

Environment and Sustainability Committee

Inquiry into Energy Policy and Planning in Wales

EPP 68 – The Planning Inspectorate

Yr Arolygiaeth Gynllunio



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THE PLANNING INSPECTORATE'S EVIDENCE TO THE NATIONAL ASSEMBLY FOR WALES ENVIRONMENT AND SUSTAINABILITY COMMITTEE INQUIRY INTO ENERGY POLICY AND PLANNING IN WALES

19 September 2011

We are grateful to the committee for inviting us to submit written evidence to its inquiry. Below we set out an introduction and factual background and the main points of our evidence.

Introduction and factual background

PINS Wales is a Directorate within the Planning Inspectorate, which is an agency within both the Department for Communities and Local Government in England and the Welsh Government. PINS Wales is based in Crown Buildings, Cathays Park, Cardiff. It deals with all planning appeals made to Welsh Ministers and called-in applications. It also handles a wide range of appeals and orders made under other legislation, including environmental permit appeals, rights of way orders and applications for works on common land.

Most cases are transferred to Inspectors who make the decision on behalf of the Minister. However, in the case of called-in applications under S77 of the 1990 Act, and a very small number of recovered appeals, the final decision is made by the Minister on the basis of a report prepared by an Inspector.

Appeals are dealt with under 3 different procedures, written representations (*where the decision is based on written evidence + a site visit*); hearings (*an informal process where parties can put their views verbally to an Inspector*); and inquiries (*where the evidence is tested formally under cross examination by advocates*). Of the planning appeals received in 2010/11 584 (79%) were dealt with by written representations, 123 (17 %) by hearings and 28 (4 %) by inquiries.

Prior to April 2010 major energy infrastructure proposals in Wales, such as generating stations above 50MW or overhead power lines, were submitted to the Department for Energy and Climate Change under s36 or s37 of the Electricity Act 1989 and determined by the Secretary of State. Other energy development proposals requiring planning permission under the Town and Country Planning Acts were handled by PINS Wales either if they had been called in by Welsh Ministers or if the applicant had been refused permission by the local authority and appealed to the Minister.

Since April 2010 applications for energy projects in Wales involving generating stations, above ground electric lines, underground gas storage facilities in natural porous strata, or pipelines other than gas transporter pipelines, above the relevant thresholds specified in the 2008 Planning Act (s15-21)¹ have been required to be submitted to the Infrastructure Planning Commission (IPC) for consent.

Unlike in England, applications for associated development and/or ancillary consents in Wales are not within the purview of the IPC and continue to be determined as before. Consequently, such proposals could potentially still fall to be handled by the Inspectorate where they are either called in by Ministers or are subject to an appeal.

The UK Government has decided to abolish the IPC, integrating its functions into the Planning Inspectorate (PINS) by setting up a new, separate national infrastructure directorate within PINS. The infrastructure planning regime will remain largely unchanged, but the power to decide applications for development consent will be transferred to the Secretary of State. These changes will take effect from April 2012 subject to the Localism Bill being enacted. All national infrastructure proposals covered by the 2008 Act in both England and Wales will be handled by the new separate national infrastructure directorate, which will be based in Bristol.

PINS Wales will continue to handle all casework where the decision rests with Welsh Ministers.

While each planning appeal/application has to be determined on its merits, the starting point for any determination is the policies of the Development Plan, providing one has been adopted and it contains policies that are relevant to the proposal. Section 38(6) of the 2004 Planning and Compensation Act requires the decision maker to determine the appeal/application in accordance with the Development Plan unless material considerations indicate otherwise. Other important material considerations will of course include national policy, as set out in Planning Policy Wales and the relevant Technical Advice Notes, including TAN8, and ministerial interim planning policy statements (MIPPS). As Inspectors act on behalf of the Minister they would normally seek to make their decision in accordance with national policies, unless there are other considerations of substantial weight that would justify a departure from national policies in the particular circumstances of the case.

TAN 8 is supportive of small community renewable energy schemes of less than 5MW subject to their meeting normal planning criteria. It indicates that larger schemes for wind turbines (over 25MW) should be concentrated in 7 Strategic Search Areas (SSAs). However, it also indicates that local authorities may wish to consider proposals on land outside but adjoining SSAs, providing there is a suitably robust case and there are no planning constraints.

In 2009/10 PINS Wales dealt with 11 appeals/applications involving renewable energy developments. Together the proposals included 43 wind turbines, ranging from a single turbine to 16 turbines. The latter scheme at Ammanford was the only one of the proposals that was called-in for determination by the Minister. Of the 11

¹ The threshold for energy generating stations, including wind farms, is any development of more than 50MW onshore and 100Mw offshore.

cases, 7 were allowed, granting permission for 24 turbines, including the scheme at Ammanford. The remaining 5 appeals covering 20 turbines were dismissed.

Of the 3 cases involving proposals of more than 5 MW, one was within an SSA (*a scheme for 13 turbines at Gorsedd Bran, Nantglyn*) and 2 were on the edge of an SSA (*these included the scheme for 16 turbines at Ammanford and a proposal to add an additional 3 turbines to an existing wind farm within an SSA at Newcastle Emlyn*). Despite being in an SSA the scheme for 13 wind turbines was dismissed on the basis of its impact on important views and noise. In contrast, the Minister approved the scheme for 16 turbines on the edge of an SSA concluding that the degree of harm it would cause did not outweigh the contribution the scheme would make to the provision of electricity from renewable sources. The scheme for the 3 additional turbines was dismissed due to its visual impact.

In 2010/11 PINS Wales dealt with 7 renewable energy appeals. Three of these were for wind energy schemes involving a total of 24 turbines, ranging for a single turbine to a 19 turbine scheme at Mynydd y Gwair, Swansea. Only the appeal for the single turbine was allowed, the other two appeals covering 23 turbines were dismissed. The other 4 renewable energy appeals related to biomass energy plants or anaerobic digesters. Three of these were allowed and one was dismissed.

Of the two wind farm schemes that were dismissed, the one for 19 turbines at Mynydd y Gwair was located in an SSA but the other scheme for 4 turbines near Blaina, Blaenau Gwent was not. The former scheme, which was recovered for determination by the Minister, was dismissed because of its unacceptable impact on blanket bog habitat. This decision is the subject of a current legal challenge. The latter scheme was dismissed because of its landscape impact.

There are currently 2 further renewable energy appeals with the Inspectorate waiting to be determined. One for 7 wind turbines at Gilfach Goch is due to be heard at an inquiry in October. The other for a 25MW biomass CHP plant at Alexandra Docks in Newport is currently in abeyance, as the Council has approved a similar scheme in principle but is awaiting the signing of an agreement under Section 106 of the Planning Act 1990.

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