

UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING APPEAL DECISIONS

A) INTRODUCTION

This report summarises the outcome of recent appeal decisions by the Scottish Government Directorate for Planning and Environmental Appeals (DPEA) relative to the cases set out below.

B) RECOMMENDATION

It is recommended that Members consider the implications of the Reporter's decision(s).

C) DETAILS OF APPEAL DECISIONS

Case 1

Planning Authority:	Argyll and Bute Council
Planning application reference:	17/02117/HH
Planning appeal reference:	HHA-130-3
Proposal:	High Hedge
Location:	127 and 127A East Princes Street Helensburgh
Date of decision:	18 th January 2018
Decision:	Appeal Allowed

1.0 INTRODUCTION

The purpose of this report is to advise members of the recent decision made by the Planning and Environmental Appeals Division regarding an appeal by Mr & Mrs Struzzi of 129 East Princes Street, Helensburgh against the refusal of a high hedge application at 127 and 127A East Princes Street.

2.0 BACKGROUND

An application was made by Mr & Mrs Struzzi, 129 East Princes Street to reduce the height of their neighbours hedge which lines both side of a lane leading to 127 and 127a East Princess Street. Mr & Mrs Struzzi allege the hedge causes significant overshadowing upon their garden ground and require a reduction in height. The trees forming the hedge measure between 5 and 9m in height.

The Council assessed the application and concluded the hedge did not appear as a solid green wall, the rear windows of the applicant's property were a sufficient distance and height away to not be affected by loss of daylighting and the matter was considered a straightforward assessment of overshadowing. The Council stated that some overshadowing already occurred over Mr & Mrs Struzzis garden created by the house and if the hedge was to be

replaced by a domestic size fence there would still be a level of overshadowing. The application was refused for the following reason:

- The trees forming the hedge are not of a significant height to cause a reduction of daylight to the rear habitable rooms of 129 to 131 East Princes Street.
- The trees forming the hedge do not create an unacceptable level of overshadowing upon the rear gardens of 129 East Princess Street to that already occurring by the dwellinghouse.

3.0 CONCLUSION

The Reporter considered that each of these lines of trees forms a barrier to light and although there would be no loss of daylight in the habitable rooms at the rear of numbers 129 and 131 East Princes Street, the loss of light in the appellants' garden area during afternoons and summer evenings resulting from these barriers to light is such that the enjoyment of the garden would be significantly reduced.

The Reporter concluded that the presence of the two high hedges adversely affects the enjoyment of the domestic property at 129 East Princes Street which occupants of that property could reasonably expect to have; that both hedges should be reduced to a height of 2m in relation to the ground level on which they are located and that the hedges should be maintained thereafter to achieve this height after the initial reduction. The notice comes into effect on 16 February 2018 with a compliance period which must be taken between 1 and 30th September 2018. Members are advised that an enforcement monitoring case has been opened to ensure compliance with this notice.

4.0 RECOMMENDATION

It is recommended that Members consider the implications of the Reporter's decision.

5.0 IMPLICATIONS

Policy: None

Financial: None.

Personnel: None

Equal Opportunities: None

Case 2

Planning Authority:	Argyll and Bute Council
Planning application reference:	15/00205/PP & 16/01448/PP
Planning appeal reference:	PPA-130-2059 & PPA-130-2060
Proposal:	Erection of a wind farm comprising 13 wind turbines (maximum height of 100 metres) together with ancillary infrastructure building and access road,
Location:	Eascairt Farm, Skipness
Date of decision:	11 January 2018
Decision:	"Notice of Intention" to Allow Appeal(s)

1.0 INTRODUCTION

The substantive appeal (PPA-130-2059) relates to the refusal of planning permission for a windfarm comprising 13 wind turbines(maximum height of 100 metres) together with

ancillary infrastructure including a permanent wind monitoring mast, access tracks, crane hard-standings, substations, control building, temporary construction compound and borrow pit search areas. The second appeal (PPA-130-2060) relates only to the access track to serve this development.

Members are requested to note that the document(s) issued are a “Notice of Intention” clarifying why the Reporter is minded to allow the appeal(s) and grant permission following the signing and registering of a Planning Obligation under section 75 of the Town and Country Planning (Scotland) Act 1997. This Section 75 will secure; a bond in respect of a restoration, a habitat management plan, and red throated diver surveys. This Section 75 Planning Obligation is required to be agreed and signed by parties within a period of 16 weeks before formal appeal decision(s) will be issued by the Reporter. Members’ attention is drawn to the fact that the Reporter clarifies that:

If, by the end of that period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

It is also requested that Members note that a separate, but related determination which deals only with access to the windfarm has also been issued by the same Reporter under appeal (PPA-130-2060). This determination is referenced, and its relationship to the windfarm Notice of Intention (PPA-130-2059) clarified in the main appeal determination. It is therefore not considered necessary in such circumstances to report the appeal relating to only the access track separately to Members, as the primary matters of interest relate to the “Notice of Intention” issued in respect of the windfarm development itself under PPA-130-2059, which this report primarily addresses.

2.0 BACKGROUND

Planning permission was refused for the development on the basis of significant and adverse visual impact/effect on the receiving landscape and cumulative harm when viewed in association with other existing windfarms in the area.

An additional reason relating to unacceptable vehicular access was also part of the reason for refusal of the windfarm application. The Reporter agreed that the proposed access under the windfarm application was not acceptable, and in this respect the Reporter has upheld one of the Councils stated reasons for refusing planning permission under appeal PPA-130-2059. However in the parallel appeal determination (PPA-130-2060) he has have found that alternative access arrangements would be acceptable, subject to conditions. Accordingly he considers on the basis of the amended access proposals that the proposed wind farm would be able to provide a suitable access.

In respect of the main windfarm appeal (PPA-130-2059) the Reporter summarises Scottish Government planning policy approach, stating that:

“Current Scottish Planning Policy (SPP) supports a transformational change to a low carbon economy and sets targets for energy from renewable sources. SPP also expects the planning system to facilitate positive change while maintaining and enhancing distinctive landscape character. The appeal site is not in a designated area for its distinctive character or quality. Spatially, the appeal site would be in an area with potential for wind farm development, as defined by SPP. In terms of development management, SPP encourage careful siting and design to minimise adverse impacts.”

The reporter noted that “*Policy LDP 6 supports such development where, amongst other things, there would be no unacceptable significant effects on landscape character or visual amenity*”. The Reporter commented that the Argyll and Bute Landscape Wind Energy Capacity Study (LWECS) provides a strategic assessment, but must, in his view, be subject to an assessment of the actual impacts on the ground. On this basis he considered that the LWECS study does not count against the development proposed.

In respect of potential Cumulative Impact and views from Arran, the reporter did not consider the appeal site to be a particularly key part of the views from Arran. In his judgement, the existing turbines, even though they are a feature of the landscape, do not interrupt the panorama or appreciation of the topography. On this basis he did not consider that the current proposal would significantly alter this relationship or disproportionately contribute to cumulative impacts.

3.0 CONCLUSION

The Reporter accepted that the scale of the turbines would influence the character of the adjoining landscape character types as set out in LWECS and that the applicant’s Environmental statement accepts there will be significant localised effects. However he concluded that, the existing landscape character would be clearly seen between and around the proposed turbines and as a result its wider impact would not be so significant to refuse permission. He also concluded that the design of the wind farm would reflect the scale and character of its location in the landscape and visual impacts would be, on balance, acceptable. The Reporter also noted the positive policy framework in respect of such proposals to meeting Scottish Government targets in respect of sustainable energy production.

4.0 RECOMMENDATION

It is recommended that Members consider the implications of the Reporter’s decision(s).

5.0 IMPLICATIONS

Policy: None. However future appeal decisions will be monitored.

Financial: None.

Personnel: None

Equal Opportunities: None

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