

## Transfer of power—the Energy Act 2016 and wind farms

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**Planning analysis: The Energy Act 2016 (EA 2016) devolves consent for large onshore wind farms in England and Wales from central government to local planning authorities. Megan Thomas, barrister at 6 Pump Court, says that developers will have a harder task demonstrating that proposed schemes have the backing of local communities.**

### **In what circumstances will onshore wind applications be decided by local planning authorities (LPAs) rather than the Secretary of State?**

Applications for onshore wind farms will be decided by LPAs unless they have been called in for determination by the Secretary of State. Applications are made under the Town and Country Planning Act 1990 (TCPA 1990). LPAs already have responsibility for granting planning permission for onshore wind farms of 50 MW or less. EA 2016, s 78 devolves consent for large onshore wind farms over 50 MW in England and Wales from the Secretary of State for Energy and Climate Change to LPAs. EA 2016, s 78 removes the obligation under section 36 of the Electricity Act 1989 to obtain consent from the Secretary of State for Energy and Climate Change to construct, extend or operate an onshore wind farm in England with a capacity greater than 50 MW. EA 2016, s 78 is in force from 12 July 2016.

### **What is the purpose of this change?**

The purpose is to give local communities more power in determining onshore wind farm applications and to devolve the decision-making away from Whitehall. The new regime is part of the government's localism agenda. From June 2015, new considerations apply to proposed wind energy development so that 'local people have the final say on wind farm applications'. LPAs 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.

### **What are the key considerations for LPAs when deciding whether to grant permission for an onshore wind project?**

Relevant policy is found in the National Planning Policy Framework, National Planning Practice Guidance, National Policy Statements, and at local level. The key issues are likely to be the extent to which the scheme complies with local policy, including:

- whether or not it is in an area identified as suitable for wind energy in a plan
- whether it impacts on landscape character and visual amenity, including any cumulative impacts from other committed wind turbine developments
- the extent of separation distances from residential dwellings
- any noise impacts
- any impact on wildlife, particularly bats and birds, and
- any impact on heritage assets

The LPA will need to be sure that concerns raised by local communities have been addressed and that the proposal has their backing.

### **What are the implications for developers?**

The devolution of larger wind farm schemes to LPA decision-making level will be likely to increase the difficulty of obtaining planning permission at first instance. More use of the appeal process to the Planning Inspectorate is likely to occur and, consequently, more delay in obtaining permission. Pre-application consultation with local communities

continues to be necessary under TCPA 1990, s 61W and as larger schemes are involved, the requirement on the developer to show that the scheme has the backing of the local community may be more difficult to demonstrate.

*Megan Thomas has practised in town and country planning and environmental law since qualifying as a barrister in 1987. She has a thorough knowledge and understanding of planning law and is also a decision maker in planning appeals.*

*Interviewed by Anne Bruce.*

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