

**ARQIVA LIMITED**

**STATEMENT IN SUPPORT**

**OF**

**APPLICATION UNDER SECTION 73 OF THE TOWN AND COUNTRY PLANNING ACT 1990**



**MARCH 2015**

**Arqiva  
Crawley Court  
Crawley  
Winchester  
Hampshire  
SO21 2QA**

## 1. INTRODUCTION

1.1 This statement is submitted on behalf of Western Power Distribution (South Wales) Plc (WPD). The application is in respect of the Arqiva Transmitting Station, Halangy Downs, St Mary's, Isles of Scilly. The site is controlled and managed by Arqiva, an electronic communications infrastructure provider.

1.2 The statement is submitted in support of the application under Section 73 of the Town and Country Planning Act 1990 for a variation to condition 1 of planning permission reference P/11/049: -

***“This permission is for a temporary period of five years from the date of the decision notice. Either on or before this date, the apparatus hereby permitted shall be removed unless otherwise agreed in writing with the local planning authority”***

1.3 The variation to the condition we seek is to state: -

***The electronic communications apparatus hereby permitted shall be removed from the land, building or structure on which it is situated within six months after it is no longer required for electronic communications purposes and such land building or structure shall be restored to its condition before the development took place or to any other condition as may be agreed in writing between the local planning authority and the developer.***

1.4 Although drawings are not required under Part 3, paragraph 7(i) & (ii) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 for Section 73 applications to assist we provide a site plan, tower plan and elevation.

1.5 In this statement we go on to highlight the benefits of retaining the existing development and to explain the particular needs of maintaining the provision of WPD services at this site. We also demonstrate that the variation to condition 1P/11/049 as proposed complies with extant Local Plan Policy and the National Planning Policy Framework.

## **Arqiva Limited**

- 1.6 Arqiva is an electronic communications company with its headquarters in Hampshire and other major UK offices in London, Buckinghamshire and Yorkshire. Arqiva own and operate the entire UK terrestrial television broadcast network - in simple terms we run the main television transmission infrastructure and Freeview platform that is used by the broadcasters such as the BBC, ITV Channel 4 and Five to transmit their programming. We also provide a similar service for national and local radio. This transmission network is in the public interest and forms part of the UK Critical National Infrastructure.
- 1.7 In addition, Arqiva provides a range of services to other network operators such as the mobile network operators, the emergency services and central and local government departments and agencies. Our sites or networks are used by almost every electronic communications system in the UK, helping to drive sustainable economic growth.

## **2. THE WPD ONGOING REQUIREMENT**

- 2.1 An installation of electronic communication apparatus at the application site was required solely for the enhancement, protection and security of the electricity distribution network between the UK mainland and the Isles of Scilly. The continued supply of power is vital for viable communities and the economy on the Isles. Failure to provide this service will mean that the circa 2000 residents and Island communities are denied their basic right of continued viability as required under Policy 6 Infrastructure for Sustainable Communities under the Islands 2005 adopted local plan.
- 2.2 The electricity distribution supply to the Isles commences its route at St Buryan substation before reaching the coast and subsequently being transferred by submarine cable on the sea bed. This in turn leaves the supply susceptible to damage from shipping and corrosion. In the event of failure in the electricity distribution network, a repair to the submarine cable can take anywhere between a week and a month, as not only does the cable need to be repaired but the location of the actual fault in the first place needs to be identified. Obviously at certain times of year and inclement weather conditions, this repair period can be greater.

2.3 As such back-up power services to the Isles of Scilly are provided by seven strategically placed generators within the electricity network on the Isles. Remote control, real time monitoring and actual start-up of these vital generators is provided via the normal BT telephone line network. However the telephone service is copper based ADSL and consequently connectivity to the generators is via the old 128k dial-up link, this dial up BT service is extremely slow and unreliable. However despite its slow speed, it remains quicker than WPD engineers physically getting to the each generator for start-up. Furthermore an additional issue with the BT network service is that there are numerous weather related interruptions to the service, from simple rain to fog to storm conditions, and typically all communications and control of the generators are frequently lost for up to 12 hours at a time.

2.4 The existing WPD 1.8 and 0.6 metre transmission dishes provide stable, secure and diverse remote communication links to the generator stations on the Isles at STM 1 / 155mb capacity service. As such, in the event of failure to the electricity distribution network supplying the Scilly Isles, this remote communication service ensures that the generators resume the normal provision of electricity services across the Islands network well within the T60 target under regulatory requirements – 60 minutes for 60% of the population.

### **3.0 COMPLIANCE WITH PLANNING POLICY**

3.1 The development permitted under application reference P/11/049 was granted planning permission under the provisions of national and local planning policy and other material considerations at that time, and that policy framework has not altered significantly since then. However, we believe it would be beneficial to highlight compliance with policy in the present day. The relevant planning policy framework that has been taken into account is found principally within: -

- Documents within the Local Plan
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance

#### **The General Policy Background**

3.2 The general policy background found within the NPPF can be summarised as follows: -

- Government policy is to support advanced, high quality communications infrastructure and systems to drive sustainable economic growth
  - Government policy is to keep the inevitable environmental impact associated with electronic communications development to the minimum
  - The key way to minimise environmental impact is to avoid the unnecessary proliferation of new radio masts and sites
  - The starting point for planning new networks or the expansion of existing networks is therefore to use existing telecommunications sites owned by other operators or radio site management companies, such as Arqiva
  - The emphasis on minimising environmental impact is greater according to the sensitivity of the site. The emphasis on exploring and utilising site sharing opportunities is consequently higher in these circumstances
  - In these sensitive landscape designations Government acknowledges that development is acceptable where it can be demonstrated it is in the public interest
- 3.3 The application site is included within the Isles of Scilly Area of Outstanding Natural Beauty and with regard to retaining the current development the protection of the landscape and scenic beauty is of particular importance. The NPPF has generally restrictive policies in the open countryside, with emphasis on designated areas such as National Parks and Areas of Outstanding Natural Beauty.
- 3.4 However, it is recognised at paragraph 116 there are circumstances where development will be acceptable, *inter alia*, when the development is in the public interest. This stance relates to major development but carries even more significance where small scale development is proposed which is evidently in the public interest, as in this instance.
- 3.5 The NPPF specifically goes further with regard to electronic communications and promotes - *“Advanced, high quality communications infrastructure as being essential for sustainable growth. The development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services”*

3.6 The retention of the existing electronic communication apparatus is essential to secure an uninterrupted electricity supply to the Isles of Scilly and is in the public interest. The proposal to vary condition 1 as brought forward through this application therefore accords with the NPPF key policy objectives.

### **Site Specific Policies**

3.7 With regard to the extant Development Plan policy, pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant policies are contained within the Isles of Scilly Local Plan, a 2020 Vision, adopted November 2005 (saved policies as part of the Local Development Framework).

3.8 Policy 1 – Environmental Protection and Policy 2 – Sustainable Development are relevant. Policy 1 seeks to respect and protect the recognised quality of the islands' natural, archaeological, historic and built environment with particular emphasis in this instance on development which conserves or enhances the AONB. Whilst not a natural feature within the AONB the visual impact of the existing development site does not materially detract from the overall character of the AONB. It is a feature of a modern and developed society that even within National Parks and AONBs some development is necessary to support the necessary infrastructure needed to serve local communities and those visiting areas. This includes roads, railways, power and buildings and structures needed for the supply of water and drainage as well as electronic communications. To that extent, the real impact that will flow from the retention of this appropriately located development may therefore be considered neutral.

3.9 Policy 2 promotes the re-use of land and buildings where practicable and appropriate. Insofar as it is applicable the retention of the WPD apparatus is in accordance with this objective with the installation of all apparatus confined to the existing, well established transmitting station structures and buildings.

3.10 The development has no effect on amenity in terms of noise, traffic, vibration or fumes and as outlined above has an extremely limited visual impact. As such the proposals do not compromise wider policy objectives, in particular those relating to the protection of amenity.

## **The use of planning conditions**

- 3.11 With regard to attaching the time limiting condition to the original permission we believe the reasoning to be flawed and a condition requiring the apparatus to be removed from site when no longer required for electronic communication purposes would have been more appropriate.
- 3.12 As a matter of general policy, the NPPF states at paragraph 206 that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, referred to as the six tests.
- 3.13 The supporting Planning Practice Guidance (PPG), published online on the 6<sup>th</sup> March 2014, provides guidance on when conditions can be used to grant planning permission for a use for a temporary period only (Paragraph 014, Reference ID: 21a-014-201-20140306).
- 3.14 Under Section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only. However, the PPG is very clear that it will rarely be necessary to give a temporary permission to an applicant who wishes to carry out development which conforms with the provisions of the development plan, as in this case: -

*A condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity.*

- 3.13 The material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. Thus, the guidance is unambiguous in stating that the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenities of the area. It is apparent from this that the reason behind the condition originally imposed was unsound against this advice. The reality is that the principle way of protecting the amenities of the area is to encourage mast sharing and to ensure the apparatus is removed when no longer required.

- 3.14 In addition, it is undesirable to impose a condition where the development is clearly intended to be permanent. The original application was not for a temporary period and the apparatus is required to support the essential services that WPD provide to the Isles of Scilly, the demand for which is very unlikely to go away and the principles of the technology deployed will not change in the near-term.

*A condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Conditions requiring demolition of buildings which are imposed on planning permissions for change of use are unlikely to relate fairly and reasonably to the development permitted.*

- 3.15 Having regard to the application of this specific guidance it is clear that a temporary permission would not be necessary or reasonable to impose and so fail two of the six tests for a planning condition as set out in paragraph 206 of the NPPF.

- 3.16 In any event, all Electronic Communications Code Operators such as Arqiva must comply with the Electronic Communications Code, which is set out as Schedule 2 of the Telecommunications Act 1984, as amended. Paragraph 22 of the Code effectively requires the removal of redundant apparatus. A planning condition is not therefore required, but to maintain enforcement within the ambit of the Isles of Scilly Council, Arqiva does not object to the variation of Condition 4 to state: -

***The electronic communications apparatus hereby permitted shall be removed from the land, building or structure on which it is situated within six months after it is no longer required for electronic communications purposes and such land building or structure shall be restored to its condition before the development took place or to any other condition as may be agreed in writing between the local planning authority and the developer.***

- 3.17 In summary, proper justification exists for the apparatus to remain beyond 25<sup>th</sup> July 2016, as specified in condition 1 of planning permission reference P/11/049. Arqiva, therefore seek permission for the retention of the WPD apparatus by means of the variation of condition 1 as stated above.