



Neutral Citation Number: [2025] EWHC 3073 (Admin)

Case No: AC-2025-CDF-000046

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**PLANNING COURT**

Cardiff Civil and Family Justice Centre  
2 Park Street, Cardiff, CF10 1ET

Date: 24/11/2025

**Before :**

**HIS HONOUR JUDGE JARMAN KC**

Sitting as a judge of the High Court

**Between :**

**RWE RENEWABLES UK SWINDON LIMITED**

**Claimant**

**- and -**

**WELSH MINISTERS**

**Defendant**

-----  
-----

**Mr Mathew Reed KC (instructed by **Burges Salmon** ) for the **Claimant****

**Ms Annabel Graham Paul (instructed by **GLD**) for the **Defendant****

Hearing dates: 12 November 2025

-----

**Approved Judgment**

This judgment was handed down remotely at 10.00am on 24 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

HIS HONOUR JUDGE JARMAN KC

**HHJ JARMAN KC:**

*Introduction*

1. The Claimant (RWE) seeks an order, by way of statutory review under section 288 of the Town and Country Planning Act 1990, quashing a decision of a planning inspector appointed by the Defendant, the Welsh Ministers, to determine its application for planning and associated permissions for up to six wind turbines on a site immediately adjacent to the southern boundary of Bannau Breicheiniog National Park and to the north of the A464 between Merthyr Tydfil and Rhymney. The inspector refused to grant the permissions. RWE claim that in doing so the inspector made seven errors of law. The Welsh Ministers submit that when read fairly as a whole, the inspector's decision letter (DL) dated 3 March 2025, displays no errors of law, but alternatively in respect of some of the alleged errors the outcome would have inevitably have been the same had they not been made.
2. The proposed development would constitute development of national importance and so the application was made under section 62D of the 1990 Act, as amended by the Planning (Wales) Act 2015 and determined pursuant to The Developments of National Significance (Wales) (Amendment) Regulations 2024. It is described as including turbines with maximum blade tip height of 180 metres, hardstanding areas, aviation lighting, temporary construction and storage compound, new access route off the highway, on-site access tracks, passing places and turning heads with two gas pipeline and two watercourse crossings, battery energy storage systems, underground power cables, and a habitat management area.
3. The site comprises some 460 hectares and the majority of it falls within the Gelligaer and Merthyr Common. Accordingly associated deregistration and consent for works were sought under sections 16 and 38 of the Commons Act 2006. These also were refused. It is agreed that these refusals stand or fall with the application for planning permission.
4. In making his determinations, the inspector was under a statutory duty to have regard to the development plan. Section 38(3) of the Planning and Compulsory Purchase Act 2004 materially provides that the development plan includes the development plan documents (taken as a whole) which have been adopted or approved in relation to the area. Section 38(6) provides that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
5. The development plan for the purposes of the planning application comprised Future Wales, the national plan 2040 (Future Wales), the Caerphilly County Borough Local Development Plan up to 2021 (the Caerphilly LDP) and the adopted Merthyr Tydfil County Borough Council Replacement Local Development Plan (the Merthyr LDP). Each of these documents contain policies which support renewable energy development but which also protect the National Park (policies 17 and 18 of Future Wales; policies SP5, SP10, CW15, CW4, NH1 and NH3 of the Caerphilly LDP; and policies SW4, EcW8, EnW5, EnW1, EnW2 and EnW3 of the Merthyr LDP). It is the interactions between such policies which lie at the heart of this challenge.

6. Planning Policy Wales (PPW) is not part of the development plan but is regarded as policy by the Welsh Government and part of the planning framework for Wales. At [1.4] it is stated that such policy, together with Future Wales, sets out how the planning system at a national, regional and local level can assist in delivering requirements through strategic and local development plans. Section 5.9 deals with renewable energy developments but does not identify a specific level of harm which must be avoided.
7. The errors which it is said this experienced inspector made, some of them fundamental, may be summarised as follows:
  - i) Failing to assess whether the proposal was in accordance with the development plan as a whole.
  - ii) Misinterpreting the meaning of the word “acceptable” within the meaning of policy 18 of Future Wales, in finding that the proposed development was not acceptable.
  - iii) Failing to consider whether there was a wholly exceptional case for the proposed development.
  - iv) Alternatively, failing to explain why there was not such a case.
  - v) Acting irrationally in finding that benefits of proposed development, such as the delivery of renewable energy and ecological mitigation and compensation could not be realised because planning permission was being withheld on landscape grounds.
  - vi) Failing to take into account the benefits of the proposed development in respect of peat compensation and enhancement and the proposed enhancement of habitat in the context of a proposed extension of a nearby SSSI.
  - vii) Misunderstanding the approach of REW landscape consultants when assessing the special qualities of the National Park.
8. The inspector held a hearing over three days in November 2024 and made three site visits in the following couple of months. Among the documents he had before him were RWE’s landscape and visual impact assessment, its environmental statement (including photomontages and an assessment of the National Park’s special qualities at appendix 5.3), and hearing statements on such matters as ecology and landscape and visual issues. He also had statements of common ground with Natural Resources Wales (together with a hearing statement), Merthyr Tydfil CBC and Caerphilly CBC.

#### *Legal principles*

9. The principles governing the approach of the inspector, and of court on an appeal under section 288 of the 1990 Act, are well established and were not controversial before me. The scope of the duty under section 36(8) of the 2004 Act has been authoritatively established by the House of Lords in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447. Lord Hope at 1449H referred to it as the essential component of the plan-led system of development control so that there is a presumption in favour of the development plan. Lord Clyde at page 1458D

to page 1459G observed that priority must be given to the development plan in the determination of planning matters, but other material considerations should be weighed in the balance to establish whether the decision should be made, as the statute presumes, in accordance with the plan. He set out the duty of the decision maker as follows:

“His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse.”

10. At 1459H-1460A Lord Clyde continued:

“Counsel for the Secretary of State suggested in the course of his submissions that in the practical application of the section two distinct stages should be identified. In the first the decision-maker should decide whether the development plan should or should not be accorded its statutory priority; and in the second, if he decides that it should not be given that priority it should be put aside and attention concentrated upon the material factors which remain for consideration. But in my view it is undesirable to devise any universal prescription for the method to be adopted by the decision-maker, provided always of course that he does not act outwith his powers. Different cases will invite different methods in the detail of the approach to be taken and it should be left to the good sense of the decision-maker, acting within his powers, to decide how to go about the task before him in the particular circumstances of each case.”

11. In *R v Rochdale MBC Ex p. Milne (No.2)* [2001] Env LR 22, Sullivan J, as he then was, observed at [48] that it is not unusual for development plan policies to pull in different directions, in which case there may be no clear cut answer whether a proposal is in accordance with the development plan. The decision-maker must decide whether it is or not, bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach.
12. These principles were more recently affirmed by Lindblom LJ, as he then was, in *Secretary of State for Communities and Local Government v BDW Trading Ltd (t/a David Wilson Homes (Central, Mercia and West Midlands))* [2017] PTSR 1337 [21-23]. He also cited Richards LJ in *R. (on the application of Hampton Bishop Parish Council) v Herefordshire Council* [2014] EWCA Civ 878 [28] and Patterson J in *Tiviot Way Investments Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 2489 (Admin) [27-36], to the effect that the statutory duty can only be properly performed if the decision-maker, in the course of making the decision, establishes whether or not the proposal accords with the development plan as a whole. He also agreed with Richards LJ in *Hampton* [30] that the duty is not displaced by government policy, which does not have the force of statute or the same status as the development plan, but which is one of the material considerations to be weighed in the balance.
13. The weight to be given to any conflict with relevant policies is a matter for the planning judgement of the decision-maker, whether the planning policy in question is part of the development plan or a material consideration, see *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at 780H.
14. Holgate J, as he then was, in *Dignity Funerals v. Breckland District Council* [2017] EWHC 1492 (Admin) said at [68]:

“68. Conflict with one particular policy may be treated as having an adverse impact and yet of relatively little weight. At the same time, the decision-maker may consider that compliance with other policies designed to secure that development in general takes place without causing significant harm to a range of environmental factors, does involve a greater degree of compliance with the development plan than the non-compliance. The decision-maker is entitled to regard compliance with those policy considerations (even in the sense of simply avoiding harm) as having a greater priority or importance than the non-compliance with a policy designed to protect one other aspect, such as the landscape.”
15. If the inspector would inevitably still have granted the application had he not made the error, his decision should not be quashed: *Simplex GE (Holdings) Ltd v Secretary of State for the Environment* [2017] PTSR 1041 (CA) at 1060C.
16. The principles applicable to reviews under section 288 of the 1990 Act of decisions such as the one in question were summarised by Lindblom LJ in *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2018] PTSR 746 at [6-7]. These, so far as relevant, may further be summarised for present purposes as follows:

- i) Such decisions are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to rehearse every argument relating to each matter in every paragraph.
  - ii) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law. The reasons need refer only to the main issues in the dispute, not to every material consideration
  - iii) A review under section 288 does not afford an opportunity for a review of the planning merits of an inspector's decision.
  - iv) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration.
  - v) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question.
  - vi) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored.
17. He also re-emphasised the limits to the court's role in construing planning policy, citing Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd* [2017] UKSC 37 [22 to 26], and his own judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraph 41). He cautioned against the dangers of excessive legalism infecting the planning system.

#### *Future Wales*

18. Policy 17 of Future Wales is headed "Renewable and Low Carbon Energy and Associated Infrastructure" and reads:
- "The Welsh Government strongly supports the principle of developing renewable and low carbon energy from all technologies and at all scales to meet our future energy needs. In determining planning applications for renewable and low carbon energy development, decision-makers must give

significant weight to the need to meet Wales' international commitments and our target to generate 70% of consumed electricity by renewable means by 2030 in order to combat the climate emergency. In Pre-Assessed Areas for Wind Energy the Welsh Government has already modelled the likely impact on the landscape and has found them to be capable of accommodating development in an acceptable way. There is a presumption in favour of large-scale wind energy development (including repowering) in these areas, subject to the criteria in policy 18. Applications for large-scale wind and solar will not be permitted in National Parks and Areas of Outstanding Natural Beauty and all proposals should demonstrate that they will not have an unacceptable adverse impact on the environment. Proposals should describe the net benefits the scheme will bring in terms of social, economic, environmental and cultural improvements to local communities. New strategic grid infrastructure for the transmission and distribution of energy should be designed to minimise visual impact on nearby communities. The Welsh Government will work with stakeholders, including National Grid and Distribution Network Operators, to transition to a multi-vector grid network and reduce the barriers to the implementation of new grid infrastructure.”

19. Policy 18, headed “Renewable and Low Carbon Energy Development of National Significance,” reads:

“Proposals for renewable and low carbon energy projects (including repowering) qualifying as Developments of National Significance will be permitted subject to policy 17 and the following criteria:

1. outside of the Pre-Assessed Areas for wind developments and everywhere for all other technologies, the proposal does not have an unacceptable adverse impact on the surrounding landscape (particularly on the setting of National Parks and Areas of Outstanding Natural Beauty);
2. there are no unacceptable adverse visual impacts on nearby communities and individual dwellings;
3. there are no adverse effects on the integrity of Internationally designated sites (including National Site Network sites and Ramsar sites) and the features for which they have been designated (unless there are no alternative solutions, Imperative Reasons of Overriding Public Interest (IROPI) and appropriate compensatory measures have been secured);
4. there are no unacceptable adverse impacts on national statutory designated sites for nature conservation (and the

features for which they have been designated), protected habitats and species;

5. the proposal includes biodiversity enhancement measures to provide a net benefit for biodiversity;

6. there are no unacceptable adverse impacts on statutorily protected built heritage assets;

7. there are no unacceptable adverse impacts by way of shadow flicker, noise, reflected light, air quality or electromagnetic disturbance;

8. there are no unacceptable impacts on the operations of defence facilities and operations (including aviation and radar) or the Mid Wales Low Flying Tactical Training Area (TTA-7T);

9. there are no unacceptable adverse impacts on the transport network through the transportation of components or source fuels during its construction and/or ongoing operation;

10. the proposal includes consideration of the materials needed or generated by the development to ensure the sustainable use and management of resources;

11. there are acceptable provisions relating to the decommissioning of the development at the end of its lifetime, including the removal of infrastructure and effective restoration.

The cumulative impacts of existing and consented renewable energy schemes should also be considered.”

*The decision letter*

20. The inspector set out the main issues which he had to determine at DL8 as follows:

“8. Having regard to the written and oral evidence, the main issues in the determination of the application are:

- Whether the development would be acceptable in principle, having particular regard to the planning policy framework;
- The effect of the development upon landscape character and visual amenity, having particular regard to the impacts on Bannau Brycheiniog National Park;
- The effect of the development on ecological interests, including the effect of the proposed development upon the peatland resource;

- The effect of the development upon cultural and historic assets; and
- Whether any identified harm would be outweighed by the matters in favour of the development.”

21. He then went on to deal with the principle of development. He concluded that such principle was acceptable, subject to assessment of environmental effects, and that the proposed development did not conflict with Future Wales or with the relevant policies of either of the local plans:

“9. The Welsh Government (WG) has undertaken an assessment to identify the areas where, in principle, large scale wind energy proposals would be acceptable. Within these ‘Pre-Assessed Areas for Wind Energy’, there is a presumption in favour of large-scale on-shore wind energy development, and the associated change in landscape character, subject to the criteria set out in Policy 18 of Future Wales: The National Plan 2040 (hereinafter referred as Future Wales). The application site was excluded from the ‘Pre-Assessed Areas for Wind Energy’, meaning that there is not a presumption in favour of the development proposed in this instance.

10. Future Wales is clear that sites in National Parks and Areas of Outstanding Natural Beauty are considered unsuitable for large-scale wind and solar. Whilst the application site borders the Bannau Brycheiniog National Park, it is not located within its boundary or any other nationally protected landscape. Future Wales states that, outside of the ‘Pre-Assessed Areas for Wind Energy’ and nationally protected landscapes, a positive policy framework exists for the consideration of such developments, subject to the tests set out in Policy 18.

11. Policy 18 is generally permissive of low carbon energy projects, subject to the development not resulting in, amongst other things, unacceptable adverse environmental impacts. The environmental impacts of the development proposed in this instance will be comprehensively assessed later in this Decision. Whilst they pre-date the publication of Future Wales, both the adopted Caerphilly County Borough Local Development Plan (LDP) up to 2021 (Adopted 2010) and the adopted Merthyr Tydfil County Borough Council Replacement Local Development Plan (2016- 2031) (Adopted 2020) form part of the development plan framework for the area. Both of those documents provide for a generally supportive framework for the consideration of renewable energy schemes, subject to consideration of environmental impacts.

12. The site lies outside of the settlement boundaries identified within both the Caerphilly and Merthyr Tydfil LDPs and is therefore countryside for the purposes of planning policy. Both

national and local policy advocate strict control of development within such areas. However, it is widely recognised that energy projects such as that proposed in this instance need to be sited in rural locations given the land-take and other requirements. It is therefore generally accepted that such developments constitute necessary infrastructure provision that would be justified in such a countryside location. This is reflected in the permissive policy framework at both a national and local level in circumstances where environmental impacts are found to be acceptable

13. Therefore, despite the fact that the site does not fall within the ‘Pre-Assessed Areas for Wind Energy’, and notwithstanding the fact that the site lies adjacent to Bannau Brycheiniog National Park, the principle of development is acceptable, subject to an assessment of the various environmental effects. The principle of the development would not therefore conflict with the aims of Future Wales, and neither would it conflict with the provisions of Policies SP5 and CW15 of the adopted Caerphilly LDP and Policies SW4 and EcW8 of the Merthyr Tydfil LDP.”

22. The next section dealt with landscape character and visual amenity and paid particular regard to the effect of the proposed development on the National Park. At DL16 it was noted that it was generally agreed at the hearing that, in respect of landscape character, the most pertinent special qualities are the National Park’s sweeping grandeur and outstanding natural beauty and its peace, tranquillity and darkness, it being designated as an International Dark Sky Reserve by the International Dark Sky Association. He then went on to deal in detail with RWE’s landscape assessment, which concluded that significant effects on the National Park would be localised and that what were termed the core areas would not be subject of significant effects and that overall its integrity and inherent natural beauty would be conserved.
23. The inspector dealt with the reference to core areas in this way:

“21. Both Natural Resources Wales (NRW) and the Bannau Brycheiniog National Park Authority (BBNPA) have raised significant concerns with the approach and findings in respect of the impacts upon the National Park. The other LPAs also appear to acknowledge that the greatest impacts would be on the National Park. Specifically, it is submitted that the evidence underestimates the significance of effects, particularly on the National Park’s special qualities. Concerns have also been raised with the general finding that the natural beauty of the National Park would be conserved given that the ‘core areas’, including the central beacons, would not be subject to significant effects. Notwithstanding this, further concerns have also been raised regarding the magnitude of change assessment that cites moderating factors, with those parties alleging that such factors would fail to moderate the effects on Bannau

Brycheiniog, resulting in the inherent value and impacts on the special qualities being underestimated.

22. There is nothing in legislation or planning policy that justifies the arbitrary division of the National Park into ‘core’ and ‘fringe’ areas for the purposes of considering landscape impacts. Indeed, both statute and policy require equal protection to be given to all parts of the designation and such an approach is generally consistent with the relevant guidance. Furthermore, I agree with NRW and BBNPA that an assessment of acceptability that focuses on whether a development would not harm the majority of special qualities, or indeed the core of the National Park, would be fundamentally flawed. Notwithstanding this finding, I also share the wider concerns that significant effects would not be confined to within 3km at BBNP LCA 9: Mynydd Llangatwg and Llangynidr, with extensive visibility and wider landscape character impacts across LCA3: Fforest Fawr; LCA7: Central Beacons; LCA8: Talybont and Taff Reservoir Valleys; LCA9: Mynyddoedd Llangatwg & Llangynidr; and LCA13: The Black Mountains.

23. At LCA3: Fforest Fawr (Viewpoint 21), the turbines would dominate the smooth, open skyline and detract significantly from the high scenic quality of the landscape. High tranquillity levels arising from its openness and lack of human influence would therefore be compromised. Moreover, the development would introduce night-time light pollution at this location. As a consequence, human influence would become a prominent feature and this would erode the sense of tranquillity and remoteness within the area. The iconic landscape at LCA7: Central Beacons (Viewpoints 18 and 24), with few detracting features relating to human development, and high levels of tranquillity, would also be adversely impacted. This would include significant impacts from the iconic summits, including Pen y Fan. Indeed, the visual prominence of the turbines, resulting from their size and proximity at around 12.5km, would attract attention and would represent incongruous features amongst the prevailing natural character and quality of views.”

24. The inspector then went on to make similar findings in respect of other areas of the National Park, noting visual intrusion, alteration to landscape of moorland trees and incongruous features in generally open landscape which forms an important setting to the National Park. He concluded as follows:

“28. Having regard to the available evidence, and my own observations taken at my site visits, I share NRW’s concerns that the adverse visual effects experienced by people at these viewpoints would generally be significant. Moreover, such harm would not be restricted to the representative viewpoints,

but would also extend along a number of promoted recreational routes, including Beacons Way, Cambrian Way, and Brecon Beacons Horseshoe Ridge Walk. Indeed, visibility from these routes would occur along the iconic ridge and summits of Corn Du, Pen y Fan, and Cribyn, which are less than 13km from the proposed turbine locations.

#### Conclusion on Landscape and Visual Matters

29. On the basis of the foregoing, I find that by virtue of their scale and siting, coupled with their vertical projection and dynamic movement, the proposed turbines would cause harm to sensitive aspects of the landscape and detract from the special qualities of the Bannau Brycheiniog National Park. Such harm would be significant and would extend well beyond the 3km area in which the LVIA acknowledges significant harm to the BBNP. For the same reasons, the development would also introduce dominant man-made features at locations currently.

...

32. The development would therefore have an unacceptable adverse impact on the setting of the Bannau Brycheiniog National Park. Indeed, it would fail to conserve or enhance its natural beauty and thus undermine the first statutory purpose of the designation. It would also interfere with people's enjoyment of the landscape, undermining the second purpose of promoting the enjoyment of its special qualities by the public. The development would therefore run counter to the provisions of Policy 18(1) of Future Wales. There would also be conflict with Policies EnW5 and EcW8 of the adopted Merthyr Tydfil LDP, Policies SP10, CW4 and NH1 of the adopted Caerphilly LDP, and Caerphilly CBC's adopted Supplementary Planning Guidance (SPG) document entitled 'Smaller Scale Wind Turbine Development Landscape Sensitivity and Capacity Study' which, amongst other things, advises that there is limited capacity for large scale wind turbine development in LCA17 due to the presence of the National Park."

25. The inspector then went on to consider ecological impacts and peatland as a habitats and species resource. He referred to the stepwise approach in PPW which has as its first priority the avoidance of any damage to biodiversity. Where there is such harm, reasonable alternatives involving no harm, less harm or benefit. Proposals in statutorily designated sites are unacceptable. This principle applies to sites containing protected species and habitats which are considered to be irreplaceable. That word is explained in footnote 129 of PPW as technically very difficult (or taking a very significant time) to restore, recreate or replace once destroyed. The inspector found that description was engaged in the present case and therefore wholly exceptional circumstances would be needed to justify this impact. However at DL47, he found that the contribution towards renewable energy targets, coupled with the wider peat mitigation and compensation measures, amount to the wholly exceptional

circumstances needed to justify the development, and that the proposal “would, therefore, be broadly compliant with PPW and the development plan framework in this respect.”

26. He next considered designated sites and noted that part of the site had been designated as a proposed SSSI shortly before the hearing. He came to a similar conclusion in DL56 as he had in DL47. He went on to consider protected species, in particular curlew and snipe and concluded at DL64:

“Therefore, subject to the proposed mitigation and compensatory provisions, there would not be any unacceptable adverse impacts on protected species. The development would, therefore, broadly comply with Policies 9 and 18 of Future Wales and PPW. There would also be no conflict with Policy CW4 of the adopted Caerphilly LDP and Policies EnW1, EnW2 and EnW3 of the Merthyr Tydfil LDP.”

27. The inspector came to similar conclusions in respect of heritage and other matters. At DL71-78 he considered “other matters” and at DL78-81 he set out the “matters in favour of development.” He stated that policy 17 of Future Wales gives strong support for renewable and low carbon energy development. He noted that the export capacity of the proposed development would be sufficient to power about 24,500 homes annually and could be delivered quickly. There would also be economic benefits in the construction and operational phases. At DL81, he considered that such matters merited “substantial weight in the planning balance.”

28. The inspector’s overall conclusions were set out in the final paragraphs of his decision letter, headed “Planning Balance and Conclusion” as follows:

“82. There is no doubt that the development would bring with it substantial benefits, principally in the form of a significant contribution towards renewable energy production. The fact that such benefits could be brought forward as soon as 2027 adds further weight to the proposals. The economic benefits are also weighty considerations. However, for the reasons outlined above, I have found that the development would have an unacceptable adverse impact on the surrounding landscape and, in particular the setting of the Bannau Brycheiniog National Park. Indeed, the harm would be substantial and the development would fail to conserve or enhance the natural beauty of the BBNP. It would also cause material harm to the special qualities of the National Park and would interfere with people’s enjoyment of the land subject of the designation.

83. In balancing these impacts, I find that the harm to the National Park to be a compelling consideration that outweighs the benefits that would be associated with a grant of planning permission. Indeed, despite the wider support for such proposals, I find that the development would conflict with Policy 18(1) of Future Wales which states that proposals for renewable and low carbon energy projects qualifying as

Developments of National Significance will be permitted where the proposal does not have an unacceptable adverse impact on the surrounding landscape, particularly on the setting of national parks and areas of outstanding natural beauty. Moreover, whilst ecological harms have been found to be policy compliant by reason of wholly exceptional circumstances, they nevertheless attract moderate weight against the scheme given the finding that the harm to landscape is sufficient to withhold planning permission and thus prevent the benefits of the scheme from being realised.

84. Therefore, on the basis of the foregoing, I find that the application for planning permission should be refused. In coming to this conclusion, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Wellbeing of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that the findings of this decision are in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.”

*Ground 1*

29. I turn now to the grounds. Mr Reed KC, for RWE, accepts that the decision letter need not refer expressly to section 38(6) or the priority of the development plan, as long as it is clear from the decision that the statutory duty has in substance been complied with. He submits in the present case that it is not possible to come to that conclusion because the inspector simply deals with each matter by weighing up harm and benefit without considering whether the proposed development complied with the development plan as a whole and without considering the consequence of his findings in the policy context. He referred to this as “salami slicing.”
30. Mr Reed KC further submits that the inspector did not properly deal with the sustainability of the proposed development, which by its nature has limited sites where it can be sited. He did not engage with the policy tension between support for renewable energy on the one hand and protection for the National Park on the other. He submits that policies 17 and 18 do not provide that if one or more of the criteria to which the support for renewable energy is subject, then permission must be refused. The proposed development was found to be non-compliant in only one respect. Although at DL83 the inspector found that the harm to the National Park was “compelling” he did not consider how that fitted in with the policy context. He did not go on to consider whether material considerations indicated that, in spite of any contravention of the development plan, permission should be granted.
31. Ms Paul, for the Welsh Ministers, submits that it is clear from the decision letter that the inspector did have regard to the strong policy support for renewable energy proposals. He found the proposed development to be acceptable in principle, subject

to environmental impact. She points to various examples of where the inspector found compliance with policy (eg DL13, 47, 59, 64 and 70) and to the on respect in which he did not (DL32- the unacceptable adverse impact on the National Park). Policy 18 of Future Wales provides expressly for an exception to such strong support where there is unacceptable harm to the National Park. If the development fulfils the criteria in that policy, it will be compliant but if not, there would be a breach. Ms Paul accepts that the inspector was required to assess the nature and the extent of the breach but submits that that is what the inspector did, see particularly DL32.

32. I prefer the submissions of Ms Paul. Policy 18 of Future Wales, being national and recent policy, was central to the decision which the inspector had to make as this was development of national significance. He was entitled to focus upon it and to find that subject to environmental impact the proposed development was complied with plan policy. However, he referred also to the relevant local plan policies. It is not suggested that he overlooked any relevant policy. Policy 18 then required him to go on to consider various matters there listed, including whether the proposal would have an unacceptable adverse impact on surrounding countryside and in particular on the setting of the National Park. This the inspector proceeded to do, in some detail. He was entitled to find that such impact was unacceptable, which was a matter for his planning judgment. Once he had done so, the “subject to” criterion in policy 18 was not met and so the policy did not require the proposed development to be permitted, despite the strong policy support for such development where there was no such adverse impact. It did not require permission to be refused either, but the inspector found that the harm to the National Park was compelling which outweighed the benefits.

*Ground 2*

33. Under ground 2, Mr Reed KC submits that the inspector equated the word “unacceptable” with “significant” and refers in particular to DL29-32. Whether it is acceptable is not just a question of scale but also involves appropriateness. The third criterion in policy 18 refers to no “adverse effects,” for example on SSSI sites, unless there are no alternatives. This shows that “unacceptable” in the first criterion means something else. Policies 17 and 18 must be considered together. The meaning of “unacceptable” is a matter of law and the inspector took too strict an approach.
34. Ms Paul submits that policy 18 is clear that such development will be permitted, but that is subject to the first criterion that there must be no unacceptable adverse impact, and that phrase is used in most of the criteria. So the starting point is that the development should be permitted, but then it must be considered whether the adverse impact is unacceptable, in the context that the principle of development has already been established by policy.
35. I do not accept the submission that the inspector equated “unacceptable” with significant. Reading the decision letter fairly as a whole, the inspector in my judgment considered the appropriateness of the development. He did not wholly accept the expert evidence produced by RWE, as he was entitled to do, having visited the site and formed his own planning judgment.

*Ground 3 and 4*

36. I shall take these together. Mr Reed KC further submits that even if there was a breach of policy 18(1) in the alternative under ground 3 the inspector failed to consider whether there was nevertheless a wholly exceptional case for allowing the development. The test of exceptional circumstances was specifically set out in respect of development within the National Park in PPW (para. 6.3.10). Moreover, such a test applied in respect of other issues, such as the protection of the proposed SSSI and the impact on the peatland resource.
37. Ms Paul accepts that an exceptionality test applies to development within the National Park and to such matters as the protection of the SSSI and peatland resource. The former does not apply here, and the inspector did apply such a test where appropriate. However, it was not such an obvious material consideration, and it was not raised as a free-standing test.
38. Again, I prefer the submissions of Ms Paul. The inspector did apply such a test where appropriate. There was nothing to indicate that he should have considered this as a free-standing test. In those circumstances, he did not have to give reasons why he did not consider it as such.

*Grounds 5 and 6*

39. I shall take these together. It is accepted that at DL83 the inspector appeared to discount ecological benefits on the basis that such benefits could not be realised as permission was being refused on landscape grounds. It is further accepted that as expressed this displays a lack of logic as the question was how the ecological benefits should be weighed in the balance in determining whether permission should be granted. However, in my judgment, as Ms Paul submits, it is clear that this slip is not sufficient to affect the rationality of the decision read fairly as a whole. It is clear that the adverse impact on the National Park was found to be so unacceptable as to negative the presumed acceptability of the development in policy 18.
40. Because the inspector did not expressly refer to such benefits in the summary of his conclusion in DL82-83 does not mean that he failed to take these into account. He had dealt with these in detail earlier in the decision letter, which read fairly as a whole, shows that he took them properly into account.

*Ground 7*

41. Finally, Mr Reed KC submits that the inspector misunderstood the RWE's approach to the special qualities of the National Park. The reference by its landscape experts to the core meant those areas where susceptibility would be most affected. By concluding that the distinction between areas of the National Park was flawed, the inspector placed the same importance on effects throughout the National Park areas; for example, at DL23-24. Accordingly, he failed to properly assess the merits of RWE's case in this regard.
42. I do not accept that submission. He was entitled to observe that there was no policy justification for the distinction between core areas and other areas of the National Park. Nevertheless, it is clear that he went on to consider in detail the effect on various areas and considered many such effects on different areas, including upon

smooth open skylines, tranquillity and remoteness, openness, lack of human interaction, and dark skies.

*Conclusion*

43. Notwithstanding the measured way in which Mr Reed KC advanced each of the grounds, in my judgment they display the sort of excessive legalism against which the courts have repeatedly warned. Standing back, with an appropriate degree of benevolence, it is clear why the inspector refused planning permission notwithstanding the policy support for such development. The development plan expressly permits the proposed development, subject to the criteria that the proposal does not have an unacceptable adverse impact on the National Park. The inspector used his planning judgment to find the harm to the National Park to be a compelling consideration which outweighs the benefits. Reading the decision letter fairly as a whole, he set out what those benefits were. Accordingly, none of the grounds is made out and the challenge fails. The decision of the inspector stands.
44. I am grateful to counsel for their focussed submissions. They helpfully agreed that any consequential matters which cannot be agreed can be dealt with on the basis of written submissions. A draft order, agreed as far as possible, together with any such submissions should be filed within 14 days of hand down of this judgment.