

# Planning in England: Repowering under the NPPF



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## Overview

- Introduction
  - Consenting regime in England
  - NPPF restriction on new schemes
- Repowering: four practice points
  1. Options for repowering
  2. Using the extant scheme
  3. Securing a fall-back
  4. Consultation
- Local development plans?

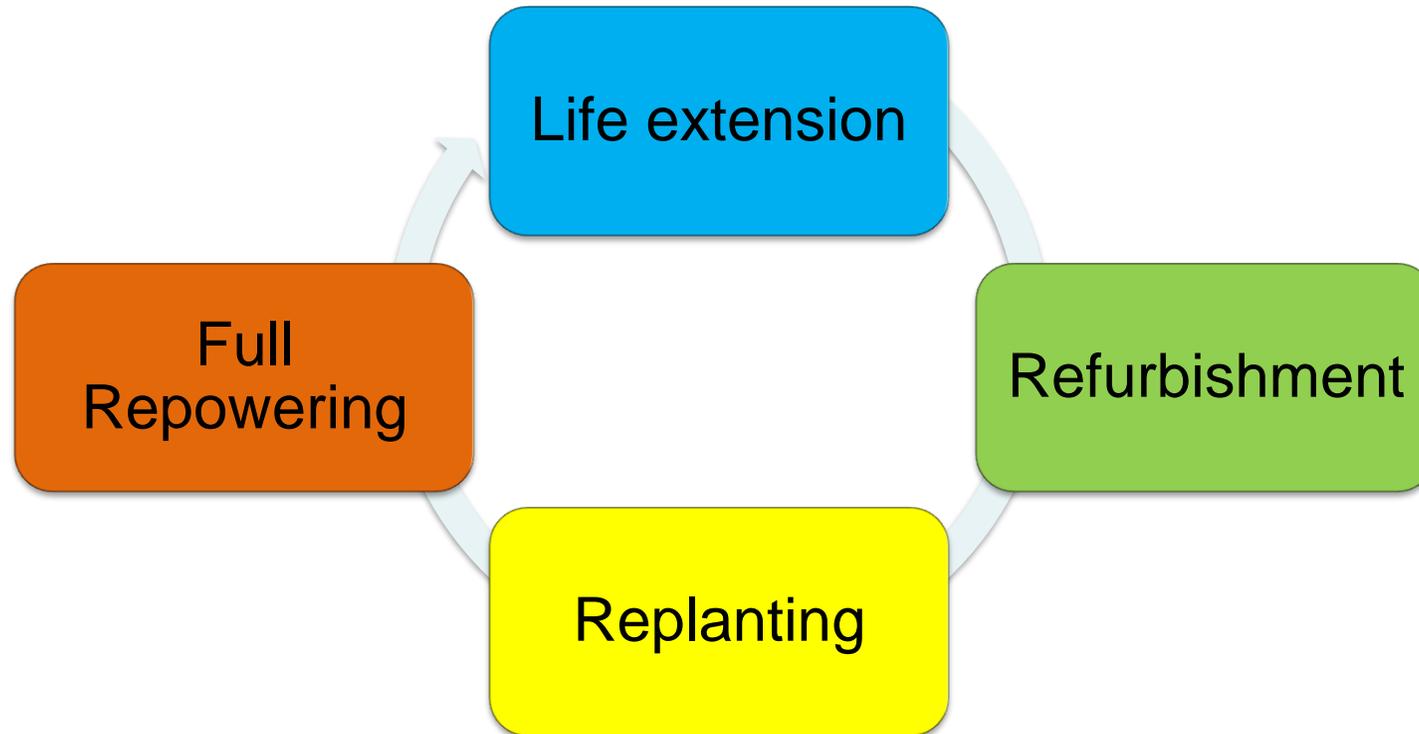
## Introduction: on-shore consenting in England

- Following Infrastructure Planning (Onshore Wind Generating Stations) Order 2016, **onshore wind excluded from NSIP regime in England**
  - Decision-maker: local planning authority
  - Decision-making framework:
    - Town and Country Planning Act 1990
    - National Planning Policy Framework (“NPPF”) and National Planning Practice Guidance (“NPPG”)
    - Statutory development plan
    - Other material considerations

- June 2015 Written Ministerial Statement (now footnote 49 of NPPF):
  - new schemes only acceptable if:
    - In area identified as suitable in development plan; AND
    - It can be demonstrated that planning impacts identified by local community fully addressed + proposal has their backing.
- Following engagement, applications *“for repowering of existing wind turbines”* are exempted.
- Repowering has important role to play both in maintaining and increasing onshore contribution (cf RUK’s [April 2019 paper](#))

## Practice Point 1: options for repowering?

- Not defined in NPPF or NPPG. Discussed in EN-3 and Scottish guidance
- RUK categories:



## Life extension?

- Kirkby Moor (29 July 2019)
  - Only appeal decision on fn 49.
  - Scheme was second go: replanting scheme rejected by LPA and not appealed
  - LPA accepted that replanting = repowering BUT argued life extension was not.
  - Rejected by Inspector (para 33). Appellant’s argument that repowering included “*replacement, replanting and extension of life*” was “*persuasive*”

## Relationship to previous footprint?

- National policy (EN-3) acknowledges that repowering will normally involve changes in number and size of turbines, and therefore layout of wind farm.
- May necessitate new red line boundary.
- LPAs may argue not a “repowering scheme” but a new scheme.
- Key points for promoters:
  - Seek to align scope of impacts in original EIA and new EIA
  - Justify any expansion beyond original red line boundary
  - Consult with LPA (and locals)

## Practice Point 2: using the extant scheme

- Extant scheme / historic consent provides a roadmap and potentially a strong basis for evidencing impacts of repowering scheme
  - e.g. at Kirkby Moor, hydrological issues addressed due to site knowledge
- Potential for showing additional value where decommissioning obligations on original consent are dated (at Kirkby Moor an enhanced habitats plan)
- However, legal and policy framework will have changed. Note especially EIA and Habitats.



- EIA law and practice has evolved significantly since 1990s
- Also changes in scheme may lead to differences in Zone of Influence etc
- Important to understand aviation safety requirements as lighting may be significant component

## Habitats

- Habitats law has become significantly more onerous
- Recent CJEU decisions:
  - ***People Over Wind; Grace; Holohan***
- NB:
  - standard of scientific knowledge required to exclude adverse effects
  - consideration of mitigation.



## Practice Point 3: securing a fall-back

- RUK’s 2019 paper seeks planning guidance which supports “with windfarm” scenario as EIA baseline
- Difficult if permission for extant scheme is due to expire
- Is it worth applying for a life extension prior to applying for fuller repowering?
- In planning law, must be a “real prospect” of fall-back being implemented: ***R v SSE ex p Ahern*** [1998] ENV LR 189.
- EIA Regs 2017 require:
 

*“description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge”*

## Practice Point 4: consultation

- Experience demonstrates sensitivity of onshore wind in England
- Survey data shows shift but potentially still fragile
- Poor communications or over ambitious applications may generate significant local opposition
- Schemes which need to change red-line boundary may be vulnerable
- At Kirkby Moor, a significant number of local residents spoke in favour of the application.

## Local development plans

- To date, little engagement by industry with local plan process
- National policy not likely to change immediately but the ongoing need argument esp around climate change may give opportunities to persuade key authorities to designate “suitable areas” where area (i) has particular potential for wind power and (ii) is less sensitive
- May well be a prerequisite for new schemes even if policy does change: c.f. position in Wales.

# Thank you for listening

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