

Shropshire and mid Wales alliance – Joint submission. 22.9.11

Environment and Sustainability Committee of the Welsh Government

Response to Committee paper dated 2<sup>nd</sup> August 2011

This is a response of to the Committee's inquiry paper. It is directed, in particular, at the Welsh Government's aspirations for on-shore wind energy generation as embodied in Technical Advice Note No. 8 and submitted by the following bodies:

Conservation of Upland Powys, STOP Windfarms and Pylons, Montgomeryshire Against Pylons and windfarms, CPRE Shropshire, Rhiwcyonon Against Pylons, Abermule Action Group, Mochdre Action Group, Llansantffraid Action Group, GALAR - Gwirfoddolwyr Abergorlech Llansawel a Rhydcymerau, Shropshire North Against Pylons, Cambrian Mountains Society, Country Guardian, Artists Against Windfarms, The Rainbow Trails Project Dyfnant Forest Llangadfan and Trefeglwys Against Power Plans

The single most important factor in the entire debate over wind energy is the European Directive on Environmental Assessment ("the Directive") embodied into Welsh law by Statutory Instrument S.I.1656 (W170 of 2004). This changed fundamentally the balance of powers and duties in circumstances where conflict arises between development on the one hand and environmental protection on the other.

It is a matter for surprise that the Committee's paper of 2<sup>nd</sup> August makes no mention of the Directive and the impact it may have on Welsh planning policy. This strange failure to acknowledge the presence of the elephant in the room necessitates a reminder of the Directive's salient features:

- (1) **It binds** all responsible authorities, including central and local government. That, of course, also includes the Welsh Assembly Government.
- (2) **It applies to** any plan or programme concerning, inter alia, energy, transport, town and country planning and land use.
- (3) **It demands** that the responsible authority should carry out an environmental assessment before the relevant plan or programme is adopted if it is likely to have significant environmental effects
- (4) **It identifies** interested parties as the named statutory consultees and those elements of the general public likely to be affected by the plan or programmes.
- (5) **It prescribes** the criteria to be taken into account when determining the likely significance of environmental effects

(Schedules 1 and 2).

The last of the above carries momentous consequences. The criteria listed in Schedule 2 are much more specific, more exacting and more stringent than the guidelines seen elsewhere in environmental legislation.

Schedules 1 and 2 of S.I.1656 are attached hereto as Appendix A. It will be seen that 13 detailed criteria, (a)-(m), are laid out and the impact of any plan or programme must be tested against those criteria both individually and collectively. The authority responsible for the plan or programme must also state:

- (i) the environmental protection objectives relevant to the plan or programme and the environmental considerations taken into account during its preparation (Sch.2 para.5)
- (ii) the likely significant effects on the environment, including short, medium and long-term effects (Sch.2, para.6)
- (iii) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment (Sch.2, para.7)
- (iv) the measures envisaged concerning, monitoring of the effects (Sch.2, para.9)

**Nowhere in the Directive do we find a “save and except” provision. Nowhere do we find an over-riding imperative to the effect that none of this applies (or only some of it applies) where the industrial development envisaged, though damaging to the environment, is aimed at creating renewable energy. That objective is accorded no special status. It is not a trump card of any kind. There is not even a presumption in favour of it. The Directive provides a level playing field for the contest between development and environmental damage regardless of the nature of the development. This is not a chance oversight. The Directive does, indeed, cast its eye over renewable energy but only to the extent of listing “Climatic factors” in Schedule 2 of S.I. 1656 as one of the 13 criteria to be addressed. No question of primacy – just one out of 13 equally important considerations.**

Against that background it is difficult to understand why TAN 8 was not strangled at birth, because it is self-evident that a thousand or more towering wind turbines scattered over the forests and the pristine hills of Wales (together with associated infrastructure and delivery systems) would contradict nearly all the 13 criteria in Schedule 2. Explanation of this oddity is to be found in the timing of

the Assembly's business over the summer of 2004. The sequence of events was:

- (a) January 2004: S.I.1656 appears on Assembly's legislative calendar
- (b) 12<sup>th</sup> July 2004: S.I.1656 comes into force but, by its own terms, applies only to plans and programmes started after 20<sup>th</sup> July 2004 or, if started earlier, which are not adopted until after 21 July 2006).
- (c) 13<sup>th</sup> July 2004: draft TAN 8 circulated for comment
- (d) 13<sup>th</sup> July 2005: TAN 8 adopted

The dates at (b) above, compared with that at (c), show how TAN 8 was slotted into the Assembly's programme at a point where it escaped the need for scrutiny under the Directive (=S.I.1656).

By their letter of 13<sup>th</sup> July 2004 the Assembly circulated the TAN 8 document among various agencies and organisations. The letter did not identify the policy or practice under which this was done but its wording is strictly neutral.... "Your comments are requested"... and gives no hint that, only 8 days later on 21<sup>st</sup> July any plan or programme such as TAN 8 would be captured and sterilized by the Directive.

Whether the timing of TAN 8 was only a matter of chance or a duplicitous manoeuvre to save it from death at the hands of the Directive makes no difference to the outcome 7 years later. The Directive still retains its fatal potency because it applies just as much to local government as to regional and central government. In July 2011 Powys County Council ("PCC") issued for consultation its Local Development Plan ("LDP") recognizing, as it was obliged to do, that the plan must meet the requirements of the Directive (otherwise described as the SEA – Strategic Environmental Assessment). For detailed reasons laid out in Appendix B hereto it is almost inconceivable that the TAN 8 proposals could find acceptance in this LDP. The first obligation of County Councillors is to obey the law and that means applying the Directive. If, mistakenly, PCC accorded some kind of precedence to TAN 8 or failed to give full and proper effect to the Directive the error could swiftly be put right on Judicial Review. With an open door to statutory appeal beyond that point if required. It cannot be over-emphasised that the Directive is paramount in the matter of environmental impact resulting from any plan or programme. TAN 8 is nothing more than a government policy, liable like any other policy to be bent or broken by the dictates of legislation. It does not deserve the prominence which it has been accorded. (It might be noted in passing that TAN 8 is exclusively the creature of the Welsh Assembly Government who should realise that, where legislation clashes with policy, a cry of "we will not budge" is futile).

If current intransigence persists in Cardiff the only result will be a plague of litigation stretching down over the years. It will not be a single battle which settles the argument once and for all time. TAN 8 is a failed policy: every time it comes up against the Directive, whether at local planning level or in a court of law, TAN 8 will be knocked out by the Directive. By luck or devious manipulation it was saved from testing at its birth. Seven years later it is no better equipped for survival.

APPENDIX A

Regulations 9(2)(a) and 10(4)(a)

SCHEDULE 1

CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF  
EFFECTS ON THE ENVIRONMENT

**1.** The characteristics of plans and programmes, having regard, in particular, to—

- (a) the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
- (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
- (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
- (d) environmental problems relevant to the plan or programme; and
- (e) the relevance of the plan or programme for the implementation of Community legislation on the environment.

**2.** Characteristics of the effects and of the area likely to be affected, having regard, in particular, to the—

- (a) probability, duration, frequency and reversibility of the effects;
- (b) cumulative nature of the effects;
- (c) transboundary nature of the effects;
- (d) risks to human health or the environment;
- (e) magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
- (f) value and vulnerability of the area likely to be affected due to —
  - (i) special natural characteristics or cultural heritage;
  - (ii) exceeded environmental quality standards or limit values; or
  - (iii) intensive land-use; and
- (g) effects on areas or landscapes which have a recognised national, Community or international protection status.

SCHEDULE 2

INFORMATION FOR ENVIRONMENTAL REPORTS

- 1.** An outline of the contents and main objectives of the plan or programme, and of its relationship (if any) with other relevant plans and programmes.
- 2.** The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.
- 3.** The environmental characteristics of areas likely to be significantly affected.
- 4.** Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Council Directive [79/409/EEC](#) on the conservation of wild birds<sup>(1)</sup> and the Habitats Directive.
- 5.** The environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.
- 6.** The likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues including—
  - (a) biodiversity;
  - (b) population;
  - (c) human health;
  - (d) fauna;
  - (e) flora;
  - (f) soil;
  - (g) water;
  - (h) air;
  - (i) climatic factors;
  - (j) material assets;
  - (k) cultural heritage, including architectural and archaeological heritage;

- (l) landscape; and
- (m) the inter-relationship between the issues referred to in sub-paragraphs (a) to (l).

**7.** The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.

**8.** An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties encountered in compiling the required information.

**9.** A description of the measures envisaged concerning monitoring in accordance with regulation 17.

**10.** A non-technical summary of the information provided under paragraphs 1 to 9.

**(1)** O.J. No. L 103/1 25.4.79.

## APPENDIX B

This appendix takes each of the criteria prescribed by Schedule 2 of S.I.1656 and offers reasons by the TAN 8 proposals would be offensive to and incompatible with the environmental protection

(a) Biodiversity

The Montgomeryshire Wildlife Trust, Radnorshire Wildlife Trust and Shropshire Wildlife Trust have expertise in this area. All have called for a review of TAN 8. Not even the most ardent propagandist in the vast wind-power industry has suggested that turbines and pylons are good for biodiversity.

(b) Population

The Directive (Reg.13 of S.I.1656) demands that the views of the local population should be taken into account – not just those of statutory consultees. The Assembly will know from multiple petitions and polls that the local population is overwhelmingly opposed to TAN 8. Then, there is tourism which is a vital stream of revenue for hotels, guest houses, caravan parks and B & B farmhouses throughout Powys. More than 10% of the population of Powys are employed in tourism. Extensive wind farm development would destroy that employment sector: “Visit our magic panorama of 200 meter high wind turbines” hardly looks like a winner. And what about the 40% loss of value inflicted on housing that falls in the path of those towering pylons? Moreover property values, already reduced by about 20%, are affecting the ability of local business owners to raise collateral to expand, develop and offer further employment.

(c) Human health

Mass wind farm development is not an obvious way of promoting good health. The magnificent walking country of the Welsh uplands and valleys will no longer attract the rambler, the angler or the rider. Who would wish to brush shoulders with those mighty turbine blades? Who would be attracted to the land of the marching pylons? World Health Organisation concerns over the noise, infrasound, sleep and strobic effects of wind farms have never been addressed by the Assembly. And it is a notorious fact that the resonance of whirling blades (noise and infrasound) drives people out of their homes. The health issue is highlighted by the Bill recently presented to the House of Lords by Lord Reay which aims to ban wind farms within 2km of housing. Finally, the requirement to undertake a Strategic Health Assessment still remains outstanding.

(d) Fauna

The adverse impact of wind farms on fauna is almost universally accepted even by the developers themselves. The Nuon developer (active in SSA B & C) have said: “If red kites are not displaced from wind farm areas then it is apparent that they will be at risk of collision with turbines” and deaths have, indeed been reported in Germany, Wales and Scotland. So much for one of the cherished icons of mid-Wales. The isolated (but highly visible) areas designated as suitable for wind turbines will assuredly see an acceleration in the decline of ground-nesting birds. The reclusive pine marten still hangs on in the Dyfnant forest but will be doomed as that forest is itself destroyed.

(e) Flora

The short point is made that flora on access routes to and on the site of any wind farm will be replaced by hardcore, tarmac and concrete.

(f) Soil

Powys enjoys the presence of vast areas of peat land – Europe’s equivalent of tropical rain forest and a vital component of the planet’s natural protection against excessive CO2 in the atmosphere. Peat can be in layers up to 20 metres thick, storing 20 times more carbon per hectare than other ecosystems. How compatible is that with pouring thousands of tons of concrete into the peat bed? According to the Assembly’s own document issued as recently as March 2010, “The future of the Uplands”, this ground constitutes an important carbon store holding an estimate 410 mega tonnes of carbon. Nearly half of this (196 mega tonnes) lies in organic soils. A loss of only 1% of soil carbon would increase Wales’ carbon emissions by 25%. How green is this picture? How can TAN 8 survive as the creature of the same body that recognized these facts?

(g) Water

The declared planning objective for water would conventionally be protection and improvement of quality for water resources and habitats. Also the prevention of flooding as recognized in the Sustainable Urban Drainage Strategy. Wind farm development is inimical to these objectives. Replacing absorbent bog, peat and marshland with non-absorbent concrete is destruction of habitat and conducive to greater flood risk.

(h) Air

Air quality in mid-Wales is pretty good but, with TAN 8 on the agenda that won’t last much longer. The wind farm developers themselves estimate 1,000 traffic movement per turbine – and that does not include scoping, maintenance or repairs. Neither does it include infrastructure. The vehicles involved, of course, are not small motor cars but in many cases, transport units of

a size so vast that their like has never previously been seen in Wales.

(i) Climatic factors

This is the one and only criterion where the proponents of TAN 8 might seek to find comfort. But, as pointed out earlier, this criterion in the Directive stands equal in rank to the other 12 and no more than that. The combined negative weight of all the other criteria makes for an unequal contest. This does not mean that the desirability of wind power as a source of green energy is acknowledged. There is increasing appreciation world-wide that the environmental destructiveness of large scale wind farms represents more pain than gain. It is worth recalling the words of another European Directive, that on Renewable Energy (Directive 2001/77/EC: “Steps to increase use of electricity must be in proportion to the objective to be obtained.”

(j) Material assets

The implicit but undeclared objective under this criterion must be to protect the relevant asset from harm. A complete inventory of material assets in Powys would number hundreds of sites. For illustrative purposes a few of the more prominent in the mid-Wales area:

Broneirion – Girl Guide Centre for Wales  
Powis Castle  
Gregynog – historic and tourist attraction  
Glansevern – Historic and tourist attraction Grade II\*  
listed building with 100 acre park registered with  
CADW as a historic environment. Also the location  
of the annual Welsh Food Festival  
Lake Vyrnwy  
Hay Festival  
Glyndwr Way  
Kerry Ridgway  
Offa’s Dyke  
Dyfnant Forest  
Stiperstones

It cannot seriously be contended that wind farms with their associated hubs and pylons (or even taken on their own) are compatible with safeguarding these (and other) assets or, in particular, that they are compatible with the good health of the tourist industry sustained by these assets.

(k) Cultural heritage

The Pevsner Architectural Guide for Montgomeryshire identifies 98 locations of historical/cultural importance. Of this

number, 76 will be significantly affected by wind farm development. Those conducting this review are invited to verify this assertion by indentifying the Pevsner locations and relating them to the wind farm/pylon/hub proposals. Alternatively, the 76 affected locations can be supplied on request.

(l) Landscape

The natural and historic landscape of Powys is under threat from TAN 8. The industrialisation of uplands and valleys would be the very antithesis of landscape protection. It is not felt necessary to expand on this point. To suggest that a mass invasion of turbines and pylons would enhance the landscape could only invite derision. In 2001, three years before TAN 8 came on stage, a public inquiry (Inspector David Wilks) into the cumulative effect of wind farms at Carno, Adfa and Llanbrynmair concluded that their impact on the visual and Recreational quality of these uplands would be unacceptable. These conclusions were adopted by the Assembly. But the same Assembly felt able to ignore this inconvenience when it rushed to publish TAN 8 ahead of a second inconvenience looming up in the shape of the Directive.

(m) Inter-relationship

The observations recorded under 11 out of the first 12 of the above headings demonstrate conclusively that the effects of an unmodified TAN 8 on Powys would be not merely “significant” (the wording of the Directive) but also calamitous.

**Every single fact and feature associated with TAN 8 inspires both distrust and distaste. It must urgently be reviewed in order to:**

- (1) restore public confidence in the processes of government.**
- (2) preserve the planning system from long-term acrimony, disruption and litigation.**