

**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**

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**Reference No:** 15/02060/PP

**Planning Hierarchy:** Local

**Applicant:** Colintrave 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

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**SUPPLEMENTARY REPORT NO.1**

**(A) INTRODUCTION**

The attention of Members is drawn to the report dated 28<sup>th</sup> April 2016 which is currently before you for consideration.

Since the compilation of this original report, further information has been submitted by the agent that has led to the issue of land ownership and road safety improvements receiving further consideration.

Members will recall that the recommended third reason for refusal relates to matters of road safety, as follows:

**Land Ownership and Visibility Splays**

The land required to achieve the requisite visibility splays has been re-examined. Given the depth and nature of the verge along this part of the B836 public road, it has been ascertained by the Roads Engineer that the land necessary will be under the control of the Council as Roads Authority. With that in mind, there would be no third party involvement in ensuring that the visibility splays are kept free of obstruction over 1.05 metres in height above the level of the carriageway.

On the basis of the above, therefore, it is considered that the reference to the maintenance of visibility splays in the reason for refusal can be removed, as keeping the verge free of the requisite obstructions could be secured by the Council as Roads Authority if necessary.

## Land Ownership and Access Improvements

Members will recall that the Roads Department had recommended that the existing surfaced area for the access (currently 8 metres back from the public road) needed to be extended by 2 linear metres in order to reduce the prospect of loose debris being carried out onto the carriageway. In the absence of definitive evidence that the applicant would be able to undertake such improvement works, the third reason for refusal incorporated this issue.

The agent has submitted details of land ownership and rights of servitude in the form of the missives for the land transaction and the report on the title provided by the Development Trust's solicitors, Burness Paull & Williamsons. This is an excerpt from the e-mail dated 12<sup>th</sup> May 2016 from the agents Locogen:

*"I would draw your attention to Section 4 Rights Benefitting the Property of the Report on Title (page 3). As you will see, with regard to the land to the north of the B836 road, the Trust has inter alia a "...right to enter on the remaining parts of the estate for the purpose of inspection, maintenance or improvement of the access roads, water supplies and drainage systems...". On this basis, the Trust maintains that it has a legal right to undertake the minor access track improvement works (i.e. laying of another two linear metres of tarmac) requested by the roads officer."*

The submitted information has been forwarded to the Council's Legal Services Section and they have expressed the view that the information provided by the agent is not sufficient on its own to determine the accuracy of the claim. They have referred to Entry Number 3 in the Burdens Section of the land title which provides that the subjects conveyed by the Secretary of State for Scotland to Ian Fisher Barr and others and their heirs and assignees, recorded G.R.S. (Argyll) 22 May 1959 were conveyed subject to a burden that allowed the proprietors to use a road identified by a broken blue line. There was also servitude right to construct and maintain all of the roads identified by a broken blue line.

Insofar as they relate to the current application, the routes shown by a broken blue line on the title plan are in the proximity of the access from the public road that the developers intend to utilise. As the routes are '*indicated approximately*', it is arguable that the route shown by a broken blue line does in fact form the existing access; however, this would be a matter for the Trust and the proprietor of the ground over which the access route passes to determine. It is arguable that the extension of the existing hard surface of the road at the junction with the public road by 2 linear metres would fall within the definition of the construction and maintenance of a road and that it would be open to the Trust to exercise its servitude right to undertake the required works.

In the event that it was determined that the burden above did not permit the Trust to upgrade the existing access, as it did not follow the route shown by a broken blue line, it would be open to the Trust to form a new road along the route indicated by the broken lines on the Title Plan. However, such a road would require Planning Permission.

On the basis of the preceding paragraphs, 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 continue to include reference to the issue in recommended reason for refusal number 3.

### **Absence of a Transport Management Plan**

The last factor in recommending refusal on the grounds of road safety was the absence of a transport management plan. This was considered important as 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. It is not, therefore, 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.

The lack of a transport management plan remains significant and the fact that the issue of whether the applicant has the legal right to carry out improvements to the access has not been established beyond a reasonable doubt is also connected to this particular factor. It is conceivable that the existing access might require additional improvement in order to facilitate the size and type of vehicles needed, beyond that identified by the Roads Engineer on the basis of currently available information, and therefore, the ongoing legal dubiety about the applicants ability to execute works on land outwith the application site militates against approving the proposal without this issue being clarified beyond all doubt.

In the event that Members contemplate approving the application with a stipulation that any improvement works to the existing access should be identified and implemented prior to the development commencing, they should note that any potential condition should conform to the criteria set down in Circular 4/1998 – *The Use of Conditions in Planning Permissions*. In terms of the reasonableness test, the circular advocates that particular care should be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time the application is submitted. As in this particular case, where the land is outwith the application site outlined in red, it states that “*a condition requiring the carrying out of works on the land cannot be imposed unless the authority is satisfied that the applicant has sufficient control over the land to enable those works to be carried out*”.

Having regard to all of the above, it is contended that, whilst the wording of the third reason for refusal should be altered to reflect the position described in relation to the visibility splays, the lack of definitive evidence regarding the applicant's control over improvements to the existing access ensures that the provision of an extended hard surface and the lack of a transport management plan continue to be of material significance.

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**(B) RECOMMENDATION:**

Having due regard to the information submitted since the original report, the Development Plan and all other material considerations it is recommended that, subject to a discretionary hearing taking place, planning permission be refused for the updated reasons outlined in this supplementary report.

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**Author of Report:** Steven Gove

**Date:** 17<sup>th</sup> May 2016

**Reviewing Officer:** David Love

**Date:** 17<sup>th</sup> May 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. In order to render the proposal acceptable from a road safety perspective, the existing sealed surface at the junction of the existing forestry access and the B836 public road needs to be extended by 2 linear metres with maintenance being required to ensure that the junction remains surfaced in an acceptable form to prevent debris being deposited onto the public road. The land necessary to achieve the above works and enable ongoing maintenance is not within the boundaries of the application site and no evidence has been submitted to the Planning Authority that would demonstrate beyond a reasonable doubt that the applicant has sufficient control to secure the necessary provision on third party land.

In addition to the above, 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.

Having regard to all of the above, 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.