

GS/379/IK

**Electricity Act 1989**

**Town and Country Planning (Scotland) Act 1997**

**Town and Country Planning (Appeals) (Scotland) Regulations 2008**

**STATEMENT OF CASE (OUTLINE) for**

**SPEYSIDE BUSINESS ALLIANCE (SBA) and other local objectors**

**For a Public Local Hearing and Inquiry**

Into an application for a wind power station at Dorenell, Glenfiddich consisting of 59 turbines, each 126m high and associated facilities and tracks, all known as the Dorenell wind farm

DPEA Reference: Dorenell Wind Farm

Submitted 27<sup>th</sup> August 2010

## **1 Background**

In accordance with the Procedure Notices issued by the Reporter, Mr Thomas, Statements of Case, in the form of outline Statements of Case, are required for both the Hearing topics and the Inquiry topics in relation to the Dorenell Wind Farm Inquiry. Further detail will then be set out in Hearing Statements and Inquiry Topic Papers, as well as in Productions and Precognitions.

This outline Statement of Case, primarily on behalf of the SBA, but also on behalf of the local objectors SOS Moray and STOP Dorenell, has been drafted to address both the Hearing and the Inquiry in a single document. This is to enable ease of reference.

## **2 Case Summary**

The overall position of the SBA, and the local objectors, is that the proposed development should be refused s36 consent and deemed planning permission on account of its significant adverse effects, which are not outweighed by any benefits of the proposal, and which make the proposal one that is on an unsuitable site and one that is contrary to the Council's Development Plan and Supplementary Planning Guidance (SPG).

## **3 Caveat**

As of the date of submission of this Outline Statement of Case the relevant parties have still to finalise the Core Document list and the Statement of Agreed/Not Agreed Matters. It may be necessary to add to or qualify this Outline Statement of Case once these other two documents are finalised.

## **4 Written Submissions**

It is noted that the Reporter has made provisions for SBA to lodge Written Submissions on the topics of:

- Wild life and habitats, excluding ornithology, as set out in a detailed list of points in the relevant Procedure Note
- Peat related matters

These aspects are still under consideration by the SBA and, if Written Submissions are to be made, they will be lodged by the deadline of 9<sup>th</sup> September 2010.

## **5 Hearings Sessions**

The relevant Hearing Sessions topics for the SBA will be:

- Section 36 and planning conditions and legal agreements
- Design issues

- Ornithology issues

In the Hearing Sessions discussions the SBA contributors will be:

- Ian Kelly, Head of Planning, Graham and Sibbald for all sessions
- Mark Steele, Consultant Landscape, for the design issues session
- Roy Dennis. MBE, Ecologist for the ornithology session

In relation to the discussion on the **Section 36 and deemed planning permission conditions and agreements** the anticipated contributions from the SBA and points to be advanced by the SBA are summarised below:

- Comments will be made on the draft conditions as they are set out in the Council's submitted Statement of Case
- Consideration will be given to the need for road improvements on the A941
- Similarly, comments will be made on the draft of any Agreements as they are presented at the Hearing session or in advance
- Any benefits of the proposal, to the extent that they are to be weighed in the decision making balance, should be captured in a Section 75 Agreement
- Any restoration bond provisions should be in the form of a Section 75 Agreement so that they are bound to the land as well as the developer and the development

In relation to **Design issues** the anticipated discussion contribution from the SBA is as summarised below:

- Consideration will be given to the Development Plan policy guidance and the Supplementary Planning Guidance (SPG) in relation to wind farm design and appearance
- The suitability of the proposed windfarm site will be primarily addressed by the landscape and visual impact Inquiry case. However, at the Hearing the design of the proposed windfarm turbine and infrastructure layout will be assessed against the guidance set out in '*Siting and Designing Windfarms in the Landscape*', published by SNH in December 2009
- Consideration will be given to the extent to which any alternative sites or technologies were considered
- Consideration will be given as to any alternative revenue raising projects considered by the Estate

- It will be concluded that these aspects are secondary to the primary issue of the locational guidance as set out in the Development Plan and the SPG and the non compliance of the development with policy

In relation to **Ornithology issues**, the anticipated discussion contribution from the SBA will address the undernoted issues:

- Consideration of the ornithological importance of the Dorenell site for Golden Eagles and other raptors within the Glenfiddich and Glenlivet Hills, with reference to past and future population viability and status
- A critique of the collection and interpretation of the ornithological survey data in the ES and SEI including the assessment of impacts, the proposed Habitat Management Plan, and proposed mitigation
- The relationship of this area with the Cairngorm SPA for Golden Eagles, and the failure to designate this area, including the application site, because of human impacts on the breeding numbers

All of the above matters will be addressed in detail in **Hearing Statements** which are due to be lodged on the 21<sup>st</sup> September.

## 6 Inquiry

As set out in the relevant Procedure Note the Inquiry topics for the SBA will be:

- Landscape and visual issues (including cumulative impact and impact on the CNPA)
- Tourism and recreation issues
- Economic benefits and impacts
- Policy issues (Development Plan and TMC SPG)

In the Inquiry the **appearances** on behalf of SBA will be:

- Mark Steele, Consultant Landscape Architect to address landscape and visual issues
- Professor Terry Stephens, Stephens Consultants, and a local witness yet to be confirmed, to address tourism, recreation and economic aspects
- Ian Kelly, Head of Planning at Graham and Sibbald to address planning policy issues including the Development Plan and the Council's SPG

The evidence to be led on **Landscape and Visual issues** will consider:

- Landscape (as well as cumulative landscape) effects upon the landscape character type (LCT) and landscape character sub-type (LCST);

- Landscape (as well as cumulative landscape) effects upon landscape designations including the Ben Rinnes, Blackwater and Tomintoul Area of Great Landscape Value (AGLV) that surrounds the proposed development and the Area of Landscape Significance (ALS) that lies to the south and east of the proposed development;
- Landscape and visual (and in particular the cumulative) effects upon the Cairngorms National Park and its visitors;
- Visual (as well as cumulative and sequential cumulative visual) effects upon users of roads and promoted paths within the vicinity of the proposed development site; and
- The ES and SEI methodology used to assess the significance of effects including: the selection of viewpoints, the assessment of windfarm landscape characterizing effects and the assessment of receptor sensitivity and development magnitude of effect. Reference will be made to current SNH and Landscape Institute guidance.

The evidence to be led on the aspects of **Tourism and Recreation Issues and economic impacts/benefits** will address the undernoted items:

- The nature of the brand image concern that has prompted the SBA involvement in this case
- Tourism in Scotland – volume, value and Scotland’s appeal / branding / positioning as a destination
- Tourism in the Highlands of Scotland – volume, value and appeal / branding / positioning as a destination
- Tourism in the Cairngorms National Park
- Tourism in Morayshire and Speyside focusing upon the extent of activity in the local area and the area’s branding / positioning
- The character and nature of local recreation and tourism activity
- Analysis of the area’s core brand values and how these are reflected in the way the area is marketed and the relevance of this to other key producers, manufacturers and exporters in the area whose success depends upon marketing the area’s ‘*sense of place*’
- Summary of existing research on the impact of wind turbines and wind farms on tourism in Scotland, in the rest of the UK and elsewhere in Europe and North America
- Wind farms and landscape / destination perceptions

- Conclusions about the potential adverse impacts of the proposed Dorenell development on (a) market perceptions of the area as a tourism destination and (b) the volume and value of tourism in the area
- The local tourism operators' concerns and the likely local impacts on tourism

The evidence to be led on the **Planning Policy issues** as identified by the Reporter will address the undernoted matters:

- In line with the guidance from the Reporter the matters of national energy policy and climate change policy will be addressed in the statement on agreed/not agreed matters
- A review of the relevant sections of the ES and SEI as well as the consideration of the proposal by the Council and other statutory consultees with reference to the Council Committee report of October 2009
- The relevant tests in the Electricity Act
- Assessment of the proposed development against the terms of the Development Plan having regard to the expert evidence on ornithology, tourism and economic impact, and landscape and visual impacts
- The recent history of the Development Plan, including the Public Inquiry (all as detailed by the Council), the provisions of the Structure Plan Policy 2: Environment and Resources (and the AGLV as identified in the Key Diagram), Policy ER1: Renewable Energy Proposals in the Adopted Local Plan and the additional Local Plan policies E7: Areas of Great Landscape Value, E1 and E2 (designate sites and biodiversity), and EP6: Water Bodies
- The assessment of the proposal in terms of the Council's SPG on Wind Energy Proposals (December 2005) as this is specifically referred to in the Development Plan
- It will be concluded that the proposed development is not in accordance with the Development Plan on account of its location and on account of its adverse impacts
- The additional material considerations of the consolidated SPP and the proposed benefits of the development will be assessed. The benefits will be compared with the adverse impacts identified above
- In relation to the proposed benefits of the proposal the SBA evidence will draw on correspondence with the ECDU to the effect that, in assessing with the benefit of a scheme or its contribution to targets, no reliance can be placed on the proposed installed capacity of the scheme
- It will be concluded that these material considerations do not alter the conclusions arising from the Development Plan

- It will be concluded that the proposed development should be refused s36 consent and deemed planning permission

The above areas of evidence will be expanded upon in Topic papers to be prepared and lodged as Inquiry documents.

## **7 Documents**

It is likely that the SBA will rely extensively on the Core Documents, although it is recognised that these have yet to be finalised at this point and therefore, as set out in the **caveat** above, this document list may have to be adjusted in the future.

- It is anticipated that the following Hearing documents will be lodged:
  - SBA/H/1 – Ornithology Hearing Statement
  - SBA/H/2 – Design Hearing Statement
  - SBA/H/3 – Comments on conditions and agreements
- It is anticipated that the following Inquiry documents will be lodged
  - SBA/I/1 – Landscape and visual impacts topic paper
  - SBA/I/2 – Tourism and recreation topic paper
  - SBA/I/3 – Survey, by the local objectors, of local tourism businesses
  - SBA/I/4 – Planning policy topic paper
  - SBA/I/5 – The Calliachar Wind Farm Inquiry Report (2009)
  - SBA/I/6 – The Logiealmond Wind Farm Inquiry Report (2009)
  - SBA/I/7 – Email from the ECDU confirming Ministers’ interpretation of the installed capacity of a site

## **8 Representation**

The SBA and local objectors will be represented by Senior Counsel.

## **9 Duration of Evidence at the Inquiry Sessions**

Excluding cross examination it is considered that the SBA case will take no more than 1 day.

**Submitted 27<sup>th</sup> August 2010**

**On behalf of SBA (and SOS Moray and STOP Dorenell)**

**Ian Kelly MRTPI, Head of Planning, Graham and Sibbald**

**Perth**