

HAWKINS & CO

SOLICITORS

199 Wolverhampton Street, Dudley, West Midlands. DY1 1EA

Tel: 01384 253288

e-mail: mco@hawkinslaw.co.uk

Fax: 01384 212233

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Please Ask for: Mr. Banahan

Carwyn Jones, Esq.,
WAG Minister Planning,
the Environment and Rural Affairs,
Cathays Park,
Cardiff CF10 3NQ

Dear Sir,

re:- Technical Advice Note 8
Planning for Renewable Energy

We act for the Cefn Croes Action Group, on whose behalf this firm lodged its response to the TAN 8 Consultation Paper. TAN 8 has now been issued. This confirms the Welsh Assembly Government's intention to expand on-shore commercial wind turbines in Wales.

Our Clients have scrutinised the document most thoroughly as well as discussing it in detail with ourselves. We must therefore request your response to the following observations :-

The seven Strategic Search Areas (SSAs) shown on the maps demonstrate a close correlation to upland Forestry Commission holdings and common land i.e. the public estate.

It is already known that WAG Ministers regard FC. land as a resource to be exploited for activities other than FC's core remit "to protect and expand Welsh woodlands and forests for the benefit of the nation" and further "to conserve the biodiversity, landscapes and cultural heritage of our forests and woodlands". On 13.12.04, Alan Starkey (WAG's Head Agri-Environment and Organic Farming) told Cefn Croes Environmental Management Committee that "under the Government of Wales Act, FC Wales is enabled to undertake activities such as the building of windfarms on areas which it manages".

Partners : Michael J. Banahan LLB; Anthony Tennant TEP

Legal Executive: : Jane E. Gwilt F.Inst.L.Ex., Member of the Law Society Family Panel, Member of the Solicitors Family Law Association

Practice Manager : Peter R. Skidmore ILPM ILAM

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However, the strategy document determining forestry policy in Wales, "Woodlands for Wales 2001" does not mention wind turbines. The sole reference to renewable energy is for the use of wood as fuel (ref. 2.4.4). It is clear that Mr. Starkey has been misinformed. We must therefore request an indication as to which section of that Act allows such a development.

Section 4.5.2 of the June 2005 Arup report on the TAN 8 consultation points out that "in particular, since the Forestry Commission (and hence the Welsh Assembly Government) has a duty to have regard to the national interest in maintaining and expanding the forestry resources of Wales, extensive deforestation could be in breach of its legal duties". The Arup report refers to Section 8A of the Forestry Act 1967.

Correspondence between one of our Clients and FC Executives in Aberystwyth and Edinburgh has established that there has not been any secondary enabling legislation to change the Forestry Acts of 1967 and 1981, and that statutory instruments in this instance cannot be used. New legislation would therefore be required to alter the Forestry Acts, and this would need to be subjected to the full scrutiny and open debate of normal Westminster Parliamentary procedures. There has been no such new legislation.

Forestry Commission land at Cefn Croes and within the SSAs was originally acquired for afforestation, and therefore deemed suitable for that purpose. Now however, FC Wales is disposing of large tracts of land by sale or lease, and is clear-felling - in some cases prematurely before trees reach their full market value - without replanting or permitting spontaneous regeneration. The purpose is to permit industrialisation by wind power station development.

Such activities are taking place in a secretive manner and in the absence of necessary legislation or any public consultation or debate. It is our view that such activities are illegal. Our Clients therefore wish to know which sections of the Government of Wales Act are interpreted as overriding the Forestry Acts and current FC Wales strategy, enshrined in the 'Woodlands for Wales' policy? Further, have these proposals been brought before the Commissioners under the terms of LM 473?

It therefore appears clear that the Welsh Assembly Government in collaboration with the Forestry Commission are embarked upon a policy of promoting wind power which is contrary to statute and contrary to the published policy of the Forestry Commission. Such a cavalier attitude towards the prevailing legislation cannot be allowed to continue without challenge. Our instructions are to take the appropriate legal steps to compel due observance of the law.

We understand that our Clients are in contact with other conservation groups who have been following these issues closely and who will support our Clients in such action. Copies of this letter will accordingly be sent to them.

As a matter of courtesy, we must inform you that copies of this letter are also being sent to the parties whose names are appended below.

You will have observed that we have made no reference to the commercial

aspects of on-shore wind power development; we reserve the right to do so in due course.

Yours faithfully,

cc. Andrew Davies, Esq., Minister for Economic Development
Michael Clarke Esq., Director of Legal Services
Lord David Clark, The Forestry Commission