

## STEADINGS WIND FARM

### **APPLICANT'S RESPONSE TO GRID CONNECTION**

#### **SUBMISSIONS OF TYNE DALE COUNCIL**

##### *Introduction*

1. Tynedale Council ("TC") has submitted a Note<sup>1</sup> asserting the inadequacy of the Applicants' and the Appellant's Environmental Statements in respect of grid connection proposals. TC expressly denies that it makes an adjournment application whilst asserting that there is no option but to adjourn to allow preparation and consideration; such a distinction is devoid of any difference.
2. TC apparently couches its submissions primarily in terms of the T&CP (Environmental Impact etc) Regulations 1999 ("the 1999 Regs"). The relevant regulations for the Steadings proposals, however, are the Electricity Works (EIA) (E&W) Regulations 2000 ("the 2000 Regulations").
3. This Response deals with Steadings alone. However, the same point is apparently advanced in respect of all three proposals. I have seen a draft of

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<sup>1</sup> TDC/0/10

Mr Fraser's Response on behalf of Green Rig and, in so far as they are relevant to consideration of the Steadings grid connection material, adopt - without for the most part repeating - the legal submissions therein, subject (1) to the need to read references to the 1999 Regs in the context of the 2000 Regulations (with the necessary minor modifications) and (2) to considering any further or amended submissions Mr Fraser advances in the final version of the Green Rig response.

4. This Response summarises the Steadings position in this respect. It does so on the basis of our present understanding of the latest way in which TC now puts the point. It is, however, a feature of TC's case that, whilst its original reasons for objection were provided in written form to the Secretary of State (SofS") and then updated following the Pre-Inquiry Meeting, a plethora of other diffuse and often less than clear points has subsequently and recently emerged, whether through submissions from Mr Crean, or in TC witnesses' proofs or however. The resulting difficulties are compounded by the fact that such points reveal a chameleon quality, seemingly growing and evolving with time. The grid connection point is one such. Steadings reserves its right to amplify its submissions orally as appropriate in the light of the way TC finally puts its point.

*Relevant facts and chronology*

5. The Steadings proposal is supported by three tranches of environmental information, namely the original ES, the Regulation 13 material and the SEI submitted in April 2006, January 2007 and September 2007 respectively<sup>2</sup>. Additionally, and separately, various of the Steadings witnesses here have considered the grid connection in their evidence. That evidence has yet to be heard, as has that, if any, of TC's witnesses. This is important because the EIA which in due course the SofS must carry out will be based upon not only the ES material but also the other relevant environmental information available eg in the evidence adduced at the inquiry.
  
6. The SofS exercised his power under Regulation 13 of the 2000 Regulations to require further information re the grid connection in the following terms:

*The EIA indicates that following a grid connection study around eight available grid connection points between 20-30km from the site have been identified, although have not been subject to EIA, or any other detailed assessment. Given that there are several other applications for wind farm proposals in the North Northumberland area, all of which could have an impact on the visual amenity, the Department is of the view that consideration should be given to the various developers cooperating with each other with a view to having mutually acceptable connection(s) from the various wind farms to the Grid.*

*Action: The Company to provide full details of the connection to the Grid, including route, habitat to be traversed, and mitigation*

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<sup>2</sup> CDs 2, 3 and 7

*measures. The Company should also state whether consideration was given to the sharing of electrical connections with other wind farm proposals in the area, and if not, why not.*

I note:

a. The SofS request was clearly directed at the existence of multiple schemes and grid connections. The Steadings response dealt precisely and expressly with this, and with Steadings alone. It considered *inter alia* landscape and visual impact and cultural heritage. The SofS retained a discretion to seek further Reg 13 material but refrained from so doing. He was clearly right to do so, being satisfied with the material provided. The TC point now taken depends not only upon forming a different view of the adequacy of the material - as a matter of fact, degree and expert input - but also, crucially, upon the contention that the SofS's stance was so perverse or unreasonable that no SofS, properly considering matters, could have reached such a conclusion.

b. TC, as local planning authority, considered the ES in some detail, including at Committee Meetings in May, September and October 2007<sup>3</sup>. Moreover, in the reports to the first and third of those Committees, the grid connection was expressly mentioned. Yet TC

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<sup>3</sup> Lewis Appxs 1, 2 and 6 in TDC/1/3

expressed no concern in this respect until Mr Crean raised the point very recently<sup>4</sup>. So far as Steadings is aware, TC has never sought to persuade the SofS to change his view.

7. Various of the Steadings witnesses deal with grid connection in their evidence and have yet to be heard at this inquiry.

*Legal provisions*

8. The 2000 Regulations require<sup>5</sup> that an ES contain (1) at least the information referred to in Part II of Schedule 4 and (2) such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which, having regard in particular to current knowledge and methods of assessment, the applicant can reasonably be required to compile, taking into account the terms of any scoping opinion.

9. The grid connection does not here form part of the development for which consent is presently sought. All parties acknowledge that, as is routinely the case, any grid connection application here will be made at some time in the

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<sup>4</sup> See also very recent Supp proof of Lewis - TDC/1/5

<sup>5</sup> Reg 4(1)(a) and (b)

future and by another person. The fact that a grid connection may fall to be seen as part of the same scheme or project does not mean that it forms part of the development for which consents are here being considered<sup>6</sup>. It is the latter which falls to be the subject of the ES here. The grid connection thus comes in not as part of the development itself but rather under Part I of Schedule 4 via the words *secondary* and *cumulative* therein. Even, however, were it to be regarded as part of *the development*, Steadings has here provided sufficient information for the matter properly to be considered and for consents to issue subject to necessary conditions. Indeed, EH expressly acknowledges, for instance, the availability of a *Grampian*- style condition, were one required<sup>7</sup>.

10. It is important to note that what the developer is required to provide is an environmental statement; the environmental impact assessment is a matter for the decision-maker in due course, informed by that ES and by the totality of the evidence here to be called. Moreover, the ES is required to deal only with those effects which are the main or significant ones. As already noted, the adequacy of the ES - ie whether it is fit for purpose - is a matter of fact and degree informed by appropriate expert judgement. The Courts will not interfere with a decision-maker's view on the adequacy of an ES merely because such view may differ from that which the Court might have formed; legal intervention will only occur where the decision-maker's view is found to be so wrong as to be perverse or unreasonable in the Wednesbury sense.

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<sup>6</sup> **R (Candlish) v Hastings BC** [2005] EWHC 1539 (Admin); the *BAA* case does not assist TC here, applying as it does to a different scenario

<sup>7</sup> EH/1/1 para 7.5

11. In the context of grid connection, the Companion Guide to PPS 22 provides<sup>8</sup>:

*... Developers should provide information on the most likely route and method for the grid connection to the farm with their [application] and as part of any EIA. The connection of the farm to the electricity grid forms an intrinsic part of the project and both should be considered together. (emphasis added)*

Mr Crean cited this paragraph with approval in his Note and in his earlier xx of Mr Provan. The SofS correctly recognizes that a grid connection application is likely to be separate from, and to postdate, any wind farm application. Indeed, it may well be that the precise or ultimate route etc cannot be identified at the time of considering the wind farm application; but that does not preclude such consideration of the wind farm.

12. In such circumstances, the Steadings Reg 13 material identifies that it provides environmental information about the likely grid connection route(s). Whilst Mr Crean seeks to rely on paragraph 7.32 of the Reg 13 material his submission depends upon a misreading or misunderstanding of both that paragraph and the prevailing requirements. The approach in the Steadings Reg 13 material is entirely correct and in accordance with the relevant requirements. Any grid connection application in due course may

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<sup>8</sup> page 183 para 99

well require its own ES. Indeed, as the ECJ has made clear, further ES can be required even where a reserved matters application (or other application pursuant to condition) is made<sup>9</sup>. The scheme of European and domestic law thus recognizes and allows for matters of practicality whilst ensuring that sufficient environmental information is provided at the right time.

### *Summary points*

13. TC's legal submissions are wrong and misguided. The lateness of their appearance perhaps illustrates the underlying mind-set. In any event, even assuming those submissions were wholly correct, they can only succeed if, on a proper interpretation of the material provided and of any relevant expert opinion, they are found to have substance in the context of the prevailing factual matrix here. The Steadings material is however robust and compliant in this respect.
  
14. It is quite clear from the Steadings material that any consented wind farm at the Steadings site, whether alone or with Ray and/or Green Rig, can be connected to the grid in an acceptable fashion within the four corners of the routes identified. As note, EH confirms that, were it necessary, a Grampian condition could here be employed. It is nonsense to suggest that this would infringe the *ratio* in the *Hardy* case.

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<sup>9</sup> eg **R (Delena Wells) v SSTLGR** [2004] 1 CMLR 31

15. It is, in any event, premature to rule that additional material is required in the case of Steadings. There is relevant evidence yet to be heard, including landscape and visual and cultural heritage. Even if, contrary to these submissions, further material were found to be required, the most efficient and fairest mechanism would be to continue the inquiry and then, if necessary and when any further material has been provided, convene a separate, discrete and short session at an appropriate later date to consider such material.

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