NoPilrow Ltd
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Ms Leanne Palmer
The Planning Inspectorate
3/26 Hawk Wing
Temple Quay House
2 The Square
Bristol BS1 6PN

25th March 2014

Dear Ms Palmer

Appeal by Broadview Energy Ltd - Pilrow Wind Farm

APP/V3310/A/13/2197449

National Planning Practice Guidance – 6 March 2014.

Thank you for your letter of 11 March 2014 inviting comment to the Inspector on the impact if any of this latest Guidance. I haven't as yet heard from the principal parties as to whether they intend to provide further comment and as I think the 10 working day time limit expires on Tuesday I submit these additional Submissions which I have limited to the issue of Consultation, more specifically described in the PPG under "Local People at the pre-application stage" and the question posed "Is pre-application community consultation compulsory?"

In Eversheds letter to you of 17th February 2014 enclosing the final Statements of the Appellants, they took the opportunity (which I don't believe was provided for in the Inspector's permission for additional comments on the Appeal by his directions on 17th January 2014) to challenge our Submissions on the consultation point, and the immediate closure of the Inquiry meant we did not have an opportunity to reply.

However the point arises again in the context of the NPPG and we would like, if permitted, to make some observations.

We start however an analogy in a different area of business life.

Through their Employment Law practice the Appellants Solicitors will be more than familiar with the concept of consultation in a redundancy situation which is a compulsory feature of redundancy dismissals and depending on the numbers of employees involved in any given establishment, a failure to consult carries specific penalties in addition to any award for unfairness of

dismissal. So there is a bite to the legislation that creates a disincentive to simply paying lip-service to a process.

Consultation must be undertaken by the employer with a view to reaching agreement with appropriate representatives on issues such as ways of avoiding dismissals or reducing the number of employee to be dismissed. This duty applies even when the employees to be made redundant are volunteers. Failure to comply with the consultation requirements could lead to a claim for compensation, known as a protective award.

ACAS Guidance includes a Policy Paper on Redundancy passages of which we reproduce below.

Collective consultation on redundancies

ACAS/PDP/11/09

Consultation

The duty to consult …..is not linked to a dismissal as such but to a proposal to dismiss. The intention is that the employer should set out what is proposed as a basis for discussion. The proposals do not have to be the employer's final and unalterable thoughts; on the contrary, they cannot be for the aim is to achieve agreement with the appropriate representatives, and the employer must therefore enter discussions in a frame of mind that is open to persuasion. If a redundancy situation is presented as a fait accompli then subsequent consultations may be not be considered genuine.

The purpose of consultation is to consult about ways of:

- avoiding the dismissals
- reducing the number of employees to be dismissed; and
- mitigating the consequences of the redundancies.

By clear analogy, what the Appellants were doing in their pre-Application consultation was far removed from what an employer would be doing in a redundancy consultation. No amount of negative feedback from their consultation has prevented the Appellants from proceeding as they have. By contrast the primary purpose of a redundancy consultation as per the first bullet point above is to try and avoid compulsory redundancy.

What the Appellants have demonstrated is lip service to a process and instead of direct face-to-face discussions with those most directly affected – for example Terry Mogg & Louise Allen, or Tony & Sheila Rendell, or Dave Hodgson, to name three households, the Appellants spent their time, and

presumably money, in commissioning 'Yes to Wind' to undertake a farcical exercise on Burnham High Street in an attempt to canvass support

An indication of the feelings of the local residents might be gauged from the response to 2000 project newsletters (twice), mobile exhibitions and public exhibitions is that nine local residents took the opportunity to visit Low Spinney Wind Farm, and one of them, Colin Loader, gave the Inspector his feedback from that visit.

The attitude of the Appellants to pre-Application consultation was mirrored by its great efforts to denigrate post-Application objections, all of which exemplifies the reason why the Government must be taken to have changed the regulations, so that something meaningful arises from consultation in the future.

There was for example not a shred of evidence at the Inquiry as far as impact on local residents to suggest as asserted by Eversheds that:

"Post July 2011: Broadview considered the feedback received from the various pre-application consultation exercises and used this feedback to inform the design of the wind farm proposals"

Eversheds go on to write:

"The above activities demonstrate that the Appellant used a wide range of means of communication to engage with residents within the vicinity of the wind farm site, encouraged residents to become actively involved in shaping the wind farm proposals and gave consideration to all comments received throughout the pre-application consultation in the progression of the wind farm design. The nature and extent of this pre-application consultation clearly goes beyond that which is now required under S 61W of the 1990 Act"

What in fact happened could be more accurately stated, without seeking to be facetious, in an un-spun form as follows:

"We have decided we need a wind farm in your neighbourhood. None of you have been in when we called to discuss, so we are sending you a newsletter to tell you what we will be doing. You can get all the information we think you need from our web site. You can come and see our mobile exhibition vehicle and we will be having some public exhibitions telling you what we are planning to do. We will also tell your Parish Councillors. You can write to us, you can express your views opposing the scheme, but there will still be turbines. You can come and have a look at one of our projects if you want but it's not in a location anywhere similar to your landscape but it will show you what we are going to build. When we make the planning application, you have the right to object but we are going to ignore your objections and those of your elected representatives."

It seems to us that the purpose of the change in the law is to avoid lip service by Applicants such as Broadview to a consultation process. We gave the analogy of redundancy consultation. Case law is awash with examples where employers have been penalized for paying lip service and going through a sham procedure to arrive at a given destination.

The writer's Concise Oxford English Dictionary suggests that when used as a verb, the word "consult" is

- to seek information or advice from (someone, especially an expert or professional) or
- to seek permission or approval from.

As a noun "consultation" is

- the action or process of formally consulting or discussing, or
- a meeting with an expert or professional in order to seek advice

The conduct of the Appellants in their pre-Application Consultation could not be characterized by those descriptions. The Government has plainly been exercised by the nature of consultation on large turbine projects and something wasn't happening before which needs to happen now. That "something" must be taken to be direct meaningful consultation with members of the local community with a view to seeking the permission and approval of those members of the local community. If it were otherwise, what's the point of the change?

We make these Submissions because they affect the judgment to be made on the local impact of the proposed development. Many tens of thousands of words have been expended by the Appellants in seeking to persuade the decision maker to give approval to the proposed development.

What is strikingly missing is the equivalent or near-equivalent effort in engaging with the local community, and then ignoring and denigrating the views of that local community when they don't coincide with the views of the Appellants. That we suspect is not what the Secretary of State had in mind when he made his Written Statement to Parliament on the 6th June 2013 saying *"…planning works best when communities themselves have the opportunity to influence the decisions that affect their lives"* and *"..the importance of early and meaningful engagement with local communities".*

The failure of the Appellants to "meaningfully engage" is one of the factors we say should come into the balance when the decision is made.

Thank you for the opportunity to make further Submissions.

Yours sincerely,

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