

Wind

Onshore wind power: The present position.

Much has happened in respect of onshore wind power during the past 12 months and people may well ask just what the present position is nationally. This article does not seek to comment on the merits or otherwise of onshore wind farms but to comment on recent developments. Nor does it deal with offshore wind, be it for sites that are clearly visible from land, such as Tees Offshore, or wind farms well out to sea but which may well have a significant impact where the electricity comes ashore, such as Dogger Bank.

Earlier this year, over 100 MPs (mainly, but not exclusively, Conservative MPs) wrote to the Prime Minister expressing their concern about the effect of wind turbines on the landscape. Subsequently, a very wind sceptic MP, John Hayes, was appointed as Energy Minister. He is reported as saying that we had enough of wind turbines and he was then moved to be a Prime Minister aide. There were rumours of a giant rift between him and the Secretary of State for Energy and Climate Change (DECC), Ed Davey, and staff at the relevant Department, DECC. Meanwhile, a large wind farm was approved in the constituency adjoining Mr Hayes's.

Since then, in June we heard that communities were to be given a veto in respect of wind farms that may affect them. Then on 6th June Eric Pickles made a Ministerial Statement that certainly did not go this far but did say communities must be given a greater voice. He also said planners must take greater account of the potential impact on landscape, heritage assets, cumulative effect, etc. All this stems from claims that planners, including the Planning Inspectorate (PINS), were riding roughshod over the views of communities.

Simultaneously, however, greater incentives were offered to communities agreeing to host wind power, up to 5 times the existing limits. Some said the announcements were the death knell of future wind farms, others that people would be clamouring for them. Many claim the incentives to be little more than bribes.

At the National Opposition to Windfarms (NOW) Conference in Cheshire at the beginning of July, two senior MPs were saying this Statement marked the end of unwanted wind farms and a leading barrister said he found the Statement unprecedented. However, he also noted that there remains a presumption in favour of renewable energy (including of course wind energy) but felt that this was the first time one could be optimistic that unwanted wind energy would not be foisted on communities. Meanwhile, Ed Davey was commenting that communities, because of the incentives, would be more willing to accept them.

Whether or not communities are influenced by the "incentives", planners, including from Durham County Council, were questioning what change the Statement made, saying that they already took the various issues into account. Then came an appeal decision where the Inspector virtually said the same and allowed the appeal, contrary of course to the wishes of the community.

The Statement has now been superseded by the Planning Practice Guidance for renewable and low carbon energy issued by Dept for Communities and Local Government (DCLG) in July 2013 (when of course MPs were in recess). This also covers other forms of renewable energy (not dealt with in the Ministerial Statement) but our greatest interest is no doubt in wind energy (large ground solar arrays are unlikely at our latitude anyway).

While this DCLG Guidance does repeat many of the issues mentioned in the Ministerial Statement, it appears to have had the cold hand of DECC influence it. However, importantly, it does say "the need for renewable or low carbon energy does not automatically override environmental protections". Many critics have feared that decision makers, and particularly Inspectors when determining appeals, had let the "need for renewable energy" be virtually the overriding factor, even in cases where significant harm was accepted by them.

The views of affected communities were simply ridden roughshod over.

Bearing in mind the comments already made by one Inspector, I have written on behalf of CPRE Durham in respect of one appeal recently lodged for a single turbine in the west of the County and in the Area of Outstanding Natural Beauty (AONB). I have suggested that the position must have changed and Parliament would not have taken the action it has just for the Planning Inspectorate (PINS) to say there is "No Change". Surely PINS must take account of the fact that senior figures are saying communities have been ridden roughshod over and that this Guidance does at least change the emphasis.

Since then the Prime Minister has stated there is little room for more onshore wind farms in the UK. Almost immediately afterwards, we saw press reports about a proposal for 100 turbines in Kielder Forest. This may not be anything new - the revoked Regional Strategy specified Kielder as a strategic site for a wind farm provided Ministry of Defence issues can be overcome. But the timing was incredible.

Further at the beginning of September, there was an article in *The Journal* specifying how a number of older wind farms (particularly at Tow Law) were now significantly less efficient than when they were constructed, something a number of critics of wind power have been mentioning for some time. The article states that the Tow Law wind farm rarely produces more than 25% of its installed capacity. But up to now at least, this sort of evidence has been excluded from Public Inquiries, or if admitted, treated as being a challenge to Government Policy and so discounted. And even this type of evidence does not cover the question of how much "back up" is required from other sources, particularly fossil fuels. This has been stated by E.ON to be 90% of installed capacity of wind power (see their 2005 Wind Report).

Meanwhile the issue about noise has raged on. The Institute of Acoustics has produced a Good Practice Guide regarding the application of ETSU 97. ETSU is the Guidance that the Government has stated is relevant for determining noise issues with regard to wind farms. Some claim this GPG weakens the Guidelines, making it easier for wind farms to be situated near to residential properties. One thing the Good Practice Guide does not address is Amplitude Modulation, the "blade swish" noise from wind turbines. It says "The evidence in relation to "Excess" or "Other" Amplitude Modulation (AM) is still developing. At the time of writing, current practice is not to assign a planning condition to deal with AM".

Meanwhile, acousticians like Mike Stigwood have been studying problems caused to residents by existing wind farms, particularly from Amplitude Modulation. He has now prepared a report to say that, far from being rare as claimed by the industry, AM emanates from all wind farms and single turbines. Many sites are now causing problems and the subject of complaints which our government in particular is underplaying.

However, there are not complaints in respect of all sites because the noise may fall on uninhabited areas. He was not invited to join the recent review by the Institute of Acoustics and has been criticised by "established" firms. Nevertheless, it now appears other acousticians worldwide are supporting his views.

Readers may be aware of the Den Brook case where a condition, as a result of Mike's stalwart efforts, was included to protect residents from AM. Although that condition was approved by the Court of Appeal, the second highest court in the country, it has been repeatedly criticised in subsequent wind farm applications (and of course not included in the Institute of Acoustics Good Practice Guide).

Den Brook is the case that is behind the AM condition in the Moor House, Darlington, and Lamb's Hill, Stockton, permissions and the efforts by the developer to remove it. The Den Brook developers also tried to remove the condition (albeit replacing it with an allegedly inferior alternative condition).

Now, however, the Den Brook application has been withdrawn, apparently on the basis that they have decided that the condition is after all workable (but they are also rapidly approaching the time when the permission lapses). AM it appears is back on the table.

Some councils have imposed minimum distances between wind farms and houses. This has been the subject of a High Court case involving Milton Keynes. Although the Council lost on a technicality, it was held that they were entitled in law to specify a minimum distance provided this was done in a “positive” way (ie wind turbines could be approved if they were situated outside the specified distance as opposed to saying they would be refused if they fell within it).

However the judge did also say that the actual distance could be subject to review when the Plan was examined in public. This provision however appears to be at odds with the comment in the DCLG Guidance that “Local planning authorities should not rule out otherwise acceptable renewable energy developments through inflexible rules on buffer zones or separation distances.”

All this sort of information may be relevant following a decision by the United Nations Economic Commission Europe. UNECE brought into being the Aarhus Convention which guarantees citizens certain rights with regard to environmental projects.

The European Union (EU) was a party to the negotiations and the UK ratified them in 2004. It was argued that the UK had failed to comply with a number of provisions of the Convention, most of which UNECE, in its draft report, has not found substantiated. However, it has found that the UK does not permit public participation in respect of the preparation of National Renewable Energy Action Plans (NREAPs) and as such has breached this provision of the Convention. It has been argued that this may bring about the end of wind energy in Europe. The industry, however, has said that it will make little difference.

Finally, in a recent issue, Birdwatch Magazine reports, following a study in the United States, that bird strike by turbines may be underestimated by up to 30%. In Germany, a recent report has claimed that the number of bats killed may be far in excess of that claimed but it appears the report has been withheld. This followed the death of an extremely rare vagrant swift by a turbine in the Western Isles, where some 40 “twitchers” were watching it. While the siting of wind farms may be important, I suspect we do not know what actually happens in relation to “ordinary” birds such as Swallows.

So where are we with onshore wind turbines? Is the DCLG Guidance effectively the death knell for them or will the community incentives mean that there will be an influx of them? Will separation distances in fact come into being as per Milton Keynes or will these be unacceptable as suggested in the DCLG Guidance? And will AM return to being a relevant factor requiring a condition to control it, or will it disappear into the long grass, where the Industry would so love to kick it? Will performance become a permissible argument or will any evidence on these lines remain a “challenge to government policy”?

Will full compliance with the Aarhus Convention mean that these issues have to be fully considered when National Renewable Energy Action Plans are consulted upon, or will they make no difference as the industry suggests. Will the recent reports on the impact on wildlife have any effect?

In short, is the UK, as the Prime Minister seems to have suggested, full so far as onshore wind farms are concerned or is there still room for huge applications such as at Kielder?

I am afraid I do not know the answer to these questions. I believe at the moment we are at a cross roads and the next few months will be critical in determining how this controversial issue pans out.