

AGENDA ITEM

ISLE OF ANGLESEY COUNTY COUNCIL	
Report to	EXECUTIVE COMMITTEE
Date	2 December, 2013
Subject	Use of Supplementary Planning Guidance (SPG) on Onshore Wind Energy in planning decisions
Portfolio Holder(s)	Councillor John Arwel Roberts
Lead Officer(s)	Jim Woodcock
Contact Officer	Jim Woodcock, ext: 2402, jwxpl@anglesey.gov.uk
1.0 Nature and reason for reporting	
To confirm the Council's stance in dealing with applications for wind turbines.	

A – Introduction / Background / Issues
<p>1. Full Council adopted the Onshore Wind Energy SPG on 24.1.13. A copy is available at: http://www.anglesey.gov.uk/Journals/2013/04/03/m/p/c/SPG_Wind_Energy_Adopted_2013.pdf</p> <p>2. Contrary to Officer recommendation, the Council approved among other changes, the following significant amendments:</p> <ul style="list-style-type: none">(i) For wind turbines over 20 metres, the separation distances from residential or tourism properties will be the greater of 500 metres or 20x tip height;(ii) Medium and large wind turbines within the Area of Outstanding Natural Beauty (AONB) or within 2 kilometres will not be supported. <p>The Monitoring Officer advised against making any amendments to the draft SPG which could leave it, or decisions made under it, open to legal challenge because of fettering discretion under the policies or applying arbitrary separation distances which the Council could not defend on appeal. The Monitoring Officer also reminded Members of the Commissioners' reserve powers.</p> <p>3. The Planning and Orders Committee determines all applications for wind turbines with the exception of very small residential turbines. Since the adoption of the SPG the Planning Committee has considered 8 planning applications and Members have raised concerns that Officers are disregarding the Council's amendments referred to above.</p>

B - Considerations

The main considerations are as follows:

4. When making recommendations to the Planning and Orders Committee, Planning Officers refer to and take into account the SPG approved by Full Council. Officers do not ignore the Council's amendments to the SPG and do not highlight the fact that the SPG is lacking evidence to Planning Inspectors in the event of an appeal. However, they are professionally bound to recognise that:
 - (i) Any SPG, while it is an important material consideration, is guidance only and must consider other material considerations
 - (ii) SPG cannot create new policy and the separation distances do not form part of the Development Plan policy
 - (iii) The separation distances are not supported by any evidence that those particular distances should apply to particular applications. At the end of the day, they have been chosen arbitrarily
 - (iv) To refuse an application based on the amendments to the SPG would open the Council up to a potential award of costs against it for using unsubstantiated reasons.

Members are advised to adopt the same approach in Committee reports.

5. In recent appeal decisions for turbines at Bodneithior and at Maes Mawr, Planning Inspectors have drawn the Council's attention to three issues:
 - (i) The separation distance amendments have not been subject to a public consultation exercise
 - (ii) Do not reflect development plan policy
 - (iii) The Council has not submitted any evidence for the separation distances.
6. SPG should only interpret existing policy and not make new policy. The Local Development Plan (LDP) is the appropriate mechanism for making, changing or updating planning policy. The Joint Planning Policy Unit has commissioned a Renewable Energy Capacity Assessment and a Landscape Sensitivity and Capacity Study and these will be fed into the Deposit version of the LDP. This will enable the Council to further consider issues around separation distances.
7. It would be possible to instigate public consultation on the separation distance amendments and, no doubt, there would be overwhelming support. However, it is considered that this would be a fruitless exercise because hard evidence for

specifying the particular distances is lacking.

8. In appeal cases in England, Planning Inspectors do not support refusals based on separation distances, even when they have been subject to public consultation, and allow appeals based on this reason for appeal. The current SPG has already been subject to two rounds of public consultation which were very resource intensive. A further round would utilise valuable staff time in the Joint Planning Policy Unit at a financial cost to the Council. Progress on the LDP has been delayed although measures have been put in place to catch-up with the timetable. A further separate public consultation on the SPG would run the real risk of delaying progress on the preparation of the LDP.
9. In any case, the Council will be consulting on the Deposit Plan in May/June, 2014.

C – Implications and Impacts		
1	Finance / Section 151	Final response awaited
2	Legal / Monitoring Officer	The advice given to full Council on 24.1.13 remains good advice
3	Human Resources	
4	Property Services (see notes – separate document)	
5	Information and Communications Technology (ICT)	
6	Equality (see notes – separate document)	
7	Anti-poverty and Social (see notes – separate document)	
8	Communication (see notes – separate document)	
9	Consultation (see notes – separate document)	

C – Implications and Impacts		
	document)	
10	Economic	
11	Environmental (see notes – separate document)	The Council has considered its duties under the Countryside and Rights of Way (CROW) Act, 2000 and under the Natural Environment and Rural Communities (NERC) Act, 2006 when preparing the Supplementary Planning Guidance
12	Crime and Disorder (see notes – separate document)	
13	Outcome Agreements	

CH - Summary
10. In making recommendations to the Planning and Orders Committee, Planning Officers take into account the approved SPG but are able to give very little weight to the separation distances specified in the SPG because they do not reflect the provisions of the Development Plan and raise questions about the robustness of the rationale for a fixed buffer distance which ignores the particular characteristics and context of an individual proposal.

D - Recommendation
The Executive Committee confirms that any amendments to the Council's policy for Onshore Wind Energy proposals are considered as part of the process of preparing the Local Development Plan.

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Job Title: Head of Planning & Public Protection
Date: 6th November, 2013

Appendices:
None

Background papers

Minutes of Full Council meeting on 24.1.13

<http://democracy.anglesey.gov.uk/documents/s1766/Minutes%2024%20January%202013.pdf?LLL=0>

Supplementary Planning Guidance on Onshore Wind Energy (January, 2013)

http://www.anglesey.gov.uk/Journals/2013/04/03/m/p/c/SPG_Wind_Energy_Adopted_2013.pdf

Appeals Decisions:

Bodneithior (PINS reference APP/L6805/A/12/2177165)

Maes Mawr (PINS reference APP/L6805/A/13/21959)