

Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 15/02060/PP

Planning Hierarchy: Local

Applicant: Colintraive and Glendaruel Development Trust

Proposal: Erection of Two Wind Turbines (Measuring Up to 60 metres to Hub and Up to 86.5 metres to Blade Tip) with Ancillary Electrical Buildings, Areas of Hardstanding and Formation of Vehicular Access

Site Address: Land at Cruach Nam Mult, Stronafian Forest, Glendaruel

SUPPLEMENTARY REPORT NO.4

(A) INTRODUCTION

The attention of Members is drawn to the decision made at the Planning, Protective Services and Licensing Committee on 18th May 2016 to hold a pre-determination hearing in respect of the above proposal.

Members may recall that their consideration of this application included the Department's Supplementary Report No.1 dated 17th May 2016. One of the issues that was examined in this report was the land ownership situation insofar as it related to the extension of the surfaced area at the existing bellmouth by 2 linear metres (as recommended by the Roads Department).

The applicant's solicitors had contended that the Development Trust had a legal right to undertake the minor access improvements as required by the Roads Department. Upon consultation with the Council's Legal Services Section, this Department had the following comments:

"... it is considered that the case for accepting that the applicant has a legal right to undertake improvement works to the existing access has not been demonstrated beyond reasonable doubt and further information will be required. Ultimately, it is not for the Council as Planning Authority to adjudicate upon a matter of law. With the foregoing in mind, given that the area in question lies outwith the application site and there is no certainty as to the applicant's ability to execute the required works on third party land, it

remains necessary to include reference to the issue in recommended reason for refusal number 3".

The Department wrote to the agent on 19th May 2016 and advised, *inter alia*, that the continuation of consideration might allow the legalities of the access improvements to be examined further. On 14th June 2016, the agent forwarded the comments of the Development Trust's legal advisers together with copies of title deed plans.

The legal adviser has explained that the Development Trust have the benefit of the servitude right as detailed in a 1959 disposition by the Secretary of State for Scotland to Ian Fisher Barr which allows them "*to construct and maintain roads along the route indicated approximately by the blue broken lines on said Plan*" It is their contention that, whilst the blue broken lines differ from the actual roads on the ground, these lines were intended to be indicative only and that the current position of the road is the correct location for the exercise of the servitude rights. They understand that the broken blue lines were drawn without a full knowledge of the site.

The legal adviser's comments have been forwarded to the Council's Legal Services Section who, as mentioned above, is familiar with the information previously submitted in association with the issue of access legality. They have advised the following:

".... (we) consider that the information provided is sufficient to enable the Council to determine that, on the face of it, the applicants have sufficient control over the access to enable the works to extend the existing sealed surface at the junction of the existing forestry access and the B836 public road by 2 linear metres to be carried out and, thereafter, maintain the junction to a standard required to ensure road safety. Should (any) objector consider that the applicants do not have a legal right to exercise servitude rights over land in their ownership for this purpose, this would be a civil matter between the parties. (We) note that objectors have not submitted any title information which contradicts the information provided by the Applicant."

Having regard to the new information submitted on behalf of the applicant, it is now incumbent upon Members to consider whether there has been a material change in circumstances that would warrant a revision to the third reason for refusal.

In making this judgement, Members should consider that, if they were minded to approve the application, could the improvement works recommended by the Roads Department be competently attached as a condition to the permission. In this regard, Paragraphs 36, 37 and 38 of Annex A to circular 4/1998: The Use of Conditions in Planning Permissions 'Control Over Land' are relevant, as follows:

"Paragraph 36.

Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can in principle be imposed, but the authority should have regard to the

points discussed in paragraph 3 above. If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.

Conditions Depending on Others' Actions

Paragraph 37.

It is unreasonable to impose a condition worded in a positive form which developers would be unable to comply with themselves, or which they could comply with only with the consent or authorisation of a third party. Similarly, conditions which require the applicant to obtain an authorisation from another body, such as the Scottish Environment Protection Agency, should not be imposed.

Paragraph 38.

Although it would be ultra vires to require works which the developer has no powers to carry out, or which would need the consent or authorisation of a third party, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Whereas previously it had been understood that the test of whether such a condition was reasonable, was strict; to the effect that there were at least reasonable prospects of the action in question being performed, the House of Lords (in the British Railways Board v the Secretary of State for the Environment and Hounslow LBC [1994] JPL32; [1993] 3 PLR 125) established that the mere fact that a desirable condition, worded in a negative form appears to have no reasonable prospects of fulfilment does not mean that planning permission need necessarily be refused as a matter of law.

Thus, while an authority will continue to have regard to all relevant factors affecting a planning application and whether it should be granted with or without conditions, there is no longer a legal requirement to satisfy a reasonable prospects test in respect of any negative condition they may decide to impose Planning authorities should therefore note this recent House of Lords ruling and its implications for a less restrictive view in the use of negative conditions.'

The Department is of the opinion that the extension of the surfaced area at the bellmouth by 2 linear metres is necessary in the interests of road safety. Having regard to the foregoing, it is considered that it would be competent to achieve the necessary improvement works by the imposition of a negative suspension (Grampian) condition should Members wish to approve the application. On this basis, the third reason for refusal should be revised as recommended below.

(B) RECOMMENDATION:

The further information detailed above represents a material change in circumstances which, whilst not altering the original recommendation of refusal, amends the third reason for refusal as set out below.

Author of Report: Steven Gove

Date: 14th June 2016

Reviewing Officer: David Love

Date: 14th June 2016

Angus Gilmour
Head of Planning & Regulatory Services

REASONS FOR REFUSAL RELATIVE TO APPLICATION: 15/02060/PP

1. The proposed wind turbines, inclusive of the means of access required, would be located on land at Cruach Nam Mult, which lies to the north of Stronafian Forest in Glendaruel. The site is within the '*Steep Ridgeland and Mountains*' Landscape Character Type as defined in the '*Argyll & Bute Landscape Wind Energy Capacity Study 2012*' which is intended to guide the Planning Authority on the acceptability of further wind turbine developments in the landscape. The proposal would occupy a prominent location within a sensitive and highly valued landscape character type which has been accorded regional status by being designated as an Area of Panoramic Quality in the Council's adopted Local Development Plan. The site is also located only 1.4 kilometres to the north of, and would affect the landscape setting of, the Kyles of Bute National Scenic Area which is of national significance on the basis of its outstanding scenic interest.

The Landscape Capacity Study concludes that there is no scope to accommodate larger typologies (i.e. between 80 metres and 130 metres to blade tip) within this landscape without significant effects occurring on a number of key sensitivity criteria. It is considered that the proposed two wind turbines would impinge inappropriately on the highly sensitive landscapes of both the Area of Panoramic Quality and the Kyles of Bute National Scenic Area which have the least capacity to accommodate the effects of wind farm development due to their valued semi-natural character, high inter-visibility and open views, undeveloped skyline, sense of remoteness and tranquility, scale, complexity and their diverse and highly scenic composition.

In particular, the skyline at the northern boundary of the National Scenic Area is perceived as semi-natural and is currently not noticeably affected by built structures. The wind turbines would change this important landscape characteristic due to their location on the defining 'ridge', their prominence, scale, colour and movement. The proposal would create a new, large scale focus on the horizon which would detract from the existing composition and the focus of the Kyles and from the dramatic scenery and setting of the National Scenic Area.

The foregoing environmental considerations are of such magnitude that they cannot be reasonably offset by the projected direct or indirect local economic or community benefits which a development of this scale could deliver, or the modest contribution it could make towards the achievement of climate change related commitments.

The proposal would have a significant adverse impact on Landscape Character and would degrade designated scenic assets contrary to:

- Scottish Planning Policy;
- Scottish Government's Specific Advice Sheet on Onshore Wind Farms;
- Policies LDP STRAT 1 – Sustainable Development; LDP DM 1 – Development within the Development Management Zones; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; LDP 5 – Supporting the Sustainable Growth of Our Economy; LDP 6 – Supporting the Sustainable Growth of Renewables; LDP 9 – Development Setting, Layout and Design; and

LDP 10 – Maximising our Resources and Reducing Our Consumption of the ‘Argyll & Bute Local Development Plan’ (2015);

- Supplementary Guidance SG LDP ENV 12 – Development Impact on National Scenic Areas and SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality of the ‘Argyll and Bute Local Development Plan’ (2015);
- Draft LDP SG – Renewables (February 2016)
- ‘Argyll and Bute Landscape Wind Energy Capacity Study’ (2012);
- ‘Guidance on Siting and Designing Windfarms in the Landscape’ Scottish Natural Heritage (2014).

- 2 The proposal would be prominently sited on a ridge providing the immediate setting to the northern end of the National Scenic Area in circumstances where the submitted Zone of Theoretical Visibility indicates the proposal will potentially be visible from a considerable part of the Kyles of Bute National Scenic Area. The proposal will significantly intrude on the defining skyline which encircles and visually contains the Loch Riddon/Ruel area and the northern end of the Kyles of Bute and would intrude onto a ridge that forms an important defining horizon in many of the area’s panoramic views.

The turbines will impinge on views from a range of key viewpoints on the shores including scattered settlement and key routes, and also from the water, popular for recreation. These effects would be greatest within 10 kilometres of the proposal site, which includes much of the shores and waters of the northern part of the National Scenic Area. In this area, the loch shore is accessible, settlement is scattered, and visitors to the area enjoy the scenic composition and recreational experience both onshore and offshore. The proposed turbines would intrude into, and detract from, key views and panoramas of importance to visitors and residents including loch edge locations, water based views from the head of the Kyles of Bute and Loch Riddon, views from parts of routes including the A8003 and A886/B886, the Cowal Way Long Distance Route, and NCR 75, along with views from elevated locations including Creag Dubh, the key National Trust viewpoint (layby off the A8003).

The proposal would give rise to significant visual effects upon visual receptors experiencing key views contrary to:

- Scottish Planning Policy;
- Scottish Government’s Specific Advice Sheet on Onshore Wind Farms;
- Policies LDP STRAT 1 – Sustainable Development; LDP DM 1 – Development within the Development Management Zones; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; LDP 5 – Supporting the Sustainable Growth of Our Economy; LDP 6 – Supporting the Sustainable Growth of Renewables; LDP 9 – Development Setting, Layout and Design; and LDP 10 – Maximising our Resources and Reducing Our Consumption of the ‘Argyll & Bute Local Development Plan’ (2015);
- Supplementary Guidance SG LDP ENV 12 – Development Impact on National Scenic Areas and SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality of the ‘Argyll and Bute Local Development Plan’ (2015);

- Draft LDP SG – Renewables (February 2016)
 - Argyll and Bute Landscape Wind Energy Capacity Study' (2012);
 - 'Guidance on Siting and Designing Windfarms in the Landscape' Scottish Natural Heritage (2014).
3. The proposal will involve the conveyance of abnormal loads along the B836, a route which is potentially sub-standard in width and alignment. The applicant has not submitted sufficient details to enable the planning authority to conclude that this access route can support the size of vehicles required for the delivery and erection of turbine components. A fully detailed transport management plan has not been submitted with the application and, therefore, it is not known how these loads will impact on the road infrastructure, what if any improvements will be required, if any third party land will be necessary for these works, and if so the availability of such land. In the absence of any satisfactory information being advanced for the risk presented to the route by the type of traffic associated with the proposal, the development does not benefit from an identified satisfactory means of access for either construction or for decommissioning purposes.

On the basis of the foregoing, the proposal would be contrary to Policy LDP 11 – Improving our Connectivity and Infrastructure and Supplementary Guidance SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes of the Argyll & Bute Local Development Plan 2015.