



Real value in a changing world

Section 36 Electricity Act 1989

Precognition of

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In respect of an Application under Section 36 of the Electricity Act 1989 and for Deemed Planning Permission under Section 57 of the Town & Country Planning (Scotland) Act 1997 for the erection of 59 wind turbine generators, associated access tracks and cabling, anemometer masts, electrical substation building and contractor's compound at Hill of Dorenell, Glenfiddich Estate, Morayshire.

In relation to:

Planning & Renewable Energy Policy

prepared for

Dorenell Limited

November 2009

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1.1 Introduction

1.1.1 My name is David Campbell Bell. I hold a First Class Bachelor of Science (Honours) degree in Town and Country Planning from Heriot-Watt University and a Diploma in Urban Design from the University of Strathclyde. I am a corporate member of the Royal Town Planning Institute and the Institute of Highways and Transportation.

1.1.2 I am a National Director with Jones Lang LaSalle and have over 20 years experience in planning and development.

1.1.3 I have prepared a detailed Report (**APP-P2**) which contains a policy assessment of the proposed development.

1.2 Policy Assessment

1.2.1 I have had regard to the statutory duties placed upon the Scottish Ministers as decision-makers and the Applicant in terms of Paragraph 3 of Schedule 9 to the Electricity Act 1989. In my report I also present the planning policy assessment of the proposed development with reference to the statutory Development Plan.

1.3 Electricity Act 1989, Schedule 9

1.3.1 The conclusion that I reach is that the Applicant has fulfilled its duties having regard to the terms of paragraph 3 of Schedule 9 to the 1989 Act. The information that is contained within the individual topic chapters of the ES addresses these matters.

1.3.2 It is important to note the use of the terms 'desirability' and 'reasonably' in the Act with regard to project design, siting and mitigation. This recognises that there are balances and reconciliations to be considered in decision making.

1.3.3 Through the EIA process that has been undertaken, potential environmental effects have been avoided or reduced. It is considered that the detailed work undertaken for the EIA has confirmed that the proposed development is environmentally acceptable.

1.4 Development Plan Conclusions

1.4.1 The aims and objectives of the Development Plan have been considered and the conclusions reached are that the proposed development is specifically supported by the relevant aims and objectives of the Development Plan. It is concluded that the significant landscape and visual effects are not so great in magnitude so as to undermine the delivery of both the strategic and local land use strategies in the Plan.

1.4.2 The Development Plan promotes renewable energy developments subject to assessment against various policy criteria.

1.4.3 Following detailed consideration of the relevant policies, it is considered that the proposed development is in accordance with the relevant policies and with the Development Plan when read as a whole.

1.4.4 Having examined the issues raised by third parties, I can identify no particular issue that deserves significant weight such that consent should be refused.

1.5 Other Relevant Considerations

- 1.5.1 Of particular relevance are the EU, UK and Scottish Government renewable energy targets and policies with regard to climate change. Such targets and policies, provide the basis of the need case for the proposed development.
- 1.5.2 The proposed development will make a direct contribution to achieving renewable generation targets in Scotland and the UK, thereby implementing the policy of the Scottish Ministers and the UK Government, which is to encourage more electricity generation from renewable sources.
- 1.5.3 This policy imperative is also reflected in SPP. However, the Scottish Government's energy policy has again moved on since the publication of SPP, with the introduction of the 80% target for renewable energy generation to be achieved by 2020.
- 1.5.4 In these circumstances there is very strong Government policy in support of the development of further renewable projects. The Government is fully aware that in order to achieve the development of renewable energy it is necessary to put in place a positive policy framework.
- 1.5.5 The relevant considerations which I consider to be particularly important are:-
- National energy policy and policy on renewable energy developments: the proposed development will make a direct contribution to achieving renewable energy generation targets in Scotland. The proposed development would also result in a significant benefit in terms of CO₂ emission savings.
 - The site enjoys an exceptional wind resource compared to many other wind farm sites and would have an efficiency well in excess of the UK average – there are benefits in having a large efficient development, rather than several smaller ones.
 - Scottish Planning Policy: which expresses the expectation that environmentally acceptable wind farms will be consented. Consideration of the significance of any adverse impacts of a renewable generation proposal should have regard to the projected benefits of the proposal in terms of the scale of its contribution to renewable energy targets. A key point in the SPP is that Development Plan policies should be based on the principle that wind farms should be accommodated where the technology can operate efficiently and environmental and cumulative impacts can be addressed satisfactorily. In the case of the proposed development at Hill of Dorenell, the technology can operate efficiently and potential significant adverse impacts have been identified and have been addressed satisfactorily. Subject policies 'Economic Development' and 'Renewable Energy' of SPP are particularly supportive of the proposed development with regard to renewable energy generation, climate change action, employment creation, rural regeneration and economic benefit.
 - It is considered that the proposed development is in accordance with the aims, objectives and key principles as outlined in SPP and this is a relevant consideration that deserves considerable weight.

- The views of SNH, with respect to a range of environmental effects, including cumulative effects and which are supportive of the proposed development.
- Scottish Government research on wind farms and tourism and other planning decisions on this topic, which show that generally, wind farm developments and these aspects of the economy are compatible. There is no conclusive evidence of wind farms harming tourism and none in the case of the proposed Dorenell development.

1.5.6 The Council's SPG on wind energy is a relevant consideration but given it has been demonstrated that it is in many respects contrary to national planning policy and requires review, no significant weight should be placed on its provisions.

1.5.7 Specifically, in drawing conclusions it is noted that: -

- The detailed consultation response by SNH supports the view that the landscape character at the Application site is suitable for wind farm development. SNH state in their final consultation response to the Scottish Government of 18th June 2009 that "...SNH remains of the opinion that this is a suitable location for a wind farm of this scale" (page 4) and "accordingly SNH has no objection to the proposal as submitted on grounds of landscape or visual impact" (page 5);
- The effects on the National Park have been considered in detail. The CNPA is quite wrong to say the Applicant has only focussed on the NSAs within the Park. The significant effects on the National Park would be limited and would only affect a small area of the Park, as explained by Mr Welch in his evidence. It is notable how limited the ZTV is considering the scale of the proposed development.
- Residential amenity and noise impacts are notably not major issues with this development – there is very little residential amenity impact. It is remarkable, given the scale of the proposed wind farm, that there are only five properties within 5km of the turbines, which may experience significant visual effects.
- The potential effects of the development on ecology, hydrology and hydrogeology have been addressed to the satisfaction of SNH, SEPA and local Fishery Boards;
- There is no objection from consultees on aviation grounds – a matter which has held up and continues to delay the consenting and delivery of many wind farm developments in Scotland;
- The proposed development would not result in any significant adverse effects in relation to traffic and transport;
- The proposed development would have very positive effects in terms of socio-economic considerations: it will present an opportunity for local housing provision, socio-economic regeneration and employment opportunities in the Cabrach and further afield. The development would support 124 jobs during construction and 126 during the 25 year operational period. There would be substantial benefits in terms of refurbishment of local properties for office and residential purposes – 15 properties in total, including two that are Listed. In

this regard the proposed development would help attain the opportunities for regeneration outlined in the Cabrach report, commissioned by Highlands and Islands Enterprise and would be consistent with the essential principles of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Six of the properties would be made available as affordable housing. All the proposed benefits would be secured by means of a suspensive condition which the Applicant has offered.

- I have advised on a large number of wind farm projects throughout the UK and it is fair to say that in this case, the benefits that are committed are much more substantive than those relating to the vast majority of other wind farm developments that I have been involved in. This is a particularly relevant consideration given what is currently happening in Moray with Defence cuts and the associated impacts on the local economy.
- The evidence indicates that there would be no unacceptable effects in terms of tourism and recreation – there would be no impact on any tourist facilities and no significant visual effects on tourist routes. There would be significant local improvements to the tourism offer and enhanced recreation and access provision would be provided.

1.5.8 The *location* selected for the proposed development has all of these advantages.

1.5.9 National planning policies regarding the built environment and natural and cultural heritage have also been considered and the proposed development is considered to be supported by these policies in the context of it having been designed and sited to avoid areas of greatest sensitivity and to minimise environmental effects.

1.5.10 In conclusion, the relevant considerations set out are found to be particularly supportive of the proposed development.

1.6 Overall Conclusion

1.6.1 In conclusion, it is considered that the Applicant has discharged the statutory duty contained in Paragraph 3 of Schedule 9 to the Electricity Act, in formulating the proposal for the Dorenell wind farm.

1.6.2 The Development Plan as a whole is a relevant consideration. The provisions of Section 25 of the Town and Country Planning (Scotland) Act 1997 are met as far as they are relevant to a section 36 Application. Overall the proposed development accords with the statutory Development Plan. The other relevant considerations lend further support to the overall case that consent should be given.

1.6.3 The importance of pursuing the climate change issue to which the UK Government and the Scottish Ministers are firmly committed cannot be disputed.

1.6.4 It is important that renewable energy developments, which are acceptable in environmental terms, be given consent. The proposed development has been brought forward by the Applicant as a direct response to UK and Scottish national planning policies on climate change and renewable energy and these policies are clear, as set down in SPP and the other policy documentation referred to.

1.6.5 There are important energy policy considerations that weigh in favour of granting the necessary statutory consents. Accordingly, the foregoing is submitted to this Public Inquiry and the Reporter is respectfully invited to accept my evidence that the necessary consent and direction that deemed planning permission should be made.



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