

**ARGYLL AND BUTE COUNCIL
DEVELOPMENT AND ECONOMIC GROWTH**

PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE – 23RD AUGUST 2023

UPDATE ON RECENT SCOTTISH MINISTERS SECTION 36 WIND FARM DECISION

OUR REFERENCE: 19/02424/S36

ECU REFERENCE: ECU00001957

DPEA REFERENCE: WIN-130-5

CASE DETAIL: CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF SHEIRDRIM RENEWABLE ENERGY DEVELOPMENT

SITE ADDRESS: SHEIRDRIM RENEWABLE ENERGY DEVELOPMENT (APPROX 10KM SOUTH-WEST OF TARBERT), LAND AT GARTNAGRENACH FOREST, WHITEHOUSE, ARGYLL & BUTE

APPLICANT: SLR CONSULTING LIMITED ON BEHALF OF SCOTTISHPOWER RENEWABLES (UK) LIMITED

STATUS: REFUSED BY SCOTTISH MINISTERS ON 26TH JUNE 2023

A) INTRODUCTION

In Scotland, any application to construct or operate an onshore power generating station, with an installed capacity of over 50 megawatts (MW) requires the consent of Scottish Ministers under Section 36 of the Electricity Act 1989. Any ministerial authorisation given includes a 'deemed planning permission' and in these circumstances there is then no requirement for a planning application to be made to the Council as Planning Authority. The Council's role in this process is one of a consultee along with various other consultation bodies. It is open to the Council to either support or object to the proposal, and to recommend conditions it would wish to see imposed if authorisation is given by the Scottish Government.

In the event of an objection being raised by the Council, as was the case with this proposal, the Scottish Ministers are obliged to convene a Public Local Inquiry (PLI). The Inquiry was conducted by a Reporter(s) appointed by the Directorate for Planning and Environmental Appeals.

This report summarises the recent decision made by Scottish Ministers to REFUSE Section 36 consent and deemed planning permission for Sheirdrim Renewable Energy Development.

B) RECOMMENDATION

Members are asked to note the contents of the report.

C) REPORTERS CONCLUSIONS AND RECOMMENDATION TO SCOTTISH MINISTERS

Reporter's Conclusions

Although the proposal would contribute to meeting national targets for reducing greenhouse gas emissions and generating renewable energy, it would also bring its own impacts to the locality where it is proposed. For the most part the environmental effects would not be significant or could be made so by mitigation and/or imposing conditions. This would not resolve the landscape and visual (including cumulative) effects, albeit that those would be localised. However, in our judgement, the benefits of meeting national energy and climate change policy are preferable in the overall balance, as set out in NPF4 (National Planning Framework 4) Policy 11 e).

However, the applicant's assessment has not fully considered the effects of the proposal on the setting of Dun Skeig scheduled monument. The proposal would result in significant adverse impacts on the integrity of the setting of Dun Skeig scheduled monument, which could not be mitigated without significantly changing the proposal. Consequently, the proposal is contrary to NPF4 Policy 7 h). No compelling evidence persuades us that there are any exceptional circumstances under NPF4 Policy 7 h) iii or elsewhere. The proposal is also contrary to the Historic Environment Policy for Scotland. Despite our applying significant weight to the meeting of greenhouse gas reduction and renewable energy targets this matter would present issues for compliance with NPF4 Policy 11 e) vii.

Therefore, despite many factors being in the proposal's favour, its significant adverse impacts on the integrity of the setting of Dun Skeig scheduled monument alone lead us to conclude that the proposal would not be acceptable overall.

Reporters Recommendation to Scottish Ministers

The Reporter therefore recommends that, consent under section 36 of the Electricity Act 1989 and deemed planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 should be refused. Should Scottish Ministers disagree with this recommendation, they recommend that the conditions proposed in Appendix A of their report should be attached to the consent.

The Scottish Ministers' Conclusions

Reasoned Conclusions on the Environment

The Scottish Ministers are satisfied that the EIA Report and its AI (Additional Information) 2020 and AI 2021 have been produced in accordance with the EIA Regulations and that the relevant procedures regarding publicity and consultation laid down in those Regulations have been followed.

The Scottish Ministers have fully considered the EIA Report and the AI 2020 and AI 2021, the consultation responses, representations, the findings, conclusions, and recommendation of the PI Report and its Supplementary Report and are satisfied that the environmental impacts of the proposed Development have been sufficiently assessed. The Scottish

Ministers have taken the environmental information into account when reaching their decision.

Taking into account the above assessment the Scottish Ministers consider there would be significant local landscape and visual effects and significant effects on the setting of Dun Skeig scheduled monument, neither of which can be mitigated.

The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion addresses the likely significant effects of the proposed Development on the environment. The Scottish Ministers are satisfied that this reasoned conclusion is up to date.

The Scottish Ministers Determination

As set out above, the seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a priority for the Scottish Ministers. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (the “2019 Act”) sets a target for Scotland to be carbon-neutral, meaning net-zero CO₂, by 2045 at the latest. Additionally, the 2019 Act sets out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040. Scotland’s renewable energy and climate change targets, energy policies and planning policies are all relevant considerations when weighing up the proposed Development. NPF4, Scotland’s Energy Strategy and the Onshore Wind Policy Statement make it clear that renewable energy deployment remains a priority of the Scottish Government. These are all matters which should be afforded significant weight in favour of the proposed Development.

The Scottish Ministers consider that the proposed Development, if deployed, would create net economic benefits and deliver significant renewable energy benefits that would support climate change mitigation and are wholly in accordance with Scottish Government’s climate change ambitions. The proposed Development in these respects would contribute to sustainable development and this has been taken into account when reaching a decision. These benefits however must be considered carefully in the context of the negative impacts on the historic and natural environment, particularly on the setting of Dun Skeig scheduled monument, and whether or not, on balance, they are acceptable.

The Scottish Ministers acknowledge, in accordance with both NPF4 and the OWPS, that meeting our climate ambitions will require a rapid transformation across all sectors of our economy and society, however this does not negate the continuing requirement to ensure that the right development happens in the right place.

The Scottish Ministers, having considered the Application, the EIA Report, the AI 2020, AI 2021, consultation responses and public representations alongside the Reporters’ considerations and subsequent conclusions, consider that although the significant local, landscape and visual impacts would be acceptable in the context of the net economic benefits and the significant renewable energy benefits that would be delivered if the proposed Development were to be deployed, the impacts on the historic environment and the integrity of the setting of Dun Skeig scheduled monument would not.

The significant adverse impact on the setting of Dun Skeig scheduled monument and resulting impact on how it is understood and enjoyed, and the experience of its benefits, would not be secured for present and future generations if the proposed Development were consented. Even taking into account the significant support assigned by NPF4 to the proposed Development and its status as national development, this ultimately leads the

Scottish Ministers to the conclusion that despite the many factors in favour of the proposed Development, this is not the right development in the right place and the proposed Development is therefore not acceptable overall.

The Scottish Ministers therefore consider the Application for consent under Section 36 of the Electricity Act 1989 for the construction and operation of Sheirdrim Wind Farm, wholly within the planning authority area of Argyll and Bute Council, should be refused.

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 for consent.

The Reporters Inquiry Report and Scottish Ministers decision can be viewed on the DPEA (Directorate of Planning Environmental Appeals) website at the following link:

[Scottish Government - DPEA - Case Details \(scotland.gov.uk\)](https://www.scotland.gov.uk/topics/dpea/cases)

D) IMPLICATIONS

Policy: None.

Financial: None.

Personnel: None

Equal Opportunities: None

Author: Arlene Knox **Date:** 19th July 2023

Fergus Murray
Head of Development and Economic Growth