

Planning policy review of Local Impact Reports submitted by Neath Port Talbot CBC and Bridgend CBC in respect of the Upper Ogmere Wind Farm proposal by RES

Planning Inspectorate Reference: DNS/3213662

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1. Introduction

1.1 Neath Port Talbot have made reference to the National Development Framework (NDF) and given the date of the report this can only mean they were looking at the September 2020 draft placed before the Senedd – it would not have been the August 2019 draft for consultation, since in that draft the strategic policy was Policy 11 and not policy 17 which appears in the September 2020 and indeed February 2021 versions. However what is odd is that having correctly identified the target figures from the NDF, they ignore entirely the fact that their Llynfi Afan site which they lost on appeal some seven years ago is now entirely inside a new Pre-assessed Area (PAA) for wind energy, instead of being entirely outside the old refined SSA Area F, and similarly that the whole of the Upper Ogmere site is within the same PAA in the NDF. While like us they may have assumed last autumn that further changes might be made to the NDF it is very surprising that they omitted this fundamental change from the old TAN8 policy guidance completely.

1.2 Bridgend by contrast make no mention at all of the NDF in any of its various guises, despite their Impact Report post-dating the two draft versions of the NDF as well as the publication of the Stage 1 and Stage 2 Studies by ARUP for the identification of the priority/Pre-Assessed Areas for wind energy on those drafts of 2019 and 2020. Given the fundamental changes to the planning policy position that the publication of the final version of the NDF will mean, this will mean that they are going to have, one would assume, to make some further submissions in respect of what changes now have to be made to their Impact Report, since a very substantial part of it is concerned with landscape effects and the Special Landscape Designation along with their related

policy implications in terms of the LDP and the SPG and the landscape character assessments studies that have underpinned both of these. Indeed, neither they nor NPT seems to have appreciated at the time of writing their Impact Statements that the NDF was to become part of the statutory development plan; that the NDF as the most up-to-date element of the hierarchy would supplant whatever the Council adopted many years ago; and that as regards landscape effects the advice in the NDF would trump the approach they are now taking.

2. **Neath Port Talbot Impact Report**

- 2.1 NPT cite 22 NPT LDP policies as being relevant and no less than 8 elements of their SPG as being engaged for the part of the development which involves relatively minor upgrading of the forestry access track to the north of the main development area of the site. It will be a matter for evidence in due course as to their selection of the elements of this raft of policy guidance for the purposes of explaining the relevance of it all for the benefit of the Inspector. My original Planning Statement emphasised the extent of the works inside NPT and reflected that it was issues pertaining to highways and potentially biodiversity which were likely to be engaged. Other responses to the NPT Impact Report submitted on behalf of the Applicant will have made it clear that the lengthy statement by NPT about the effects on the Scheduled Monument is misconceived as in the event it is not being proposed to move the relevant part of the access track nearer to the Bachgen Carreg Round Cairn.
- 2.2 For clarification, their statement at para 2.2 that the nearest settlements are Blaengwynfi and Abergwynfi should be corrected to read the “nearest settlements within Neath Port Talbot”, since these two settlements are considerably further away than the nearest settlement which is Blaengarw in Bridgend. There also needs to be a further correction at para 4.1 that the site application boundary lies in close proximity to the Pen y Cymoedd Windfarm and the Llynfi Afan Windfarm. This is somewhat misleading since the nearest turbines at Pen Y Cymoedd are some 6 km away, whereas the turbines at Llynfi Afan virtually abut the site boundary. It is only the

access track that creates a red line boundary that goes about half way to the Pen Y Cymoedd turbines.

- 2.3 Their comments on the landscape assessment note, quite fairly, that for three of the four LCAs inside NPT the effects are minor and not significant, and for the other LCA the effects are negligible and not significant. However, they still come to the conclusion that the effects on landscape areas inside NPT will be negative. This I suspect reflects one of the problems of the terminology for Impact Reports in that these effects taken out of our EIA fall into the same negative category as would a 50 turbine scheme on the same site. Fortunately the Applicant does not consider that the “negative” finding in the context of landscape impacts will ultimately be material to the overall determination of the Application, since under the NDF, despite whatever conclusions assessors come to in purely EIA terms, the effects are now deemed to have passed the NDF test of being in a Pre-Assessed Area – and this time one which the councils will not be able to refine further.
- 2.4 In terms of effects on residents in planning policy terms, the only Viewpoint they suggest that even reaches the moderate level (albeit under this EIA approach a moderate is a significant effect) is at Blaengwynfi. This needs to be put into context in that the same VP in respect of Llynfi Afan would have introduced at that time much more substantial change to the views, and compared to that, putting a further seven turbines behind Llynfi Afan and further away from the VP would not suggest that this is a compelling objection to the proposal.
- 2.5 Their para 8.14 in respect of cumulative effects on residents is an issue which is raised in Policy 18 of the NDF. It is clear that NPT accept that Upper Ogmere Wind Farm is not going to materially alter the areas of land occupied by turbines in views from any of the settlements in NPT or indeed other land there. Indeed, they concede at para 8.15 that the new turbines will always be read from inside NPT as being in conjunction with Llynfi Afan. Their “negative impact” finding is again borne out of the fact that there will be seven more turbines visible in some views on the other side

of the Llynfi Afan turbines, but in the light of their overall conclusions on the visual impact issue it does not appear that this would warrant an objection being raised on this ground under Policy 18.

2.6 The Council criticise a lack of assessment against NPT planning policies in the ES. It is not strictly speaking a function of an ES to make an assessment against planning policies but to identify what environmental harm might arise and how it might be mitigated. It is the Planning Statement where the policy assessment takes place, and the limited effects of the development in terms of NPT policies has been addressed there.

2.7 It is not necessary to comment in detail on matters relating to noise, ecology/biodiversity and heritage, since these are covered by other respondents on behalf of the Applicant. However, NPT suggest in their para 8.23 that there has been a lack of assessment of the track widening against their NPT policies in the LDP. However, the very detailed comments made by the Applicant's ecology experts in their response to the Local Impact Reports from both Councils demonstrate that for almost all the issues raised across both Councils these relate primarily to two aspects. The first is that there is disagreement from the Councils about the potential impacts that might arise from a range of matters, including the timing of surveys that have been undertaken. The second aspect is that certainly on the part of NPT there has been a misunderstanding about the extent of the works along the forest track and the implications these may have for a range of issues, from effects on breeding birds, to the scale of felling and hydrology. These are all addressed for the Applicant in the submission on the Local Impact Reports. In the context of the need to address NPT LDP policies, regard needs to be had to the original Planning Statement at para 10.1, where there is clear reference to the LDP and to the specific policies within it which would need to be addressed in the event that there was significant harm to interests of ecological importance such that the need to balance harm against the benefits would arise. It remains the case on behalf of the Applicant that no such trigger has occurred in the context of any issue of ecological significance such that the tests in SP15, EN6 and EN7 are engaged.

- 2.8 While NPT have at least raised the issue of the NDF, their comments are only in respect of the targets aspect, and their references to SP1, SP18, RE1 and their SPG will in due course have to be addressed again in the light of the NDF, PPWales 11 and the identification of Pre-Assessed Areas for wind energy.

3. **Bridgend Impact Report**

- 3.1 As the Council which would be hosting the infrastructure of the development apart from the access track improvements, it is inevitable that the Bridgend response in its Impact Report is more comprehensive. However, while it is a matter for the Inspector as to the extent to which they have complied with the statement at their para 1.5 about limiting themselves to factual statements, there appear to be topics in particular with the matters related to visual impacts in the context of introducing weighting and opinion which I will address in the context of planning policy.
- 3.2 Bridgend helpfully provide a detailed summary of the site and neighbouring site history, from which it can be noted that while NPT refused consent for the bulk of the Llynfi Afan Wind Farm, Bridgend consented the three turbines which were on their side of the boundary. That is highly relevant in that they would have been well aware of the TAN8 Refined Boundary for SSA F in place at that time (2013). The schedule also points out that Bridgend did not object to the remainder of the wind farm proposals inside NPT, again in the full knowledge that that site too lay outside the refined area in the TAN8 exercise. The decision on the three turbines and the response to the balance of the scheme have to be put in the context of their reference to the 2004 Werfa appeal decision, because that decision was made before the TAN8 publication in 2005, before the refinement exercises and of course before the revised TAN8 targets for up to 2017, various iterations of PPWales (from 1 to 11), the new NDF and all the work carried out by ARUP for the new Pre-Assessed Areas.

- 3.3 Section 5 of the Impact Report refers to local designations, and specifically in para 5.1 to the Northern Upland Special Landscape Area (SLA). In Section 6 we have a list of the LDP policies that Bridgend consider are relevant to the proposal. Reference has already been made to a number of these in the Planning Statement, but of key importance to the response to the Impact Report on behalf of the Applicant are the renewable energy policies and that on the SLA (SP8 ENV3 and ENV18). Bridgend do not refer at all to the then emerging NDF in their Impact Report, despite NPT having made a reference to what was then the draft before the Senedd dating from September 2020. As a result, their report is entirely lacking in any consideration of the major changes in policy which have arisen as a result of the final version of the NDF published in February 2020, and which does not differ markedly in respect of the approach to defining areas deemed suitable in landscape terms as a matter of principle for further wind energy development. The boundaries of the Pre-Assessed Areas have not changed between the two versions. Policies 17 and 18 have not changed in respect of the issue of landscape effects from turbines located in the Pre-Assessed Areas.
- 3.4 Of course now the NDF is the top element of the Section 54A statutory development plan and where there is a later plan following the adoption of the LDP that would take precedence in any material disagreement. In any event it is crystal clear that the Welsh Government will now expect Councils to take the new Pre-Assessed Areas directly into their new plans without amendment (see para 5.9.18 of PPWales11).
- 3.5 The problem for the Council is that they have their SPG and their policies but these have been superseded by the NDF in a complete about-turn as regards strategic policies. Going from there being a presumption against a major development outside the refined areas to one where the site is now actually fully inside the areas where there is stated to be a presumption that the landscape effects are acceptable is a major issue that the Council have to respond to and have not sought to do so to date despite having been forewarned in the September 2020 version of the NDF that this was what was proposed. How does chapter 4 of the SPG provide a robust evidence base for informing future planning decisions on renewable energy when the NDF has effectively undermined it? Again at the bottom of page 14 they refer to the SSA

advice in terms of areas outside the SSAs but in the knowledge surely that the direction of travel from the Welsh government was that the position had been reversed.

3.6 Again all the comments from 9.1 to 9.23 of their Impact Report have to be viewed in the context of the position in respect of the NDF. This fundamentally affects their approach and their conclusions. In particular they state that the significant effects identified on the SLA and related Landscape Character Areas must be tested against the LDP policies and SPG – not any more, since the NDF changes this position fundamentally. This section then goes on to make a series of comments about the “fact” that the site lies outside the SSA. This material now has little or no weight as a policy lever against the proposals.

3.7 It is considered to be helpful in any event to have regard to what has been happening over a number of years in this part of South Wales within and around SSA Area F in TAN8 as regards the approach to Special Landscape Areas across the three Council areas of Neath Port Talbot, Bridgend and Rhondda Cynon Taf. Set out in the Planning Statement Further Addendum which is being submitted concurrently with the responses to the Impact Reports is a list of all the wind farms within a 15km radius which have been consented within Special Landscape Areas within the three Councils. This list is included below for ease of reference as it relates directly to the stance that Bridgend are talking in their Impact Report as regards the SLA. The sites are as follows:

All bar the three Bridgend turbines at Llynfi Afan are in an SLA in Neath Port Talbot

All of the 11 turbines that are now consented at Foel Trawsant are in an SLA in Neath Port Talbot

The four turbines at Mynydd Brombil allowed on appeal are in an SLA in Neath Port Talbot

The five Melin Court turbines are in an SLA in Neath Port Talbot

Eight of the Pen y Cymoedd turbines are in an SLA in Rhondda Cynon Taf

The Taff Ely and Headwind Taff Ely wind farms are both in an SLA in Rhondda Cynon Taf

The Mynydd Portref and Mynydd Portref extension wind farms are both in an SLA in Rhondda Cynon Taf

Pant Y Wal is in an SLA in Bridgend

The western part of Fforch Nest is in an SLA in Bridgend

Of all these schemes, only Llynfi Afan inside Neath Port Talbot and Mynydd Brombil also in Neath Port Talbot derived from appeal decisions, with the rest being consented by the local Councils (apart from Pen y Cymoedd which was a Section 36 application). There is therefore already a significant element of the current sites of wind farm development within this study area which have been consented in SLAs. Notably in the case of the two appeals mentioned above, these were allowed before the LDP for Neath Port Talbot had been adopted – hence the adoption took place with the SLA in the knowledge of the consented wind farms in those SLAs.

- 3.8 Of course while landscape effects are deemed acceptable in the Pre-Assessed Areas, the same does not apply to visual effects and especially when it comes to residential properties, and under Policy 18 of the NDF it is expected that due regard will be had in the decision-making process to matters such as residential amenity. However, what follows in paras 9.24-9.29 of the Bridgend Impact Report goes in the view of the Applicant much further than a neutral statement of effects. What follows from here on to the end of the section is a planning assessment, since it seeks to provide planning evidence as to the acceptability of the scale of effects, as opposed to simply defining what they are. It strays from the neutral to the partial when it comes to its assessment of the actual effect on properties. For example, in para 9.26 it seeks to equate its Policy ENV18 which refers to “visual dominance” to the Fforch Nest decision where the wording is actually to be “so dominant that they would have an unpleasant, overwhelming and unavoidable presence”, and then in para 9.30 to turbines being an “unavoidable presence” in views from communities at the northern end of the Ogmore Valley. Yet they go on in the same paragraph to accept that the turbines would not “dominate outlook”. This part of the text is akin to a planning statement of evidence which sits rather uncomfortably against the “factual statement” that the Report is

meant to be. Even allowing for that, its confusion about terminology suggests that the Applicant's assessment of the acceptability of the effects, to which further commentary is added by Land Use Consultants in their separate written response to this aspect of the Council's Impact Statement, is to be preferred in the final decision.

- 3.9 The final sentence in para 9.33 invites the Inspector to consider whether the impacts on living conditions of residents inside Bridgend are outweighed by the (then) strategic policy support for development of large scale wind energy within and immediately adjacent to the Strategic Search Areas in TAN8. This is of course no longer the test. The boundaries of the old SSAs are no longer in existence in a planning policy context, and the Inspector will be being asked to consider the impacts on residents, which the Council have conceded do not in any location dominate the outlook from properties. The evidence from LUC points to the orientation of different sets of properties such that a main outlook towards both Llynfi Afan/Upper Ogmere and Pant y Wal/Fforch Nest is not generally available.

- 3.10 The Bridgend Report also makes references to recreational receptors and it is not proposed to make detailed comments on this aspect. However, it can be noted that in the context of the two VPs they have cited (VP2 and VP3) both are referred to as having views associated with the SLA, and of course this specific site of the Application and large areas to east and west of it are part of PAA9 in the NDF. It will be a matter for the Inspector to address how the landscape acceptability of this specific site which happens to be in PAA9 as well as a local Council SLA is treated when it comes to views of this landscape with a wind farm within it. Of course it is already the case that for views from both north and south of the Application site those views will take into account the six existing turbines of Llynfi Afan lying immediately to the north of the current proposed seven turbines, as well as the three to the west inside NPT which are in their SLA, and the three to the south-west which have been consented by Bridgend.

4. **Conclusions**

- 4.1 Neither Council in its respective Impact Report has addressed the implications that the NDF has for their own policy positions. The NDF did not change the Welsh Government target figures to which Neath Port Talbot do refer, yet neither Council has referred even to the draft NDF of September 2020 as a major change in the Direction of Travel being pursued by Welsh Government – a position that is now endorsed in the final version. In both Councils any reliance they may have sought to place on TAN8 and its iterations of Strategic Search Areas has now disappeared. The value that Bridgend place on their SLA designation will need to be carefully scrutinised by the Inspector against the fact that this designation was taken into account by ARUP in their two stage studies to produce the new Pre-Assessed Areas. The presumption in favour of the acceptability of a wind farm on the Application site now contained in the NDF and specifically in Policy 17 will take precedence over the policy position set out in both Councils' LDPs and in their SPGs.