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Baffled by batteries: battery storage and the planning regime

Battery storage is the way ahead for renewable energy. However, there are various practical, legal and technological hurdles to overcome before this solution can be fully implemented. One such hurdle is that way in which energy storage is treated in the planning system.

Which rules govern applications for planning consent to develop an energy plant?

Development proposals for energy plants must have less than 50MW generating capacity in order to fall within the standard planning regime. Anything above this will be dealt with through the National Significant Infrastructure Project ('NSIP") procedure. For developers and investors in energy generation plants, NSIP applications add significantly to the time and cost of making applications. In addition, NSIP applications need to conform to the relevant NSIP planning document which identifies sites suitable for large generating capacity plants, whereas under the normal planning regime, an application can be made at any suitable site, unconstrained by the NSP. It is not usually problematic to ensure that an application for energy generating plant falls under the NSIP threshold, as the generating capacity is something that is clear in the design of the proposed installation. However, there is a significant problem emerging in relation to battery storage facilities.

How are batteries treated in the planning regime?

Battery storage has emerged in recent months as an important element in the UK energy mix. It is commonly installed in relation to renewable energy installations as it enables the fluctuations in generation by renewable sources to be evened out over diurnal or longer cycles. Excess energy can be stored and released during peak demand or when the renewable energy source is not generating – during the night for solar or calm periods for wind power. It therefore makes good sense to install battery storage facilities alongside renewable generating plant.

The problem arises when, in the interests of coherent and comprehensive planning, a developer opts to bring forward generating plant and a battery facility side by side. Under the current regulatory and planning regimes, the battery element is not considered to be storage but generating plant. Therefore, even if the generating capacity of the energy plant is no more than 49MW, and the battery plant capacity is no more than 49MW and

the maximum output to grid at any one time is no more than 49MW, the development would fall under the NSIP regime because the battery component is considered to be a generating plant, so the development would be deemed to have a generating capacity of 98MW.

Whilst common sense would suggest that the battery unit was simply there to store power already generated from a primary source, the reason the battery unit is classed as generating rather than storage is because in order to convert the stored potential energy into energy that can be output to grid, it must be regenerated and it is this regeneration process which means that to all intents and planning purposes, the battery is not a class B8 under the Town and Country Planning (Use Classes) Order 1987, but a 'sui generis' generating unit. Similarly, under the electricity generating licencing regime, it is also considered to be generating capacity, which has implications for the export of the power to grid.

"Developers should be aware that for now battery power units are likely to continue to be treated as generating rather than storage facilities"

How does the Government plan to tackle this problem?

The Government has recognised the importance of battery storage at all levels: from cars to households to major commercial and national grid scales. It is considered to be a key element in the future development and security of UK energy supplies. Fortunately, it has also recognised the problems arising from the lack of clarity surrounding the classification of battery storage. As in the case of the development of fracking, the legal framework needs to be reassembled in order to accommodate the roll-out of this new technology.

The Government green paper published in July 2017, which was part of the "Building our Industrial Strategy" initiative, highlights the restrictions currently imposed by the problems in classifying battery storage. The paper addressed this and other issues across the wider regulatory regime and voiced an intent to address this in order to enable battery storage units to be brought forward more quickly and easily within a framework which specifically caters for them. The legislative changes needed to effect any proposals adopted from the consultation will be subject to parliamentary time, which is, of course, primarily concerned with Brexit at present, but it may also be that this issue is a little higher up the political agenda than other matters.

What does this mean in practice?

In the meantime, developers should be aware that battery power units are likely to continue to be treated as generating rather than storage facilities. In a number of cases, a battery plant that is added to an existing 49MW renewables plant may well escape NSIP, but a new 49MW plant with associated 49MW battery unit is likely to be treated as one 98MW plant and fall within NSIP. Making two separate applications may avoid NSIP, although connectivity, co-dependency and colocation may link the two applications in the eyes of the regulators. A phased approach (in which the generating plant precedes the battery plant) and/or geographical distance between the two application sites may enable authorities to view the two elements as separate units. It would be prudent to discuss this with planning authorities and other regulators prior to bringing forward development, if the objective is to avoid being caught by NSIP.

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