



Independent Noise Working Group

Wind Turbine Amplitude Modulation & Planning Control Study

Work Package 6.1A – Legal Issues: the Control of Excessive Amplitude Modulation from Wind Turbines

Supplementary Paper

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Purpose of this Supplementary Work Package

This work Package WP6.1A should be read in conjunction with WP6.1.

In July 2015, David Davis MP introduced a Bill in Parliament the purpose of which was to require wind farm developers to obtain public liability insurance for any nuisance that they may cause to nearby residents. In particular this is aimed at noise nuisance.

In introducing the Bill he referred to a problem one of his constituents had with noise from a local wind farm but his constituent had found it impossible to sue because the wind farm operator was purely a shell company with very limited assets. The parent company may have vast assets but if the shell company is the operator it will be impossible to obtain any damages from it and even may not be able to recover the costs of the case. In view of this, it appears that claimants' insurance companies are unwilling to commence proceedings in this type of case.

It is not known how extensive this practice is but there is evidence to suggest it is common. Even if the developer who applies for permission is the parent company, that company can transfer the asset to a different company at any time in an attempt to divest itself of any legal responsibility for any nuisance that it may cause.

This Paper therefore considers whether this is an issue that may affect any of the issues raised in WP6.1.

The remedies available if a claimant takes action against a wind farm company

These remedies are considered in WP6.1. In the main it is anticipated that a claimant wants the problem to stop. The ultimate remedy for this is an injunction requiring the defendant to cease the actions. There does not appear to be a legal problem with this even if the defendant is a shell company. If an injunction is imposed then it can be worded in a way to ensure that no person causes the nuisance in the future and enforced against any subsequent operator of the wind farm.

The main problem however will be if a claimant is seeking damages as well or in lieu of any remedy to stop the nuisance. A claimant may not seek an injunction if for example he has moved as a result of the nuisance and is no longer troubled by it.

Will the fact that an operator is a shell company affect any claim for damages?

While it is not proposed here to discuss any detail of Company Law, it is important to note that every limited company is a separate legal entity. It may be owned by a parent company but legally it is quite separate from it. If the operator is a shell company and has limited

assets, any action for damages (or award of costs) may be significantly affected if the only money available is a nominal amount.

This is likely to add a further complication to the issues relating to nuisance outlined in Chapter 6 of WP6.1 and a further reason why Inspectors should not say individuals can rely on nuisance as a remedy, as mentioned in paragraph 6.35 onwards. Therefore, even if a person affected by wind farm noise should commence an action in nuisance for damages, he may be thwarted even if he wins his case if the defendant is a shell company with limited assets.

It is beyond the scope of this Paper to consider whether there are ways around such a problem. Company Law principles will come into play in such a case. But it is important to appreciate that the result of this may be that no remedy for damages is in fact available, even if the claimant wins.

It may be possible to take action against the landowner if different from the operator but this again adds a further complication to requiring an affected resident to seek his own remedy in nuisance. And of course the landowner may also have limited assets. Meanwhile, the true culprit, the wind farm company itself which may hold vast sums of money, escapes liability as it is a separate legal entity that is not operating the wind farm in question (but is benefitting from it).

Conclusion

In introducing his Bill, David Davis MP has highlighted a problem that has perhaps been little appreciated. There may well be ways around this problem in company law but it appears that, even if this is the case, it has prevented some insurance companies from taking action on behalf of their clients on this ground alone. But whether there are in fact such remedies or not, it is yet another complication which makes putting the onus on residents to take a nuisance action against the operator - as has been suggested by some Inspectors, and is referred to in paragraph 6.35 of WP6.1 - even more unreasonable and a course of action which should be avoided'