

Inspector's Ruling made on Wednesday 23 July at 17.45 hours

David M H Rose BA (Hons) MRTPI

In relation to:-

Application Ref: APP/R2928/A/07/2039188

Site at Green Rigg Fell

Application Ref: GDBC/001/00247C

Site at Ray Estate

Application Ref: GDBC/001/00278C

Site at Steadings

Introduction

1. An application was made by Mr Philip Coppel of Counsel on behalf of the Ministry of Defence for a formal ruling on the legitimacy of a line of questioning in the re-examination of Squadron Leader Coleman relating to the effects of the Green Rigg windfarm on SA-8 following an objection by Mr Vincent Fraser QC.

Background

2. During the re-examination of Squadron Leader Coleman on the impact of the Green Rigg windfarm on the siting of a SA-8 at Bell Craggs, Mr Coppel sought to put document AMEC/10/5 before the witness.
3. Mr Fraser QC objected on the grounds that he had received a very clear answer from Squadron Leader Coleman as to his evidence relating to Bell Craggs and the SA-8.
4. Mr Norris QC supported the intervention on the basis that an advocate, as part of re-examination, could not seek the withdrawal of a clear agreement received during cross-examination unless it was factually incorrect – the purpose of re-examination was to illuminate any lack of clarity.
5. Mr Fraser QC expressed concern about the conduct of Counsel for the Ministry of Defence in seeking to establish a new case and invited Mr Coppel to withdraw the objection. Mr Norris QC indicated agreement.
6. Mr Coppel responded by saying that if a witness were shown three documents, which yielded a certain answer, and if there were other relevant documents, then he was entitled to put them before the witness and to re-visit the topic. Here there were two reports (SWFL/12 and AMEC/10/5) with a factual basis that had not been put before the witness.
7. In turn, Mr Fraser QC said that it was plain what figures and factual basis Wind Prospect relied on, notably those of Mr Lennox, which the witness had agreed to be factually correct. Mr Norris QC expressed the view that Mr Fraser QC had laid a proper factual basis before the witness and had closed all avenues of retreat.

My Ruling

“Having considered the request for a formal ruling in relation to a line of questioning sought by Mr Coppel, my recollection, supported by my notes, shows that Mr Fraser undertook a methodical approach to cross-examination with the witness, obtaining agreement to the relevant factual background before asking a series of questions resulting in clear concessions.

On this basis there can be no suggestion that the witness was misled, misdirected or cajoled in a particular direction, or that he did not have the opportunity to qualify his answers by reference to other documents.

In this regard, I do not accept Mr Fraser’s approach to have been one which requires or permits other documents related to the point in question to be put to the witness for comparison and comment.”

Postscript

8. Following my ruling, Mr Coppel indicated that there would have been other questions he would have wished to put to Squadron Leader Coleman, as follows: -

- 1) Impact of Green Rigg windfarm on the SA-6 in relation to the ten sites listed in AMEC/10/5 (page 20).
- 2) On the basis of AMEC/10/5, impacts relative to Otterburn, Peat Hill and Berry Hill.
- 3) The concession received by Mr Fraser QC in relation to paragraphs 5(1)(2)(3) of the Statement of Case Addendum – Ministry of Defence (MOD/0/10); paragraph 29 of MOD/4/1; and the concession that the draft Statement of Common Ground on Aviation (paragraph 16) was correct (i.e. “the RAF can accommodate the impact”).

David M H Rose

Inspector

24 July 2008