

UPDATE ON SCOTTISH MINISTERS SECTION 36 CLACHAIG GLEN WIND FARM DECISION

OUR REFERENCE: 22/00613/S36

ECU REFERENCE: ECU00002103

DPEA REFERENCE: WIN-130-7

CASE DETAIL: APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CLACHAIG GLEN WIND FARM, COMPRISING 12 TURBINES (FIVE WITH A TIP HEIGHT OF 200M, SEVEN WITH A TIP HEIGHT OF 185M), ANCILLARY INFRASTRUCTURE AND BATTERY STORAGE UNITS

SITE ADDRESS: CLACHAIG GLEN WIND FARM, LAND AT HIGH CLACHAIG FOREST, 1.8KM NORTHEAST, KINTYRE, ARGYLL

APPLICANT: RWE RENEWABLES UK ONSHORE WIND LTD

STATUS: APPLICATION GRANTED CONSENT BY SCOTTISH MINISTERS 8TH NOVEMBER 2024

1. INTRODUCTION

- 1.1 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.
- 1.2 Argyll & Bute Council objected to this application, consequently, a Public Inquiry was required. The Inquiry, which Officers participated in was conducted by a Reporter(s) appointed by the Directorate for Planning and Environmental Appeals (20th – 24th November 2023).
- 1.4 This report summarises the decision made by Scottish Ministers to GRANT Section 36 consent and deemed planning permission for Clachaig Glen wind farm.

2. RECOMMENDATION

- 2.1 Members are asked to note the contents of the report.

3. REPORTERS CONCLUSIONS AND RECOMMENDATION TO SCOTTISH MINISTERS

Reporter's Overall Conclusions

- 3.1 In balancing the factors for and against the proposal, the Reporter recognises the contribution that the proposal would make towards meeting climate change objectives and emission reduction targets; its net economic effects; and the benefits of peatland restoration.
- 3.2 The Reporter has also taken into account the significant adverse environmental effects, in particular: those to the host landscape to a maximum of 3km; the visual effects to the north, north-west and west to some 9km; visual effects on those approaching properties and working the land closest to the proposed turbines at North Muasdale (viewpoint 16); the aviation warning lighting effects on the Kintyre Way (viewpoint 13) and, in very limited periods, from Gigha; the cumulative landscape and visual effects; and the loss of blanket bog.
- 3.3 Furthermore, the Reporter notes that, with mitigation, no other significant effects are identified with respect to the proposed development.

Reporters Recommendation to Scottish Ministers

- 3.4 Consent should be granted under section 36 of the Electricity Act 1989 and planning permission should be deemed to be granted under section 57 of the Town and Country Planning (Scotland) Act 1997 (as amended), subject to the conditions listed in Appendix 1 (of Reporter's decision).
- 3.5 Consent may not be granted prior to the satisfactory completion of an appropriate assessment in relation to the effects of the proposal on Kintyre Goose Roosts SPA.

4.0 THE SCOTTISH MINISTERS' CONCLUSIONS

Conclusions on the environment

- 4.1 The Scottish Ministers are satisfied that the EIA Report has 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.
- 4.2 The Scottish Ministers have fully considered the EIA Report, the consultation responses, representations, the findings, conclusions and recommendation of the Public Inquiry 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.
- 4.3 Taking into account the assessment in their report, subject to conditions to secure environmental mitigation, the Scottish Ministers consider the environmental effects of the proposed Development are mostly overcome with the exception of significant landscape and visual impacts which are considered to be mostly localised.
- 4.4 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. Ministers are satisfied that this reasoned conclusion is up to date.

Acceptability of the proposed Development

- 4.5 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. Scotland's renewable energy targets and climate change ambitions, energy policies and planning policies are all material considerations when weighing up this proposed Development. NPF4, the Energy Strategy, and the OWPS make it clear that renewable energy deployment remains a priority of the Scottish Government. The OWPS in particular reaffirms the vital role for onshore wind in meeting Scotland's energy generation targets and net zero emissions ambitions. This is a matter which should be afforded significant weight in favour of the proposed Development.
- 4.6 The transition to a low carbon economy is an opportunity for Scotland to take advantage of our natural resources to grow low carbon industries and create jobs.
- 4.7 The Scottish Ministers are satisfied that the proposed Development will provide a contribution to renewable energy targets and carbon savings. The Scottish Ministers are also satisfied that it is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its net-zero emissions ambitions.
- 4.8 The Scottish Ministers are also satisfied that the proposed Development will not have any significant effects on any protected species, National Scenic Area or National Park.
- 4.9 The Scottish Ministers acknowledge that the proposed Development would result in some landscape and visual impacts, including cumulative and aviation lighting effects which are considered acceptable in the context of the benefits that the proposed Development will bring in terms of net economic benefit, contributing to renewable energy and climate change targets, while protecting the natural environment. The Scottish Ministers in making their determination on the Application, have had to balance the above considerations, decide what weight is to be given to each and reach a view as to where the balance of benefit lies. On balance, it is considered that the proposed Development is acceptable.
- 4.10 Taking all of the above into account, the Scottish Ministers are content that the proposed Development is supported by Scottish Government Policies and should be granted consent.

The Scottish Minister's Determination

- 4.11 Subject to the conditions set out in Annex 2 - Part 1 of their decision, the Scottish Ministers grant consent under section 36 of the Electricity Act 1989 for the construction and operation of the Clachaig Glen Wind Farm electricity generating station in the Argyll & Bute Council Planning Authority area as described in the Application and at Annex 1. 16
- 4.12 Subject to the conditions set out in Annex 2 - Part 2, the Scottish Ministers direct that planning permission is deemed to be granted under section 57(2) of the Town and Country Planning (Scotland) Act 1997 in respect of the Development described in the Application and at Annex 1.

Section 36 consent and expiry of deemed planning permission

- 4.13 The consent hereby granted will last for a period of 35 years from the earlier of: x The date when electricity is first exported to the electricity grid network from all of the wind

turbines hereby permitted; or x The date falling 18 months after electricity is generated from the first of the wind turbines hereby permitted.

- 4.14 Section 58(1)(a) of the Town and Country Planning (Scotland) Act 1997 requires where planning permission is deemed to be granted, that it must be granted subject to a condition that the permission will expire if has not begun within a period of 3 years.
- 4.15 Section 58(1)(b) of that Act enables the Scottish Ministers to specify that a longer period is allowed before planning permission will lapse. The Scottish Ministers consider that due to the constraints, scale, and complexity of constructing such Developments, a 5-year time scale for the Commencement of development is typically appropriate.
- 4.16 The Scottish Ministers consider that 3 years is not to apply with regard to the planning permission granted above, and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction, unless the development to which the permission relates is begun before the expiry of that period. A condition has been imposed stating that development must be begun within 5 years beginning with the date on which the permission is deemed to be granted and if development has not begun at the expiration of that period, the planning permission will lapse in terms of section 58(3) of the Town and Country Planning (Scotland) Act 1997.
- 4.17 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 rules relating to the judicial review process can be found on the website of the Scottish Courts.
- 4.18 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](#)

5.0 IMPLICATIONS

Policy: None.

Financial: None.

Legal: None

HR: None

Fairer Scotland Duty: None

Equalities – Protected Characteristics: None

Socio-economic Duty: None

Islands: None

Climate Change: will contribute towards meeting climate change objectives and emission reduction targets.

Risk: None

Customer Service: None

The Rights of the Child (UNCRC): None

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