

**Appeal by Awel Aman Tawe  
ref. APP/Y6390/A/05/1189610**

**Closing Statement for the  
Tairgwaith Action Group**

produced by

Paul Mobbs,

Mobbs' Environmental Investigations,

3 Grosvenor Road, Banbury OX16 5HN.

tel./fax 01295 261864 email meir@fraw.org.uk

August 2006

## Closing Statement

1. The purpose of this appeal is to assess the application by Awel Aman Tawe for a wind farm on Mynydd y Gwrhyd, but in actuality this inquiry faces a greater task. This is the first planning inquiry to consider the development of a wind farm since the inception of the Welsh Assembly Government's new policies and procedures on renewable energy – specified in the amended Planning Policy Wales<sup>1</sup> (PPW) and Technical Advice Note 8<sup>2</sup> (TAN-8) – came into force. For this reason the inquiry has not only dealt with the details relating to this development, but it has also been necessary to interpret and clarify the meaning of the new planning framework for wind power in Wales. Consequently, the outcome of this appeal may affect the determination of the many applications for wind farm developments in Wales that will follow in the next few years.
2. In deciding how to present Tairgwaith Action Group's evidence we have been mindful of the need to test all the issues that arise in this case so that all the relevant matters are given proper consideration. Rather than rely heavily on the issue of visual intrusion and the detailed interpretation of the development plan, which quite obviously would form the core of the evidence from the other parties in this inquiry, we have chosen to examine a number of other issues that arise with wind power development. Although visual intrusion may be held as the most important factor, these other planning issues must be given equal evaluation since they are clearly material to the new policy framework for wind farm development in Wales.
3. When opening our case, we made it clear that the purpose of our evidence was to challenge the evidence supporting the application for this development. In our view, the benefits of this development are illusory, and in terms of a factual or planning policy evaluation, giving consent to this development could not be supported on the basis of the evidence provided (within the terms of, but also considering issues not covered in, Neath Port Talbot County Borough Council's reasons for refusal<sup>3</sup>). In the concluding stages of this inquiry we maintain this view since no new evidence has been produced to dispute our evaluation of the issues covered in our evidence.

1 *Planning Policy Wales*, Welsh Assembly Government, March 2002 – as amended by Ministerial Interim Planning Policy Statement 1/2005 – *Planning for Renewable Energy*, Welsh Assembly Government, July 2005.

2 Technical Advice Note No.8 – *Planning for Renewable Energy*, Welsh Assembly Government, July 2005.

3 As outlined in the *Opening Statement* for Neath Port Talbot CBC.

**a. Impact upon the visual, natural and cultural environment**

4. During this inquiry various people have produced evidence regarding the special landscape and visual character of Mynydd y Gwrhyd, in particular the cultural heritage of the area, and its use for country pursuits such as walking and riding. Although the debate over these issues is somewhat mired in the issues relating to the sequence of the production of Landmap data, the fact remains that there are special characteristics that make Mynydd y Gwrhyd a highly valued landscape, and permitting this development would detract from the preservation and enjoyment of these special characteristics.
5. An issue that arose as a result of the evidence of Ms. Kay Hawkins was the assessment of visual impacts to nearby communities outside daylight hours. When questioned, Ms. Hawkins did not accept that there would be any significant visual impact from the wind farm at night, except perhaps during periods of bright moonlight. However, it is our view that the impact of this development, silhouetted against the sky-glow from the Swansea Valley, will also have a visual impact to the residents of Tairgwaith and Gwaun Cae Gurwen during the night.

**b. Effects upon birds**

6. In our evidence we raised the issue of the effect of this development upon birds<sup>1</sup>. In the cross examination of our case it was stated that the Tairgwaith Action Group had provided no evidence to prove an effect upon wild birds. However, as outlined in our evidence, and as stated in response to this question, we see the onus as being upon Awel Aman Tawe to prove that there is no significant effect upon wild birds.
7. Under the Wildlife and Countryside Act there is no minimum level of impact set in law which can be applied to the operation of a wind farm – in each case the operator must show that any damage was unavoidable. As it has not been demonstrated that any incidental damage to wildlife through the operation of a wind farm in this location is “unavoidable” – for example, a comparison of alternative development sites to demonstrate that this site represents the least-worst option – if significant numbers of protected birds were harmed by this development we believe this constitutes an effective “intent” to harm by virtue of negligence.

1 Paras. 1.14 to 1.18, Case for the Tairgwaith Action Group, Paul Mobbs March 2006 (TAG-1).

### **c. Problems with the wind turbines Identified for this development**

8. It is our view<sup>1</sup> that the failure to specify a particular model of wind turbine for use in the development of this wind farm creates uncertainty in relation to the effects on the visual environment, noise and the level of the carbon dioxide savings generated by this development. As noted by Mr. Newland in our cross examination of his evidence the model of turbine identified in the Environmental Statement<sup>2</sup> is no longer manufactured, and if we look at other turbines of a similar generating capacity<sup>3</sup> none has the precise dimensions of the turbine identified in the Environmental Statement.
9. We would argue that the use of notional dimensions, rather than the fixed dimensions of a known wind turbine, is inconsistent with the legal requirement for the environmental statement to provide, "a description of the... size of the development"<sup>4</sup>. If this appeal is allowed, the physical dimensions of the turbines used as the basis for the compilation of the Environmental Statement must be enforced as a maximum through planning conditions.

### **d. Irregularities in the BWEA's carbon emissions data**

10. National policy on renewable energy places emphasis on the reduction of carbon dioxide emissions. As this development claims the reduction of carbon emissions as a positive benefit it is important that we correctly assess the scale of the carbon saved by this development. Most wind farm developers use data produced by the British Wind Energy Association (BWEA) to assess carbon savings, but in our view this data is flawed and seriously over-estimates the level of the carbon saved<sup>5</sup>.
11. Both in the cross examination of our case, and in our cross examination of Mr. Newland, reference was made to the BWEA's data being "accepted" for use in wind farm applications. It is our case that this "acceptance" is in error as the BWEA's data cannot be supported if we compare them to the statistics produced by organisations with a lesser vested interest in wind

1 Paras. 2.2 to 2.7, Case for the Tairgwaith Action Group, Paul Mobbs March 2006 (TAG-1).

2 Section 1.1, Written Statement (volume 2), Mynydd y Gwrhyd Community Wind Farm Environmental Statement, September 2004.

3 Table 1, page 11, Case for the Tairgwaith Action Group.

4 Para. 1, Part 2, Schedule 4, Town and Country Planning (Environmental Impact Assessment) Regulations 1999.

5 Paras. 2.8 to 2.14, Case for the Tairgwaith Action Group.

farm developments – such as the Department of Trade and Industry (DTI) and the Energy Technology Support Unit (ETSU). We have provided DTI and ETSU data which shows that the displacement of carbon emissions from the UK's electricity generation system is not as great as the BWEA claim. Interestingly, Mr. Newland's own evidence<sup>1</sup> also provides a more recent ETSU study that casts doubt on the BWEA's figures.

12. We request that, in determining this appeal, attention is given the use of the BWEA's data to assess the significance of the carbon emissions saved by this development, and that figures for the carbon saved by this development are rejected as unreliable.

#### **e. Alternatives to the location/design of this development**

13. As outlined in our evidence, it is our view that Awel Aman Tawe should have provided an assessment of other development options. The assessment of alternatives within environmental statements is required<sup>2</sup>, but often alternative development options are not considered since many large developments are site specific. In this case the proposed development is not site specific – the appellant does not own the land, and this site is not the only location in the immediate area where a wind farm could be located. Also, as the site is near to the Pontadawe Strategic Search Area (SSA), and the boundaries of the SSA have been questioned by Awel Aman Tawe as part of their case, it would have been helpful to have an assessment of an alternative location within the SSA as a comparison to demonstrate that the proposed site created no greater impact than if a similar development had been located within the SSA.
14. The failure to consider alternative development options represents an deficiency in the Environmental Statement that calls into question the adequacy of the environmental information required to determine this appeal (in order to meet the requirements of Schedule 4 of the Environmental Impact Assessment Regulations). Consequently the Environmental Statement provides no objective evidence that the development site or design option chosen is the best possible. It is our view that the failure to identify alternative forms or locations for development should be cited as a reason to dismiss the appeal.

1 Para. B.22/Table 5.4, Annex B, proof of evidence (PDN/2), Peter Newland, May 2006.

2 Para. 2, Part 2, Schedule 4, Town and Country Planning (Environmental Impact Assessment) Regulations 1999.

## f. Planning policy evaluation

15. Before balancing the benefits and dis-benefits of this development we must consider how this development fits within the national planning policies outlined in PPW/TAN-8. The planning policy framework creates, in effect, an area-specific quota for wind power similar to the land banks policy that operates for minerals extraction or housing. The terms of this policy are quite clear:

- ◆ A specified generating capacity (1,120 mega-Watts) will be created by a small number of large wind power developments, equal or greater than 25 mega-Watts, within the SSAs, and the development of wind farms within the SSAs is given positive backing in policy<sup>1</sup>;
- ◆ An unspecified number or quantity of wind power developments of between 5 mega-Watts<sup>2</sup> and 25 mega-Watts<sup>3</sup> are permitted on industrial or brownfield sites;
- ◆ Wind developments equal or less than 5 mega-Watts are permitted within or outside the SSAs, provided that they do not create adverse local impacts or compromise the objectives of the SSAs policy<sup>4</sup>.

16. Clearly, as a wind farm proposal with a generating capacity of 11 mega-Watts that is not sited within an industrial area this application falls outside the planning policy framework. As TAN-8 states, *"It is acceptable in such circumstances that planning permission for developments over 5MW outside SSAs and urban/industrial brownfield sites may be refused."*<sup>5</sup>

17. In his evidence for Awel Aman Tawe, Mr. Newland seeks to re-interpret the substance of the policy framework by stating that, *"The scale of the wind farm is not inconsistent with the MIPPS or TAN8 neither of which state that community wind farms outside of the SSAs of more than 5MW are unacceptable in principle"*.<sup>6</sup> If we look for the term "unacceptable" it only appears in TAN-8 in relation to planning obligations and hydro-power<sup>7</sup>, and the use of the term "acceptable", as it applies to the scale of development, only applies to the enlargement

1 MIPPS para. 12.8.9, refined in detail in paras. 2.2 to 2.10 of TAN-8.

2 TAN-8 para. 2.13.

3 TAN-8 para. 2.11.

4 MIPPS para. 12.8.11, refined in paras. 2.11 to 2.14 of TAN-8.

5 TAN-8 para. 2.13.

6 Para. 7.13, proof of evidence (PDN/2), Peter Newland, May 2006.

7 Paras. 2.16 and 3.13, TAN-8.

of existing wind farms<sup>1</sup>. If we look at the over-arching policy in PPW, developments over 5 mega-Watts outside of the SSA are clearly “unacceptable” given that the direction to local planning authorities on the content of development plans states that, “*Where justified, policies that restrict onshore wind energy developments outside SSAs to those up to 25MW in urban/industrial brownfield sites, and less than 5MW elsewhere, are acceptable.*”<sup>2</sup> For this reason Mr. Newland's claim that a scale of development in excess of 5 mega-Watts is not “unacceptable in principle”, whilst correct in the vaguest sense of the duties of planning authorities in law to consider all applications on their merits<sup>3</sup>, is a distortion of TAN-8 and PPW – in particular the requirement, “*...that planning permission for developments over 5MW outside SSAs and urban/industrial brownfield sites may be refused.*”<sup>4</sup> In terms of planning policy the scale of the development makes it unacceptable in this location.

18. Balancing the dis-benefits of this development with the positive benefits offered by Awel Aman Tawe is difficult since many of the community benefits offered by AAT cannot be fairly tied to this development under a planning obligation<sup>5</sup>, and nor can they be guaranteed since they are not (unlike other developments, such as retail or industrial units) tied to the operation of this development. This fact is also demonstrated in the way that Awel Aman Tawe's case has been put in this inquiry. When commenting on his evidence-in-chief Mr. Newland stated that this development was acceptable without the balance of the community benefits offered by Awel Aman Tawe. In our view this is a position taken not from the strength of the case for this wind farm, but from procedural necessity.
19. Given that in planning terms the “community benefits” of this development are not directly material to determining this appeal all that remains are the benefits that relate to the substance of the planning policy framework for wind energy – in particular, the generation of renewable energy and the reduction of carbon emissions. As outlined in relation to our evidence on energy and carbon, the information presented by Awel Aman Tawe does not demonstrate that this development provides the best method of significantly cutting carbon

1 Para. 2.14, TAN-8.

2 Para. 12.9.3, PPW – as amended by MIPPS.

3 Under the provisions of Part III of the Town and Country Planning Act 1990 (as amended).

4 Para. 2.13, TAN-8.

5 Para. 1.3 of Annex B, TAN-8.

emissions. What is more, it is our interpretation of the policy in PPW<sup>1</sup> and the guidance in TAN-8<sup>2</sup> that only the “large” wind farms developed within the SSAs contribute towards the Welsh Assembly's target for onshore wind power. Other smaller wind power developments, such as Awel Aman Tawe's proposed wind farm, do not contribute to the onshore wind target. For this reason Awel Aman Tawe cannot rely upon an argument of overriding national need to meet the target for renewable energy as development will not contribute towards meeting the 800 mega-Watt target for wind farm development.

## **In conclusion**

20. In conclusion:

- ◆ Due to its scale and location there is no planning policy argument to grant this appeal;
- ◆ There are strong planning policy grounds to dismiss this appeal as the scale of this development does not accord with the policy framework for renewable energy in Wales;
- ◆ The development of this wind farm in this location would have a harmful effect on the natural environment of Mynydd y Gwrhyd, and the visual character of the area.
- ◆ The majority of the “community benefits” offered by the appellant are not directly material to determining this appeal; and
- ◆ Those benefits that are relevant can be shown to be of no consequence in terms of national energy policy, or are significantly over-estimated because of errors or uncertainties in the data used to calculate the impacts of this development.

21. For these reasons we request that this appeal be dismissed.

Paul Mobbs,  
consultant to the Tairgwaith Action Group

1 Para. 12.8.6, PPW – as amended by MIPPS.

2 Paras. 1.4, 2.2 and 2.5, TAN-8.