

# **Inspector's Ruling in relation to MoD's request for reconsideration of Ruling made on 23 July 2008**

**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**

1. On 23 July 2008 I made a formal ruling, against the Ministry of Defence, on the legitimacy of a line of questioning in the re-examination of Squadron Leader Coleman. This is documented in X/25 and X/26.
2. Following that ruling Counsel for the Ministry of Defence made a written application (MoD/O/31), dated 1 August 2008, inviting my reconsideration of the matter as follows: -

*The Inspector is asked to reconsider the ruling that Mr Coppel not be allowed to re-examine Squadron Leader Coleman for the purpose of asking him to re-assess his concessions as to the anticipated effects of the proposed windfarms upon the radars of an SA-8. The request for reconsideration applies equally to the lines of questions that would, had they been allowed, have been put in re-examination to Squadron Leader Coleman in relation to the SA-6.*

3. At this preliminary stage it is helpful to set out the basic steps that led to the initial ruling. In cross-examination of the witness, Mr Fraser QC established clear concessions as to likely impacts on threat radar systems when tested against his own witness's evidence. Mr Coppel, during re-examination, sought to put the evidence of Mr Turner (AMEC/10/5) before the witness. This was the subject of an objection and I was asked to rule on the matter.
4. It is now contended: -
  - (i) it is wrong to limit the scope of re-examination in this way;
  - (ii) the ruling appears to have been influenced by the developers' submissions;
  - (iii) the witness was not directed to other material before the Inquiry;
  - (iv) the witness was not cross-examined on the full range of sites;
  - (v) the witness had been on the stand for several days; he bore physical signs of exhaustion; and he could not have been expected to be fully conversant with the documents submitted by the other developers (i.e. AMEC/10/5 and SWFL/12);
  - (vi) to permit the lines of re-examination would not delay the conclusion of the Inquiry;
  - (vii) the witness has been asked not to discuss his evidence until the outcome of the application is known.

5. Each of the developers has had the opportunity to reply to the application (AMEC/0/74 & WPD/0/19); Steadings made no direct contribution. The application is supported by Mr W Short (JWS/0/28). Counsel for the Ministry of Defence responded to the representations on 18 September 2008 (MoD/0/32).
6. Considering first what might be and what might be not permissible in re-examination, apparent differences remain between the parties. The references relied on are useful as background but are not determinative given that I have discretion in the matter, subject to exercising that discretion reasonably and rationally.
7. My original ruling was made after a short period of reflection taking full account of the limited submissions made at the Inquiry. It was reasoned and reduced to writing; and it was not 'challenged' at the time. I believe it to have been fairly made on what was before me; and, contrary to the suggestion made by Mr Coppel that *'the ruling appears to have been influenced by the developers' submissions'*, I would confirm that it was not.
8. Moving on to consider the nub of the issue, Squadron Leader Coleman was called on behalf of the Ministry of Defence as expert witness on threat radar systems. He produced a proof of evidence (MoD/4/1) and a rebuttal proof (MoD/4/2). His rebuttal proof (dated 11 July 2008) was prepared to address the further evidence submitted by Messrs Lennox (WPD/8/2); Spaven and James (SWFL/12); and Turner (AMEC/10/5). Indeed, it provides an analysis of the evidence submitted by the three developers; and it demonstrates that the witness had a general familiarity with that evidence and a good understanding of the material differences in relation to threat radar systems.
9. During evidence-in-chief Squadron Leader Coleman was not questioned by Mr Coppel on the differences between the applicants in relation to effects on threat radar systems – the evidence-in-chief being limited largely to general operational and technical matters; with specific reference to any of the threat radar sites being absent.
10. Squadron Leader Coleman made his concessions to Mr Fraser QC on day three of his appearance after giving his evidence and being cross-examined by Counsel for the other two applicants. He confirmed his concessions, in relation to the SA-6, at the beginning of day four. I am in no doubt, by the time he made his concessions, that he would have been sufficiently familiar with the material before the Inquiry to give authoritative and comprehensive answers.
11. Mr Fraser's cross-examination followed a pattern of establishing the sites with which Squadron Leader Coleman was concerned, for both the SA-8 and the SA-6, which limited the need to look at each and every site. Indeed, it was Squadron Leader Coleman who listed the sites at which he alleged an impact.
12. The material point to be answered is: - does that evidence require further explanation, to make it clear and/or complete, in the light of other material before the Inquiry.

13. Had this Inquiry concerned Green Rigg only, such a matter would not have arisen as the evidence to be tested would have been that of Squadron Leader Coleman against Mr Lennox. Although Mr Fraser QC was careful to establish the 'credentials' of his witness, and thereafter to test Squadron Leader Coleman against Mr Lennox's evidence, the material produced by the other developers suggests certain differences. It is that material which Mr Coppel seeks to draw to the attention of his witness.
14. In this regard I am not persuaded by the claim that the witness bore physical signs of exhaustion, as his concessions were given on the first sitting day of the week (albeit the second week of his appearance); and he confirmed his concessions to Mr Fraser QC, in relation to the SA-6, at the beginning of the following day. I also believe that there is no good reason why he should not have been expected to be fully conversant with the documents submitted by the other developers not least because he had assessed them in his rebuttal proof of evidence; he had given evidence and he had been cross-examined by others.
15. Whilst Squadron Leader Coleman had the opportunity to draw out, during cross-examination, such other material as he considered relevant, he did not do so. It is not for me to speculate on why he did not, but it does leave an apparent lacuna as to whether he felt constrained in his answers by the structure of the cross-examination or whether he believed the documents to be not relevant.
16. The parties will appreciate that I must take into account all material considerations, and that all such considerations are to be laid before the Secretaries of State. Having given very careful consideration to all of the submissions I have received, I believe, given the way in which this matter has evolved, that the only way to ensure certainty and clarity, as far as it might reasonably be achieved, is to grant the application to continue re-examination – restricted to consideration of the SA-8 and SA-6 and documents SWFL/12 and AMEC/10/5.
17. This in itself poses certain potential difficulties in that a period of some three months will have elapsed. Although I have been assured of the propriety of the witness during the adjournment (and rely implicitly upon his integrity), he will have had considerable time in which to reflect on his evidence and answers in cross-examination; and the prominence of the other material has been elevated by the ongoing 'dispute'.
18. In reaching my decision I have not been influenced by the suggestion that the resumption of re-examination would not delay the conclusion of the Inquiry. Whilst I would hope that to be the case, and that the inquiry will conclude as programmed, I recognise that there could be no such guarantee.
19. Against this background, although I believe my earlier ruling to have been properly made in the light of what was before me, I consider that there is potential for uncertainty as to Squadron Leader Coleman's position in relation to the information before the Inquiry on threat radar systems, as a whole. On balance, I find this to be a matter of sufficient importance to require clarification.

20. The request for reconsideration and reversal of my original ruling is accordingly granted for the reasons given above.

*David M H Rose*

INSPECTOR

7 October 2008