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UPDATED PLANNING GUIDANCE ANNOUNCED FOR ONSHORE WIND PROJECTS RAISES NEW CONCERNS FOR INVESTORS FOLLOWING DECC'S ANNOUNCEMENT ON RO SUPPORT DATED 18 JUNE 2015

On 18 June 2015 the Secretary of State for Communities and Local Government gave a written ministerial statement to the House of Commons (link 1 below) stating their intentions regarding updates to the planning regime for onshore wind developments. This statement was somewhat overshadowed by the announcement concerning the withdrawal of support for onshore wind under the Renewables Obligation, also announced yesterday.

Following the Queen's Speech, the Government stated on its website (link 2 below) that in relation to onshore wind development there would be contained within the Energy Bill:

- legislative changes to remove the need for the Secretary of State's consent for any large onshore wind farms (over 50 megawatts), and
- changes to the national planning policy framework (NPPF) to give effect to the Conservative manifesto commitment that local communities should have the final say on planning applications for wind farms.

It is worth noting the fact that it was stated these changes would not impact on the planning regime in Scotland and Northern Ireland.

As a result of the written statement by Greg Clark MP yesterday, we now have some indication of what such changes to the NPPF will be. It is also stated that these will come into effect immediately (i.e. on 18 June 2015). The statement says:

"When determining planning applications for wind energy developments involving one or more wind turbines, local planning authorities should only grant planning permission if:

- *the development site is in an area identified as suitable for wind energy development in a local or neighbourhood plan; and*
- *following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing."*

It is clear that these new requirements are particularly onerous on onshore wind developers, with areas designated as 'suitable for wind' having to be decided and declared before any application can realistically be considered for approval.

It is unclear how much local opposition would be required to derail the prospects of a project obtaining planning permission. However, the problem is that it appears that fully addressing

any concerns may not be enough, and that if there is any local opposition at all this could be fatal to such an application.

Whilst the requirement for the development site to be in an area identified as 'suitable' is not a requirement for projects already in the planning system (assuming a local development plan does not show such suitable areas), the second requirement above is still required for any decisions on such projects taken from yesterday onwards.

An interesting question is whether changing the guidance to be applied once a project is caught up in the process will survive a legal challenge. Given the investment at risk it would be no surprise for such a challenge to arise in the near future.

Links

(1)

<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150618/wmstext/150618m0001.htm#15061882000002>

(2)

<https://www.gov.uk/government/publications/queens-speech-2015-what-it-means-for-you/queens-speech-2015-what-it-means-for-you>

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