

BSG TECHNICAL REVIEW

RECENT WIND FARM PUBLIC INQUIRY DECISIONS AND WILDLIFE ISSUES

Cheverton Down Wind Farm– Isle of Wight (*Inspector: Mr Woolcock*)



Bechstein's Bat (*Myotis bechsteini*)

Photo © Matt Hobbs

Following our recent presentation to Renewables UK Conference in Manchester (October 2011), Baker Shepherd Gillespie (BSG) has continued to monitor and review wind farm appeal decisions. As part of this, a review of the Cheverton Down Wind Farm inquiry is presented below, together with comments and observations on the appeal decision (issued on 30 August 2011).

Dr Peter Shepherd (BSG Partner) was asked to give evidence to the inquiry on behalf of the appellant as the impact on bats was a main issue at the inquiry and because expert support was being provided to the Rule 6 parties.

Background

The Isle of Wight supports an exceptional bat fauna with 12 species recorded within 5 km of the site including three of Britain's rarest bats – barbastelle, Bechstein's bat and grey long-eared bat. Extensive survey work had been undertaken including radio tracking of barbastelle and Bechstein's bat, as well as collation of environmental data on wind speed, temperature and rainfall. This enabled an analysis to be undertaken of the correlation between level of bat activity and windy, cold and wet nights. Given the highly sensitive nature of the bat populations in which the proposed three turbine scheme would sit, the client agreed a curtailment strategy linked to wind speed and temperature characteristics that would

avoid a high percentage of the nights when, based on survey data, bat activity would be most likely to occur.

The Rule 6 parties were critical of the survey effort and methods and focussed on the need for a high degree of certainty of no adverse impact on bats given the high quality bat fauna in the locality.

How the decision relates to bats

The Inspector dismissed the appeal, but not on the grounds of adverse impacts on bats. In particular, the Inspector concluded in paragraph 85 to say that there was "adequate survey coverage" and that "differences in patterns of bat behaviour between the years does not discredit the validity of the results". He goes on in paragraph 86 that "there is no reason to doubt that NE [Natural England] would have intervened or expressed criticism had it considered the survey work to be deficient."

In relation to the proposed mitigation measures, the Inspector commented in paragraph 88 "ThWart (Rule 6 party) is critical of these measures because it considers that shutting down the turbines at specific times, wind speeds and temperatures is untested in the UK, and in any event would only reduce the frequency of collisions and barotrauma, and not avoid them all together. The appellant's expert evidence, which

reviewed collision risk for each species, was that with the proposed mitigation the collision risk threat to bat populations would for all species be very low or negligible, in that collisions would be unlikely or at worst very infrequent, or less likely."

The Inspector acknowledged that monitoring bat collisions would not be straightforward but that such monitoring would be able to detect significant bat strike. He also concluded that the proposed operational restrictions were precise and readily enforceable. In paragraph 89 of his judgement the inspector notes that "the mitigation measures would be an important consideration in assessing the risk to bats from turbines. Furthermore, it is evident that NE takes a different view from ThWart about the likely effectiveness of the proposed mitigation measures." The Inspector placed "a lot of weight" on NE's view.

The Inspector acknowledged the valuable local knowledge of ThWart and the supporting written expert opinion, but concluded that he would "give preference to the appellants' expert evidence, because the work on which it is based is supported by NE."

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In paragraph 91 the Inspector considered the implications of the Woolley v Cheshire East Borough Council judicial review. He concluded that *"taking into account the proposed mitigation measures it seems to me unlikely, were planning permission to be granted, that a licence from NE might be required"*. However, he went on in paragraph 91 to say *"were monitoring to discover bat deaths, notwithstanding the mitigation measures, the wind farm operator would either need to apply further mitigation or apply for a licence. The appellants are not confident, were such circumstances to arise, that the rigorous tests for the latter could be passed, and that further mitigation would not only be preferable, but would also be required by law irrespective of the conditions imposed on any planning permission."*

Viewpoint

It seems from the judgements of the Inspector that three key conclusions/lessons can be drawn:

Firstly, in relation to survey effort, whilst the Rule 6 party supported by expert opinion was able to point to shortcomings in survey

effort (in particular radio tracking), that the inspector placed a great deal of weight on the judgement made by the expert evidence presented by the appellant and the fact that NE had supported the overall survey effort although initially they had some concerns.

Secondly, whilst curtailment is not commercially desirable, in certain high risk circumstances (e.g. high levels of high risk species activity or rare species populations that may be affected by the wind farm operation) it may be required in order to confidently reduce the level of risk to local bat populations. However, such proposals need to be based on good bat activity and weather data that can be correlated as in this case. The inspector clearly believed the proposals put forward were reasonable and likely to be effective and perhaps, more importantly, would be deliverable through planning conditions.

Lastly, the inspector was content that the mitigation measures would be successful and as such a licence from NE would be unlikely to be required. However, he seems to have left this point open by referring to

the need for further mitigation if bat deaths were recorded. Although the extent and number of deaths was not defined, neither was it clear whether this would relate to individual bats or bat populations.

If you would like to discuss this case further then please contact *Dr Shepherd*:
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