



Department  
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Dear Sirs

**ELECTRICITY ACT 1989**

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A WIND  
TURBINE GENERATING STATION AT LAND IN POWYS, MID WALES  
(LLANDINAM REPOWERING)**

**I. The Application**

- 1.1 I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to refer to the request by CeltPower Limited ("Applicant") to the Secretary of State for consent to be granted under section 36 ("section 36 consent") of the Electricity Act 1889 ("the 1989 Act") to decommission the existing Penrhyddlan & Llidiartywaun ("P&L") wind turbine generating station and construct and operate a new wind turbine generating station known as Llandinam Repowering ("the Development") at land at Powys, Mid Wales, and for a direction under section 90(2) of the Town and Country Planning Act ("section 90 direction") that planning permission for the Development be deemed to be granted.
- 1.2 The initial application for section 36 consent and planning permission was submitted by the Applicant on 9 May 2008 ("the Original Application") for 42 turbines and an installed generation capacity of up to 126MW. In 2011 the scheme was reduced to 39 turbines and in 2013 it was reduced further to 34 turbines and a maximum generating capacity of 102MW. The application is therefore considered and determined on

the basis of this amended scheme and in this letter “the Development” refers to this amended scheme.

- 1.3 Whilst the application site is located just outside the ‘broad brush’ boundaries of SSA C the Secretary of State agrees with the Inspector that it should be considered to effectively be within, given its close proximity to the boundary.
- 1.4 The Development will include the decommissioning of the turbines that comprise the existing Penrhyddlan & Llidiartywaun wind farm (“P&L”) which was granted consent in 1991 by Montgomeryshire District Council. As there is no decommissioning condition associated with the P&L wind farm it can be considered to be permanent. The proposed re-powering scheme would remove the existing wind farm and includes a decommissioning condition to ensure it is removed at the end of its lifecycle.
- 1.5 The application for section 36 consent was published in accordance with the Electricity (Applications for Consent) Regulations 1990 (“the 1990 Regulations”) and served on the relevant persons.
- 1.6 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 as amended (“the 2000 Regulations”) an environmental statement was submitted with the application. It was supplemented by additional information in the form of Supplementary Environmental Statements in August 2009, September 2011 and July 2013. The documents are collectively referred to hereafter as “the Environmental Statement”. The Environmental Statement describes the Development, gives an analysis of its environmental effects, and has been disseminated publically in accordance with the 2000 Regulations.

## **II. Public Inquiry**

- 2.1 Following an objection from Powys County Council (“the Council”), to the application, the Secretary of State was obliged to cause a public inquiry in to the Application to be held under Schedule 8 to the 1989 Act.
- 2.2 In addition the Council also objected to 4 other wind turbine generating station applications made under section 36 of the 1989 Act (schemes known as “Llanbadarn Fynydd” “Llaihddu” “Llanbrynmair” “Carnedd Wen”) and a proposal under section 37 of the 1989 Act to install and keep installed a 132kV overhead electric line connection from the Llandinam Repoerwing scheme to Welshpool Substation (“Llandinam 132kV line”). The Secretary of State was therefore also obliged to hold a public inquiry under Schedule 8 to the 1989 Act into those other applications. The Secretary of State took the view that the proximity and possible cumulative impact of the proposals made it appropriate to use

the power conferred by section 62(3) of the 1989 Act to direct that the inquiries into all 6 applications should be combined.

- 2.3 The Secretary of State appointed Mr A D Poulter BArch RIBA (“the Inspector”) to preside over the conjoined public inquiry. The public inquiry (“the Inquiry”) was governed by the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 2007 (“the Inquiries Procedure Rules”).
- 2.4 When the Public Inquiry was announced the Secretary of State issued a statement of matters to be considered at the Inquiry. Those matters are set out in paragraph 12 of the Report.
- 2.5 The Inquiry commenced on 4 June 2013 and concluded on 30 May 2014. An Introductory meeting was also held on 28 November 2012 and a pre-Inquiry meeting was held on 18 and 25 February 2013. During the Inquiry, the Inspector was assisted by Inspector Emyr Jones BSc(Hons) CEng MICE MCMI in matters pertaining to the Llandinam 132kV line. The Inspector submitted his Report of the Inquiry (“the Report”) to the Secretary of State on 8 December 2014. A copy of the Report and annexes is available at: <https://itportal.decc.gov.uk/EIP/pages/recent.htm> (click on ‘More Information’ to view documents).
- 2.6 Welsh translations of the decision letters in respect of all the applications considered at the Inquiry and the Inspector’s report are also, or will shortly be, published at <https://itportal.decc.gov.uk/EIP/pages/recent.htm>, or are available on request.

**Mae cyfieithiad Cymraeg o’r llythyrau penderfynu ar gyfer pob un o’r ceisiadau a ystyriwyd yn yr Ymchwiliad ac adroddiad yr Arolygydd wedi’u cyhoeddi, neu i’w cyhoeddi’n fuan, yn <https://itportal.decc.gov.uk/EIP/pages/recent.htm>, neu maent ar gael drwy wneud cais.**

### **III. Summary of the Inspector’s Recommendation**

- 3.1 The Inspector’s recommendation in respect of the *Llandinam Repowering* application is that Section 36 consent and deemed planning permission be granted subject to the conditions set out in Annex A of the report.

### **IV. Secretary of State’s consideration of the Inspector’s Report**

- 4.1 The Secretary of State has carefully considered the Report and all other material considerations. The Secretary of State’s consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Report.

- 4.2 Except as indicated otherwise in this letter, the Secretary of State accepts the full content of the Report, including its findings on matters of fact, conclusions and recommendation (including the reasons for that recommendation).

#### Need and Relevant Policy for the Proposed Development

- 4.3 After having considered the comments of the Inspector set out in paragraphs 40-59 of the Report, and in particular the conclusions on the application in paragraph 592, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, granting consent would be consistent with energy National Policy Statements (“NPS”) EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure). The Secretary of State agrees with the Inspector that the proposed development would be consistent with Welsh Government policies set out in *Planning Policy Wales, Edition 4 (2011)* (PPW) (as supplemented by Government circulars, Ministerial letters and a series of Technical Advice Notes (“TANs”), including *Technical Advice Note 8: Planning for Renewable Energy (2005)* (“TAN8”). The Secretary of State is also satisfied that the proposed development would be acceptable in terms of *the Powys Unitary Development Plan (adopted 2010)* (“UDP”).

#### Cumulative Impacts and Combined Effects of All Schemes

- 4.4 The Secretary of State notes the Inspector considered a range of issues relating to the cumulative and combined effects of all the proposed developments, taking into account other schemes in the Powys area which have already been granted planning permission or where planning permission has been applied for. The key impacts were: landscape and visual effects; the impacts of construction traffic; construction and operational noise; and impacts on biodiversity, including the ecological functioning of European sites and European Protected Species (“EPS”). He also considered social and economic effects (including on tourism), human health, cultural heritage, aviation, hydrogeology and impacts on peat, as well as the potential for the wind farms to be connected to the grid network. These impacts were considered for proposed developments both within the two Strategic Search Areas (“SSA”)s B [IR 378-395] and C [IR 244-262] and between them [IR 498-559]. The Secretary of State sees no reason to disagree with the Inspector’s reasoning and conclusions on cumulative impacts and combined effects of all schemes.

#### Landscape and Visual Effects

- 4.5 The Secretary of State notes that the existing P&L turbines are 45m in height to blade tip. The majority of the proposed turbines will have a height to blade tip of 121.2m (with three turbines at a reduced height of 111.2m to blade tip), and that concerns were raised about the impact of

the increased height on the landscape. The Secretary of State notes the consideration of this issue in paragraphs 101 – 115 of the Report.

- 4.6 The Secretary of State notes that the Inspector agreed with Council's view that the existing turbines gave rise to a very busy and cluttered appearance which catches the eye but as the proposed turbines would be more widely and less regularly spaced and would rotate more slowly, for viewpoints within about 4km, the proposed development would visually enhance the appearance of the wind farm and that the landscape change would, in this respect, be an enhancement.
- 4.7. The Secretary of State also notes that the Inspector agreed with the Council's overall view that there would be a progressive change from beneficial visual effects at close range, shifting towards adverse visual effects at about 4-5km, before the adverse effects again began to diminish with further distance [IR108].
- 4.8 The Secretary of State notes that as the proposed wind farm would cover a slightly larger footprint than the existing wind farm, the turbines would be seen from some properties that do not currently have a view of the existing wind farm. The Secretary of State has had particular regard to those properties that would be affected but are not currently affected by the existing P&L site. The Secretary of State agrees with the Inspector's conclusion that few of the proposed turbines would be seen, that the additional adverse effects would be localised and that the distances between dwellings and turbines would be sufficient to avoid significant adverse effects on residential amenity [IR 113].
- 4.9 The Secretary of State notes that the Council considered that, subject to agreed conditions, the Llandinam repowering scheme is acceptable in landscape and visual impact terms. The Secretary of State also notes the Inspector's conclusion that there would be some significant adverse landscape and visual impacts resulting from the Development but agrees with the Inspector that these would be limited and localised and in the context of the existing P&L wind farm there would be visual enhancements for some areas [IR 590]. The Secretary of State is satisfied the landscape and visual impacts, for all of those affected, are not so significant that they outweigh the need for this Development.

#### Therapy Course

- 4.10 The Secretary of State notes that an objection was raised by an operator of a therapy course that uses an area of woodland near the proposed Development. The operator raised concerns that the visual and noise disturbance may make the area unsuitable for such courses [IR 88]. The Inspector noted that some of the existing turbines can be seen from a close distance within and around the area of woodland and a number of the proposed turbines will also be seen. However the Inspector noted that as the proposed turbines will rotate more slowly, they would not create a greater visual disturbance to the tranquillity of the area and

there was no indication that the proposed turbines would be noisier than the existing ones [IR 112]. The Secretary of State therefore agrees with the Inspector that the suitability of the area for its use in connection with therapy courses would not be materially harmed.

#### Site-Specific Transport Matters

- 4.11 The Secretary of State notes that at present due to the length and height of the vehicles needed to deliver the turbines for this Development, a temporary 'bailey' bridge crossing of the River Wye will need to be built to bypass Builth Wells and that the carriageway under the railway bridge at Cross Gate will need to be lowered.
- 4.12 The Inspector noted that the River Wye is a Special Area of Conservation ("SAC") but that National Resources Wales ("NRW") had advised that with suitable mitigation they did not consider that there would be an adverse effect upon the integrity of the SAC resulting from the construction and use of a bridge. The highway authority, the Welsh Government's Transport Division, have indicated that they think an engineering solution can be found with regard to lowering the carriageway under the railway bridge at Cross Gate. The Secretary of State notes that these schemes will require separate permissions but is satisfied that the need for these schemes to be put in place along with any other necessary mitigation in relation to transport matters is secured by Conditions (28)-(36) in the permission.
- 4.13 The Secretary of State agrees with the Inspector's conclusion that there are no site specific highway safety or practicability matters that should carry weight against the proposal and is satisfied that abnormal loads can be safely transported in a way that minimises inconvenience to other road users and local communities and that the environmental effects of this and other construction traffic, after mitigation, would be acceptable [IR 566]. The Secretary of State is satisfied that this complies with NPS EN3 [IR2.7.78].

#### Socio economic

- 4.14 The Secretary of State notes that the Council suggested a condition requiring Training and Employment Management Plan with a view to the promotion of training and employment opportunities for local people. The Inspector noted that the Development would result in significant opportunities for local people in terms of local business and jobs and that this would happen regardless of whether a condition was put in place or not and therefore concluded that such a condition was unnecessary and unreasonably restrictive [IR 84].
- 4.15 The Secretary of State has carefully considered this issue. The Secretary of State considers that is important to provide as many opportunities as

possible for the local workforce to benefit from the economic opportunities provided by the Development and concludes that such a requirement would assist in this aim (Condition (51)).

#### Grid Connection

- 4.16 The Secretary of State notes that the grid connection for the wind farm is proposed to be via the proposed Llandinam 132kV line. The Secretary of State has decided that this application should be refused as an alternative route for the line has been identified that could result in significantly less harm overall than the one put forward. Whilst the Secretary of State notes that this means that there will be a need for a further application to be made to ensure a grid connection will be possible, the Secretary of State sees no reason why an alternative route for the line cannot be found and a grid connection made possible. The Secretary of State sees no reason, therefore, why a decision on this Development should be refused or delayed.

### **V. Secretary of State's Consideration of the Planning Conditions**

- 5.1 The Secretary of State has carefully considered the Planning Conditions for the Application in the Report. The Secretary of State agrees that, subject to some minor amendments, they are suitable for inclusion in any section 90 direction which the Secretary of State may give.

### **VI. Findings and Conclusions in Relation to Habitats Regulations**

#### *River Wye Special Area of Conservation ("SAC")*

- 6.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") requires the Secretary of State to consider whether the proposed Development would be likely to have a significant effect on a European Site as defined in such Regulations. If such an effect is likely, then the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the European Site in view of its conservation objectives. The AA should take into account the impacts of the proposed project alone and also in combination with other plans and projects. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons for overriding public interest apply.
- 6.2 The Secretary of State considers that a likely significant effect arising from the proposed Development, when considered both alone and in combination with other plans or projects, cannot be excluded in relation to the River Wye SAC. The Secretary of State therefore considers that an appropriate assessment ("AA") is required under the Habitat

Regulations to consider the effects of this Development, both alone and in combination alongside other operational, consented and reasonably foreseeable projects (subject to a current planning application), as regards to the potential for an adverse impact upon the integrity of European designated sites.

- 6.3 A copy of the Secretary of State's Habitats Regulation Assessment is available at <https://itportal.decc.gov.uk/EIP/pages/recent.htm> and has been prepared on the basis of the Inspector's Report and advice from NRW. As regards the assessment, the Secretary of State agrees with the Inspector, and with NRW, that, with the mitigation measures secured in the consent, the Development will not have an adverse effect, either alone or in combination with other plans or projects, upon the integrity of the River Wye SAC.

## **VII. Secretary of State's consideration of issues raised following the close of the Inquiry**

- 7.1 Following the close of the Inquiry, a number of representations have been received by the Secretary of State. Some relate purely to timing of decisions and therefore require no further consideration. Some representations also make reference to the Government's manifesto commitments (i.e. the Government's Manifesto commitment and proposed Energy Bill to ensure that future decisions on consent for such onshore wind farms would not be taken by the Secretary of State, and also cuts in subsidies for onshore wind). Ministers have decided that in relation to this particular decision, and the other mid-Wales decisions considered in the conjoined inquiry, that they should continue to take these decisions given the stage to which they have progressed. Subsidy cuts are not a relevant planning matter and therefore have played no part in the decision-making process. However, in so far as representations raising other specific matters relating to the proposed developments are concerned, such as construction traffic, biodiversity, Heritage Sites, landscape and visual impacts, tourism and the local economy, the Secretary of State considers these largely rehearse arguments raised before or during the Inquiry and, to the extent that the Secretary of State considers they have already been addressed by the Inspector in his consideration of the Inquiry and subsequent report, they are not further addressed in this letter.

## **VIII. Secretary of State's Decision on Reopening the Public Inquiry**

- 8.1 Rule 21 of the Inquiries Procedure Rules allows (and in certain circumstances requires) the Secretary of State to re-open the Inquiry. The Secretary of State does not consider that the Rules require the Inquiry to be re-opened or for there to be any reason to exercise a discretion under the Rules to re-open it.

## **IX. Equality Act 2010**

- 9.1 The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:
- (a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
  - (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
  - (c) the fostering of good relations between people who share a protected characteristic and those who do not.
- 9.2 The Secretary of State has considered the potential impacts of granting or refusing the Application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the protected characteristics.
- 9.3 The Secretary of State does not, therefore, consider that either the grant or refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

## **X. Human Rights Act 1998**

- 10.1 The Secretary of State considers that there is no proposed interference with the human rights of individuals and that the grant of development consent would not be unlawful under section 6(1) of the Human Rights Act 1998.

## **XI. Secretary of State's Conclusion and Decision on the Application**

- 11.1 The Secretary of State has considered the views of the Inspector, the relevant planning authority, consultees and others who have made representations on the matters set out above and all other material considerations. For the reasons given in this letter, the Secretary of State agrees with the Inspector that consent for the Development should be granted, given the contribution it will make to the production of renewable energy. The Secretary of State considers that the potential adverse local impacts of the Development are mitigated by the proposed terms of the consent and planning conditions and any residual impacts are not outweighed by the contribution the Development will make to the production of renewable energy.

11.2 In reaching this decision, the Secretary of State considers the following issues material to the merits of the section 36 consent application:

- i) adequate environmental information has been provided for the Secretary of State to judge its impact;
- ii) the Company has identified what can be done to mitigate any potentially adverse impacts of the proposed Development;
- iii) the fact that legal procedures for the application have been properly followed;
- iv) the views of the relevant planning authority, the views of statutory consultees under the Habitats Regulations, the 2000 Regulations, and the Electricity (Applications for Consent) Regulations 1990, the views of other interested parties, the environmental information and all other relevant matters have been considered;
- v) HM Government policies on the need for and development of new electricity generating infrastructure, and specifically wind turbine generating stations, as set out in the *Overarching National Policy Statement for Energy (EN-1)* and the *National Policy Statement for Renewable Energy Infrastructure (EN-3)*, designated on 19<sup>th</sup> July 2011 under the Planning Act 2008 following their approval by Parliament and the reasons given for those policies in those national policy;
- vi) the energy and climate change policies of Welsh Government, as set out in PPW and supplemented by Government circulars, Ministerial letters and TANs, including TAN8 and also the relevant local planning policy for the developments, as set out in the UDP; and
- vii) the Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision. The Secretary of State is of the view that the Inspector`s Report considers biodiversity sufficiently to accord with this duty.

11.3 The Secretary of State believes the Planning Conditions will ensure that the Development proceeds in a form and manner that is acceptable in planning policy terms, and therefore she has decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

- 11.4 I accordingly enclose the Secretary of State's consent under section 36 of the Electricity Act 1989 and a direction under section 90(2) of the Town and Country Planning Act 1990, which has also been published at <https://itportal.decc.gov.uk/EIP/pages/recent.htm>.
- 11.5 In deciding what material to publish in Welsh, the Secretary of State has taken into consideration her duties under the Welsh Language Act 1993 and the Department's Welsh language scheme – which is available at: <https://www.gov.uk/government/organisations/department-of-energy-climate-change/about/welsh-language-scheme>

## **XII. General Guidance**

- 12.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such application must be made as soon as possible. Parties seeking further information as to how to proceed, including time limits, should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).

Yours faithfully

Giles Scott

Head of National Infrastructure Consents and Coal Liabilities