

UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING APPEAL DECISIONS

A) INTRODUCTION

This report summarises the outcome of recent appeal decisions by the Planning and Environmental Appeals Division (DPEA) for the conjoined Killean & Clachaig Glen Public Local Inquiry held in January 2019. The outcome for each of the individual cases are set out below.

B) RECOMMENDATION

Members are asked to note the contents of the report.

C) DETAILS OF APPEAL DECISIONS

Planning Authority:	Argyll & Bute Council (Section 36 Consultation)
Planning application ref:	16/03400/S36
Planning appeal ref:	WIN-130-3
Proposal:	S36 Consultation for proposed Killean Wind Farm
Location:	Killean Wind Farm, Tayinloan, Argyll and Bute

Date of decision:	18th December 2019
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The Planning Authority objected to this application on the 18th October 2017. The Planning Committee agreed with the planning officer's recommendation to object to the proposal as the proposed development would be contrary to local development plan policies, supplementary guidance, landscape capacity study and Scottish Planning Policy on the basis that the development would be unacceptable due to the adverse landscape and visual impacts which would occur.

In accordance with the terms of paragraph 2(2) of Schedule 8 to the Act, the Scottish Ministers caused a Public Local Inquiry to be held. The Killean wind farm application was considered by the Reporters alongside an appeal relating to a nearby proposed wind farm at Clachaig Glen (PPA-130-2064), which was recalled by Scottish Ministers to enable the cumulative impacts of both Killean and Clachaig Glen wind farm proposals to be considered. The conjoined Public Inquiry and Hearing Sessions took place in January 2019.

Reporters' conclusions

The Reporters' concluded that:

- With regard to Schedule 9 of the Electricity Act, the Company has minimised impacts where possible within the parameters of the chosen site and submitted design.
- The scale of the harmful visual effects on the proposed development would outweigh the benefits of the project.

- Notwithstanding national energy policy support, both the Scottish Planning Policy and Policy LDP 6 of the local development plan require Ministers to give consideration to visual impacts. It is considered that the proposal is contrary to local development plan policy LDP 6.
- The proposal does not benefit from the Scottish Planning Policy presumption in favour of sustainable development because of the substantial adverse visual impacts, both individually and cumulatively.

Reporters' Recommendation

For the above reasons, and after taking account of the advice of Scottish Natural Heritage, the Reporters' agree with the Council and Community Councils that the consent should be refused. The visual impacts are unacceptable due to the siting and size of the turbines.

The Scottish Ministers' Decision

The Scottish Ministers **refused** the application for consent under Section 36 of the Electricity Act 1989 for the construction and operation of the proposed development on the 18th December 2019. The Scottish Ministers decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications of consent.

Full details of the appeal decision can be viewed on the DPEA website:

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=118391>

Planning Authority:	Argyll & Bute Council
Planning application ref:	16/01313/PP
Planning appeal ref:	PPA-130-2064
Proposal:	Erection of 14 wind turbines (13 with a blade tip height of up to 126.5m (and hub height of up to 80m) and one with a blade tip height of up to 115.5m (and hub height of up to 69m)), upgrading of permanent access, formation of site access tracks, erection of permanent anemometer mast, control building and substation, watercourse crossings and temporary construction compound.
Location:	Clachaig Glen Windfarm, Land North East Of Muasdale, Argyll and Bute
Date of decision:	18th December 2019

This application was refused permission by Argyll & Bute Council following consideration of the application by the Council's Development & Infrastructure Services Committee on the 20th September 2017. The appeal against the refusal of planning permission was submitted to Scottish Ministers on the 20th December 2017. On the 29th January 2018 the applicants for the proposed Killeen wind farm requested that the examination of their Section 36 application be conjoined with the planning appeal for Clachaig Glen wind farm. On the 22nd March 2018 Scottish Ministers recalled the Clachaig Glen wind farm appeal for them to determine. This was in order to consider the potential cumulative impact of the Killeen and Clachaig Glen

developments together. The conjoined Public Inquiry and Hearing Sessions took place in January 2019.

Reporters' conclusions

Clachaig Glen wind farm would contribute to Scottish Government targets for increasing generation of electricity from renewables and reducing carbon dioxide emissions. The Reporters conclude that the proposal should be considered acceptable in terms of its landscape and visual impact, including cumulative impacts. Subject to the use of their recommended planning conditions, they do not find any other unacceptable environmental impacts. They consider that the proposal accords overall with the relevant provisions of the development plan and would benefit from the Scottish Planning Policy presumption in favour of development that contributes to sustainable development. There are no other material considerations which the Reporters' consider would justify the refusal of planning permission.

Reporters' Recommendations

The Reporters' recommended that planning permission be granted, subject to the satisfactory completion of an appropriate assessment and subject to conditions. This recommendation was made irrespective of whether Scottish Ministers consent the Killeen wind farm or not.

The Scottish Ministers' Decision

Scottish Ministers have carefully considered the evidence presented at the public local inquiry and the Reporters' overall conclusions and recommendations. They accept the Reporters' conclusions and recommendations and adopt them for the purpose of their own decision.

Accordingly, Scottish Ministers allow the appeal and grant planning permission for the erection of 14 wind turbines (13 with a blade tip height of up to 126.5M (and a hub height of up to 80M) and one with a blade tip height of up to 115.5M (And a hub height of up to 69M)), upgrading of permanent access, formation of site access tracks, erection of permanent anemometer mast, control building and substation, watercourse crossings and temporary construction compound at Clachaig Glen windfarm, land North East of Muasdale, Argyll subject to the conditions.

An Appropriate Assessment concluding that the development is not predicted to have any adverse effect on the integrity of the Kintyre Goose Roosts SPA or any other Designated European Sites, alone or in-combination with other projects, has been completed by Scottish Ministers.

The foregoing decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date thereof. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

Full details of the appeal decision can be viewed on the DPEA website:
<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=118390>

D) IMPLICATIONS

Policy: None.

Financial: None.

Personnel: None

Equal Opportunities: None

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