

P.S.O.W.
08 JUN 2012
P.S.O.W.

WITNESS STATEMENT

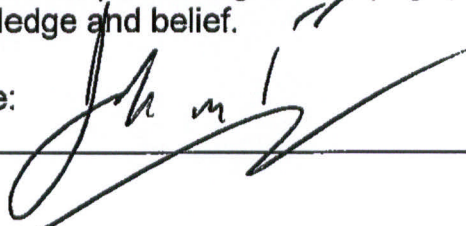
Statement of: Councillor John Foulkes

Age if under 18: 'over 18' (if over 18 insert 'over 18')

Occupation: FARMER

This statement (consisting of _____ page(s) each signed by me) is true to the best of my knowledge and belief.

Signature:



Date:

2/6/12

Questions

1. Please confirm that you have undertaken to accept the terms and conditions of the Code of Conduct of Penmynydd and Star Community Council (Appendix A).
2. Please confirm how long you have been a member of Penmynydd and Star Community Council.
3. Please describe any training or advice that you have had on the Code of Conduct (other than your conversation with Meirion Jones on 6 December 2011 – I will ask specifically out that below).

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4. Please explain why you contacted Meirion Jones on 6 December 2011(Appendix F).

5. Please explain in as much detail as you can the content of the conversation that you had with Meirion Jones on 6 December. Please quote any specific remarks that you recall saying to Mr Jones or recall hearing him say to you.

6. Please confirm the details of any planning applications you have submitted to erect wind turbines on your land. What is the current status of these applications (Appendix G).

10. I understand that you did not declare a personal or prejudicial interest in agenda item 5 and 5.1 relating to a planning application for a wind farm in the area (Appendix D). Did you consider whether you had a personal or prejudicial interest in this issue?

11. What factors did you take into account in deciding that you had no personal or prejudicial interest to declare in the matter being discussed at agenda item 5 and 5.1.

12. It has been suggested in the complaints, and the attached statements (Appendices H – M) that there was a considerable number of the public at the meeting and that the majority of attendees were against the wind farm development. Please confirm your recollection of the nature of the meeting and the general feeling of the public present on the issue of wind farms.

13. I understand from the complaints, and the attached statements, that you participated with the other members present in the discussion on agenda item

5.1. Please confirm your recollection of the nature of this discussion and your contribution to it.

14. It is stated in the complaints that you persuaded other members, who had indicated that they were minded to abstain, to vote in favour of the application. Please give your comments on this allegation.

15. I understand that you proposed the vote in favour of supporting the application. Please explain the factors you considered in deciding to propose a vote to support the wind turbine application.

16. Do you accept that you had a personal interest in item 5.1 on the agenda of the meeting of 7 December 2011 by virtue of paragraphs 10(a)(vi) and 10(c)(i) of the Code? If not, why not?

17. Do you accept that in failing to declare a personal interest you may have breached paragraph 11 of the Code?

18. Do you accept that a member of the public, with knowledge of the relevant facts, would reasonably regard the fact that you had already submitted your own wind farm application as so significant that it would be likely to prejudice your judgment of the public interest in discussing and voting on an application for a similar neighbouring scheme?

19. Do you accept that the personal interest may also have been prejudicial by virtue of paragraph 12 of the Code?

20. Please take the opportunity to make any further comment that you wish on this matter.

Signature:
Date:

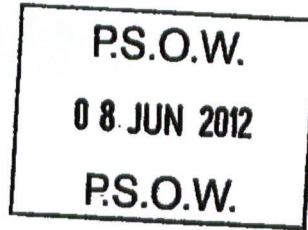
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2/6/12

Signature witnessed by: *E. A. Davies*

Continuation Sheet – Witness statement of Councillor John Foulkes

U

C



Answer to witness statement (7 pages).

Case reference number: 201102860

1. Yes.
2. Estimate 20 years (possibly longer)
3. No specific training, I have received a copy of the code of conduct from the community council.
4. I contacted Meirion Jones knowing that a public meeting was taking place followed by the community council and an application for a wind turbine would be on the agenda.

Signature:

Date:

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2/6/12

Signature witnessed by:

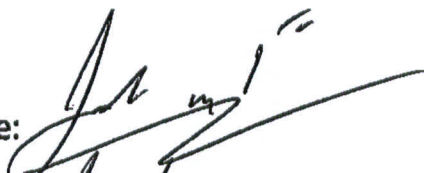
E. A. Davies

5. I have read Meirion Jones's letter to you and agree that the contents are basically correct, but two other scenarios were discussed.
- a. Application for a planning permission for a renewal of a property known as Llinos Penmynydd and a property that I own being Tyn- Buarth Penmynydd, both properties are due for a total renewal. I told Meirion Jones that I took part in the discussion in the planning application for Llinos knowing that I would have similar planning application in the pipeline, to my recollection he answered that the application was not really unique and it was probably alright to have taken part in the discussion and vote.
 - b. I again discussed with Meirion Jones about a planning application for a new dwelling in the village of Star, which I took part in knowing that I had similar land of the other side of the village that could be considered for planning, his reply was again that the application was not really unique and it was probably alright to have taken part in the discussion and vote. Then we returned to the matter of the planning of the wind turbine at Ty Fry Rhoscefnhir , his opinion was that this was more unique, but only I could make the decision whether I should declare an interest. I specifically recall Meirion Jones saying:
 - Situation not really being unique
 - Situation being more unique
 - And only I could make the decision

More than likely a recording of the conversation would be available to you from the council office.

Signature:

Date:


2/6/12

Signature witnessed by:

E. A. Davies

6. Prior to the 7th of December 2011, I had submitted three individual screening applications for wind turbines at the following locations

1. Marchynys, Penmynydd
2. Tyn-Buarth, Penmynydd
3. Treferwydd, Llangaffo

After the submission of these planning applications, Anglesey County Council Planning decided that an environmental impact assessment was not required for the size of the individual turbines. Today being May 30th 2012, relevant information and documents have been collected and have been presented to the planning department.

7. There was a general discussion about wind turbines, and I declared that I had made a screening application for a wind turbine.

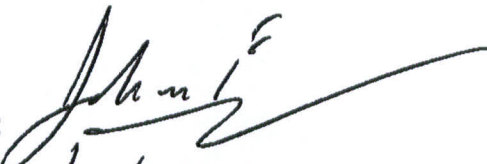
8. That I had submitted a screening application, and because there was a general discussion about wind turbines.

9. I was present and I recall I did not take part in the discussion and also recall the remaining councillors agreeing to allow Anglesey Against Wind Turbines to hold a public meeting prior to any application for a wind turbine.

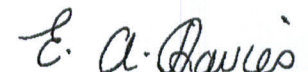
10. Yes I did give it careful consideration.

Signature:

Date:


2/6/12

Signature witnessed by:



11. Distance and Location

Location of the planning application was a good distance away and out of the view of my own planning application. Ty Fry site is by the river Ceint in a small valley and my own proposed site is in another valley by the river Braint and well out of view.

Anglesey Councillor Eric Jones stated in the public meeting that the planning authority to date had received 74 planning applications for wind turbines, and had dealt with four of them on the same day in a planning committee. With 74 applications in hand wind turbines are no longer unique in my opinion.

12. There were approximately 120 people in the hall, few more in the hallway and an unknown amount outside. Those present were clearly members of Anglesey against wind turbines, and they were well organised in the people that gave presentations on the evening. In my own view there were very few local people present at the meeting. There was a hostile mood against wind turbines and all planning matters in general.

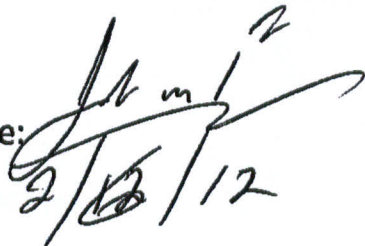
13. Yes I participated in the discussion. I stated that several planning applications had come before the community council over the years for example

- Waste recycling plant at Penhesgyn
- A methane generator producing electricity at Penhesgyn
- Compost site again at penhesgyn

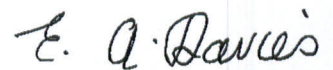
At the time of these applications there were various allegations that these developments would harm the area, create untold traffic, sound and odours and at the time there was significant over reaction. Today, very few of the local residents would notice the whole development.

Signature:

Date:


2/12/12

Signature witnessed by:



14. I did not pressurise or persuade any member of the council to vote in favour of the application.

15. Yes I proposed the vote in favour of the application. I knew the exact location of the proposed site and in my view it would have minimal effect on the surrounding properties and area. Anglesey council has declared itself an energy island generally in favour of schemes which produce electricity. Planning policy dictates a presumption in favour of renewable energy.

16. I had no personal interest in item 5.1 on the agenda

- a. I have no business interest with the family in Ty-Fry
- b. I have different planning consultants to the Ty-Fry Site
- c. Not in direct view of my proposed site.
- d. Councillor Eric Jones said there were 74 applications in hand.
- e. Wind turbines being no longer and unique situation.
- f. Meirion Jones said that only I could make the decision.
- g. I do not accept if planning permission was granted that it would enhance my chances of having a wind turbine.

17. I have read the code of practice before and after the meeting and I still maintain that I have not breached paragraph 11 of the code of practice.

18. Very few people in the public meeting would have been able to identify the site at Ty-Fry or the proposed site for my own wind turbine, they were against wind turbines regardless of locations or size. A member of the public which is not associated with Anglesey Against Wind Turbines but with knowledge of the sites would realise that they are definitely not neighbouring and would not consider question 18 to be relevant.

Signature: 

Date: 2/6/12

Signature witnessed by: E. A. Davies

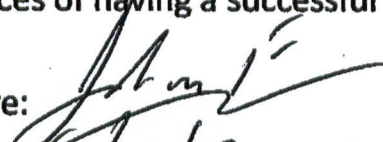
19. I do not accept that I have gained any personal interest in my decision to support the Ty Fry applications. I have read paragraph 12 before and after the meeting and still maintain that I had no personal interest.

20.

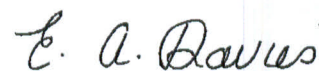
- a. I have served on the Penmynydd Community council for approximately 20 years. The nature of the work over the years has not varied a great deal. Most of the planning applications are either extensions to houses, conversions of existing farm buildings, new agricultural buildings, new houses and highway matters, if I was to declare an interest in all these matters my role as a community councillor would be non-existent. It could be argued that the councillors who voted against the development could also have a prejudice interest in fear of the development reducing the value of their own properties.
- b. In the evidence and letter received there are references to wind farms and wind turbines. The Anglesey planning authority and Welsh Assembly have a clear definition between wind farms and single wind turbines these particular complaints are about applications for single wind turbines.
- c. In my telephone conversation with Meirion Jones he used the analogy of two applications for new bungalows on a green field site. If one was approved the second was more likely to be approved, I agree totally with his statement and have declared an interest in planning applications for wind turbines which are neighbouring and in full view of my own sites. This application was at Ty Gwyn, Penmynydd by Mr O. Owen for an anemometer (application number 41c103m). This site is roughly 1km from my Marchynys application "as the crow flies". In comparison the Ty-Fry application is much further away (3km "as the crow flies") and would not greater my chances of having a successful planning application in my view.

Signature:

Date:


2/6/12

Signature witnessed by:



- d. The phrase neighbouring scheme appears in various documents I hope you will be able to access a map which shows contours in the land and location of different planning applications.
- e. Since the community council meeting on the 7th of December, three community councillors have resigned, two of them due to the comments they received outside the hall that evening. These gentlemen were pillars of the local community and have served the people of the area for decades. Now all three vacancies on the council have been appointed with members of the community who are also active members of Anglesey Against Wind Turbines. I would appreciate your view if a person that is a member of Anglesey Against Wind Turbines group would have a prejudicial judgement against an application for wind turbines, and voting against without giving due consideration for planning policies and the view of the silent majority of the wind turbine supporters.
- f. I have given the matter a lot of consideration after all of the complaints and I am confident that I made the right decision at the time.

Signature:

Date:

John P...
2/6/12

Signature witnessed by:

E. A. Davies

Appendix

16

000109

Attendance Note

For Legal Services Manager

Matter reference: CC-007318-RMJ
Matter name: Cynghorau Cymunedol a Threfol - Cynhorion
Attended by: Meirion Jones
Attendance with:

Attendance on: 01 December 2011
Recorded on: 09 December 2011
Subject: Attendance Note

On Thursday last week Councillor Peter Rogers telephoned me regarding a Community Councillor and whether he had to make a declaration in a Community Council meeting which was coming up the following week. He gave me a few details but I suggested that he tell the Community Councillor to contact me so that I could discuss the matter with him. On Tuesday 6th of December I received a message that John Foulkes had telephoned and that he would contact me again in the afternoon. I know John Foulkes as a farmer of Marchynys, Penmynydd. I live in the neighbouring village of Llanfairpwll.

When he telephoned I explained to him who I was because we know each other but he may not have realised that I was the person that he was speaking to. He explained to me that there was a Community Council meeting in Penmynydd on the Wednesday evening and there was an application for a wind turbine in the Pentraeth area (Rhoscefnhir). He said that he had an application for a wind turbine which would be coming through the system shortly at his property Marchynys. He wanted to know whether it was in order for him to attend the meeting of the Community Council and take part and vote.

I referred him to the Code of Conduct and I said to him at least 3 times during our conversation that it was a matter for him as the individual Councillor to make his own decision having considered the requirements of the Code and the facts of the matter. I referred him to the Code of Conduct of which he would have had a copy as a Community Councillor but also he could see the version which is on the Council's website. I referred in particular (and when I was doing that I had my version of the Code up on the screen on my computer) to paragraphs 10(2)(a) and 10(2)(c) and paragraph 12. I read out various parts of the Code to him including paragraphs 10(2)(a) and a number of the sub-paragraphs and 10 (2)(c)(i) and referred to "well-being" and "financial position".

He said to me that he was aware that there was a "small objection" to his application but he said that the Rhoscefnhir application before the Community Council was nothing to do with him and no contact with his application. He was of the view that because the two matters were different he could take part.

As I have indicated I did point out to him that if he considered that he did have a personal interest then he should then move on to the question of whether it was prejudicial and I referred to paragraph 12. I emphasised that it was a matter for him to decide whether he considered he had a personal interest and whether he should declare it and not take part in the meeting. I did suggest to him that if this application was approved then it was more likely that his application would be approved and therefore it was a matter for him

to consider whether he in fact should take part in the matter or not. I used the analogy of two applications for a new bungalow in a green field. If one was approved then the second was more likely to be approved.

We were on the phone for about 10 minutes and we concluded by my saying to him that it was a matter for him to decide having considered the facts and the Code. I could not make a decision for him because I would not have all the facts and in any event it was a matter for him to decide.

As a local resident I am aware of the quite strong feelings regarding the application for the erection of a wind turbine in the Penmynydd area. I was aware that there was going to be a public meeting in Penmynydd on the Wednesday evening the 7th of December. I happened to see the Welsh News at 7.30 on S4C and Sion Tecwyn the Reporter was present and he spoke to Owain Evans a member of the community.

What I was not aware of was that the public meeting preceded the Community Council meeting.

On the 8th of December I received a telephone call from Richard Edwards 07884313050 regarding the application for a wind turbine at Rhoscefnhir which came before the Penmynydd Community Council the previous evening. He was concerned about one of the Councillors voting on the matter when he himself has an application to come before the Council in the future. He wanted to make a complaint and I explained to him that if it was a complaint about the behaviour of the Councillor, he had to make it to the Ombudsman. He had been on the Ombudsman's website and we discussed that aspect and if he had any difficulty with proceeding then he could contact me again.

I received 2 messages from Susan Owen in the afternoon of the 8/12 after I returned from the Council meeting and I telephoned both. Firstly, Mrs Tooze on 01248 750431 and it was clear that she was demanding to see me so I arranged for her to come to see me at 3 o'clock on 9/12.

I telephone Carolynne Johnson on 07836750214 and she wished to make a complaint. I explained to her about how to make a complaint to the Ombudsman. She said that she was not the type of person to complain usually but she felt very strongly that one of the Councillors should not take advantage of the situation when the Rhoscefnhir matter was similar to his own application. I said that I would send her the Ombudsman's document although we did speak about her going on his website. Her address is Gwel Eryri, Rhoscefnhir, Pentraeth LL75 8YU. (The letter was sent on 9/12).

I saw Mr & Mrs Tooze on 9/12 and Mrs Tooze referred to the first meeting which was the public meeting. She referred to health and safety matters that there people outside and their views would not be heard and the Council wanted views of the public etc. I explained that I did not believe that the County Council was responsible for the public meeting and that the Community Council is a separate entity to and different from the County Council. I directed her to the Clerk and the Chairperson of the Community Council regarding the public meeting.

With the other matter, the behaviour of the Councillor, I gave her a copy of the Code and the form from the Ombudsman "How to complain that a local authority member has broken the code of conduct".

During the conversation which lasted about 20 minutes she referred to John Foulkes' comment that "I've been in contact with Llangefni and they have said it's alright for me to take part".

Appendix

17

- 12 Rhif y Cais / Application Number 30C663A
Plwyf / Parish Llanfair M.E.
Ymgaisydd / Applicant Mr Harol Barton
Lleoliad / Location Ty Coch, Brynteg
Adnewyddu caniatad cynllunio amlinellol rhif 30C663 ar gyfer codi annedd a modurdy ynghyd a creu mynedfa newydd i gelr ar dir yn / Renewal of outline planning permission ref 30C663 for the erection of a dwelling and garage together with the construction of a new vehicular access on land at
Caniatáu / Permitted
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 26/07/2011
- 13 Rhif y Cais / Application Number 30C719
Plwyf / Parish Llanfair M.E.
Ymgaisydd / Applicant Mr David Owen
Lleoliad / Location Rhiwias, Amlwch Rd, Benllech
Bwriad / Proposal Addasu ac ehangu yn / Alterations and extensions to
Penderfyniad / Decision Caniatáu / Permitted
- Dyddiad y Penderfyniad / Decision Date 27/07/2011
- 14 Rhif y Cais / Application Number 30C97U
Plwyf / Parish Llanfair M.E.
Ymgaisydd / Applicant Mr David Stretton
Lleoliad / Location 103, Bay View Road, Benllech
Bwriad / Proposal Codi anec hunan gynhaliol yn/Erection of a self contained annexe at
Penderfyniad / Decision Caniatáu / Permitted
- Dyddiad y Penderfyniad / Decision Date 26/07/2011
- 15 Rhif y Cais / Application Number 32C179
Plwyf / Parish Llanfair-yn-Neubwll
Ymgaisydd / Applicant Mr G Richards
Lleoliad / Location 31, Bryn Trewan, Caergellflog, LL85 3LS
Bwriad / Proposal Cais llawn ar gyfer addasu ac ehangu yn / Full application for the alterations and extensions at
Penderfyniad / Decision Caniatáu / Permitted
- Dyddiad y Penderfyniad / Decision Date 26/07/2011
- 16 Rhif y Cais / Application Number 33C167A/SCR
Plwyf / Parish Llanfihangelceiliog
Ymgaisydd / Applicant Paul Shelley Ltd
Lleoliad / Location TreFerwydd, Llangaffo
Barn sgrino ar gyfer gosod melin wynt 500Kw a 50medr o uchder i'r hwb ar dir wrth ymyl / Screening opinion for the siting of a 50 meter high to hub, 500Kw wind turbine on land near
Bwriad / Proposal Dim Angen AEA / EIA Not Required
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 28/07/2011

| | | |
|----|---|---|
| 26 | Rhif y Cais / Application Number Plwyf / Parish Ymgelysydd / Applicant Lleoliad / Location | 42C47B Pentraeth Mr P Lewis Gwynedd House, Pentraeth Newid defnydd yr annedd i 3 flat yn/Change of use of dwelling into 3 flats at Caniatáu / Permitted |
| | Bwriad / Proposal Penderfyniad / Decision | |
| | Dyddiad y Penderfyniad / Decision Date | 28/07/2011 |
| 27 | Rhif y Cais / Application Number Plwyf / Parish Ymgelysydd / Applicant Lleoliad / Location | 46C149K Trearddur J. W. Lees & Co (Brewers) Ltd Trearddur Bay Hotel, Trearddur Bay Cais i gadw'r 'breezhouse' a'r man chwarae i blant yn / Application for the retention of the breezhouse and children's play area at Caniatáu / Permitted |
| | Bwriad / Proposal Penderfyniad / Decision | |
| | Dyddiad y Penderfyniad / Decision Date | 29/07/2011 |
| 28 | Rhif y Cais / Application Number Plwyf / Parish Ymgelysydd / Applicant Lleoliad / Location | 46C501A Trearddur Mr Paul Havard Refall Cre Crist Farm, Rhoscolyn, LL65 2EJ Cais llawn ar gyfer codi adellad i'w ddefnyddio fel gweithdy yn / Full application for the erection of a workshop building at Dychwelwyd i'r Ymgelysydd / Returned to Applicant |
| | Bwriad / Proposal Penderfyniad / Decision | |
| | Dyddiad y Penderfyniad / Decision Date | 26/07/2011 |
| 29 | Rhif y Cais / Application Number Plwyf / Parish Ymgelysydd / Applicant Lleoliad / Location | 48C72A Trewalchmai Dwr Cymru Welsh Water Gwalchmai Sewage Works, Gwalchmai Cais llawn i uwchraddio'r gwaith trin carthffosiaeth sy'n cynnwys 2 danc 'storm' o dan ddaear, siamber gilfach gyda sgrin mecanyddol a bwth rheoli yn / Full application to upgrade the sewage treatment works consisting of 2 new below ground storm tanks, inlet chamber with mechanical screen and control kiosk at Caniatáu / Permitted |
| | Bwriad / Proposal Penderfyniad / Decision | |
| | Dyddiad y Penderfyniad / Decision Date | 28/07/2011 |
| 30 | Rhif y Cais / Application Number Plwyf / Parish Ymgelysydd / Applicant Lleoliad / Location Bwriad / Proposal Penderfyniad / Decision | 11C143G Amiwlch Hyfforddiant Parys Training Unit 2 Llwyn Onn, Amiwlch Gosod paneli solar yn / Installation of solar panels Caniatáu / Permitted |
| | Dyddiad y Penderfyniad / Decision Date | 28/07/2011 |

- 21 Rhif y Cais / Application Number 37C175A
Plwyf / Parish Llanidan
Ymgaisydd / Applicant Mr. & Mrs. David & Nia Hall
Lleoliad / Location Cae'r Pant, Brynslencyn
- Cais llawn ar gyfer dileu amod (02) oddi ar caniatad cynllunio rhif 37C175 er mwyn gwneud gwaith rhwng Ebrill a Medi yn / Full application for the deletion of condition (02) from planning consent 37C175 so as to carry out works between the months of April and September at Granted
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 26/07/2011
- 22 Rhif y Cais / Application Number 17C444
Plwyf / Parish Menai Bridge
Ymgaisydd / Applicant Mrs Judith C Moss
Lleoliad / Location Boat House, Menai Bridge
Bwriad / Proposal Cadw'r uned gwyliau yn/Retention of holiday let at
Penderfyniad / Decision Tynnwyd yn ôl / Withdrawn
- Dyddiad y Penderfyniad / Decision Date 28/07/2011
- 23 Rhif y Cais / Application Number 39C327A
Plwyf / Parish Menai Bridge
Ymgaisydd / Applicant Ms A Evans
Lleoliad / Location Ty'n Rardd, Mount St, Menai Bridge
Cais llawn ar gyfer codi annedd newydd ynghyd a creu mynedfa newydd i geir ar dir / Full application for the erection of a dwelling together with the creation of a new vehicular access on land at
Caniatáu / Permitted
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 28/07/2011
- 24 Rhif y Cais / Application Number 41C110A/SCR
Plwyf / Parish Penmynydd
Ymgaisydd / Applicant Paul Shelley Ltd
Lleoliad / Location Ty'n Buarth, Penmynydd
Barn sgrinio ar gyfer lleoli melyn wynt 500Kw 50 metr mewn uchder i'r hwb ar dir yn / Screening Opinion for the siting of a 500Kw, 50 meter high to hub wind turbine on land at
Dim Angen AEA / EIA Not Required
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 28/07/2011
- 25 Rhif y Cais / Application Number 41C66C/SCR
Plwyf / Parish Penmynydd
Ymgaisydd / Applicant Paul Shelley Ltd
Lleoliad / Location Marchynys, Penmynydd
- Bran sgrinio ar gyfer codi melyn wynt 500Kw, 50 metr o uchder i'r hwb ar dir yn / Screening Opinion for the siting of a 50 meter high to hub, 500Kw wind turbine on land at
Dim Angen AEA / EIA Not Required
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 28/07/2011

- 17 Rhif y Cais / Application Number 34C617
Plwyf / Parish Llangefni
Ymgaisydd / Applicant David John and Roger Phillips
Lleoliad / Location Old School House, Penrallt, Llangefni
- Newid defnydd yr hen dy ysgol i fod yn 6 annedd ynghyd a'i addasu ac ehangu, dymchwel yr adeiladau allannol ag addasu'r fynedfa bresennol yn / Conversion of old school house into 6 dwellings together with alterations and extensions thereto, demolition of outbuildings and alterations to the existing access at
Caniatáu / Permitted
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 26/07/2011
- 18 Rhif y Cais / Application Number 34C617A/LB
Plwyf / Parish Llangefni
Ymgaisydd / Applicant David John and Roger Nicholas Phillips
Lleoliad / Location Old School House, Penrallt, Llangefni
- Caniatad Adollad Rhestrédig ar gyfer newid defnydd yr hen dy ysgol i fod yn 6 annedd ynghyd a'i addasu ac ehangu, dymchwel yr adeiladau allannol a addasu'r fynedfa bresennol yn / Listed Building Consent for the conversion of old school house into 6 dwellings together with alterations and extensions thereto, demolition of outbuildings and alterations to the existing access at
Caniatáu / Permitted
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 29/07/2011
- 19 Rhif y Cais / Application Number 34C622
Plwyf / Parish Llangefni
Ymgaisydd / Applicant Miss Yvonne Roberts
Lleoliad / Location 1, Bridge Street, Llangefni
- Cais cynllunio ar gyfer cynnwys defnydd 'A3' 'bwyd poeth i fynd allan' yn/Planning permission to include 'A3' use 'Hot Food Takeaway' at
Caniatáu / Permitted
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 27/07/2011
- 20 Rhif y Cais / Application Number 36C12F
Plwyf / Parish Llangristiolus
Ymgaisydd / Applicant Mrs. Carol Parry
Lleoliad / Location Slop Newydd, Rhosröhwa
- Cais amlinallol ar gyfer dymchwel y sloptgweithdy, codi annedd ynghyd a creu mynedfa i gerbydau yn / Outline application for the demolition of the shop/warehouse, erection of a dwelling together with the construction of a vehicular access at
Caniatáu / Permitted
- Bwriad / Proposal
Penderfyniad / Decision
- Dyddiad y Penderfyniad / Decision Date 29/07/2011

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Appendix

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Rhif Cais / Application **21C43G**
No:
Cyf Grid / Grid Ref: SH **49300 70300**
Swyddog / Officer: **Emma Hayward**
Ymgeisydd / Applicant : **Mr. & Mrs. K. Roberts**
Bwriad / Proposal: **Cais llawn ar gyfer addasu ac ehangu yn / Full application for alterations and extensions to**
Lleoliad / Location: **Cilmeri, Llanddaniel Fab**

Rhif Cais / Application **41C66E**
No:
Cyf Grid / Grid Ref: SH **52671 74005**
Swyddog / Officer: **Nia Jones**
Ymgeisydd / Applicant : **Mr. John Foulkes**
Bwriad / Proposal: **Cais llawn ar gyfer codi un twrbin gwynt gyda uchder hwb hyd at cyfanswm o 50m, diamder rotor hyd at uchafswm o 54m, a uchder blaen unionsyth hyd at uchafswm o 78m ynghyd a sailwaith cysylltygiedig ar dir yn / Full application for the erection of one wind turbine with a maximum hub height of up to 50m, rotar diameter of up to 54m, and a maximum upright vertical tip height of up to 78m together with associated infrastructure on land at**
Lleoliad / Location: **Marchynys, Penmynydd**

Diwedd yr Adroddiad / End of Report

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Appendix

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Report to Public Services Ombudsman for Wales
18 July 2012

Declaring an Interest : Reference 201102860

The Ombudsman has asked for my advice on whether supporting or opposing a planning application for a wind turbine in the locality could be regarded as setting a precedent for future turbine applications in the area. I have based my appraisal on the documents and plans on the file.

Creation of a precedent

1. I set out below the courts approach to the creation of a precedent. In *Collis Radio Ltd v SSE [1975] JPL 221*, Lord Widgery CJ said that it was of great importance, when considering a single planning application, to ask what the consequences in the locality would be and what side effects would flow if permission were granted. The judgement added that there must be evidence (rather than mere assertion) to indicate that, if planning permission were granted, it would make it more difficult to refuse other applications for similar development which may have damaging effects.

2. In *Poundstretcher v SSE [1988] 3 PLR 69* Deputy Judge Widdicome said: "... in the present case the inspector clearly did rely on precedent. I accept Mr Hobson's proposition that where precedent is relied on, mere fear or generalised concern is not enough. There must be evidence in one form or another for the reliance on precedent. In some cases the facts may speak for themselves. For instance, in the common case of the rear extension of one of a row or terrace of dwellings, it may be obvious that other owners in the row are likely to want extensions if one is permitted. Another clear example is sporadic development in the countryside."

3. Setting a precedent is therefore a material consideration in the determination of planning applications. However, there has to be evidence in each case that there could be a proliferation of similar applications that would be difficult to refuse, if the application in question was allowed.

This Case

4. The facts in this case are that Cllr F has submitted a screening application followed by a planning application for a 50m wind turbine on his land at Marchynys which lies some 3km from the subject application site for a similar wind turbine at Ty Fry. He has also submitted two other screening/planning applications for turbines at other sites in the locality.

5. From the plans on file, I note that the proposed sites for a wind turbine, Marchynys and Ty Fry, are in rural locations. Both sites have a scatter of dwellings near to the application site and so they share similar features from a planning point of

view. The effect of the wind turbine on the appearance of the countryside and the proximity of dwellings to the turbine are likely to be material considerations in assessing the merits of a wind turbine application.

6. With these points in mind and having regard to the court's approach, I believe that the two sites and developments share sufficient common factors that a precedent would be established by the grant of a planning permission on one of the sites. The community council's support or opposition to the wind turbine application at Ty Fry would be incorporated into the local planning authority's assessment of the development. The effect of a precedent is always tempered by other planning factors that are particular to each site but precedent would be a consideration that weighed in favour of, or, the refusal of any wind turbine application.

7. Cllr F, as a community councillor, is acting as a consultee rather than the decision maker in relation to this application. In my view, this subsidiary role 'dilutes' the precedent effect of his support for Ty Fry application. Nevertheless, there is a strong similarity between the two developments and his support for one has some bearing on the prospects for the other.



Jim Griffiths MA(Arch) MSc MRTPI
Associate Adviser (Planning)

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Appendix

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Extracts from my guidance on the code of conduct

I issued guidance for members of local authorities in Wales on the Model Code of Conduct in April 2010 ("my guidance").¹ I include below extracts of the guidance which are relevant to this complaint.

Personal and prejudicial interests

The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates. Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could conclude that the interest would influence your vote, or your decision. Guidance on registering interests is at Section 4.

The paragraphs below are designed to offer guidance on a very complex subject. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and what you need to do if so, you should ask your monitoring officer or clerk for advice.

Personal Interests

See paragraph 10

While you are carrying out your duties, you need to decide if you have a personal interest, and if so, whether you need to disclose it. Most members know that you need to disclose personal interests at meetings, but as you will read below, there are other occasions, such as when speaking to your authority's officers about the matter concerned, when you may also need to do so.

...

If a decision might be seen as affecting your well being or financial position or the well being or financial position of any person who lives with you or with whom you have a close personal association to a

¹ <http://www.ombudsman-wales.org.uk/uploads/publications/466.pdf>

greater extent than other people in your ward or, for members of authorities which do not have wards (e.g. national parks) in your authority's area, you also have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

What does "affecting well-being or financial position" mean?

The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively.

So if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of or reasonably ought to be aware of the existence of the personal interest. Clearly you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

If you declare a personal interest you can remain in the meeting, speak and vote on the matter, unless your personal interest is also a prejudicial interest.

What constitutes a prejudicial interest is outlined in a following section.

Disclosing personal interests

See paragraph 11

At meetings, you must declare that you have a personal interest, and the nature of that interest, before the matter is discussed or as soon as it

becomes apparent to you except in limited circumstances. Even if your interest is on the register of interests, you must declare it orally in the meetings where matters relating to that interest are discussed. If you are making representations in writing (including emails, faxes etc.) to another member or an officer, you must include details of any personal interests you have.

Similarly, if you are speaking with an officer or member in person, by phone or video conference you should tell them about any personal interest you have before making representations or when the interest becomes apparent. You are obliged to confirm your interest by e-mail or in writing to the officer concerned and to the monitoring officer within 14 days. The Ombudsman would generally expect officers to make a record of any conversation in which a member has declared an interest and attach it to the appropriate file.

Prejudicial Interests

See paragraph 12

What is a prejudicial interest?

Your personal interest will also be a prejudicial interest in a matter if either of the following conditions applies:

- the matter does not fall within one of the exempt categories of business, or
- the matter relates to a licensing or regulatory matter (see paragraph 12 (3))

and a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest.

What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is an objective test. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your personal interest was

so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest. The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility. You would have a prejudicial interest in a planning application proposal if a close personal associate of yours (e.g. your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or electoral division affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. It does not matter whether it actually would or not.

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be inclined to vote accordingly, whether this is the case or not.

What to do when you have a prejudicial interest

See paragraph 14

Even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.

Key points:

If you have a prejudicial interest in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room (or any other venue in which the meeting is being held including, for example, the location of a site meeting), unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case, you can also attend the meeting for that purpose.

However, you must immediately leave the room or chamber once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot remain in the public gallery to observe the vote on the matter. In addition, you must not seek to influence a decision in which you have a prejudicial interest. This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that as well as leaving meetings where the item is discussed, you should also not write or make any oral representations about the matter.

...

The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your authority's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. You may not take part in the discussion or observe the vote.

When must I leave the place where the meeting is held?

You must leave immediately the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above.

What if the public are not allowed to speak to the meeting on the matter?

If an ordinary member of the public is not allowed to speak on the matter, you cannot do so if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way. This may be the case, for example, where your authority is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your authority. Like the public, you are not allowed to participate if you have a prejudicial interest. However, where the public may be allowed to sit in the public gallery to observe the meeting, you will be required to leave the room during the debate and vote.

NB: This guidance has now been updated for Community Councillors and is available at <http://www.ombudsman-wales.org.uk> in the publications section, under the heading "Guidance/Policies"

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DOGFEN / DOCUMENT

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Details of case and reference number

FORM A

Subject Member's response to the evidence set out in the investigation report

Please enter the number of any paragraph in the investigation report where you disagree with the findings of fact, and give your reasons and your suggested alternative.

| Paragraph number from the investigation report | Reasons for disagreeing with the findings of fact provided in that paragraph | Suggestion as to how the paragraph should read |
|--|--|--|
| | | |
| | | |
| | | |

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Details of case and reference number

FORM B

Other evidence relevant to the complaint

Please set out below, using the numbered paragraphs, any evidence you feel is relevant to the complaint made about you.

| Paragraph number | Details of the evidence |
|------------------|-------------------------|
| 1 | |
| 2 | |
| 3 | |

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Details of case and reference number

FORM C

Representations to be taken into account if a Member is found to have failed to follow the Code of Conduct

Only complete this form if you agree with the findings in the investigation report that you failed to comply with the Code of Conduct

Please set out below, using the numbered paragraphs, any factors that the Standards Committee should take into account if it finds that you failed to follow the Code of Conduct. Please note that no such finding has been made yet.

| Paragraph number | Factors for the Standards Committee to take into account when deciding whether to censure, suspend, or partially suspend |
|------------------|--|
| 1 | |
| 2 | |
| 3 | |

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Details of case and reference number

FORM D

Arrangements for the Standards Committee hearing

Please tick the relevant boxes.

| | | | |
|----------|---|--|-----------------|
| 1 | Are you planning to attend the Standards Committee hearing on the proposed date in the accompanying letter? If 'No', please explain why. | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Reason: |
| 2 | Are you going to present your own case? | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | |
| 3 | If you are not presenting your own case, will a representative present it for you? If 'Yes', please state the name of your representative. | Yes <input type="checkbox"/> No <input type="checkbox"/> | Name: |
| 4 | Is your representative a practising Solicitor or Barrister? If 'Yes', please give their legal qualifications. Then go to Question 6. If 'No' please go to Question 5. | Yes <input type="checkbox"/> No <input type="checkbox"/> | Qualifications: |

| | | | |
|------------------|---|---|-----------------|
| <p>5</p> | <p>Does your representative have any connection with your case?</p> <p>If 'Yes', please give details.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> | <p>Details:</p> |
| <p>6</p> | <p>Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> | |
| <p>7</p> | <p>Do you, your representative or your witnesses have any access difficulties or any other needs? (e.g. is wheelchair access needed?)</p> <p>If 'Yes', please give details.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> | <p>Details:</p> |
| <p>8</p> | <p>Do you, your representative or witnesses need an interpreter?</p> <p>If 'Yes' please give details</p> | <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> | <p>Details:</p> |
| <p>9</p> | <p>Do you want any part of the hearing to be held in private?</p> <p>If 'Yes', please give reasons.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> | <p>Reasons:</p> |
| <p>10</p> | <p>Do you want any part of the relevant documents to be withheld from public inspection?</p> <p>If 'Yes', please give reasons.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> | <p>Reasons:</p> |

Details of case and reference number

FORM E

Details of witnesses you propose to call:

| | | |
|------------------------------|---|--|
| Name of witness or witnesses | 1 | |
| | 2 | |
| | 3 | |
| Witness 1 | | |
| a | <p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Outline of evidence:</p> |
| b | <p>Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Outline of evidence:</p> |

Witness 2

| | | | |
|----------|---|--|----------------------|
| a | <p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> | Outline of evidence: |
| b | <p>Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> | Outline of evidence: |

Witness 3

| | | | |
|----------|---|--|----------------------|
| a | <p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> | Outline of evidence: |
| b | <p>Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> | <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> | Outline of evidence: |

