

**Hearing Statement of Jessel Gair
for the Applicant**

Conditions and Legal Agreements

Public Inquiry into the proposed Dorenell Wind Farm

Section 36 of the Electricity Act 1989

The Town & Country Planning (Appeals) (Scotland) Regulations 2008

27 August 2010

Introduction

My name is Jessel Gair. I am a solicitor at Biggart Baillie LLP and I am also a Legal Associate of the Royal Town Planning Institute. I will speak for the Applicant in relation to proposed conditions and legal agreements.

The Applicant contends that all impacts identified within the Environmental Statement (“ES”) can be mitigated by the imposition of appropriate conditions and if necessary a planning agreement. A summary of the mitigation measures proposed is presented in Chapter 25 of the ES and would be delivered, along with a monitoring and reporting programme, under a Health, Safety and Environmental Management System (“HSEMS”). This has been proposed for both the construction and operational phases of the wind farm. Table 25.1 of the ES lists the commitments made by Infinergy Ltd and a summary of mitigation measures to be adopted. The Applicant is willing to accept the conditions recommended by SEPA and SNH, government guidance on conditions and agreements and those consistent with other s.36 consents granted by the Scottish Government.

This approach is reflected in the list of issues to be covered by the proposed conditions and any legal agreement set out below:

S.36 Conditions

- Duration
- Commencement of Development
- Decommissioning
- Assignment
- Health and Safety

Planning Conditions

Timing

- Non-operational turbines
- Duration of Construction
- Post Construction Restoration Statement
- Temporary contractors’ site compound removal

Design

- Turbine micro-siting with limits of deviation
- Track micro-siting with limits of deviation
- Track running widths
- Suspensive detail condition
- Reinstatement of internal access tracks
- Electricity and control cables
- Borrow pit location
- Turbine design

Method Statements

- Construction Method Statement
- Pollution Incident Response Plan

Environmental Management Plan

Ecology

Appointment of ecological clerk of works
Protected Mammal Species Survey and Assessment of Sensitive Areas
Fisheries Management Plan
Operational Access Protocol (“Code of Practice”)
Ornithological Monitoring
SNH proposed conditions
Pre-decommissioning surveys for protected mammals, aquatic habitats and fish populations

Noise

Construction Work
Blasting
Fixed and mobile plant

Roads

A941 passing places/strip widening
Temporary Signage
Site Access details
Abnormal load management
Temporary local widening and “one way” traffic light control between Laggan and Bridgehaugh
Traffic Management Plan
Wheel washing, road sweeping, mud and debris management etc.
Snow Clearance

Water

Drainage Design and Management Plan
Abstraction Management Plan
Water quality monitoring programme
SEPA and SNH proposed conditions

Land Management Plans

Habitat Management Plan
Access Management and Recreation Plan
SEPA and SNH proposed conditions

Decommissioning

Decommissioning Method Statement
Restoration and Aftercare Scheme
Financial Bond

Aviation

Defence Estates and NATS proposed conditions

Peat Management

Peat Management Plan
Geotechnical Risk Register
Contingency Plan
Excavation
SNH and SEPA proposed conditions

Planning Agreement

- **Community Benefit:** Infinergy propose that the wind farm will contribute to a community benefit of £2,000 per MW per annum over the entire operational life of the wind farm. A s.75 Minute of Agreement will be required in this regard.
- **Habitat Management Plan:** The details of the Habitat Management Plan will not only require a suspensive planning condition, but may also require a s.75 Minute of Agreement to ensure that this obligation runs with the land.

Conclusion

The Applicant has yet to review the draft planning conditions to be put forward by the Planning Authority. However, there has been some initial and positive discussion on the foregoing list of conditions. In light of this, both the Applicant and the Planning Authority have agreed to progress a Joint Submission on Conditions, to be lodged as a document by the due date to assist the Reporter at a Hearing Session on this topic.

List of Documents on which the Applicant will rely at the Hearing Session

1. Scottish Planning Policy
2. Circular 4/1998: The use of conditions in planning permissions
3. Circular 1/ 2010: Planning Agreements
4. Circular 12/1996: Planning Agreements
5. Circular 10/2009: Planning Enforcement
6. Circular 4/2009 Development Management Procedures
7. The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2008
8. Letter from David Bale, Area Manager, SNH to Lorraine Brown, Energy Consents Unit, Scottish Government dated 18 June 2009 (conditions proposed by SNH)
9. Letter from Zoe Griffin, Planning Liaison Officer, SEPA to Victoria Wallace, Enterprise, Energy & Tourism Directorate, Scottish Government dated 23 June 2008 (conditions proposed by SEPA)