GS/379/IK

Electricity Act 1989

Town and Country Planning (Scotland) Act 1997

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

SBA/H/3: HEARING STATEMENT – COMMENTS ON CONDITIONS AND AGREEMENTS

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 proposed to be known as the Dorenell wind farm

DPEA Reference: Dorenell Wind Farm

Submitted 17th September 2010

1 Background

In accordance with the Procedure Notices issued by the Reporter, this Hearing Statement follows on from the Outline Statement of Case for the SBA (and others) and addresses the position of the objectors in relation to the matters of proposed conditions and agreements.

As set out in the Outline Statement of Case, for this Hearing discussion the SBA contributor will be:

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

In relation to the discussion on the **Section 36 and deemed planning permission conditions and agreements** it was advised that the anticipated contributions from the SBA and points to be advanced by the SBA would address:

- 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.

2 Preliminary Comments

The recent experience of wind farm proposals throughout Scotland has been that when schemes are consented/permitted there is usually an extensive raft of conditions, in some cases over 60 conditions including complex pre-commencement conditions (eg Calliachar, Gordonbush, Lochluichart, and Griffin). Subsequently, objectors find that the relevant Planning Authority does not have the manpower to effectively monitor or enforce compliance with these conditions. This situation can be even more complex than anticipated where a subsequently developed and agreed Habitat Management Plan changes the approach to site development, as has happened at Griffin, and that in turn results in a pattern and volume of traffic movement that is materially different to that forecast in the ES or related documents and contemplated in the s. 36 consent and deemed planning permission.

To compound the difficulites, in one case SNH has been asked for over a year to circulate the peer reviewed science that underpins their assumptions that the HMP will achieve the mitigation they anticipate in terms of European protected interests. They have been unable to produce any papers.

Additionally, in that case and another case, there has been difficulty, and indeed radically differing views, as to precisely what has been consented/permitted as part of the approval. Particular aspects in dispute include, but are not confined to construction related activities, off site road improvements, the uses on site and off site of borrow pit material, and the undertaking of activities which, in isolation might have Permitted Development rights, but which should properly be part of the consented project and thus subject to the conditions.

Finally, taking another lesson from a consented/permitted application, at the PLI, the applicants asserted that the access route had been fully assessed and that no more than minor alterations were needed in relation to the offsite road works. The evidence to the contrary from local objectors was rejected by a Reporter. Subsequently, the applicants brought forward a local planning application for significant engineering works at a key point in the local road network with these works resulting in the local "A" class road being closed for six months. This approach also meant that the environmental effects of a significant element of that wind farm project were not assessed *at all* at the primary point of decision.

Drawing all of this together, should the outcome of this process be that the Dorenell scheme is approved, then the SBA would wish to be assured that:

- It will be possible, either in a condition that refers that refers to drawings and specifications in the ES or in the preamble to any consent, that there can be a full listing of what is exactly being permitted, so that if something is not in that list then it is not covered by the consent/permission. In SBA's view it is simply not sufficient to say that a development "is permitted by reference to an ES" or some such formulation. Greater precision has been shown to be necessary

- All of the implementation and operational aspects of the development, including the potential environmental effects of the proposed development arising from the off-site and access requirements (in particular the exact impacts on and improvements to the A941), have been identified and assessed and that residents and local interests will not be faced with subsequent follow up applications for matters that should have been considered at this Inquiry

- SNH demonstrates that it has a full, peer reviewed scientific investigation and predicted outcomes to underpin all of the habitats and species based advice and recommendations which it is to provide to the Inquiry

- The Planning Authority is satisfied that it is fully resourced in terms of being able to adequately monitor the compliance with and enforcement of the conditions

The Planning Authority and the applicants would be content with the formation of a Local Liaison Committee comprising representatives of the applicants, the Council and the Cabrach community, with that Committee being the forum for consulting with the local community and advising them on all aspects of the conditions compliance

3 Detailed Comments – Conditions

The comments follow the numbering system for the proposed conditions as set out in the Council's Hearing Statement. It is anticipated that the detailed wording of many of the conditions can be adequately discussed at the Hearing:

- General point – as mentioned above the development, including all ancillary elements, should be clearly defined
- Condition 3 –the last part of the reason for this condition should state "and to enable the Council to ensure that all pre-commencement and suspensive conditions have been fully complied with"
- Condition 4 – the reason is expressed in somewhat clumsy terms
- Condition 5 – the life of the development should be controlled in relation to the commencement of the development. To allow for the construction period this condition should give a total "life" of 26 years from the date of commencement
- Conditions 6 and 7 – could these not be incorporated within condition 8 on the CMS?
- Condition 8 – the activities here should correlate with the detailed description of the development
- Conditions 9 and 10 – these should cover all construction traffic rather than just abnormal loads and perhaps there is a case for the integration of conditions 9 and 10. Vehicle numbers should be specified and controlled as should the requirements for upgrading of the A941
- Condition 14, 15 and 16 – these could perhaps be addressed in the CMS rather than in additional conditions
- Conditions 25, 26 and 27 – again these could be incorporated within the CMS provisions
- Condition 33 – the borrow pits should be part of the detailed assessment of the proposals in terms of both environmental impacts and planning policy. This condition should be amended to reflect the outcome of that assessment process
- Condition 35 – this should refer to an independent ECOW and that the ECOW should report to the Planning Authority
- Informatives – the provisions in the two notes should be incorporated in conditions so that they can be properly monitored and enforced

- General point – it is suggested that, rather than indulge in second hand guess work, SNH should be asked to confirm that all matters raised in their advice are adequately addressed in the proposed conditions

4 Agreements

In relation to the restoration of the site, paragraph 186 of SPP1 advises that "*Authorities should also ensure that sufficient finance is set aside to enable operators to meet their restoration obligations, and should consider financial guarantees through a section 75 agreement*". It is considered that the restoration bond provisions for Dorenell should be captured in a section 75 agreement that is then binding on the land.

It is understood, from the ES, that the claimed environmental benefits of the proposal are the generic benefits associated, through Policy, with the drive for renewable energy generation. In that those benefits are already built into the favourable planning policy environment of an up to date Development Plan and central Government's energy policy statements, there is no need to seek to capture these benefits in any form of agreement. However, should in evidence, the developers or their advisors seek to promote scheme-specific environmental benefits then these should be captured in section 75 Agreement. This matter will need to be considered in the light of the actual evidence led at the Inquiry.

In most planning policy assessments of wind farm proposals, including assessments by Reporters at Inquiries, the proposed installed capacity of a scheme is usually taken as both a proxy for benefit and a measure of the scheme's contribution towards national targets. That proposed installed capacity can then be compared with any adverse impacts of the scheme as part of a planning balancing exercise. This is a process that is now well understood by planning practitioners and by other informed parties.

However, as will be set out in documents and evidence for the Inquiry session, it is now the view of Scottish Minsters, as expressed on their behalf by the ECDU, that once a consent and deemed planning permission is issued then the developer, providing that he complies with conditions, can install whatever capacity at or below the maximum applied for, that it wishes. Thus, based on examples in Scotland, the ECDU has ruled that a proposed reduction in installed capacity of 20% (but with the same number and height of turbines) is not a material change to a development.

This Inquiry is not the forum to debate the *vires* of that ruling, but it is considered that clear regard must be had to its implications. Therefore, if the proposed installed capacity, and the directly related contribution to targets, is to be considered as a benefit of this proposal, in the planning balancing exercise, then that proposed installed capacity should be secured through a section 75 Agreement such that it cannot be materially reduced. It is suggested that a reduction of say up to 5%, arising from final turbine specification, would not be a material variation but above 5% would.

It is considered important that this matter is addressed as it cannot simply be assumed that, in the circumstances of a materially reduced installed capacity, but with the same height and number of turbines, that the balancing exercise undertaken by the decision maker would reach the same conclusion.

5 Representation

The SBA and local objectors will be represented at the Conditions and Agreements Hearing Session by Senior Counsel.

Submitted 17th September 2010

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

Ian Kelly MRTPI, Head of Planning, Graham and Sibbald

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