

PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
24th AUGUST 2011

UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING DECISION
STACAIN WINDFARM, BY INVERARAY

A) INTRODUCTION

This report advises of the outcome of the decision on the above application, which was 'called-in' for determination by Scottish Ministers in 2008, in view of Members resolution to grant permission, contrary to recommendation and to the view of Scottish Natural Heritage in their capacity as a statutory consultee.

B) RECOMMENDATION

Members are asked to note the contents of the report.

C) DETAILS OF DECISION

PLANNING APPLICATION 05/00770/DET
CALL IN REFERENCE – N/ABC/015 – Planning permission refused by Scottish Ministers
14 Wind Turbines and associated development
Land at Stacain, east of the A819 between Inverarary and Dalmally

This 'call-in' case was first considered by way of Public Local Inquiry held in November 2008, the Council's position being that planning permission ought to be granted and SNH's position being that there would be unacceptable landscape and visual effects and adverse nature conservation effects, particularly in relation to golden eagles.

The Reporter in his findings concluded that the development proposed would be acceptable other than for its implications for golden eagles, the conservation status of which had been enhanced by the promotion of a candidate Special Protection Area (SPA) by SNH under European legislation. His view was that the prudent approach in this situation would be to undertake the same 'appropriate assessment' as would have been required had the SPA been formally designated. In so doing, he concluded that the proposal failed to safeguard the conservation status of golden eagles, or to meet the tests necessary to be able to permit development with identified adverse effects on qualifying interests with a European designation. The Scottish Ministers accepted his recommendation and planning permission was refused in October 2009.

Subsequent to that decision, a legal challenge was mounted by the applicants on the basis that regard had not been had by Scottish Ministers to late information concerning a change which had been made by SNH to the avoidance rate which it applies when modeling potential eagle collision risk; the effect of which was to halve the risk of collision occurring and therefore of significance to the outcome of the case. That action was successful, and in turn, led to the Public Local Inquiry being re-opened in November 2010 in order to re-address eagle issues. During the intervening period, the Glen Etive and Glen

Fyne Special Protection Area for eagles had become classified and had taken effect as a European designation under the habitats regulations.

The Reporter produced a subsequent Report of Inquiry in March 2011, which again recommended that planning permission be refused; his conclusion being that notwithstanding the revised position in respect of eagle collision modeling, the European conservation status of the site necessitated 'appropriate assessment', the conclusion of which was that the development would be likely to have a 'significant effect' on the integrity of, and the conservation objectives of, the site. His recommendation was accepted by Scottish Ministers who, in turn, refused planning permission on 15th July 2011.

D) CONCLUSION

This decision re-affirms the status of any 'appropriate assessment' carried out in respect of development within or affecting Special Areas of Conservation and Special Protection Areas for Birds as an overriding material consideration in the determination of any application affecting habitats and species of European nature conservation importance.

In cases where 'significant effects' are anticipated upon qualifying interests designated under the habitats regulations, other than where development is required in connection with the management of that area, an 'appropriate assessment' must be carried out by the 'competent authority' in all cases. This must be undertaken on the basis of 'no reasonable scientific doubt', in order to establish whether nature conservation objectives are likely to be prejudiced by inappropriately located development. Where there is too much scientific doubt, adverse effects have to be assumed.

This proved to be the case with the planning application for the Largie Windfarm in Kintyre in 2006, when Members failed to secure a competent motion to approve a windfarm development in the face of an 'appropriate assessment' raising reasonable scientific doubt.

Members should note that an application to the Scottish Government under section 36 of the Electricity Act 1989 (the decision route for large windfarms with a generating capacity over 50MW) remains undetermined in respect of a proposed 22 turbine windfarm site at Shira, by Dalmally. That application has been held in abeyance pending the outcome of the Stacain application, and given that this site lies within the same SPA that led to the refusal of this application, the future of that proposal is likely to be very much influenced by the decision in this case.

E) IMPLICATIONS

Policy: None
Financial: None
Personnel: None
Equal Opportunities: None

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