

CHAPTER 1 - INTRODUCTION

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1 INTRODUCTION

Introduction

- 1.1 This Environmental Report is submitted in support of a planning application for full planning permission by Energiekontor UK Limited (herein after referred to as 'the Applicant') for the development of two wind turbines, and associated infrastructure (herein after referred to as 'the Proposed Development') on a development site (herein after referred to as the 'Site') of approximately 6.4 hectares.
- 1.2 The Site is located approximately 5.5km to the south-east of Llanybydder and 2km to the north of the village of Rhydcymerau, above Esgairliving Farm (Figure 1.1 – Site Location). The west of the Site is bound by the Lon Felin Rhydybont road. The south of the Site is bound by the B4337. Further afield to the north lies the parish of Pencarreg.
- 1.3 This Environmental Report has been prepared by Energiekontor UK Limited and sets out the findings of various environmental assessments of the Proposed Development. The Planning Application was coordinated by the Applicant. The Environmental Report considers the likely effects on the environment arising from the Proposed Development during construction, operation and decommissioning.

The Applicant – Energiekontor UK Ltd

- 1.4 Energiekontor UK Ltd (EK) is a renewable energy development company with offices in Glasgow, Edinburgh and Leeds. The company was formed in 1999 and develops small to medium-sized onshore wind and solar farms throughout the United Kingdom. The company operates eight existing wind farms in the UK with a number of other wind and solar projects at various stages of the development process throughout the UK.
- 1.5 Energiekontor UK Ltd is part of the Energiekontor Group. The parent company, Energiekontor AG, was established in 1990 in Bremerhaven in Northern Germany. It has since grown to become one of the leading wind energy companies in Europe and is active in Germany, France, The Netherlands, Portugal, the USA and the UK. The company has built more than 100 onshore wind farms in Europe.

Planning History

- 1.6 A Planning Application (Ref: W/31728, herein after referred to as 'the Original Planning Application') and accompanying environmental information was submitted by the Applicant under the Town and Country Planning Act 1990 for two turbines of 100m tip height, and associated infrastructure, at the same location as this submission in March 2015. The Council considered the development non-EIA and subsequently granted planning permission in March 2016 (herein after referred to as 'the Original Planning Permission').
- 1.7 Following this, an application (Ref: W/34341, herein after referred to as 'the Variation Application') was submitted by the Applicant to the Council in August 2016 under section 73 of the Town and Country Planning Act 1990, in which a variation was sought for the aforementioned planning permission (Ref: W/31728) as to not comply with Condition 2, which stated that: "The development shall be carried out in accordance with the following approved plans and documents: Figure 3.1 Typical Wind Turbine Elevation". The Applicant proposed to supersede Figure 3.1 with a new figure (Figure 3.1a), essentially requesting a 25m turbine tip height increase from 100m previously granted to 125m. Additional environmental information was provided with the Variation Application, including on landscape and visual and noise. The Council refused the Variation Application in March 2017 for the following reasons:
- The proposed development is contrary to Policy RE2 of the Carmarthenshire Local Development Plan;
 - The proposed development is contrary to Policy SP11 of the Carmarthenshire Local Development Plan; and
 - The proposed development is contrary to Planning for Renewable Energy - Technical Advice Note: 8 Planning for Renewable Energy (2004).
- 1.8 The Applicant appealed under section 78 of the Town and Country Planning Act 1990 against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990.
- 1.9 The Welsh Minister's appointed inspector ('the Inspector') provided an appeal decision ('the Appeal Decision') in February 2018 in which the following main issues were considered:

- the landscape character of the site and surrounding area, particularly that of the Teifi Valley Special Landscape Area (“SLA”);
- the visual effect of the scheme, particularly on local residents and users of rights of way and publically accessible areas; and
- Whether any harm identified in relation to the foregoing is outweighed by any additional benefits of the scheme and its contribution to renewable energy production.

- 1.10 The Inspector's decision was that the appeal should be allowed and planning permission granted for the Variation Application without compliance with Condition 2 previously imposed by the Original Planning Permission but subject to the conditions set out in the schedule attached to Inspector's Appeal Decision.
- 1.11 As a procedural matter, as stated in the Appeal Decision, during the appeal a screening direction was issued by the Welsh Ministers that concluded that “*the proposal is not ‘EIA development’*”.
- 1.12 Following this, the Appeal Decision was challenged by a local resident (John Leslie Finney, ‘the Claimant’) in the High Court of Justice, in which it was argued *inter alia* that the Inspector should not have allowed the appeal because she had no power under Section 73 to amend a condition pursuant to which a prior planning permission had been granted which had the effect of directly contradicting the description of the development permitted in that earlier permission (i.e. the Original Planning Permission)¹. Further or alternatively, the Claimant asserted that the Inspector failed to consider at all (as she should have done in accordance with established legal principles) whether the application before her constituted a “fundamental alteration” of the earlier permission. Following a hearing in September 2018, the judge concluded that “*the Inspector did consider whether the application constituted a fundamental alteration of the original proposal and that it is proper to draw the inference from her decision letter read as a whole that she considered that it did not.*” As such, the Claimant's application was dismissed, and the Appeal Decision stood.

¹ <https://www.bailii.org/ew/cases/EWHC/Admin/2018/3073.html> (Last Accessed: 21/09/2020)

- 1.13 The above High Court judgement was then appealed by the Claimant to the Court of Appeal in which the judge's ruling was contrary to that of the High Court and the appeal was allowed; quashing the Inspector's Appeal Decision because it was "*beyond her powers*"².
- 1.14 It should be noted that through the entire aforementioned court processes the determinative issue was around the procedural appropriateness of using section 73 of the Town and Country Planning Act 1990 to vary an existing planning permission, and not whether the development itself of 125m turbines on the Site would be unacceptable in planning/environmental terms. Again, to reiterate, the development of 125m turbines on the Site was considered non-EIA development by both local and national authorities and was not disputed, and the Appeal Decision considered the overall acceptability in planning terms of the 125m turbines in detail.

The Proposed Development

- 1.15 The Proposed Development is described in detail in Chapter 3: Project Description. It includes the following principal elements (these collective elements will herein after be referred to as 'the Proposed Development' – see Figure 1.2):
- Two turbines, up to 125m tip (total installed capacity would be in the region of 5MW);
 - Turbine foundations;
 - New and upgraded tracks;
 - Crane hardstandings;
 - Temporary storage area;
 - Substation;
 - Upgraded site entrance; and
 - Temporary construction compound.
- 1.16 It is proposed that the two turbines will be erected at the approximate grid references, detailed in Table 1.1 below, in fields above Esgairliving Farm. Note: these locations are the same as the previous planning applications on the Site.

² <https://www.bailii.org/ew/cases/EWCA/Civ/2019/1868.html> (Last Accessed: 21/09/2020)

Table 1.1: Proposed Turbine Coordinates

Turbine Number	Easting	Northing
T1	256960	241001
T2	256950	241248

- 1.17 The red line planning application boundary is known as the 'Site Boundary', shown in Figure 1.1. The land edged blue on Figure 1.1 is under the control of the Applicant for purposes of the planning application.
- 1.18 Planning permission is sought for 25 years of the operational phase of the wind farm. After the expiration of this period the turbines would be decommissioned and removed. Any alternative course of action would require a fresh planning application to be submitted.

Structure of the Environmental Report

- 1.19 The Environmental Report (ER) is presented in three separate volumes, as below.
- Volume I: Written text (this document);
 - Volume II: Figures; and
 - Volume III: Technical Appendices
- 1.20 An Executive Summary of the ER is provided at the start of this report, provided in English and Welsh.
- 1.21 In addition to the Environmental Report, the planning application will be supported by the following documents:
- Planning Statement;
 - Design and Access Statement; and
 - Pre-Application Consultation (PAC) report.

Screening Exercise

- 1.22 An EIA Screening Request was submitted to the Local Planning Authority, Carmarthenshire County Council (CCC) in October 2020. CCC has confirmed that the Proposed Development is not considered EIA Development.
- 1.23 The EIA Screening Request is provided in Appendix 1.1.

Contact for Further Information and Commenting

- 1.24 The coronavirus pandemic (Covid-19) and lockdown restrictions has meant that, inline with regulations³, we are unable to provide physical copies of the Environmental Report in the locality of the Proposed Development. Due to this, documents can be viewed online at <https://www.energiekontor.co.uk/our-projects/mynydd-pencarreg>.
- 1.25 For additional copies, a charge of £15 will be made for a full electronic copy of the Environmental Report on CD. Costs for paper copies are as follows:
- Volume I – Written Text £100
 - Volume II – Figures £250
 - Volume III – Technical Appendices £100
- 1.26 Electronic and physical copies can be requested via email at ***Fred.Brown@energiekontor.com***

³ The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020