planning permission granted for erection of 17 wind turbines, wind monitoring mast, access tracks, crane hard standings, water crossing, control building, substation compound, car park, off site road improvements, temporary compounds, borrow pits, masts and welfare facilities subject to conditions;

- ii. Appeal B (access road) be allowed and planning permission be granted for highway upgrades and associated works on third party land between Newtown and the proposed Garreg Lwyd Wind Farm to facilitate deliveries of abnormal indivisible loads and the construction of a new track and upgraded track from Cwm y Berllwyd across the proposed Llanbadarn Fynydd Wind Farm to access the proposed Garreg Lwyd Hill Wind Farm subject to conditions.

6. The starting point for the consideration of the appeals is section 38 of the Planning and Compensation Act 2004 which provides that if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination shall be in accordance with that plan unless material considerations indicate otherwise.

7. The Inspector considered that the main considerations in Appeal A, and those which were considered at the inquiry, are:

- The policy context and whether the proposal in combination with other developments would exceed the Welsh Government capacity limit for Strategic Search Area (SSA) C;

- The effect of the development on:
 - the landscape character of the area;
 - visual amenity;
 - setting of Scheduled Ancient Monuments and Listed Buildings;
 - noise;
 - health;
 - ecology;
 - tourism; and
 - living conditions of neighbouring residential occupiers with regard to the internal access track, increased traffic on the local highway network, private water supplies and shadow flicker.

8. The Inspector considered that the main considerations in Appeal B, and those which were considered at the inquiry, are:

- The effect of the development on the free and safe flow of traffic on the public highway; and
- Ecology and the Habitats and Species Regulations 2010

9. I agree with the Inspector that these are the relevant issues for Appeals A and B.

10. In considering these appeals I have done so taking into account the current position in the determination of the wind farm schemes (above 50MW) subject of the Mid-Wales Conjoined Inquiry (MWCI) and those below 50MW¹. At the date of this decision letter those wind farms schemes remain undetermined and no decisions have yet issued. I have therefore reached my conclusions on the main issues associated with Appeals A and B on this basis.

Ministerial conclusions on the main issues

Appeal A

(i) Policy Context and SSA capacity

11. The Inspector's conclusions on this issue are at paragraphs 149 – 162 of her report and I agree with them.

(ii) Landscape Character

12. The Inspector's conclusions on this issue are at paragraphs 163 – 180 of her report. In her conclusions the Inspector has had regard to policy EN-1 - 'Overarching National Policy Statement for Energy'. Policy EN-1 is a UK Government policy which applies to applications for consent made under the Planning Act 2008 for electricity stations generating more than 50MW of onshore energy including from wind power. Applications of this nature are not a devolved matter and, as Appeal A is for the generation of less than 50MW of onshore energy, policy EN-1 is therefore not relevant. Consequently, I cannot take policy EN-1 into account when determining Appeal A. Subject to this comment I agree with the Inspector's conclusions.

(iii) Visual Amenity

¹ Hirddywel; Neuadd Goch; Bryngydfa

13. The Inspector's conclusions on this issue are at paragraphs 181 – 190 of her report. In refusing planning permission for the proposed wind farm the Council had regard to the effect of the proposed grid connections on visual amenity. The Inspector sets out that whilst this matter is not for consideration as part of Appeal A she notes that within the appeal site the connection would be underground and considers it would have no effect on landscape character. As it is not part of Appeal A it is not something which I can take into consideration or comment on. Subject to this comment, and the comments made in paragraph 12 above about Policy EN-1, I agree with the Inspector's conclusions on visual amenity.

(iv) Cultural Heritage

14. The Inspector's conclusions on this issue are at paragraphs 191 – 210 of her report and I agree with them.

(v) Noise

15. The Inspector's conclusions on this issue are at paragraphs 211 – 218 of her report and I agree with them.

(vi) Ecology

16. The Inspector's conclusions on this issue are at paragraphs 219 – 221 of her report and I agree with them.

(vii) Tourism

17. The Inspector's conclusions on this issue are at paragraphs 222 – 226 of her report and I agree with them.

(viii) Effect on Living Conditions of Local Residents

(a) Internal Access route

18. The Inspector's conclusions on this issue are at paragraphs 227 – 229 of her report and I agree with them.

(b) Increased Traffic on the Local Highway Network

19. The Inspector's conclusions on this issue are at paragraphs 230 – 231 of her report and I agree with them.

(c) Health

20. The Inspector's conclusions on this issue are at paragraphs 232 – 233 of her report and I agree with them.

(d) Private Water Supplies

21. The Inspector's conclusions on this issue are at paragraphs 234 – 235 of her report and I agree with them.

(e) Shadow Flicker

22. The Inspector's conclusions on this issue are at paragraphs 236 – 238 of her report and I agree with them.

(f) Other Matters Raised by Local Residents

23. The Inspector's conclusions on this issue are at paragraphs 239 – 240 of her report and I agree with them.

Inspector's Planning Balance and Conclusions on Appeal A

24. The Inspector's appraisal of the issues identified in paragraph 7 above are contained at paragraphs 149 – 240 of her Report. The Inspector, at paragraphs 241 - 248 of her report, drew the following planning balance and overall conclusions on Appeal A:

"241. The proposal would make a contribution towards the UK target of 15% of energy to be derived from renewable resources by 2020 and the WG's aim of having 2GW in total capacity by 2015/17, although it would come towards the end of that target period. The planning system has an important role in delivering the above target and aim with the latter to be achieved by, amongst others, optimising the use of the existing SSAs. Nonetheless TAN 8 recognises that not all the land within the SSAs may be environmentally suitable for major wind power proposals and the Minister's letter of July 2011 confirms that all SSAs have a finite environmental capacity and output should not exceed the maximum levels outlined. In isolation the development would not exceed the target for SSA C, but it may be exceeded if other wind farms under consideration are permitted in advance of a decision on this appeal.

242. A balance needs to be struck between the benefits of generating electricity from renewable onshore wind and the identified impacts of the scheme on the landscape character and visual amenity of the area, the setting of the SAMs and LBs and other matters raised in evidence.

243. Although in respect of landscape character and visual amenity I consider that the development would cause harm, in TAN 8 there is an implicit objective to accept significant change in landscape character. I consider that the degree of change to the landscape, and as a consequence visual amenity, that would be brought about by the development on its own would be consistent with the aims of TAN 8. However, in combination with other similar developments the balance may be tipped over into unacceptability. I am also satisfied that, subject to conditions, the development would be satisfactory with regard to noise and ecology.

244. I have identified substantial harm from the development to the setting of the SAMs Castell y Blaidd, Coventry Barrow and Ty'n y Ddoli Barrow which would be in conflict with policies of the development plan. Moreover the identification of harm to the settings of the Cwm y Hob LBs is of considerable importance and merits weight in the balancing exercise by reason of Section 66 of the 1990 Act.

245. I have also identified a degree of harm to tourism and although I have concluded that this harm would be insufficient to justify dismissing the appeal, it carries weight against it.

246. With regard to the effect of the development on the living conditions of local residents, I have concluded that the effect of the internal access route on the residents of Fiddlers Green and Lower Fiddlers Green would be limited. The residents of these properties would also be affected by increased traffic on the local highway network although it would not be sufficient to cause harm. Issues of the private water supply to the same properties I am satisfied can be protected by condition and matters raised in relation to the effect of the development on the health of local residents are also not sufficient to justify refusal of the appeal.

247. In terms of shadow flicker only three properties would potentially be affected for less than 30 minutes per day during three months of the year and such effects can be safeguarded via a condition. Although the turbines would feature in the outlook from several properties in the area surrounding the site, I have concluded that the proposed development

would not appear unpleasantly overwhelming and an unavoidable presence in main views. However, I am concerned that with the proximity of the development to the Gatehouse and the circumstances regarding the health of the occupant that the property might come to be regarded by her as an unattractive and thus unsatisfactory (but not uninhabitable) place to live. This carries weight against the appeal.

248. However, on balance I conclude that the positive benefits of renewable energy, the location of the site within SSA C and the acceptable level of change to landscape character and visual amenity outweigh the considerable weight against the appeal from the identified harm to the setting of the SAMs and the limited identified harm in the other respects identified above. The evidence persuades me that the balance is in favour of the appeal and that the proposal would therefore accord with Policy E3 as the primary policy against which the appeal needs to be judged. On this basis I conclude that the appeal should be allowed."

25. As there are listed buildings within the vicinity of the proposed windfarm I have, as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, had special regard to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest which they possess.

26. In that respect, the Courts have held that a decision-maker should accord considerable importance and weight to the "*desirability of preserving ... the setting*" of listed buildings when weighing this factor in the balance with other '*material considerations*' which have not been given this special statutory status. They have also held that, although 'harm' is not the test in section 66(1), one of the meanings of preservation is to keep safe from harm. This, together with the addition of the word 'desirability' in section 66(1), signals that 'preservation' of setting is to be treated as a desired or sought-after objective to which the local planning authority or the Welsh Ministers ought to accord '*special regard*'.

27. I have noted, and agree, the Inspector's comments about the adverse effect the proposed windfarm would have on the listed buildings identified. I have had particular regard to the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the need to accord considerable importance and weight to the desirability of preserving the setting of listed buildings when carrying out any balancing exercise but I consider that the benefits of the proposed development identified by the Inspector outweigh the adverse effects on the listed buildings. Subject to these comments, and those made in paragraphs 12 and 13 above, I agree the Inspector's overall conclusions and accept the recommendation that planning permission be granted for the revised scheme of 17 turbines.

Conditions (paragraph 273 of the Inspector's report)

28. The Inspector outlines that the conditions for this appeal agreed between the parties and discussed at the Inquiry provide an appropriate basis for the set of conditions that would need to be applied if planning permission were granted for the proposed development. The Inspector has drafted a revised set of conditions for Appeal A which are contained in Annex D to the Inspector's report. The Inspector considers those conditions would meet the tests prescribed in Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management.

29. While I agree with the Inspector that the conditions contained in Annex D provide an appropriate basis for the set of conditions that would need to be imposed on any planning permission, I consider that a number of them, as drafted, do not satisfy the tests in Circular 016/2014.

30. Consequently I have redrafted a number of conditions to improve precision, deleted a number of conditions which, while desirable, are not necessary for the development to proceed and deleted a number of conditions which are not relevant to planning.

31. Two of the conditions, between them, require the setting up, and operation of, a financial agreement for the provision of monies to cover decommissioning and site restoration costs. This is not something that can be required by condition and should be the subject of a legal agreement between the developers and the local planning authority. I have considered whether it would be appropriate to issue a 'minded to approve' letter subject to the legal agreement being provided but, in view of the nature of the development proposed and the type of decommissioning and restoration works that would be involved, I do not believe that the lack of such a financial agreement in this case would justify planning permission being refused.

32. The Inspector notes that the final choice of turbine has not been made by the appellant and although it is anticipated that the turbines would generate 2MW each, a range of 1.8 to 3.5MW has been suggested which would equate to a maximum generating capacity for the proposed wind farm of 59MW. As the Welsh Ministers do not currently have the power to grant consent for the generation of 50MW or above of onshore electricity, I am of the opinion a condition should be attached to the planning permission to ensure the amount of electricity generated can not exceed 49MW.

Appeal B

(i) Free and safe flow of traffic on the public highway

33. The Inspector's conclusions on this issue are at paragraphs 249 – 257 of her report and I agree with them.

(ii) Ecology and the Habitats and Species Regulations 2010

34. The Inspector's conclusions on this issue are at 258-269 of her report.

Inspector's Planning Balance and Conclusions on Appeal B

35. The Inspector's appraisal of the issues identified in paragraph 8 above are contained at paragraphs 249 – 269 of her Report. The Inspector, at paragraphs 270 - 271 of her report, drew the following planning balance and overall conclusions on Appeal B:

"I have concluded that overall the disruption to road users caused by the increased traffic and the consequences for the local population, economy and tourist industry as a result of the proposed wind farm would not be unacceptable. Moreover, PCC and NRW have raised no objection with regard to the effect of the development on the ecology and biodiversity of the area and the evidence has not convinced me otherwise.

On the matter of the AA, whilst I am of the opinion that one is required, I am of the opinion that the competent authority would be able to conclude that subject to the imposition of appropriate conditions the appeal proposal would not adversely affect the integrity of the populations of otters and other qualifying species or the River Wye SAC. On this basis and subject to the AA being completed, I conclude that the appeal should be allowed."

36. While the Council withdrew its objection to the access route the Conservation of Upland Powys Group (CUP) and local residents raised concerns about the effect of the access route on biodiversity. The Inspector sets out that the issue had been fully explored in the Environment Statement and the additional information provided in the Supplementary Environment Information. Furthermore, that on the basis of these reports, and subject to

certain conditions, Natural Resources Wales (NRW) and the Council find the development to be satisfactory.

37. The Inspector highlights there is one outstanding matter raised by NRW concerning European Protected Species (EPS). The EPS potentially affected by the access route includes the dormouse, common and soprano pipistrelle bats, and otters. The Inspector states that demonstration of no detriment to the maintenance of the favourable conservation status of each of the affected populations of these species is material to the decision and there is therefore a need to consider whether the proposals are compliant with the provisions of the Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations') in relation to the protection of those species.

38. With regard to the dormouse and bats, the Inspector outlines that subject to the implementation of agreed mitigation and necessary compensatory measures which could be secured through condition, NRW considers that it can be demonstrated that the proposed access route would be unlikely to be detrimental to the maintenance of the favourable conservation status of each affected population of the species in this natural range. The mitigation and compensatory measures referred to by NRW are addressed in the conditions put forward for consideration.

39. The Inspector notes that water voles were recorded within 1km of the proposed access route and in view of this NRW considers that updated surveys should be undertaken prior to work commencing and any necessary mitigation undertaken. This is provided for in the recommended conditions.

40. The otter is a feature of the River Wye Special Area of Conservation (SAC). The Inspector states that, as some of the works are within or adjacent to the catchment of the River Wye SAC, NRW is unable to conclude that there will be no likely significant effect on the SAC, alone or in combination with other projects, and an Appropriate Assessment (AA) is required to be undertaken by the competent authority.

41. Under the provisions of regulation 61 of the Habitats Regulations a competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

42. In considering whether a plan or project will adversely affect the integrity of the site the competent authority must consult the appropriate nature conservation body and (regulation 61(6)) must have regard to the manner in which the plan or project is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

43. The Inspector notes that as the competent authority in this case it falls on the Welsh Ministers to undertake an AA. I accept the view of NRW (as the appropriate nature conservation body) that an AA is required of the implications of the access route for the SAC in view of the SAC's conservation objectives.

44. In carrying out this assessment I have had regard to regulation 61 of the Habitats Regulations, and subsequently given consideration to the following: the information submitted by the appellant on the proposed mitigation; representations made by NRW and third parties on the proposal; and the proposed conditions should the Welsh Ministers decide to allow the appeal and grant planning permission. I have also taken into account the Inspector's assessment at paragraphs 266 – 268 of her report of the factors that need to be taken into account.

45. In light of that information, and particularly the conditions it is intended to impose should planning permission be granted, I have reached the conclusion that the proposed access route would not adversely affect the integrity of the otter population or the River Wye SAC. Nor am I of the view the proposal is likely to have a detriment to the maintenance of the favourable conservation status of the otter population in their natural range.

46. Taking into consideration my conclusions on the Appropriate Assessment I agree the Inspector's conclusions on Appeal B and accept her recommendation that planning permission be granted for the access route.

Conditions (paragraph 273 of the Inspector's report)

47. The Inspector outlines that the conditions for this appeal agreed between the parties and discussed at the Inquiry provide an appropriate basis for the set of conditions that would need to be applied if planning permission were granted for the proposed development. The Inspector has drafted a revised set of conditions for Appeal B which are contained in Annex E to the Inspector's report. The Inspector considers those conditions would meet the tests prescribed in Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management.

48. I have considered the suggested conditions and am satisfied that, other than condition number 16, they satisfy the tests in Circular 016/2014. I do not consider condition number 16 to be relevant or necessary and, as such, it will not be imposed on the planning permission.

49. I have taken into account the environmental information as defined by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended) in reaching my decision of the appeals.

FORMAL DECISION

50. For the reasons given above, and in exercise of the power referred to in paragraph 2 above, I allow your client's appeals (APP/T6850/A/13/2209593 & APP/T6850/A/13/2209595) and hereby grant planning permission for:

- (i) the erection of 17 wind turbines, wind monitoring mast, access tracks, crane hard standings, water crossing, control building, substation compound, car park, off site road improvements, temporary compounds, borrow pits, masts and welfare facilities on land at Garreg Lwyd Hill, between Felindre and Llanbadarn Fynydd, Llandrindod Wells, Powys subject to the conditions set out in Annex B to this letter; and
- (ii) highway upgrades and associated works on third party land between Newtown and the proposed Garreg Lwyd Wind Farm to facilitate deliveries of abnormal indivisible loads and the construction of a new track and upgraded track from Cwm y Berllwyd across the proposed Llanbadarn Fynydd Wind Farm to

access the proposed Garreg Lwyd Hill Wind Farm subject to the conditions set out in Annex C to this letter.

51. This letter, a copy of which has been sent to Powys County Council and those who requested a copy at the inquiry, does not convey any approval or consent which may be required under the enactment, bye law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carl Sargeant', with a stylized flourish at the end.

CARL SARGEANT AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources,
one of the Welsh Ministers.

Enc: Leaflet 'HC' & 'H'