



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Inquiry into Wind Energy:
Department of the Environment Officials

3 July 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Cathal Boylan
Mr Barry McElduff
Mr Ian Milne
Mr Peter Weir

Witnesses:

Ms Joy Hargie	Department of the Environment
Mr Simon Kirk	Department of the Environment
Ms Deirdre McSorley	Department of the Environment

The Chairperson: We welcome Simon Kirk, the acting director, and Deirdre McSorley and Joy Hargie from planning policy. Deirdre is the area manager. As you know, we are now deep into the inquiry, so your input will be very useful. Thank you for your paper. Please make your initial presentation to us, and I am sure that members will have questions to ask you afterwards.

Mr Simon Kirk (Department of the Environment): I will run through the main points of the information that we have sent to you.

Obviously, the Department recognises the contribution that the renewable energy sector makes to the Northern Ireland economy and to the reduction of carbon emissions, but it also acknowledges the importance of processing applications in a consistent and timely manner, having regard to the published policy. Since 2010, there has been a very significant increase in the number of applications for renewable proposals, particularly for individual wind turbines. At the end of May this year, the Department had 770 renewable applications, with 644 of those relating to individual turbines. Approval rates for renewable applications remain high, with 89% of renewable applications approved in 2013-14.

Applications for wind farms and turbines continue to generate a high level of objection, with landscape and visual impact, noise and residential amenity being the main reasons. Currently, wind farms are dealt with by strategic planning division, which is a small team in Belfast that has been in operation since 2003. To date, we have approved 74 wind farm applications, with the potential to provide just over 1,000 MW of power. We have a further 39 applications that are being processed, which equates to 279 turbines and just over 700 MW of power, if approved. At the moment, we are dealing with a number of planning appeals against refusal of permission for wind farms, and there appears to be a greater use of non-determination appeals under article 33. We have had four of these recently. It seems to be a route that some of the wind farm developers will follow.

The Chairperson: I am just trying to look through the notes. What is a non-determination appeal?

Mr Kirk: If the Department does not make a decision within two months of an application, you have the right to go to the Planning Appeals Commission and to be heard. The jurisdiction for the decision then transfers from the Department to the Planning Appeals Commission. It is like an ordinary appeal. We will be sending reasons for refusal against those four. It takes the final decision away from the Department, and this is a new feature really. We have not had any.

The Chairperson: Thank you for your presentation. I certainly read through your paper. As you said, we have certainly been hearing a lot of opposition, although last week, when we were out in Omagh, we met a group of people last week who were quite positive about the community benefits. The environmental people who came to us have concerns that there are far too many single turbines and that they have proven to maybe not be as effective in generating energy. Maybe it is better to have more concentrated areas with larger wind farms being able to be connected to the grid, whereas, for a lot of the single turbines, they may go and apply for planning, and they get it, but then they find that it is too expensive to connect to the grid. There is also the issue of our grid capacity, the connector and all that. What is the most efficient way of doing it? Should we not have, say, zoning, and say that we really want to encourage more large wind farms than single turbines here, there and everywhere, which take up planners' time as well?

Mr Kirk: Well, I suppose that the Department has to react to the applications that are presented to us. There has been a marked increase in single wind turbines. There may well have been financial incentives to erect them. I agree with you, Chair, that there have been cases where people have found that it is simply too expensive for them to connect to the grid. At the moment, the policy allows for both wind farms and single wind turbines. It may be that we have had a peak. It may fall off in future years. I know that Northern Ireland Electricity (NIE) is looking at clusters because they make grid connection more efficient. I suppose that there is an argument that you could have more wind farms.

You raised the point of zoning. I take it you mean that there would be areas which would be seen as acceptable and areas that you would maybe constrain? It would be a matter for the development plan process to identify areas of constraint. For many years, we have had areas in plans that were subject to constraint on minerals development. There would be no reason not to do that in a development plan, as long as you took account of the strategic planning policy statement and did not attempt to say that there would be no wind farm development.

The Chairperson: You mention the draft strategic planning policy statement (SPPS) a lot in your paper. I believe that PPS 18 on wind energy is currently supplemented by a best-practice guidance note. However, it is not mentioned in the draft SPPS. When you have the final document, will that best-practice guidance note be included?

Ms Joy Hargie (Department of the Environment): A section in the draft SPPS talks about transitional arrangements. Although the proposed transitional arrangements were that the SPPS would sit alongside, it would take precedence where there were any areas of conflict. Planning policy statements and any associated supplementary planning guidance, such as what you are referring to, would still be a material consideration until councils adopt both of their plans — the plan policy and local development plans; the two stages. We have received over 700 responses to the public consultation on the SPPS document. We actually hope to get a paper to the Environment Committee on the key emerging findings from the SPPS consultation. We hope to get that paper to you by tomorrow. That will give members a flavour of the issues that are coming through.

There has been a mixed reaction to the transitional arrangements. Some people believe that the SPPS should be more strategic in its thinking and not include so much detailed operational policy, and that it should itself sit at that level. Other people want the planning policy statements to remain as we have suggested until the plans are adopted by the councils. There is a different level of thought. We need to work through the comments received in relation to the transitional arrangements, and that will provide for whether the guidance, etc, will still be a material consideration.

The Chairperson: The SPPS was supposed to incorporate all of the individual PPSs. You are saying that some people want another layer; they want the SPPS at the top and then the individual PPSs.

Ms Hargie: The SPPS is trying to set out the new two-tier planning system. You will have your strategic planning policy, which will be set out in the SPPS, and councils will be able to bring forward

their detailed operational policies, specific to their local areas, through their local development plans. It is just for the transitional period, because, obviously, councils cannot start actively preparing their development plans until they get the powers next April. Some people believe that, when the SPPS is adopted, there will be a period in which there will not be enough detailed operational policies, so the existing planning policy statements could have stayed, along with the guidance, to give guidance on specific areas to decision-makers and those out there. That will be the detailed information that will go into the local development plans, once councils prepare those. We had suggested that they would drop away at that stage. I hope that that is clear.

Mr McElduff: I welcome the delegation from the Planning Service. I thank the Planning Service for its willingness to engage in pre-application discussions, sometimes, with residents' groups as well as with developers, where appropriate. I have had that experience a couple of times, and I thought that it was very useful. I suppose that one obvious question, speaking as a west Tyrone MLA, is this: is there ever such a thing as reaching saturation point in an individual area or community? Does the Planning Service view the world in that way? Is there ever going to be an end to it? Is there an endgame? Is west Tyrone at saturation level?

I am very interested in what Simon was saying in relation to article 33 non-determinations going to appeal. As well as giving that information, do you have any comment to make? Is it ethical? Is it appropriate? Is that type of practice a tactic or a ruse, or is it entirely OK?

Ms Deirdre McSorley (Department of the Environment): I will deal with the single turbines. I am area manager for the west Tyrone area. We obviously have the lion's share of the single turbine applications. As part of the consideration of each turbine, we do take in the cumulative impact of turbines in the area. That includes those that have been approved and not built, together with those that have been constructed, and any in the pipeline that have not been decided. So we do look at the cumulative impact, and there will be areas where they have reached saturation point, in that the environment cannot take any more without them having an adverse impact. There is also an issue with connection to the grid, and there will be a saturation point at some stage in terms of the ability to connect to the grid or the grid being able to take any additional turbines. So, yes, there are issues over the cumulative effect and the saturation point.

As for appeals and article 33, the legislation allows for it. I am not sure whether it is an advantage or a disadvantage. Certainly, when processing single turbines, we find that a lot of information is required on noise reports and, sometimes, on shadow flicker. There is all the consideration of any objections or representations that we receive. I think that it is fair in some cases. The article 33 appeals — all of that information may not be available, and in some cases the commission has to seek that information. I am not sure if there are any advantages, other than time, in going down that route.

Mr Kirk: Part of the reason is that an application for a large wind farm is incredibly complex to deal with and very time-consuming in the amount of analysis that you have to do on its impact on dwellings, the landscape and natural heritage. They take a long time to get through the system, and in the recent cases that we have had, I think that article 33 appeals have been submitted to maybe move the applications forward more quickly, but it may or may not do so, because as Deirdre said, a quantity of information is required.

Wind farm applications trigger environmental impact assessment regulations and require a formal EIA, and neither the Department nor the Planning Appeals Commission can grant permission without taking account of the required environmental information. In the EIA regs, you are precluded from doing that. So it may just be something that is recent and may not continue, but as Deirdre said, legally, there is a mechanism.

Ms McSorley: They are not as common for single turbines as they are for wind farms. Most applicants will allow the turbine application to be determined by the Department and then appeal it if necessary, so article 33 appeals are not as common.

Mr Kirk: It has not been common historically, but it has happened recently. We got four all in one.

Mr McElduff: In the correspondence before us from a family in the Castlederg/Killeter/Aghyaran area — always say Aghyaran up here; it is important — there is a general statement, which has been made to us previously, that some of these wind farms are illegal under EU law. Do you understand the point that is being made? For example, there is a reference here to Crighshane:

"The wind farm you visited is contrary to EU law operating without full consent, as developers made significant changes during construction. Under case law, this should now be subject to a full EIA."

People who are opposed very often say that type of thing to us as a Committee. They say, "This is all illegal under European law". What do you say in answer to that?

Mr Kirk: First, I am not aware that it is illegal under any European law. I am not quite sure which European law they are talking about. With any planning permission, you are granted permission to carry out the development that you have applied for, based on the approved details and drawings. In the construction industry generally and in the wind farm industry, things change. You can make minor amendments to planning applications without recourse to a new application, but we quite often get applications to amend.

Mr McElduff: Sometimes minor amendments are a contested area, because what is described as a minor amendment may not be minor at all.

Mr Kirk: We have had that debate about a number of development types. It is a matter of planning judgement. Moving a turbine from its approved position to another position is not a minor amendment. That would require an amended application, which you can do retrospectively, but we have found that applicants generally do not do that. They instead seek an amendment prior to starting the work. So I do not believe that any approved wind farms are unlawful under Northern Ireland domestic law.

Mr McElduff: Can I ask one final question? Again, it is typically areas like Gortin Glen and Bruach Dearg — Broughderg — areas of outstanding natural beauty where there seem to be applications for large wind farms in the pipeline. What additional protection is given to those communities and areas of outstanding natural beauty against the impact, adverse or otherwise, of these wind farms?

Mr Kirk: The current policy in PPS 18 applies across Northern Ireland generally. It does not distinguish between areas of outstanding natural beauty and other areas of open countryside. Joy, that issue may have been raised in the —

Ms Hargie: In the key emerging themes paper, one strong theme is that areas of outstanding natural beauty should be offered more protection than other areas. We have picked that up through the consultation responses on the SPPS, and we will consider it further.

The Chairperson: You showed us maps with the locations of wind farms in Northern Ireland. Compared with the rest of the UK, we seem to have a larger concentration, with more wind farms approved or in the pipeline. Will there come a point when you say that enough is enough and that we need to look at other energy sources to meet our targets for renewable energy?

Mr Kirk: As a general principle, the more wind farms that come into the system, the fewer that will get approval, because issues of cumulative impact will come into play. Certainly, planning policy does not want wind farms everywhere. Our paper states that about 97% of renewable energy to the grid is from wind.

The Chairperson: That is right.

Mr Kirk: Perhaps we should look to other technologies, but energy companies should bring those forward. A number of proposals are coming into the system.

The Chairperson: As a Department, is there a point at which you say that there are too many wind farms, and we should stop?

Mr Kirk: That might now be an issue for the councils when they bring forward their development plans. As Mr McElduff said about parts of west Tyrone, councils might say that an area has reached saturation point so they will constrain development. I think that that will be acceptable as long as there is clear justification. In other areas, wind farm development might not need to be constrained. I see that as the main mechanism rather than a policy that says, "No more".

Ms McSorley: In areas such as west Tyrone in particular, where there are single turbines, the difficulty is that, although we know that quite a large number are approved in that area —

The Chairperson: The approval rate is 92%.

Ms McSorley: — we do not know how many will be constructed. A lot of those may not be constructed for other reasons, such as the cost of connection to the grid or whatever reason. It is sometimes difficult to make a judgement about saturation point if a large proportion of those will not be constructed.

The Chairperson: Should it be communicated to applicants for single wind turbines that, at the end of the planning application process, they may not get connected to the grid?

Ms McSorley: Most applicants are aware of that because NIE will not entertain an application for a connection until permission has been granted for a turbine. A lot of people in the industry know that they have to get permission for a turbine before they can get the connection sorted out.

The Chairperson: Is that not a waste of time and manpower? People apply for planning permission, and, at the end of it, they may not get connected. A large number of applications are now clogging up the system.

Ms McSorley: It is an issue.

The Chairperson: Given that we know that it is an issue, is there a way to address it?

Mr Kirk: We react to applications that are submitted to us, and, if people consider that they want to do this, they will continue to make applications. We cannot prevent that. As Deirdre said, connection is a big issue. As with any permission that is granted — for a single wind turbine, a house or a factory — the implementation of the permission is a matter for the applicant. As long as applicants comply with conditions of consent, the Department has no further role.

Mr Boylan: I am trying to think of another question, Chair, because nearly all the questions have been asked.

We have to look at the issue going forward. Over the last 12 months, I have had a lot of complaints not only about wind turbines but about single houses and the lengths that people have to go to to connect to the grid because of complaints, the use of other people's land and all that. We need to give serious consideration to that. As you said, Simon, I know that it may be outside the remit, but we need to look collectively at how we deal with that.

I will go back to some of the main points. A couple of years ago, all the planning policy statements were combined in this major strategic planning policy statement. It is not going to be that way. My problem with the SPPS is that, while I recognise that a wee bit of work has already been done on the area plans, we are looking at, in some cases, 2020 as the timeline for the introduction of those area plans in some councils. Is that a fair assessment?

Ms Hargie: The SPPS suggests that it could take up to 40 months to get the two plans in place — that is, the strategic policy plan and the local policy plans.

Mr Boylan: I say that to you because the target of 40% renewables by 2020 will be operating on those planning policy statements. I am talking about single wind turbines at the minute. Councils will have great difficulties in making decisions on this issue. We need to look at something that will give them an opportunity to make fair and informed decisions. We started this inquiry into PPS18, but, to be honest with you, the real inquiry is into the wind energy element. New technologies are coming forward, and we are trying our best to support them. Whilst there is a general view to support renewable energy, there is certainly a problem with wind energy. I agree with my colleague, and, to be fair to my colleague in west Tyrone, it is there and is staying there. That is why we started the inquiry in the first place. I am concerned that, between the strategic planning policy statement, the existing planning policy statements and the introduction of the new development plan, there will be a gap in making decisions, and we will get caught up in this back and forth. How will we try to address that?

Ms Hargie: As you know, at the start, the key purpose of the SPPS was to consolidate all existing planning policy statements. Our Minister then said that, in certain key areas, he would look at what came through the consultations to see whether anything needs to be addressed. Obviously, renewable energy falls into one of those categories. If strong opinions come through on certain areas, and it is considered that something needs to change in the policy rather than it just reflecting the existing policy, we will consider that through the policy. Additional information may be included in the SPPS to give more detail in some areas to make sure that there are not the gaps that you refer to. The transitional arrangements are not decided as they are proposals to continue with the PPSs until the plans are adopted. That has been queried. So, that decision has still to be taken. However, the SPPS will take precedence if the PPSs remain. If more information is considered to be required about particular aspects of renewable energy policy, that will be considered as part of the overall process.

Mr Boylan: I have a straightforward question. Is it a fair point that, under your development plan, you can outline a target number of wind turbines or wind farms in an area? Can you look at that and say that they will not exceed a certain number?

Ms Hargie: There will be the regional development strategy and the SPPS. Obviously, the Programme for Government targets will have to be provided for. So, I am not sure that you can say that a blanket ban —

Mr Boylan: No, I understand that, Joy. That is where the problem will lie, because it will be a big issue once councillors get into the development of area plans. It is down to the numbers. That is the reality of what will happen. I understand that process because we looked at the regional development strategy, the SPPS and the area plans. This is the problem, and we will need to take it forward. I welcome your coming to the Committee today. These are the issues that we are faced with.

I want to go on to another point. While it is part of the process, non-determinations will be a difficult issue. All the information may or may not be there on how it goes to appeal. For wind farm applications, information is gathered, and there are environmental impact assessments and all that. However, there is always a question mark over how that proper process can be assessed under an appeal mechanism.

Ms McSorley: I assume that the Planning Appeals Commission will not make a decision unless it has all the facts. So, if information is lacking, maybe on noise reports or other issues, the PAC will adjourn the appeal until the information is available or make a determination to refuse the appeal on the basis that the information is not there to demonstrate —

Mr Boylan: That is why it is unusual, but my view is that you should wait until the whole process is finished. I do not see why it should go to a non-determination without all the information, because, within the time frame, it does not —

Mr Kirk: If the information is not there, it does not speed up the process.

Mr Boylan: No, 100%. I have a load of questions, but I will leave it at that.

Mr Milne: Thank you all for coming along today. When you consider that, in the Castlederg area, there will reportedly be over 100 single turbines within a five-mile radius, how do you define "cumulative impact"?

Ms McSorley: We do not have a precise definition of cumulative impact. For individual turbines, we have to make a judgement when we assess an application and look at all approvals for existing turbines as to how that impacts on the environment, and whether the impact is so negative that we refuse the application. The cumulative impact of noise can be assessed through the noise assessment, which will also include looking at all approvals for existing turbines.

Mr Kirk: The same principle applies for wind farms: you have to look at what has been approved and consented to, and what is proposed. If a proposal would tip the balance unacceptably, cumulative impact comes into play. As Deirdre said, it is a matter of judgement as to when there is just too much. We have had cases of consent being given to two wind farms, and then somebody wanted to put another wind farm between them, but we believed that was an unacceptable cumulative impact because there would have been a massive visual impact. However, that is a planning judgement.

Mr Milne: However, people will make different judgements about anything.

Mr Kirk: That is true.

Mr Milne: After visiting the Castlederg area last week or the week before, I am concerned that the people who live in that basin — I am not too familiar with the area — will be completely surrounded by wind turbines. To be honest, it does not sound good to me if you are saying that, somewhere along the line, you will start to refuse permission to build any more in a particular area because NIE cannot take the power into the grid. If NIE says that it cannot cope with any more, does planning take that into consideration at that stage? It should be taking it into consideration now. It should not be based on how NIE or anybody else can accommodate that.

Mr Kirk: As I said, the grid connection is part of the implementation of the permission, and it rests largely with an applicant. If NIE cannot make the connection, and if that becomes an issue and it says so up front, I would be surprised if anybody went through with the cost of an application. They require a full EIA, and applications are costly because of the planning fee and the amount of work that consultants have to do to prepare the information necessary for an application.

Mr Milne: That is fine. I am very concerned about where all this caps out. If we just carry on approving applications, every field in the country could be covered with wind turbines. Do you agree that a plan has to be put in place?

Mr Kirk: Yes. The Minister has listened to a lot of people who are concerned that the policy might allow wind farms to such an extent that we have approved an awful lot of them. He said that he will look at the issue when he considers the responses to the SPPS. As Joy said, there is the potential to amend the policy if there is broad agreement to do so.

The Chairperson: It is the cumulative effect that upsets people. The young couple whom we met said that the first wind farm started across the way from them; it was quite far away, but they could see it. That wind farm now has permission for an extension so, within a 45-mile radius, they are going to be absolutely surrounded; they are at the epicentre.

Mr Boylan: It will be 900 metres from the house.

The Chairperson: You can understand why people get so upset about it.

Mr Kirk: I fully understand the opposition to wind turbines, and people are quite entitled to hold those views. At the moment, we are faced with having to determine planning applications in the context of PPS 18 and other relevant material considerations, but we take cumulative impact into account. As Mr Milne said, it is a matter of planning judgement, which can lead to markedly different opinions in many areas, not just on wind turbines.

The Chairperson: From your record of approval, you seem to approve nearly everything coming your way. It is 92.6% for this year.

Mr Kirk: We currently have seven appeals. There are three refusals and four non-determinations that we do not believe are acceptable, and we will present reasons for refusal. We are starting to refuse applications. A number of wind farm applications have been presented to councils recently with an opinion to refuse, so that figure of seven may increase.

The Chairperson: What is the reason for those refusals? Was it the cumulative effect?

Mr Kirk: I cannot honestly remember the exact reasons, but they include the visual impact on the landscape, which is probably the most widely used reason for refusal.

The Chairperson: Thank you very much for coming.