

WIND FARMS – POLICY CHANGE

Scottish Planning Policy 6 (SPP6), on Renewable Energy, published in March 2007, sets out how Scottish Ministers consider the planning system should “manage the process of encouraging, approving and implementing renewable energy proposals when preparing development plans and determining planning applications”. Support for such proposals is manifest in the document. The policy framework set out in the document will, it is stated, ensure the delivery of renewable energy targets. Current strategy is to achieve a target of 18% of electricity generated in Scotland coming from renewables by 2010 (already met) and 40% by 2020. The latter target has been re-confirmed as 6 GigaWatts.

In considering wind farm proposals of over 20 megawatts, a spatial approach is to be used. However, it is stressed that this should not be used to restrict development on sites where the technology can operate efficiently and environmental and other impacts can be addressed. Annex A of SPP6 sets out the considerations which should be taken into account when setting out this framework. It is pointed out that the extent to which the considerations set out in annex A are relevant to proposals below 20 megawatts will depend on the scale of development proposed and recognising that the design and location of development must reflect the scale and character of the landscape. However, paragraph 23 of the SPP which refers to the need for such a framework ends by stating: *“This framework should not be used to put in place a sequential approach to determining applications.”*

END OF THE SEQUENTIAL APPROACH

This provision will have implications for those development plan policies dealing with wind farm developments which, in their present form, adopt a sequential approach. This consists of requiring proposals to conform to a sequential consideration of tiered planning designations. The highest tier will typically consist of sites of an international designation such as Ramsar sites or Special Protection Areas. The next tier will typically consist of national designations and may include green belts. The third tier will cover local designations such as areas of landscape significance or value and the fourth and lowest tier will cover non designated areas or what are sometimes described as preferred areas for wind farm developments.

Invariably, an imperative reason of overriding public interest or need will be required in order to justify a development which would have an adverse impact on a site in the highest tier. In addition, it will require to be demonstrated that there are no alternative sites within lower tier areas. Similar provision will be found with sites within other tiers where the sequential exploration of alternatives will require to be undertaken, either absolutely or where some level of harmful impact is considered to be probable. In the lowest tier, development is generally permitted subject to consideration of local circumstances and impacts.

This approach poses a number of problems. Firstly, it would seem unnecessary to exclude a site in a higher tier where no adverse impact would occur simply because the availability of a site in a lower tier has not been

considered. If a particular site is otherwise acceptable, it should not logically be ruled out because lower tier sites have not been looked at. That can be seen as an unjustified barrier to appropriate development. A site may fall within a particular tier for a reason that has no particular impact on suitability. For example, it may lie within an area where protected species have been observed thus bringing it within a particular tier but there is no question of the proposed wind farm affecting that species. In that situation, it would be pointless to require the proposal to conform to the sequential approach where there was no impact.

Another problem is to identify how far one has to look to find alternatives. Is it to be within the UK as a whole, Scotland, the development plan area or, more narrowly, sites within the control of the developer? In many cases, the development plan will provide no assistance. One extreme would be too wide, the other would, in many cases, provide no alternative at all.

The prohibition on the use of the sequential approach in terms of SPP6 should have the effect of concentrating attention on what may be described as the real issue, which is determining whether, wherever the site is located, there would be an adverse impact and if so whether that is such as to justify refusal of planning permission. Undoubtedly, the level of designation attaching to a development site or land close to a site will be important but the new approach focuses attention on the suitability of the site and the assessment of impact resulting from the proposal.

Policies in development plans which employ a sequential approach enjoy the status accorded them by section 25(1) of the Town and Country Planning (Scotland) Act 1997 which is to the effect that where in making a determination regard is to be had to the development plan the determination “ is, unless material considerations indicate otherwise; (a) to be made in accordance with that plan”. SPP6 is a material consideration. It sets out government policy. It is to be expected that on this issue it would be accorded very considerable weight by decision makers. It is expected that to the extent that development plans required a sequential approach, decision makers would identify a contrary indication from its terms in reaching decisions. This would apply to decisions by planning authorities and by reporters and Scottish Ministers on appeal.

It should be noted, however, that whatever SPP6 says about the sequential approach, the Environmental Impact Assessment (Scotland) Regulations 1999 still require, in cases where an environmental statement is required for a wind farm development, that the environmental statement include an “outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice..”. However, that does not require a full examination of alternative sites.

IMPACT ON COMMUNITIES

One other point about SPP6 may be noted. Annex A does require that broad criteria be used to set out the criteria that should be used to set out the considerations that developers should address in relation to local communities. It is said that proposals should not be permitted that would have a significant long term detrimental impact “ *on the amenity of people*”

living nearby". It goes on to state that Scottish Ministers would support 2km as a separation distance between "*turbines*" (not the development site) and the "*edge of cities, towns and villages*" so long as it is recognised that this is solely as a mechanism for steering proposals to broad areas of search and that within that distance, proposals would continue to be judged on a case by case basis. Acknowledging that qualification, one can identify a desire to direct wind farm developments away from communities where significant impacts on amenity may be anticipated. Accordingly, notwithstanding the powerful policy support which SPP6 gives to renewable energy proposals such as wind farms, account does still require to be taken of such impacts as well as those on designated areas, green belts, tourism and recreation and other specified matters.

In these circumstances, one can expect continuing debate in the planning process given the strong encouragement for wind farm development set against the continuing opposition from some of those who live near such proposed developments.

Steven Stuart

murray stable