

Den Brook Judicial Review Group

C/o Mr Mike Hulme
Coxmoor
Spreyton
Devon
EX17 5AR

RES UK and Ireland Ltd.

FAO CEO Dr Ian Mays, Board of Directors & Ors
Beaufort Court
Egg Farm Lane
Kings Langley
WD4 8LR

26th May 2015

Dear Sir/Madam,

Monitoring of Greater Than Expected Amplitude Modulation (GTE-AM) from the Proposed Den Brook Wind Farm.

Background

We the Den Brook Judicial Review Group (DBJRG) write in our capacity representing the interests of local residents whose amenity, sleep patterns and properties are at risk of being adversely affected by the proposed Den Brook wind farm near North Tawton, West Devon. I personally have been a leading member of DBJRG since it was founded in March 2007 with a principle aim of ensuring acoustic impacts from the proposed wind turbines were properly conditioned and controlled in order to adequately preserve people's rights and well-being within the Den Brook neighbourhood.

You should be aware that during the course of the past eight years a number of legal actions were initiated by me on behalf of the DBJRG. Amongst a number of outcomes, noise data analysis undertaken by both RES and its later engaged acoustic advisers Hoare Lea Acoustics was found to be flawed to the extent that planning permission for the Den Brook wind farm was quashed following a ruling by the Court of Appeal (CoA). Furthermore, conditions 20 and 21 were imposed for the control of GTE-AM wind turbine noise with the subsequent grant of planning permission¹ by a senior Planning Inspector, Andrew Pykett BSc(Hons) PhD MRTPI. The conditions were later ratified by the CoA² such that the ruling of Lord Justice Elias, inter alia, states:

"...there is an obligation on the developers to comply with the AM levels specified in condition 20 and that obligation will run for the duration of the planning permission."

Following imposition of the GTE-AM noise conditions RES made an application to the Local Planning Authority (LPA) aimed for making substantial and significant material changes to the conditions which, along with other critical reviews, became the subject of a report carried out on behalf of the DBJRG.

¹ Appeal Ref: APP/Q1153/A/06/201716, dated 11 December 2009

² Neutral Citation Number: [2011] EWCA Civ 638, dated 26 May 2011

Dr Malcolm Swinbanks' detailed examination of RES's proposals³ revealed procedures including undisclosed, in-house software code which perversely reduced by up to 50% measured levels of GTE-AM that were to be assessed for compliance purposes. RES later withdrew the section 73 application and in the alternative devised a Written Scheme as required by condition 21 of its planning permission.

The Written Scheme⁴ was approved and discharged by the LPA, 21 May 2014. In line with specific council practice, no third party consultation was entered into by the LPA's officers for arriving at their decision. However, following discharge of the Written Scheme, DBJRG and its expert advisers were provided access to the final draft of the approved Written Scheme together with the final draft of ongoing reports from consultants ISVR who advised the LPA in the matter.

Subsequent testing of the condition 21 Written Scheme using real-world wind turbine noise data was professionally carried out on behalf of the DBJRG. In particular, testing of stage 4, which incorporates complex mathematical procedures claimed by RES to filter out apparently invalid complaints before compliance testing is to be carried out against condition 20, has revealed inconsistencies believed by DBJRG to unlawfully undermine the ruling of the CoA as cited above.

Furthermore, DBJRG represents that, under the Doctrine of Precedent, condition 20 is to remain intact unless overturned by an equal or higher authority than the CoA. Clearly, neither RES nor the LPA constitute such a higher authority.

DBJRG's ensuing efforts for resolving the matter unfortunately fell to further legal actions through the courts. Detailed expert evidence was submitted on behalf of DBJRG that clearly identified problematic aspects of the Written Scheme. Notwithstanding said evidence, both RES and the LPA's consultants manifestly failed to address arguably the most transparent flaw identified within stage 4 of the Written Scheme, i.e. stage 4(c), which states in terms:

"If this assessment [stage 4, clauses a and b] indicates that GTE-AM is present, then the LAeq,125msec data required by Condition 20 shall be band pass filtered, from 0.9fc to 1.1fc, and the application of the Condition 20 methodology repeated. This is essential to ensure that the variation causing apparent non-compliance with Condition 20 derives solely from that occurring at the blade passing frequency, fc."

In a yet further effort to resolve the matter, DBJRG approached RES's senior technical manager Dr Jeremy Bass for his considered view of the effects of stage 4(c) on condition 20 (Dr Bass is understood to have authored the procedures specified, including stage 4(c) of the Written Scheme). Dr Bass however failed to provide his view but instead deferred to the LPA for determination of the matter.

Such disingenuous responses, especially given Dr Bass' declared expertise in the matter⁵, can only

³ Assessment of RES Revised Condition 20 for Evaluating Excessive Amplitude Modulation, M. A. Swinbanks, MAS Research Ltd., Mathematical & Scientific Research, May 2013

⁴ West Devon Borough Council Application Number: 00261/2014, 21 May 2014

⁵ First Witness Statement of Dr Jeremy Bass - claim for Judicial Review in the High Court - CO/3059/2014

harm relations and further excite suspicion of RES within the communities amongst which RES proposes to build the Den Brook wind farm.

Moreover, DBJRG would also draw attention to longstanding concerns that RES, in consort with its commissioned acoustics experts Hoare Lea and the Hayes McKenzie Partnership, advised not only the surrounding communities but also decision makers within the LPA and later the Planning Inspectorate that GTE-AM was not an issue requiring attention or indeed assessment. This now clearly malfeasant position was maintained throughout the extensive planning process despite widespread and growing empirical evidence to the contrary⁶. Indeed, it is on public record that during a meeting only as recently as 7 November 2013, Dr Bass conceded that the industry wind turbine line (as adopted by RES for many years) that GTE-AM is rare and a GT-EAM condition is not necessary to protect amenity was no longer tenable:

“...that idea has been completely exploded by the weight of evidence presented by Mike Stigwood in particular.” Dr Bass went on to say that he suspected in the future, developers at public inquiries will no longer try the argument that GTE-AM is rare and shouldn't have a condition. He added that it *“seems to me the entirely rational position.”*

In summary, although absencing remaining issues with the more complex aspects of stages 4(a) and 4(b) of the LPA-approved Written Scheme, DBJRG's view remains that stage 4(c) is both a materially significant and unlawful failing in that it requires potentially important aspects and portions of any GTE-AM noise to be excluded from all condition 20 compliance assessments. This not only ominously and materially prejudices neighbours of the proposed Den Brook wind farm and holds serious implications in relation to Article 8 of the Human Rights convention, but flies directly in the face of the extant 2011 CoA ruling.

Notice of Intent

On account of the matters outlined above and further, RES's previously declared unwillingness⁷ to either assist or participate in compliance noise monitoring following construction and operation of the Den Brook wind farm, DBJRG has resolved to professionally carry out 24/7 noise monitoring in a similar way to that currently in operation at the Cotton Farm wind farm⁸. Moreover, given recent

⁶ See for example “Wind turbines at night: acoustical practice and sound research” - Frits van den Berg, 2003 ABSTRACT: Sound levels near a wind turbine park at night were much higher than expected. This is caused by strong winds at hub height especially when at ground level there is little wind, as is quite usual at night..... http://www.researchgate.net/publication/228566955_Wind_turbines_at_night_acoustical_practice_and_sound_research [accessed May 17, 2015].

⁷ During a meeting between RES, WDBC, ISVR and DBJRG, 4th February 2014, Dr J. Bass and Mr D. Cox, both of RES, were asked whether RES would provide SCADA data from the proposed Den Brook wind farm and further assist with noise monitoring planned to be undertaken professionally on behalf of DBJRG. The response was that RES was not prepared to cooperate with DBJRG's proposed monitoring as such cooperation was not an obligation of RES's planning permission.

⁸ See: http://www.masenv.co.uk/~remote_data/ [accessed May 17, 2015].

reports concerning infrasound emitted by industrial scale wind turbines⁹ and its clear potential for creating adverse effects to neighbours, DBJRG will also be looking to install infrasound and low frequency noise monitoring.

All breaches of condition assessed in accordance with the condition 21 Written Scheme alongside assessment directly according with the parameters established by condition 20 will be logged on a dedicated website, thus enabling widespread, indeed worldwide, close scrutiny of the proposed Den Brook wind farm.

If, as suspected, the Written Scheme fails to trigger measures to address and mitigate GTE-AM contrary to condition 20, the matter will be pursued with continued vigour.

DBJRG regrets that the need has arisen to publicly issue RES with this pre-action protocol for Notice of Intent. Moreover, DBJRG respectfully requests that the entire contents of this letter are brought to the attention of and copies made available for: Board Members of RES; all interested parties; its insurers and all persons, bodies and organisations with current and prospective future financial involvement¹⁰ and/or investment in the proposed Den Brook wind farm such that they may fully take into account the measures notified for their own interests, intents and purposes.

Please acknowledge receipt of this letter, the 'Notice of Intent' and adherence with the aforementioned request to notify others, thank you.

Yours faithfully,

A solid black rectangular box used to redact the signature of Mike Hulme.

Mike Hulme
p.p. The Den Brook Judicial Review Group

⁹ See: <http://waubrafoundation.org.au/wp-content/uploads/2015/02/Schomer-P.-Review-of-Steven-Coopers-Cape-Bridgewater-Report.pdf> [accessed May 17, 2015].

¹⁰ Financial involvement to include distributors and recipients of Community Funds and the proposed Local Electricity Discount Scheme (LEDS).