

Bond Pearce

Ballard House

West Hoe Road

Plymouth

PL1 3AE

Eich cyf . Your ref: GW/TH/WINDJEN

Ein cyf: Our ref: A-PP115-07-014

Date: July 2002

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 77**

**APPLICATION BY WINDJEN POWER LIMITED**

**FOR PROPOSED WINDFARM COMPRISING THE ERECTION OF 25 WIND TURBINES,  
SUBSTATION BUILDING, 2 WIND MONITORING MASTS, EXCAVATION OF BORROW  
PITS, CONSTRUCTION OF ASSOCIATED ACCESSES AND TEMPORARY SITE  
COMPOUND**

*Summary of decision*

*The Planning Decision Committee is minded, for the reasons given below, to allow, subject to conditions, your client's application subject to the submission of a comprehensive Section 106 Undertaking, signed and sealed by all those with relevant interest, covering both the application site and the habitat enhancement area for black grouse mitigation measures*

1. Consideration has been given to the report of the Inspector, Mr Stuart B Wild MRTPI MIMgt, who held a local inquiry into your client's application for the proposed development of a windfarm comprising the erection of 25 wind turbines (49m tower, 52m rotor diameter) substation building, 2 wind monitoring masts (40m), excavation of borrow pits, construction of associated accesses and temporary site compound on land at Tir Mostyn and Foel Goch, Nantglyn, near Denbigh.

2. On 1 November 2000 the National Assembly for Wales directed, under Section 77 of the Town and Country Planning Act 1990 (the 1990 Act), that the application be referred to it rather than being determined by the local planning authority. On 16 July 2002 the Assembly resolved that a committee, to be known as Planning Decision Committee 2002/6 be established in accordance with Standing Order 35 to discharge the functions of the Assembly under Section 77 of the 1990 Act in respect of the application by Windjen Power Limited as described above. Accordingly, the Planning Decision Committee has considered the application and has resolved under Standing Order 35.16 to adopt this letter.

3. The Inspector's reasoning at paragraphs 107 to 157 of his report, a copy of which is enclosed, his comments on conditions and obligations at paragraphs 158 to 160 and his overall conclusions at paragraphs 161 to 164 are at Annex A to this letter. The Inspector recommended that planning permission be granted subject to conditions and subject to a Section 106 undertaking being signed by the appropriate parties.

4. At paragraphs 12 and 13 of his report the Inspector refers to a legal procedural point raised at the inquiry concerning whether the call in of this application was appropriate. The Planning Decision Committee consider that all proper procedures

were followed and that the decision to call in the application was made lawfully. Any action to test the legality of the decision to call in the application should, in their opinion, have been taken at the appropriate time when the decision was made.

5. The Planning Decision Committee have noted that the detailed location of some of the turbines was varied both before and during the inquiry and that further publicity was given to these amendments. The Inspector commented that the changes were within the application site and relatively minor given the scale of the proposal. In these circumstances the Planning Decision Committee consider that the modified application does not amount to a substantially different proposal and have therefore considered the application as amended. For the reasons given by the Inspector at paragraphs 16 to 19 of his report the Planning Decision Committee have considered the proposal on the basis of figure 2B at inquiry document 19 which was submitted after the close of the inquiry.

6. The policies of the emerging Denbighshire County Council Unitary Development Plan (UDP) were considered at the inquiry. The Inspector recorded in his report that subsequent to the Inquiry the Council forwarded a copy of the Proposed Modifications to the UDP dated February 2002. That document, included as inquiry document 70, was not seen by the parties but was taken into account by the Inspector. The UDP was subsequently adopted on 3 July 2002 after the Inspector had submitted his report. In reaching their decision the Planning Decision Committee have taken into account the relevant policies of the adopted UDP which now forms the development plan for the purposes of the consideration of this application.

They are of the opinion that the February 2002 Modifications, considered by the Inspector and subsequently incorporated into the adopted UDP, do not materially alter the substance of then emerging policies as considered by the parties at the inquiry.

7. Since the Inspector submitted his report Planning Guidance (Wales) Planning Policy April 1999 (PGW) has been cancelled by Planning Policy Wales March 2002 (PPW). The Planning Decision Committee do not consider that there are any differences between the policies of PGW referred to by the Inspector and those set out in PPW which would materially affect the decision on this application.

8. The Planning Decision Committee agree with the Inspector's reasoning. They agree with him that the most directly relevant policies in the UDP – Proposed Modifications February 2002, set out at inquiry doc. 70, are GEN 6, CON12 and MEW10. Those policies now form part of the adopted UDP. The Planning Decision Committee agree with the Inspector that while there would be an impact on virtually all the criteria in policy MEW 10, set out in inquiry doc. 70, the level of harm would not be unacceptable in any particular case. They accept his overall conclusion that on balance the degree of conflict that exists with those policies is significantly outweighed by the benefits that would accrue from this proposal in terms of contributing towards the Government's policy objectives for the generation of renewable energy. The Planning Decision Committee are therefore minded to allow the application subject to the prior completion of a satisfactory planning obligation.

9. A draft undertaking intended to cover the mitigation measures associated with the black grouse was submitted to the inquiry as Document 16. The Inspector considered that a planning obligation was necessary to accommodate the needs of the black grouse and his recommendation that planning permission be granted was made on the basis of the prior completion of a satisfactory planning obligation. On the basis that an undertaking would be provided, detailed evidence on the black grouse was not given on behalf of the applicants or the Countryside Council for Wales. The Inspector considered that if the applicant was unable to deliver a binding obligation then the detailed views of various experts would need to be considered on the basis of the written evidence and any updated views. Even then, he concluded that without a satisfactory obligation, the improvements to the black grouse habitat and its management would not be guaranteed.

10. After the inquiry closed, in the course of correspondence with the Assembly's Planning Division regarding the appropriate form of the obligation, you submitted, on behalf of your client, under cover of a letter dated 20 June 2002 a copy of a final version of the Planning Obligation in the form of a Unilateral Undertaking rather than an Agreement as submitted in draft to the inquiry. In your view the substance of the Obligation had not changed in any significant way from the draft Obligation delivered to the Inspector at the public inquiry. Subsequent correspondence with the Assembly's Planning Division dealt with the question of the linkage between the Obligations in the Unilateral Undertaking and the application site. Copies of the correspondence concerning this matter are at Annex B to this letter.

11. The Planning Decision Committee agree with the Inspector that a satisfactory obligation to secure improvements to the black grouse habitat should be submitted as a material consideration, prior to the grant of planning permission. Having carefully considered the Unilateral Undertaking submitted on behalf of your client on 20 June 2002 they accept that the substance of the Obligation has not significantly changed. However, they do not consider that the question of the linkage of the Obligation in the Unilateral Undertaking and the application site can be satisfactorily addressed by the completion of a Supplemental Undertaking to be completed by Windjen and the four freehold interests in the site as suggested in your letter of 2 July 2002. In the view of the Planning Decision Committee the execution of another unilateral undertaking in the manner suggested would not be "supplemental" to the existing deed as it would be dealing with different land and would involve different parties and interests.

12. The Planning Decision Committee therefore consider that a further signed and sealed comprehensive undertaking, incorporating the obligations set out in the draft Undertaking submitted on 20 June 2002, including both parcels of land and all those with an interest in them including mortgagees and freeholders should be completed and submitted to the Assembly's Planning Division prior to the grant of planning permission. The Planning Decision Committee also consider that a grant of planning permission should be subject to conditions on the lines of those referred to by the Inspector at paragraphs 158 to 160 of his report and at inquiry Document 13.

13. One of the covenants in the draft Undertaking submitted on 20 June 2002 made provision for a joint bank account with Denbighshire County Council for a fund to be used by the Council for the improvement of footpath 67. On the basis of the evidence before them the Planning Decision Committee have been unable to conclude that such improvements are necessary for the development to proceed. In consequence they do not consider that provision for such improvements need be incorporated in the Undertaking or made the subject of a condition. In the event that a clause in terms similar to clause 3.1.1 of the draft Undertaking were to be included in a fresh undertaking then, in the view of the Planning Decision Committee, consideration would need to be given to the risk of the Council having an effective veto over electricity generation at the site.

14. In reaching their decision on this application the Planning Decision Committee, having regard to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, have taken into account the relevant environmental information.

15. The Planning Decision Committee have reached their decision taking account of correspondence received after the inquiry closed including that which enclosed a copy of the document "An Environmental Strategy and Action Plan for the Hiraethog Area Published May 2002". They do not consider that any new evidence or new matter of fact has been raised which would materially affect their decision.

## FORMAL DECISION

16. Your client is accordingly invited to conclude a unilateral undertaking with the relevant parties in respect of the matter referred to at paragraph 12 above and to submit it to the Assembly's Planning Division not later than 3 months from the date of this decision letter. On receipt of a completed, satisfactory undertaking, a grant of planning permission implementing the Planning Decision Committee's decision set out at the beginning of this letter will issue.

17. A copy of this letter has been sent to the Head of Planning Services, Denbighshire County Council.

Yours faithfully

**Richard Edwards AM**

Chair,

Planning Decision Committee 2002/6