



SHEPHERD+ WEDDERBURN

RESPONSE TO REPRESENTATIONS

SINGLE TURBINE AT TAIGH MHOR, CREAGANTERVE, KILMARTIN, LOCHGILPHEAD

PLANNING APPLICATION REFERENCE 13/02205/PP

REVIEW REFERENCE 14/0007/LRB

We have received the Statement of Case from Argyll and Bute Council ('the Council') and third party representations in relation to the above appeal. The main issues raised in the Council's Statement of Case relate to landscape and visual and cultural heritage matters and we have responded below to the case advanced by the Council on these issues. We would comment at the outset that the development of new renewable energy capacity is a national priority, as reflected in national policy.

Landscape and Visual

The Applicant submitted numerous visualisations as part of the application materials for the planning permission.

The Council's Statement of Case states that "The applicant was asked to provide additional viewpoints, beyond those originally submitted, to SNH's standard however despite a number of viewpoints being agreed they were not submitted with little evidence as to why." The Applicant was faced with the application being passed amongst numerous planning officers at the Council. The Applicant attempted to deal with the officers constructively despite this and contrary to the Council's Statement of Case, the Applicant did produce additional visual material upon request subsequent to the Application. It was explained at the time of application that given the remoteness of the site and lack of public access, there were very few places the Applicant could get a view of the turbine from other than on the main road. It is very difficult to produce visualisations of the proposal due to its location in a wooded area with considerable tree cover.

The Argyll and Bute Landscape Wind Energy Capacity Study does not rule out smaller turbines within the relevant landscape character area. Given the small scale of the proposal, the submission of the

visual information and additional viewpoints comfortably demonstrates the minimal impact of the scheme.

Cultural Heritage

The second reason for refusal states that "...the proposed development will be visible against the skyline from key viewpoints and has potential to directly impact upon the visual amenity and settlement of Kilmartin and Carnassarie Castle, in addition to other sites of archaeological importance in the locality." There is a process for assessing impact on cultural heritage assets, some of which are set out in statute and others reflected in the Local Development Plan. The approach taken by the Council is incorrect and is an error in law as the test is not whether the proposal is "visible" from a heritage asset. Rather, the correct approach is to carry out an assessment of the impacts on each of the heritage asset itself by assessing the setting and context of it, and thereafter determine the impact on that asset, as Historic Scotland has done. We would encourage the Local Review Body to seek its own legal advice on this matter. An assessment of the impact on cultural heritage assets was undertaken by the Applicant and reviewed by Historic Scotland, who confirmed their findings. It is clear therefore that the planning officers at the Council adopted a threshold of acceptability which was higher than the threshold adopted by both Historic Scotland and the West of Scotland Archaeology Service, who have wider remits outside of the local authority area.

Section 60 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 provides that where an application for planning permission for any development of land is made to a planning authority and the development would, in the opinion of the authority, affect the setting of a listed building, the planning authority shall (i) publish in a local newspaper circulating in the locality in which the land is situated, and (ii) for not less than 7 days display on or near the land, a notice indicating the nature of the development in question and naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public. We understand that no such notification has taken place, indicating that the planning authority clearly did not consider that the proposal was of sufficient impact that it would affect the setting of the listed building.

The impacts of the proposal are not sufficient to warrant refusal of the proposal on cultural heritage grounds, as evidenced by the representations of both Historic Scotland and the West of Scotland Archaeology Service. Indeed, Historic Scotland has responded to the Notice of Review confirming that it has nothing further to add to its previous comments in relation to the proposal, the latest of which confirmed that the visualisations for the proposal mean that they did not consider that the impact will be sufficient to warrant an objection.

Conclusions

It is clear that the threshold of acceptability adopted by the Council in considering the proposal is fundamentally different and higher than the tests set out both in legislation and in the applicable policies. Given the extremely limited scale of the landscape and visual effects and cultural heritage impacts, we would invite that planning permission be granted for the proposal.

Shepherd and Wedderburn LLP

30 October 2014