

11 February 2016

Bond Dickinson LLP

Ballard House  
West Hoe Road  
Plymouth  
PL1 3AE

Tel: 0345 415 0000  
Fax: 0345 415 7900  
DX: 8251 Plymouth 2

[sarah.holmes@bonddickinson.com](mailto:sarah.holmes@bonddickinson.com)  
Direct: +44 (0)1752 67 7703

Our ref:  
KJG1/SCH1/380720.1  
Your ref:  
APP/W1850/W/154/3137440

Planning Inspectorate  
3/09 Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

email: [teamp1@pins.gsi.gov.uk](mailto:teamp1@pins.gsi.gov.uk)

Dear Sirs

**Town and Country Planning Act 1990**  
**Appeal by Bolsterstone Innovative Energy (Reeves Hill) Limited**  
**Site address: Land at Reeves Hill, Reeves Hill, Nr Knighton, Herefordshire**

We refer to your letter of 28 January 2016 enclosing a copy of the LPA's statement and the third party representations. We set out below the Appellant's comments.

**Summary**

- The LPA, its consultants and third parties do not identify any published guidance, standards, policy or other publications that specify that infiltration tests must be undertaken before a Surface Water and Ground Water Management Plan can be approved, rather than be specified to be undertaken as part of such a Management Plan.
- Contrary to the suggestions by the LPA and some third parties, the Surface Water and Ground Water Management Plan will ensure that the infiltration testing is undertaken and inform the detailed design of the components of the development for which approval of Herefordshire Council is required prior to construction (including conditions 22 and 23, neither of which are conditions precedent to the commencement of development).
- The Surface Water and Ground Water Management Plan provides sufficient detail for the Environment Agency to have noted (see correspondence within the LPA's Appeal Questionnaire) that the proposed measures will also ensure the protection of private water supplies in accordance with the plan approved by the LPA under condition 13. The level of detail provided is sufficient to provide assurance that the relevant development plan policy objectives will be achieved.
- Parsons Brinkerhof have confirmed that if Herefordshire Council will have an appropriate opportunity to review and approve the detail regarding infiltration testing and calculations (which it will under conditions 22 and 23 for development within Herefordshire) then they have no objection to the discharge of the condition. Similarly, they would not object if the details fall under the jurisdiction of Powys Council (which for accesses to turbines 1, 2 and 4 they do).
- The third parties raise a number of objections to the principle of the Reeves Hill Wind Farm and to the handling of the proposed development by Herefordshire. These are not relevant to the determination of this appeal. Herefordshire Council obtained Counsel's Opinion prior to the approval of an application for non-material amendments and no challenge was made to that decision. Further, there has been no successful challenge to the grant of planning permission DCWM/2008/1289F.

## **LPA Statement of Case**

The Appellant comments on the LPA's Statement of Case are made by reference to the numbered sections and paragraphs as they appear in the LPA's Statement.

## **Planning Policies**

2.6 New development plan Policy SD3 – sustainable water management and water resources - and the previous development plan Policy DR4 both have the objective of safeguarding the availability and quality of water resources and avoiding proposals that adversely affect water quality. The Appellant's case in respect of the planning policy objectives and their application to the Surface Water and Grounds Water Management Plan which is the subject of this appeal are set out in paragraph 6.13 of the Grounds of Appeal.

## **Explanatory comments**

4.2 The LPA relies entirely on the advice of the consultants it engaged to advise it in connection with the discharge of Condition 14. At paragraph 5.2 of the Grounds of Appeal the Appellant expressed concerns about the level of information provided to the consultant. The Appellant notes that the consultants, identified as Parsons Brinkerhof, in their email dated 17 December 2015 state that if Herefordshire Council will have an appropriate opportunity to review and approve the detail regarding infiltration testing and calculations (which it will under conditions 22 and 23 for development within Herefordshire) then they have no objection to the discharge of the condition. Similarly, they would not object if the details fall under the jurisdiction of Powys Council (which for accesses to turbines 1, 2 and 4 they do).

The Appellant notes that the Council has given no other substantive reason, beyond the concern expressed by its consultants, for its refusal to discharge the planning condition. It has not identified any other source of information, guidance or other authority on which to rely in refusing to discharge condition 14.

## **Appellant's grounds of appeal**

5.1 It is not the Appellant's case that the Council ought to rely on potentially overlapping elements of a condition that Powys County highway department have advised they would wish to seek to impose on any application to revise the access arrangements. Herefordshire Council has jurisdiction to determine the acceptability of development within its jurisdiction but it does not have jurisdiction to determine the acceptability of development or, indeed, any Surface Water and Ground Water Management Plan, in respect of land within Powys (see paragraph 7.3 of the Grounds of Appeal).

5.2 The Surface Water and Ground Water Management Plan sets out how the surface water drainage and pollution prevention measures will be designed. The Management Plan expressly sets out the undertaking of infiltration tests. Although these are expected to confirm the assessments to-date (including through the EIA process) that soakaways will be adequate, the Management Plan sets out the steps that will be taken if this is not the case. The planning condition requires the Appellant to implement the approved measures and accordingly they will be addressed in the detailed design of the site access that lies largely in Herefordshire (condition 22) and the onsite access, turning area and parking facilities, all of which lie within Herefordshire (condition 23).

5.3 The LPA has incorrectly recited condition 22, which following amendment stipulates that "*Before any use of the access, the access required from the adjoining public highway into the site will be constructed in accordance with the specification to be submitted to and approved in writing by the relevant highway authority as the Local Planning Authority, at a gradient not steeper than 1:12*". The amended condition is recited in the Grounds of Appeal at paragraph 4.4.4 and the 2012 planning permission and the amendments subsequently approved accompany the Appeal submission. We do not believe that this incorrect recitation impacts on the LPA's case.

5.4 Contrary to the LPA's statement at paragraph 5.4, drainage is an important factor in highway safety since a poorly drained access and other hard areas are capable of causing water hazards on the public highway. This is why the Surface Water and Ground Water Management Plan includes

information on the drainage of the site accesses and other areas within the development. Conditions 22 and 23 are concerned with drainage arrangements and, indeed, condition 13 explicitly lists drainage as one of the details to be approved.

The Appellant is puzzled by the suggestion that it does not wish to undertake the development in accordance with the approved access locations: there are no approved access locations to turbines 1, 2 and 4 because these lie within Powys. Subsequent to the grant of planning permission DCNW/2008/1289F Powys County highways department requested an alteration to the angle of access from the public highway into the Reeves Hill Wind Farm. The Grounds of Appeal explain at paragraph 3.6 the relationship between the on-site access roads within that part of the site that lies within Herefordshire and the accesses within Powys. There are implications for the design of the access to turbine 3 that lies within Herefordshire, too. The amendments requested to the access designs are not significant since the changes requested are concerned with the angle of entry. Owing to the different angle of entry there would be a need for some realignment of short parts of the onsite access tracks already approved by Herefordshire to ensure that they meet with the elements of the development to be approved by Powys. The Appellant would far rather have had to deal with only one local planning authority.

5.5 The Surface Water and Ground Management Plan (condition 14) and the Private Water Supply Protection Plan (condition 13) specify the measures to be undertaken in the detailed design of components of the Reeves Hill Wind Farm that require subsequent approval by Herefordshire Council before those components of the development can proceed. Contrary to the LPA's statement at paragraph 5.5 of its Statement of Case, conditions 13 and 14 require the approved measures to be implemented. Since the measures are integral to the detailed designs required to be submitted to and approved by the LPA under other planning conditions (specifically 22 and 23) the information identified by Parsons Brinkerhof would be required to be provided. The Surface Water and Ground Water Management Plan identifies the need for the infiltration tests and calculations identified by Parsons Brinkerhof and provides that these will be undertaken and submitted for approval as part of the detailed design of the relevant elements of development in accordance with the planning permission.

5.7 The Appellant does not agree with the LPA's interpretation of the subsequent response from Parsons Brinkerhof. In particular, there is further opportunity to submit infiltration tests and for these to inform the detailed design of components of the Reeves Hill Wind Farm that planning permission DCNW/2008/1289F expressly requires must be submitted to and approved by the LPA.

### **Conclusions**

6.1 Conditions 22 and 23 will apply to all development undertaken pursuant to planning permission DCNW/2008/1289F, including to any variation approved to ensure that the onsite accesses meet the revised access arrangements requested by Powys County Highways Authority and within the jurisdiction of Powys County Council. As Condition 14 requires the implementation of the approved Surface Water and Ground Water Management Plan, it will apply to the design of the development required to be approved pursuant to conditions 22 and 23.

### **Third party representations**

A number of matters are raised in the third party representations that do not concern the subject matter of the appeal, which is solely about the adequacy of the Surface Water and Ground Water Management Plan submitted to discharge condition 14. In response to the concerns/objections raised:

- The submitted Management Plan is very clear that as part of the process of securing detailed approval of the matters specified in the planning conditions infiltration tests will be undertaken. Following infiltration tests, the Management Plan contemplates attenuation through soakaways, if the calculations confirm the expectation that soakaways will be used as set out. It also considers additional measures if soakaways are not sufficient. The planning conditions clearly secure the protection of the water environment and the amenities of residents by requiring that prior to any further components of the proposed development taking place the details for their design must be submitted to and approved by Herefordshire Council. It is not the function of the Management Plan submitted pursuant to Condition 14 to set out the detailed designs of the

accesses, tracks, hardstandings, turbines and other components for which planning permission is granted by DCNW/2008/1289F.

- The Environment Agency has been conscious of the concerns raised regarding water supplies, flooding and pollution in its responses (which accompany the LPA Appeal Questionnaire). It recognises the overlap between the measures to secure the protection of private water supplies and the protection of surface water and ground water. It confirms that measures set out in the Surface Water and Ground Water Protection Plan (which clearly contemplate the undertaking of the infiltration tests subsequent to the approval of the Management Plan) are suitable to ensure the protection of private water supplies. If the Environment Agency considers the level of detail to be acceptable, including the undertaking of infiltration tests at a later stage, then it is hard to understand why the LPA is not also satisfied, particularly when the LPA has found the level of detail in the Private Water Supplies Protection Plan to be acceptable and so discharged condition 13.
- In common with other planning applications for wind farms, many objections were raised to the proposed Reeves Hill Wind Farm. The majority of the third party representations include some reference to an objection to the principle of the proposed development. These are not relevant to the determination of this appeal. The LPA's documentation includes correspondence from the LPA's legal department confirming that Herefordshire Council obtained Counsel's Opinion prior to the approval of an application for non-material amendments and stands by the decision made by the Council. No challenge was made to that decision. Further, there was been no successful challenge to the grant of planning permission DCWM/2008/1289F.
- As explained in section 3 of the Grounds of Appeal the Appellant has not chosen to ignore the revocation of the Section 73 permission.
- The Appellant's position regarding the lawfulness of the technical start made to implement planning permission DCNW/2008/1289F has been the subject of a separate letter addressed to Mr Simon Bliss. No access from the public highway was used in order for the site establishment works, which were sufficient to amount to development for the purposes of the Town & Country Planning Act 1990 (as amended), to take place. The works of development were not the subject of conditions requiring prior approval of the Council, although approved measures were complied with and an ecologist was present to ensure the protection of great crested newts in accordance with the method statements and strategies for protected species approved pursuant to condition 16. The location of the works was in accordance with the details approved by DCNW/2008/1289F.

Yours faithfully

A large black rectangular redaction box covering the signature area.

**Bond Dickinson LLP**