

In the business of ...renewable energy legal expertise

The last decade has seen not only a growing awareness of the need to reduce carbon emissions to address the threat posed by global warming, but also a growing concern of the dangers of relying on imported fossil fuels to meet the UK's growing energy requirements. The need for a secure, low-carbon supply of energy has therefore been at the very top of the political agenda, as recently illustrated by the Government agreeing to a binding renewable energy target which commits the country to producing 15% of all energy consumed in transport, heat and power generation from renewable sources by 2020 and a binding 80% carbon reduction target by 2050.

Since 2002, electricity suppliers have been required to source an increasing percentage of their electricity from renewable sources, with financial penalties imposed if targets are not met. This has created a market demand for renewable energy, and led to huge levels of investment in renewable energy technologies and the development of renewable electricity generating stations throughout the country.

Burges Salmon LLP is Bristol's largest commercial law firm. The firm has developed a national reputation for its advice in a number of sectors, including renewable energy and wider environmental projects. Bringing a renewable energy project to fruition requires specialists in property, planning, construction, corporate and banking work, as well as those with an excellent knowledge of grid connection, fuel supply and electricity offtake issues. As these issues often overlap, close working relationships between the various specialists and a common understanding of the project as a whole is essential to providing an effective and efficient service to clients. The firm has undoubtedly benefitted from being based at a single site in the centre of Bristol.

As well as acting for developers, we also routinely act for landowners, banks and investors. It was a deliberate decision by the firm not to concentrate solely on one type of client, and we believe that by doing this we maintain an understanding of the perspective of other parties.

The most visible evidence of renewable energy growth is perhaps seen in the form of onshore wind farms, although the South West has seen fewer wind farms constructed than some other areas of the UK. New projects have been consented and are awaiting construction, such as the landmark 66MW wind farm at Fullabrook, North Devon, for which Burges Salmon helped Devon Wind Power secure planning consent in October 2007. Whilst some local authorities have consistently objected to projects within their area, others have embraced renewable energy opportunities, such as Bristol City Council, for whom we have helped secure planning permission to build two wind turbines on its own land at Avonmouth, Bristol.

Successfully navigating a proposed development through the planning and consenting process remains one of the biggest obstacles to the realisation of renewable energy projects and is the area in which specialist legal expertise can be vital. Those objecting to renewable energy projects are undoubtedly becoming more organised and sophisticated, and therefore developers are having to become increasingly effective at overcoming these obstacles.

Many projects are tied up in the planning system, which continues to add delay and uncertainty to the development process. To speed up this process, Parliament has passed a new Planning Act which gives an independent Infrastructure Planning Commission (IPC) the power to decide whether a major infrastructure project should go ahead. One of the proposed projects in this region which would undoubtedly fall within the remit of the IPC is the proposed tidal barrage across the River Severn. A shortlist of 5 different schemes are currently the subject of a public consultation.

New Government proposals which are due to come into force in April 2009 are aimed at providing even greater financial incentives to those generating stations using emerging and developing technologies such as offshore wind, biomass,

anaerobic digestion, wave, tidal, solar, gasification and pyrolysis. Several of our clients are making significant investments in producing electricity from biomass in the region. Given the quantities of biomass that are required to fuel the larger plants and the efficiencies of shipping material in bulk, our local ports, such as Avonmouth and Port Talbot have attracted welcome new interest.

Offshore wind is also currently the focus of much attention, with the Crown Estate inviting bids for the right to develop offshore wind farms in nine zones around the UK's coastlines. This includes (subject to the results of an environmental assessment) a zone off the North Devon coast, although any proposed development within these zones would still have to clear planning hurdles. Much of the research into, and trials of, wave and tidal power technologies is also taking place on our doorstep.

Burges Salmon has always had strong traditional links with the agricultural community and these have been instrumental in helping us to explore new renewable energy opportunities. The agricultural / landowner sector has embraced renewables and is at the forefront of some of the new technology. For example, a plant generating electricity from the gas produced through anaerobic digestion is ideally suited to being situated on or adjacent to an agricultural estate. Waste from an abattoir or slurry from a dairy herd can be used as a feedstock for the plant, which will itself produce a fertiliser by-product which may be supplied for use back on the farm.

Our experience suggests that businesses are increasingly looking to develop on-site energy generation in order to ensure a secure, stable supply of electricity at a predictable price. Environmentally friendly business parks with some form of on-site electricity generation are likely to become an increasingly popular phenomenon, lending themselves to smaller scale biomass and anaerobic digestion combined heat and power plants.

It would be foolhardy to say that reduction in the availability of finance resulting from the credit crunch is not having an impact on the renewable energy sector. The appetite of some investors and large power generation companies to expose themselves to development risk, particularly in areas such as offshore wind where development costs are more uncertain, has resulted in some projects changing hands. However, in our view the renewable energy sector remains more resilient than most and a combination of the strength of the balance sheets of the large power utilities, the financial incentives on offer and the creativity and innovation of developers, will ensure that the renewable energy sector continues to thrive.

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