

## **Updating S36 and S37 Inquiry Rules**

BWEA is the UK's leading renewable energy association. Established in 1978, BWEA now has over 330 companies in membership active in the UK wind, wave and tidal stream industries. BWEA is at the forefront of the development of these sectors, protecting members' interests and promoting the industry to Government, business and the media.

Wind energy has now started a major expansion in the UK and will be the single greatest contributor to the Government's 10% 2010 renewable energy target and 20% 2020 renewable aspiration. Together, wind, wave and tidal power can supply 21% of our electricity by 2020, resulting in over £16bn of investment in UK plc. See [www.bwea.com/energyreview](http://www.bwea.com/energyreview)

BWEA would like to thank you for the opportunity to comment on this important consultation proposal which we believe includes many sensible proposals. I would be happy to meet you to discuss any of the points outlined below.

*These notes should be read in parallel with the consultation document.*

### **General comments:**

- There is a need to ensure that "High Powered" Inspectors are chosen for their knowledge of dealing with the planning system e.g. a planning QC, and not simply because they are high profile in Government circles
- BWEA are concerned at the pressure being put on applicants to advertise at all stages of the inquiry procedure (see rules 4.3, 6.2, 7.3, 8.3, and 9.7) which can cost £thousands a time and could get out of hand. This will not impact on the project but there is a need for fairness.
- Local planning authorities (LPA) should be appearing at inquiries because:
  - a) only the LPA can explain their local policies and the omission of this explanation is not fair on the inspector, and
  - b) the LPA is the statutory body dealing with conditions. The Inspector has witness powers and should use them to require the LPA to give evidence.

### **Specific comments, by rule:**

#### **Rule 3 & 26 – E-communication**

- Greater use should be made of e-communication to speed the flow of information and ensure all key documentation can be readily identified in one place. Main parties (at least) should be obliged to provide electronic copies of 'Statements of Case' and 'Proofs of Evidence' which DTI should post onto an inquiry web site.
- DTI should also be obliged to post any non-electronic documents from 3rd parties onto the web site.
- The inquiry programme should be available via the inquiry web site, and should be maintained and updated daily during the course of the inquiry, so those only interested in a specific part of the

proceedings have up-to-date information on when they will be required.

#### **Rule 4 – Timing**

- (4.3) BWEA is concerned that if the Secretary of State modifies the 'Statement of Matters' at a late stage, it could lead to delay for all parties.

#### **Rule 6 – Registration**

- (6.3 & 7.4) The document must make it clear that rule 2.6 needs to be read in conjunction with rule 6.3 and 7.4.
- (6.5) People who want to play a small part in the inquiry proceedings should at least commit at an early stage as to *how* they want to take part in the inquiry, a personal statement or otherwise, perhaps through registration. Otherwise, they can upset the inquiry procedures by randomly attending with no notice given. Some form of discipline needs to be imposed on all parties who want to attend the formal proceedings of an inquiry.

#### **Rule 7 – Appointment of Technical Advisor**

- The appointment should be announced early on so that the parties know what they are facing. BWEA would recommend the appointment is made within two weeks of the 'Statement of Case'.
- BWEA is concerned that the Technical Advisor role will lead to confusion and add to the length of Inquiries, by introducing additional expert advice which will be subject to cross-examination.
- There is no guarantee of the Technical Advisor being 'independent' and there may well be much distrust over interventions from people who are not 'parties'. It will be difficult to know what their expertise is, whether they are truly disengaged or where they have come from.
- (7.3) It is difficult to follow the language, "*the applicant also to publish a notice*". It must be clear how the applicant does this and how is it different from an advertisement.
- (7.9) If technical advisors can alter the report, then that alteration should be subject to the same cross-examination as in 7.8.

#### **8 – Mediation**

- BWEA support mediation in seeking to agree issues prior to an inquiry as this can save time during the expensive inquiry process. However, it is likely to be a cause of frustration, delay and cost to developers.
- While BWEA strongly support the use of consultation and dialogue between main parties (not every objector, or unreasonable objectors) in run-up to inquiry, this does not need the intervention of a "mediator".
- BWEA strongly resist the idea of enforced consultation or mediation during the course of the inquiry. If parties are seeking to reach agreement then they will do through natural negotiation for mutual benefit. Being forced to discuss and reach agreement (or not) will cause frustration and delay, and tie up important resources during the inquiry sessions.

- Objectors will use any "mediation" process to prolong discussion with no intention of actually reaching any agreement. A developer already has every incentive to discuss with reasonable, professional objectors and reach agreement where possible.
- Inspectors should make use of power to direct parties to engage in discussion and report back on areas of agreement / disagreement in advance of the inquiry - but this does not require a "mediator", and the timescale should be set by the Inspector.

## **9 – Procedure for Pre-Inquiry and Other Meetings**

- (9.5) This could lead to a 6 month delay to get to inquiry. Holding a pre-inquiry meeting (PIM) quickly is an advantage and can significantly reduce time taken during inquiry.
- BWEA support mandatory Pre Inquiry Meetings.

## **10 – Publicity of Inspectors Notes of Pre-Inquiry Meetings and Recommendations**

- The inspector should be responsible for crystalising the venue.

## **11 – Recipients of Statements of Case**

- BWEA support the proposed four weeks followed by two weeks and in particular support rule 11.4 calling for justified statements as to *why* they disagree.
- (11 & 15) – The definition of the 'Qualifying Objector' is drawn too broadly and needs to be clarified. The term currently includes anyone who registers an objection within the correct timeframe. However, this could include significant numbers of objectors who have no interest in participating in the inquiry. The developer will then have an obligation to send copies of Statements of Case to all objectors (perhaps several thousand) under Rules 11 and 15. Furthermore, under Rule 15, all Qualifying Objectors would have an automatic right to appear at the inquiry - possibly without having given prior notification. The definition should be restricted to those who have registered an interest in participating in the inquiry under rule 6.

## **12 – Inquiry Timetable**

- If stricter timetables are being introduced for DTI and consultees, then the Secretary of State needs to mirror the new timetable arrangements.
- BWEA support the idea of timetable. However, rule 12.4 is potentially damaging because the inspector can vary the timetable. He must be able to do so, but there needs to be the threat of cost penalties for those who dream up new evidence at a later date and elongate the inquiry.

## **14 – Date and Notification of Inquiry**

- (14.4 & 14.5) The Secretary of State should be standing back and let the Inspector to do his job.
- There is a need for visible separation of the Secretary of State and Pre-Inquiry Meetings.

## **18 – Statement of Common Ground**

- BWEA firmly oppose the inclusion of third parties in the Statements of Common Ground process as they will frustrate and delay it.
- (18 & 12.1b) A '*statement of common ground*' is difficult to prepare but is written on the back of the evidence, not before.

## **19 – Procedure at Inquiry**

(19.2 a(i)) The phrasing should read, "*matters which require consideration at inquiry*".

(19.2 b(ii)) BWEA are very concerned and fundamentally disagree with this proposed rule. If an Inspector does not subject expert witnesses to cross-examination, you cannot distinguish between a robust set of evidence and a weak set. It is important to establish whether the evidence can stand up to cross-examination and if this is prevented, the evidence can not be questioned or tested. It is important to bear in mind that cross-examination never affects the public, only expert witnesses.

(19.4) It is worth noting that this goes against the Town & Country Planning Act where the local planning authority goes first. BWEA has no preference.

(19.6) BWEA agree, provided that it is not in advance of giving the evidence.

(19.7) It is worth noting that you will get tactical answering if you know you can time the advocate out.

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