

## Windfarms: Re-birth or false dawn?



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[Andrew Fraser-Urquhart KC](#) reflects on last week's policy announcements about onshore wind.

I used to love windfarm inquiries. They were inevitably in remote and scenic places, the passionate views on both sides of the argument always made them lively encounters, and the advocates' task in weighing up the nuances of energy policy against the Marmite views on visual impact was always a great challenge.

So I shed a tear when the [Written Ministerial Statement of May 2015](#) effectively killed off large scale onshore wind.

However, the renewable energy benefits of onshore wind remained obvious and for a while now there have been suggestions that government was being pushed, not least by its own backbenchers, into a less restrictive stance on onshore wind. Therefore, it was with more than just professional interest that I heard this week a radio headline with great fanfare about the "lifting of the ban" on onshore wind. This blog examines what has actually been done. And it is very far from a lifting of the "ban".

National planning policy on windfarms contains three principal elements. First is the requirement (in paragraph 158(b) of the NPPF), that its effects be "acceptable". This applies to any scheme for renewable energy. However, with respect to wind farms there are two additional, restrictive, requirements. First, there is a prohibition on granting planning permission for turbines unless they are in an area designated as suitable for turbines in the development plan or an SPD. Second, is the requirement (as expressed in the NPPF 2021, footnote 54 that "*following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing.*")

It will be observed that this is not a "ban" in the true sense of the word. However, it is entirely clear that the policy has had not merely a "chilling" effect on the development of onshore wind, but instead a deep freeze. Only 11% of all local planning authorities in England have areas identified as suitable for wind energy in their adopted local plans. Between January 2016 and December 2021, 11 planning applications

for new onshore wind turbines were approved in England, comprising a grand total of 20 turbines. Recent media reports have noted that in the last year, whilst war-torn Ukraine built 118 wind turbines, England built precisely none.

What has changed with last week's announcements? The policy changes consist of a [Written Ministerial Statement on 5th September 2023](#) and the promulgation of a [new NPPF](#) where the only changes are in section 14, relating to the development of renewable energy. The changes impact both of the restrictive policy areas, namely the designation of areas suitable for wind energy and the local impact clause.

Looking at the designation of suitable areas, the government's approach appears to involve a good deal of confusion. The WMS suggests that the planning tests have been amended *"to make clear that suitable locations can be identified in a number of ways (rather than solely through an area's development plan)... For example, through local development orders, neighbourhood development orders and community right to build orders."*

However, each of those mechanisms is a device for granting planning permission in specified categories in response to initiatives from local communities. They are not mechanisms for identifying a suitable area for a type of development as the precursor to a grant of planning permission, once the acceptability of that development has been assessed through the planning application process.

This confusion is amplified when one considers the wording of the new NPPF. Here a new footnote 53A indicates that onshore wind farms involving one or more turbines *"can also be **permitted** through local development orders, neighbourhood development orders and community right to build orders"* (emphasis added). So, the NPPF amendments do not deal with the identification of suitable areas, as suggested by the WMS; they deal instead with the actual grant of planning permission for new turbines.

Frankly, it's very hard to see how any large-scale commercial wind farm developer is going to be willing to rely on getting permission by way of one of these orders. The whole purpose of these orders was to allow *community* initiatives for the granting of planning permission for particular types of development. In summary, therefore, the changes don't seem either to give effect to the intention stated in the WMS or to provide a better mechanism for granting permission. Instead, they simply allow permission to be granted by methods which, in reality, are most unlikely to ever be used.

The other element of restrictive policy is the local opinion provision. The new NPPF footnote 54 changes the wording of the test from *"the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing"* to *"have been appropriately addressed and the proposal has **community support**"* (emphasis added). This might be interpreted as a marginal loosening of the test.

Moreover the WMS makes a more explicit statement of intent: *"We have heard accounts that current policy has been applied in such a way that a very limited number of objections, and even at times objections of single individuals, have been taken as showing a lack of community backing. This is not the policy intent, and as a result of today's policy change it will now be important that local decision makers are able to take a more balanced approach, considering the views of communities as a whole."* The WMS also stated an intention to publish further guidance on how local authorities can more flexibly address the planning impact of onshore wind projects.

In the absence of that further guidance, however, it is difficult to see how even this relatively bold statement of intent will have any meaningful effect. It is worth noting that the existing wording of the [National Planning Practice Guidance on this topic](#) made clear that the issue of whether or not a proposal satisfied the local opinion provision was a matter for the planning judgement of the local planning

authority. There was also a subtle, but important, difference from the wording of the NPPF. The NPPG wording with respect to planning impacts was that they had to be “*fully addressed and therefore the proposal has their [the community’s] backing*” (emphasis added). On a proper reading of that policy, the word “therefore” suggests that if the planning impacts had been fully addressed, the proposal would have community backing.

In the context of this wording, it suggests that the WMS’s contention that the intention of policy was never to be this restrictive was both correct and discernible from the words of policy all along.

However, this was clearly too much of a clever lawyer’s argument for any sensible developer to base an application for a multi-million pound wind farm scheme on it. It is true enough that with the guaranteed support of a local planning authority, there was a policy basis for granting permission for onshore wind, even in the face of some local objection. However, it is simply impossible to guarantee such support when decisions are made by potentially capricious local politicians who would be subjected to considerable pressure from opponents of a scheme. After all, everybody knows that wind farms are very much a Marmite type of development.

Ultimately what matters is whether there is a clear policy basis, capable of being deployed at appeal, to support the grant of permission even in the face of local opposition. Only if developers can feel confident of taking forward a suitable scheme to appeal and not failing *merely* because there is local opposition (which there inevitably will be), will there be any significant increase in applications and permissions for onshore wind.

Against that test, these policy changes seem to be pretty ineffective. Can one really imagine that a developer will move forward simply because local decision makers are told they must take a more balanced approach to issues of community consent? It appears to me to be unlikely at best.

All told, therefore, it seems that these changes that will have an impact which is marginal at best and my wait for a joyous fortnight in a remote, windswept inquiry room will go on.

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