

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: 19 December 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

1. Following the meeting of Planning Decision Committee 2002/6 on 25 July 2002 to consider the above application a letter dated 29 July 2002, from Richard Edwards AM, Chair of that Committee was sent to you indicating that following consideration of the report of the Inspector Mr Stuart B Wild MRTPI MIMgt, who held a local inquiry into the application the Planning Decision Committee was minded 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. A copy of that letter is enclosed at Annex A to this letter which also includes a reproduction of the Inspector's conclusions set out in his report. A copy of the Inspector's report was previously enclosed with the letter of 29 July 2002.

2. The letter of 29 July 2002 indicated that on receipt of a completed, satisfactory undertaking, a grant of planning permission implementing the Planning Decision Committee's decision would issue. At its meeting on 25 July 2002 the Planning Decision Committee agreed that the question of whether any agreement subsequently submitted met the requirements set out in

the letter of 29 July 2002, the settling of points of detail relating to conditions and the issue of planning permission implementing the Planning Decision Committee's decision should be delegated to officials.

3. With regard to the question of the Section 106 unilateral undertaking and the conditions to be imposed on any planning permission the letter of 29 July 2002 contained the following paragraphs:-

"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."

4. Copies of the completed Unilateral Undertakings dated 10 October 2002 delivered to Denbighshire County Council and Conwy County Borough Council, making provision for

habitat enhancement and monitoring, were submitted to the Assembly's Planning Division on 14 October 2002. Subsequent to the delivery of the Undertakings Conwy County Borough Council submitted to the Assembly's Planning Division a schedule of concerns relating to the draft of the undertaking forwarded to them. The issues raised, involving technical questions mainly related to funding and enforcement, were also of concern to Denbighshire County Council. Having given careful consideration to the issues raised, and having regard to the detailed representations submitted on behalf of your client, I am satisfied that these Undertakings meet the requirements of the Planning Decision Committee set out in the letter of 29 July 2002. My fundamental concern in relation to the Undertakings involved the payments provided for by paragraph 5 (a) of Schedule 1 of the undertaking. In my view the effect of Section 106 (1) (d) of the Town and Country Planning Act 1990 (as amended) is to restrict, for the purposes of that section, the payment of a sum or sums to the authority on a specified date or dates periodically. To that extent I consider that the undertaking would be unlawful in respect of the proposed payment. However, having given further consideration to the matter I am satisfied that overall, notwithstanding the position regarding such payments, the measures contained in the Undertakings provide an effective basis for the Local Planning Authority to take enforcement action in respect of the Habitat Mitigation Measures provided for in the undertaking. As such in my view the Undertakings can be accepted as a material consideration for the purposes of the planning application.

5. As indicated at paragraph 12 of the letter of 29 July 2002 the Planning Decision Committee considered 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. Suggested condition 35 which refers to a scheme for the management of construction traffic has not been imposed. Welsh Office Circular 35/95 states that planning conditions are not an appropriate means of controlling the right of passage over public highways. In this case I cannot conclude on the basis of the submitted evidence that there is an overriding objection on highway grounds relating to the routing of construction traffic.

Formal Decision

6. For the reasons given in the letter of 29 July 2002 from the Chair of Planning Decision Committee 2002/6, and subject to the comments on conditions indicated above, I hereby grant planning permission, implementing the decision of the Planning Decision Committee set out in that letter, for the construction 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 in accordance with planning application (ref. 25/1999/0710/PF) dated 2 August 2000 subject to the

conditions at Annex B to this letter.

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

Council.

Yours faithfully

R O Evans

Head of Decision Branch

Planning Division

Enc: Leaflets "H" and "HC"