

23 March 2007

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Our ref:  
GMT1/SBT1/361957.1  
Your ref:

Dear Mr Eaglesham

**Proposed Black Craig Wind Farm, Glen Fyne, Argyll  
Application 06/02000/DET**

I wrote to your colleague Brian Close on 8 March requesting deferral of consideration of the application until supplementary environmental information was available, which would at the earliest be in July 2007. Land Use Consultants also wrote to Angus Gilmore on 14<sup>th</sup> March setting out in more detail the supplementary information that would be prepared. I have in front of me the Planning Officer's report to the 20 March meeting of the Development Services Committee and understand that on 20 March members resolved to defer matters only until the committee's meeting on 11 April 2007.

The purpose of this letter is to set out the reasons why the approach resolved by members is not acceptable, and to repeat my request that matters be deferred until July 2007 (and possibly longer if the supplementary environmental information which is to be prepared is not ready by then).

1. My clients are irritated by the apparent determination of your members not to allow a determination of the application at a time when all relevant material will be available. At an earlier stage in this project there were very extensive delays on the part of the Council in responding to approaches from Argyll Wind Farms. For example, it took 22 weeks to obtain an EIA scoping opinion and as you will be aware the statutory determination period is five weeks.

In the circumstances I must record a very real concern that the patience which Argyll Wind Farms displayed at an earlier stage in waiting for information from your Council is not now being reciprocated.

2. A request was made by the Council for supplementary environmental information by a letter dated 24 November 2006. The request having been made it would be very peculiar if your Council was not willing to wait until receipt of the required material before determining the application. The material cannot be submitted prior to the 11<sup>th</sup> April as it will include the results of bird survey work which is seasonally constrained and will not be completed until the end of June 2007. In any event, you will be aware that even if the information was submitted to the Council before for the Committee meeting on the 11 April, there would not be time for the statutory consultees to comment on the supplementary information.

We also refer to our meeting in your offices at Kilmory, Lochgilphead on the 29 November 2006 attended by Angus Gilmore, Neil McKay, Fergus Murray and Brian Close of your department and Peter Blacker of Argyll Windfarms Ltd and Marc van Grieken of Land Use Consultants. At this meeting the content of your letter dated was discussed and Land Use Consultants confirmed that the required information would be prepared and submitted. It was confirmed at this meeting that this information would be treated as Supplementary Environmental Information and would require further consultation with the relevant consultees. It was also understood that you deemed it unlikely that the Supplementary Environmentally Information would change the overall view of the department although you acknowledged that it may be possible to reduce or remove some of the concerns.

3. The Planning Officer's report to committee has partly been overtaken by events. Reference is made within the report to the fact that the development is outside "any designated wind farm

areas including Preferred Areas of Search, but located within an area zoned as very sensitive countryside ..." (page 38). You will be aware that SPP6: 2007 was issued on 22 March. It envisages in paragraph 23 that development plans should set out a spatial framework, supported by broad criteria, for the consideration of wind farm proposals over 20MW. Paragraph 23 clearly advises that "This framework should not be used to put in place a sequential approach to determining applications".

Annex A to SPP6 gives further advice on projects of the scale referred to in paragraph 23. It is made very clear that where a scheme is proposed outside a broad area of search, and also outside "areas that will be afforded significant protection" (para 3 Annex A) a criteria based approach should apply.

Therefore an approach to an assessment of development which has as a starting point a presumption against permission unless a proposal is within a Preferred Area of Search is now inconsistent with national advice. I have no doubt that you will wish to reflect the advice in SPP6 in your next report to committee.

4. There are legal inaccuracies within the report. I refer to the claim that an appropriate assessment has been undertaken (bottom of page 38), to the conclusion on page 39 that the proposal conflicts with the interests of "European nature conservation legislation" and to the proposed reason 2 for refusal. This reason refers again to appropriate assessment and claims that the proposal is contrary to the provision of the Birds Directive 1979

The claims made in the report depend necessarily on the existence of a Special Protection Area, since an appropriate assessment could only be required where a proposed development is assessed as likely to have significant effects on an SPA. You may wish to look at Regulation 48 Habitats Regulations 1994 in order to verify what I am saying. Since there is no SPA there could never be an appropriate assessment of this project. I am sure that you will wish to check the position with SNH. Habitat protection under the Habitats and Birds Directives, and under Regulation 48 Habitats Regulations 1994 is quite different from species protection which involves matters of judgment, and no absolute requirement to avoid any particular level of impact.

The proposed reason 2 for refusal is thus legally flawed.

There are a number of other matters within the Planning Officers report with which Argyll Wind Farms take issue, but they will be addressed separately.

It is clear to me that a determination of this application (whether positive or negative) in advance of the receipt of further environmental information (requested by your Council) would be grossly unfair to Argyll Wind Farms. Were the application to be refused the contents of this letter would be drawn to the attention of a Reporter at a subsequent inquiry. I request that the deferral sought by the applicant should be granted and I look forward to hearing from you.

Please do not hesitate to get in touch if any matters in this letter need clarification.

Yours sincerely

**Marcus Trinick**  
Partner  
for and on behalf of Bond Pearce LLP