

Electricity Act 1989

Town and Country Planning (Scotland) Act 1997, as amended

Planning, etc (Scotland) Act 2006

The Town and Country Planning (Appeals) (Scotland) Regulations 2008, *by analogy*

CLOSING SUBMISSION

for the **SPEYSIDE BUSINESS ALLIANCE (SBA)**

following a **Public Local Inquiry** into an amended application by Dorenell Limited for the proposed construction of a windfarm consisting of

59 Wind Turbines each of 3MW capacity (total 177 MW) and with maximum dimensions of 85m towers, 45m radius blades and 126m overall = (413ft), and

- associated development of about 2.2km of upgraded forestry tracks, of ~6m in width, with cable trenches alongside; about 5.3km of upgraded estate tracks, of ~5m in width, with cable trenches alongside; about 34.8km of new access tracks, of ~5m in width with cable trenches alongside;
- one borrow pit of about 90m x 90m x 10m;
- a control building or substation of ~90m x 60m including control and maintenance building; underground cables; and
- one temporary construction compound of ~150m x 75m, including a concrete batching plant

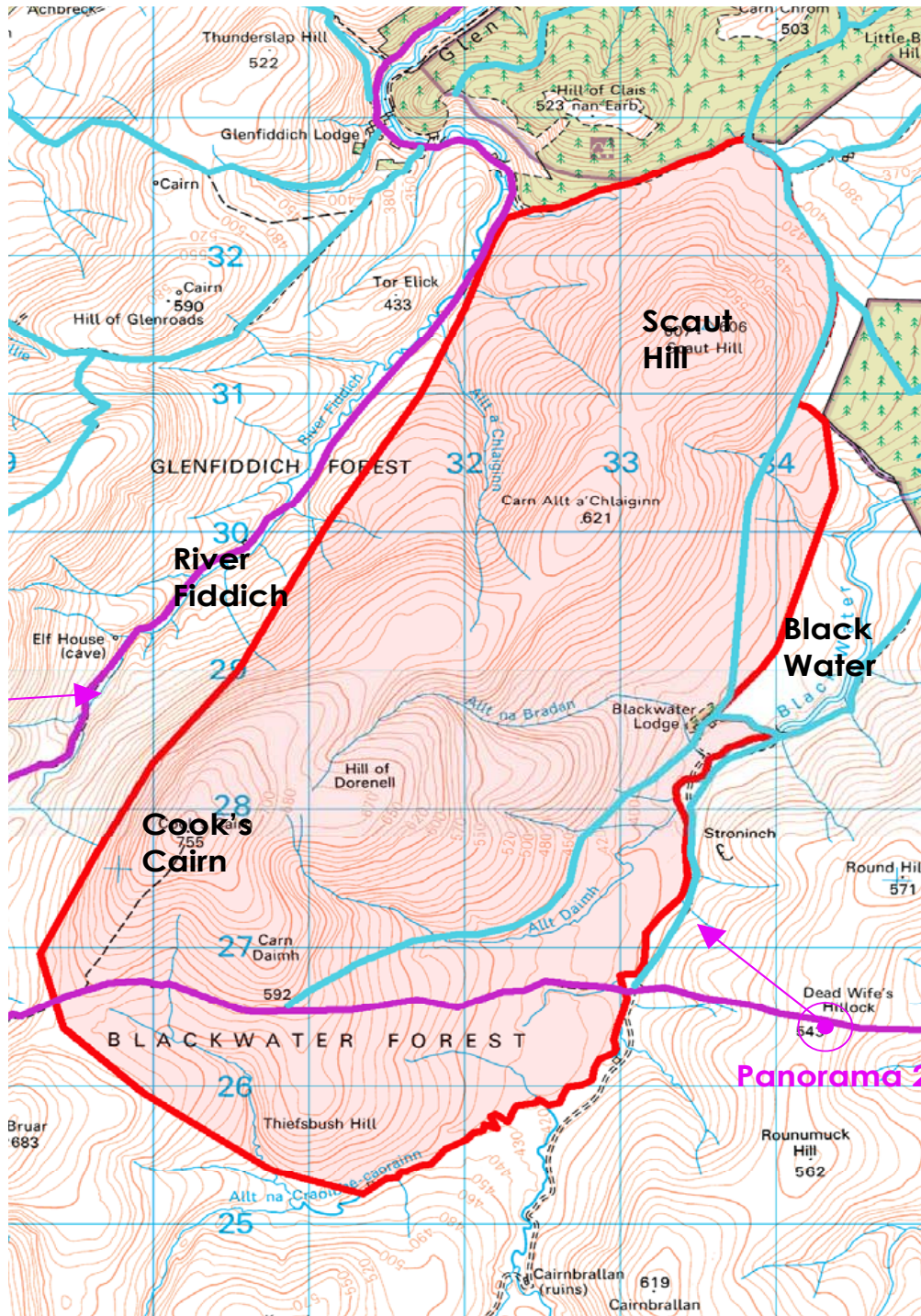
to be known as the 'DORENELL WINDFARM'

before: Mr Dilwyn Thomas, BSc(Hons), MBA, MRTPI, a DPEA Reporter,

DPEA reference: IEC / Dorenell Wind Farm

Ian Kelly MRTPI
Head of Planning
Graham and Sibbald
3 Charlotte Street
Perth PH1 5LW
E:mail: ikelly@g-s.co.uk
tel: 01738 445 733
Agent for SBA

Fig. 1 (the site)



[not to scale]

Introduction and procedure

This is the closing submission of the Speyside Business Alliance (SBA), an informal consortium of local businesses who all oppose the development of a windfarm proposed by Dorenell Ltd, the applicants, across the land shown in Fig 1, which includes the eponymous Hill of Dorenell. The combined motivation of these Third Parties in objecting to this proposal is to seek refusal of this application, reflecting their concern for the potential for damage to the 'Speyside' brand image and for their own brands; the protection and conservation of the Speyside landscape in which their businesses have grown and flourished, and the upholding of the clearly articulated planning policy of their local authority, The Moray Council. Their objection is consistent with current Scottish, UK, and local planning and planning-for-energy policy, and in particular firmly supported by SPP [2010], the latest expression of Scottish Government Planning Guidance, and by The Moray Council's Local Plan.

Formal Submission

This application should be recommend to Scottish Ministers for refusal.

Brief history of the decision leading to inquiry

The application to Scottish Ministers dates from May 2008. It was opposed by the members of the SBA from the outset. The SBA made representations in writing, in an open public meeting held in Dufftown, and at meetings with The Moray Council (TMC)'s officers in accordance with established procedure. The SBA's representations as lodged with TMC and the Energy Consents and Deployment Unit (ECDU) were known to, and carefully considered by, TMC. That consideration resulted in a Report to the Council's Planning Committee, which is referred to for its full terms.

Following its formal consideration of the application, and a vote of Members, the Council recommended to Ministers the refusal of s. 36 consent and any deemed planning permission for the reasons given in the Minute of that meeting, namely *"on the basis that the proposal is located in an area which is in conflict with the Council's Strategy for windfarm location, and that there is insufficient justification for over-riding that strategy on*

the basis of the cumulative visual impact created by the proposed 59 turbines and access tracks.”

The Electricity Act 1989 (EA89) provides by Schedule 8 that if a relevant planning authority objects to, or recommends the refusal of an application for consent under EA89, s. 36, then and in that event the Scottish Ministers shall cause a public local inquiry to be held. This inquiry was the direct and proper result of that process.

Inquiry process

By suggestion of the Reporter and consent of parties the Appeals (Scotland) Regulations 2008 (ASR08) have been used ‘by analogy’ to regulate the process of the Inquiry. The Reporter held a procedural meeting at the Mortlach Hall, Dufftown on 24 June 2010, when procedure and timetables were agreed. The Minute of that meeting is referred to for its full terms. In particular, Written Statements, and Hearing and Inquiry Sessions were agreed as to time and content limits for a range of discrete topics. Written statements by SNH and RSPB form part of the environmental information before the Reporter. Hearing Sessions were held by the Reporter on 19 - 21 October 2010, in Dufftown and Inquiry Sessions were likewise held in Dufftown on 16 - 19, and 22 - 24 November 2010. A timetable was set for delivery of closing submissions. This submission is submitted on 6 December 2010.

Representation and witnesses

SBA was represented by senior counsel and led as witnesses Ian Kelly, Planning Consultant; Mark Steele, Landscape Architect; Professor Terry Stephens, Tourism Consultant; Mr Grant Gordon, speaking for the SBA; and Mr Robert McHugh, a local tourism provider, also speaking on behalf of other tourism interests. Mr Roy Dennis, a consultant ornithologist, also appeared for the SBA at the Hearing Sessions. All inquiry witnesses were cross-examined, to greater or lesser purpose, and their evidence must therefore be regarded as fully tested.

Further inspection

Having regard to the evidence, the Reporter arranged a further accompanied site inspection for 24 November. It is respectfully recommended that if the Reporter wishes to further experience the characteristics of the landscape at the western/southern sides of the site he may do so, weather permitting, by walking or driving in from the car park at grid reference 23702480 and walking to the head of the Glenfiddich Valley at 29002820 (see SBA/I/1/Appx 3/Figure 1) on footpath SP 29 and/or taking footpath SP30 at the junction at Suie and walking to the summit (592m) at grid reference 29552670. These aspects of the site can be seen, but not fully experienced from the aerial photographs lodged by the SBA.

Environmental information

For the avoidance of doubt, it is argued by the SBA that there is insufficient environmental information to enable this application to be determined, in respect of two matters, namely the Habitat Management Plan, and the description of alternative sites and the justification for site selection and sites studied, both of which are matters dealt with below.

The ES itself *was* also deficient in a number of respects, mainly in respect of the portrayal of the site. Confusion (to some extent) arises because the landscape architects who prepared the ES (horner + maclellan) were not the same, and did not employ quite the same methodology as those who gave evidence (OPEN). The SEI has remedied some of the deficiencies in the ES, particularly in relation to cumulative landscape and visual impacts, to partly answer the argument that the ES contains insufficient information to enable a decision to be taken.

Habitat Management Plan

Referring to the evidence of Mr Roy Dennis, at the Hearing Session, and the evidence of Mr Kelly, as well as the written submission from the RSPB, it is the submission of the SBA that the proposed Habitat Management Plan (HMP) requires to be worked up in considerable detail and be assessed so that its likely environmental effects can be assessed *before any consent is issued*. That is a requirement of SNH. Mr Bradshaw (at the Hearing Session) gave

no time scale as to how and when this would be done; neither did he explain adequately how control of the land outside the application was to be achieved. His evidence at §40-43 makes it clear that only the most basic attention has been paid to the formulation of the plan, said to be “currently in outline” and only to have generic objectives.

In this state of affairs, a condition cannot be drafted which will meet the necessary tests. Draft Condition 26 (marked as Agreed, but not by SBA) is so weak as to be meaningless, particularly given the supine response of SNH to any nature conservation issue. There is no evidence as to what the HMP is to contain, far less how it is to be “signed off” (against what criteria, exactly?). It is a cosmetic effort to make the potential disturbance effects on the application site appear to be quickly remediable by the use of a Plan which has not yet been drafted.

The Area of Great Landscape Value

In applying the tests for a consent and planning permission, it is always important to remember and have in mind that the site for this application lies at the core of a long established Area of Great Landscape Value. In this case therefore, that AGLV is a permanent feature in the application of any test, as are the number of turbines proposed and the kilometres of tracks which are part of the proposal. It is an incontestably significant feature of *this* site, beyond argument as a key baseline fact.

In considering the “desirability of preserving natural beauty” test in Sch 9, it is submitted that the decisionmaker must look at the desirability of preserving what is there – not simply as landscape of a certain quality, but landscape already recognized by society as having a badge of value – the AGLV status. Although a local designation, that badge means that it is recognized in local up to date policy making as having great value” – not moderate or medium value, but *great* value. Designations of comparable *higher* value for landscape are a National Scenic Areas – scenery and landscape important at a national level – and National Parks, which are *sui generis* and embrace landscape and other considerations of national importance. SPP 2010, which is the Scottish Government’s consolidated statement of

planning policy replacing the various SPPs and NPPGs with which we have become familiar says of Local Landscapes

139. International and national designations can be complemented by local designations which protect, enhance and encourage the enjoyment and understanding of locally important landscapes and natural heritage. Local designations should be clearly identified and protected through the development plan. The reasons for designation should be clearly explained and the on-going relevance and function of local designations should be considered when development plans are prepared. ... Planning authorities are encouraged to limit non-statutory designations to two types - local landscape areas and local nature conservation sites. Both statutory and non-statutory local designations should be identified and protected in the development plan and the factors which will be taken into account in development management decision making should be set out. The level of protection given to local designations through the development plan should not be as high as the level of protection given to international or national designations.

140. The purpose of designating a local landscape area in the development plan should be to:

- safeguard and enhance the character and quality of landscapes which are important or particularly valued locally or regionally, or*
- promote understanding and awareness of the distinctive character and special qualities of local landscapes, or*
- safeguard and promote important settings for outdoor recreation and tourism locally.*

It is, with respect to the evidence of both Mr Bell and Mr Welch, difficult to see how the AGLV and its purpose could be better described. The tenor and purpose of the foregoing is reinforced by TMC Policy E7 (page 46 in the Local Plan).

No part of Renewable Energy policy overrules local designations demonstrating *Great Value*"; furthermore, SPP [190] requires decisionmakers (including Scottish Ministers) to take account of "*areas designated for their regional and local landscape value*". SPP [128] notes that "*the most sensitive landscapes may have little or no capacity to accept new development*", and "*areas of wild land character are very sensitive to any form of development*" and "*their character should be safeguarded in the development plan.*" The latter is exactly what has happened in this case. Furthermore, SPP[127] says that "*the siting and design of development should be informed by local landscape character. The natural*

and cultural components of the landscape should be considered together.” An AGLV is part of the *“cultural composition of this landscape.”* One way of describing the character of this site without fear of contradiction is to say that it has *“great landscape value”*.

The test thus means, in reality, that the applicant should seek to preserve what is there already, namely a greatly valued landscape which has already had bestowed upon it a badge emphasizing its difference and distinction from other landscapes in the Council’s area.

[emphasis added throughout]

It is therefore submitted that, at its lowest, development of a significant kind affecting both the landscape and having pronounced visual effect in such areas should be presumed against, as the TMC wind energy policy says. The greater the established sensitivity, the logic must be that the stronger is the presumption against, and the more difficult it should be to overcome.

Tests for consent under the EA89, and tests for the grant of a deemed planning permission under the TCP(S)A97

The tests for an EA89 consent and a deemed planning permission are themselves straightforward. A deemed planning permission would ordinarily follow (but does not *have to follow*) a s. 36 consent, by virtue of s. 57 of the TCP(S)A 1997.

Firstly, EA89, s.36 is governed by Schedules 8 and 9 of the same Act. Schedule 8 deals only with procedure, and not with the substance of the application. For present purposes it can be ignored.

Secondly, Schedule 9 sets two tests, namely the ‘have regard to the preservation of natural beauty and amenity’ test and ‘employ reasonable mitigation’ test. The application of these tests have been discussed in the opposing evidence of Mr Robert Stewart (for TMC) and Mr Ian Kelly (for SBA), on the one hand, and by Mr David Bell (for the applicants) on the other. The CNPA has tendered its policy evidence in writing. For the sake of brevity, SBA adopts

that evidence and holds it as incorporated here. The Sch 9 tests cannot form any firm basis for the detailed assessment of the proposed development, given the wording employed by the draughtsman. It is submitted that they simply point the direction which a developer has to take, and for him to be able to say that he has taken. They are a route map, not a criteria-based tool against which any development can effectively be measured.

The Schedule 9 test is set out here for completeness:

(1) In formulating any relevant proposals, a licence holder or a person authorised by exemption to generate or supply electricity—

*(a) shall have regard to the **desirability of preserving natural beauty**, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and*

*(b) shall do what he **reasonably can to mitigate** any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.*

(2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to—

(a) the desirability of the matters mentioned in paragraph (a) of subparagraph (1) above; and

(b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that subparagraph.

It is submitted that the words “*have regard to the desirability of preservation*” must be given meaning and content. At first sight, “*to have regard to*” means simply to notice the test, but of course it must mean more. It cannot be enough just to say one has had regard to it, but then done nothing.

The test is “*to have regard to the desirability of preserving natural beauty*” coupled with the conservation of aspects of the natural heritage, and the protection of the built heritage. The action of “*preservation*” whether used as a noun or in a slightly different form as a verb,

means, it is suggested, to 'keep' or 'conserve' the essential qualities of what is already there. So, it is suggested that the applicant must first consider the effect on the conservation of such natural beauty or features as exist. Would it (natural beauty) be preserved if development were granted consent? Likewise "*desirability*" is a word not defined, but experience suggests that it may be regarded as a consideration driven by policy, as well as by the common sense application of reasonable planning standards. It is "*desirable*" in terms of policy. When would it be desirable to preserve? Or not? '*Desirability*' of preservation thus means, it is suggested, desirability set in the context of the physical and policy context where the application is made.

It is submitted that an answer may lie in that when there is an asset (the site) which has already had bestowed upon it a badge of value, and at the same time can be seen to demonstrate objectively measured characteristics of high or superior landscape quality – such as an AGLV, or, in another context, a Listed Building. When would it *not* be desirable (or worth) preserving, say by refusal of an application such as the current one? Perhaps when there is no such badge, and the site has little or no intrinsic value? Is there a half way house – can some features be partially preserved and the test still satisfied? We suggest not.

So, in this case, to comply with Schedule 9 , the applicant must first have regard to the test and the desirability of the preservation of natural beauty. He may struggle, it is submitted, to say this very landscape is not worth preserving; or is of low value, or little or no intrinsic value, since it already carries a designation. Even objectively assessed, Mr Mark Steele gives the sensitivity of the site high value; the magnitude of change in many instances high value; and the consequent assessment of significance high value. Mr Welch seems to agree in many places that it has a considerably high value, and to consistently underestimate the landscape or visual impact, or both. The consequence is that significance of impact is persistently under assessed; the best generality Mr Welch could attempt is to say that 'significant effects' were confined to a 5 km 'radius' from the site, but it is clear from the wirelines and photomontages which he employs that significant impacts carry a far greater

distance. Given the proximity of the national park, SBA submits that these impacts alone could justify refusal.

The second leg of the Sch 9 test is the assessment of the extent to which the applicant has successfully *mitigated* any effect on the natural beauty of the countryside. The chosen siting of turbines stems, of course from the design process, and the design process flows in turn from the site selection process. It must be axiomatic that the best form of mitigation is careful, informed, intelligent site selection, coupled with choice of a project which suits the qualities of the site. Where development is of its nature obvious, and impossible to soften in appearance, mitigation should inform design. That has not happened in this case, as was perfectly clear from the evidence of Beverley Walker.

SBA does not contend that mitigation amounts to concealment, but to reduction of significant landscape, visual or other adverse effects to a point where they are of lesser or little consequence. Reduction of impact may be achieved by careful site selection, or by careful siting. This has nothing to do with any preference for or against windpower, or the opposite, or 'valency' as it is sometimes called; the measure should be an objective one, designed to enable a decision maker to see whether the significant effects of an installation have firstly been accurately predicted, having regard to the site's qualities, and then mitigated by design to a point where they cease to intrude upon established interests, or at worst intrude only to an extent where no harm is caused.

This process will, by definition, be difficult in an AGLV or a National Park, since mitigation is an intrinsic part of preserving or respecting the label of value. It will be less difficult in an undesignated landscape or other place where landscape has no badge; in the absence of direct receptors such as houses or local businesses; and where all that is to occur is the construction and operation of turbines, linked by hill tracks, and no person and no established interest is imposed upon.

That cannot be said in this case. The Dorenell site (see Fig 1 above) is not such a place. Aside from the AGLV designation, there is a range of established interests already present. The intended presence of turbines is not mitigated by the design of a wind turbine array which covers a ridge and descends into not one, but two valleys. SBA relies on the site plan (Fig 1 above) and Mr Mark Steele's characterization of the area as comprising three ridge lines and the Ladder Hills. Acknowledgement that the suite sits at the edge of the Cairngorms massif is itself an acknowledgement of its importance, when no discernable character differences can be identified. SBA is puzzled by Mr James Welch's apparent reluctance to agree that the all form part of the same landscape character area, with evident characteristics of wildness to the south and south west; as much can be seen from the aerial photographs.

The injunction of Sch 9 is not to mitigate entirely, but to the developer to do what it *reasonably* can to mitigate the effect on natural beauty, flora, fauna etc. Is there any sign in the evidence of any attempt to mitigate, rather than to maximize the number of wind turbines or tracks.

SBA suggests the very opposite.

The application of TCP(S)A97, ss. 25 and 37

Thirdly, TCP(S)A97 has not changed in this regard since the introduction of large scale windfarm building with many applications into the current energy 'picture' across Scotland. The logic is that ss. 25 and 37 TCP(S)A97 must apply when s. 57 operates to 'deem' a planning permission granted. Thus despite the different starting point, the decisionmaker finds himself in familiar 'planning permission' territory, that being an absolute requirement for development.

It is thus inexorably logical that if section 57 applies, as it must, to enable a deemed planning permission to be granted, then the tests which the wording of s.57 necessarily incorporates, namely the 'development plan tests' found in s. 25 must also apply. A

‘deemed’ planning permission is not a permission which stands alone without reasoning, or even without conditions; it is the peg upon which development control, and a range of planning conditions also hangs. It must therefore have meaning and content.

In the ordinary course, there cannot be development without the application of s. 25. Large windfarms are unquestionably a form of development. It is submitted therefore that section 25 applies to the proposed form of development in this case, as to any other. It is submitted that this proposition should be placed by the decisionmaker beyond argument. That being the case, the decisionmaker is then drawn to the Development Plan, and the application of its terms.

That analysis is the clear view of Mr Kelly and appears also to be the view of TMC (evidence of Mr Robert Stewart, precognition given on 22 November). However, the evidence disclosed a difference of view between witnesses as to the applicability and the significance of, on the one hand, the Development Plan and the application of the provisions in TCP(S)A97 ss. 25 and 37, and on the other, the application of the Schedule 9 tests. Mr Bell’s evidence contends for the pre-eminence of the Schedule 9 tests, and the treatment of the Planning Act tests as what he calls a mere “relevant consideration”; while Mr Stewart and Mr Kelly recognize the duality of tests, and insist that they both apply.

SBA urges upon the Reporter and Ministers the logic of the Stewart/Bell position, and recognition of the need to comply with the guidance in the overarching principles of SPP; to have complete regard for Sch 9 and its tests as a route map, but to follow the plan led system, all as set out in SPP and in the evidence of Mr Kelly.

The logic of Mr Kelly’s approach is inescapable. The key policy is ER1: Renewable Energy proposals. It relies on firstly the inclusion of a proposed site within a Preferred Search Area in the WEPG. This site is not so situated. Some reliance was placed in a series of questions on the use of the word “should” as importing a degree of flexibility. Only in the sense that “should” is not an absolute is that correct; but “should” is a directive word, and imports a

degree of compulsion. It certainly does not excuse (without more) the selection of a site which is not in a Preferred Area, and it ill becomes the applicants to criticize the terms of this Local Plan, when they did not take the trouble to either object to the draft policy; to follow the draft through the Local Plan Inquiry process; or (so far as the evidence shows) to take part in the evolution of the policy in any way whatsoever. The plan is up-to-date, tested at inquiry; approved by Scottish Ministers, who are the authors of the renewables drive; and has been used for other wind turbine developments since its passage through inquiry. Furthermore, the language used is “Preferred *Search Area*”; without a detailed site selection process eliminating all others of comparable quality, how does anyone know what type of search has even been conducted?

Site selection: Assessment of alternatives and design

The evidence (ES and elsewhere, particularly the evidence of Beverley Walker) strongly suggests that a large number of alternative sites were assessed, but in a generic fashion across Scotland and/or the Region. None are named. It is perfectly comprehensible why that should be; any developer worth his salt will look wherever he can for a site. The combination of a willing landlord and reasonable proximity to the transmission/distribution grid make a large site of this kind attractive to any windfarm developer.

The short route to an application would not necessarily involve detailed consideration of many other sites if a large and otherwise suitable location was brought forward by an interested proprietor. But there is no table of criteria before the inquiry, such that an informed reader might be left with a clear understanding of why *this* site, and its extent, were chosen. It seems to SBA to be tolerably obvious that their ownership and the willingness of the owner were the starting point.

Beverley Walker, whose qualifications do not immediately mark her out as a person qualified in design of very large windfarms in a wild or near-wild upland landscape, but who was the Manager of the ES, gave evidence of the ‘iterative design process’ *for this site* which has been undertaken, beginning with a precise grid of wind turbine locations being overlaid

onto the site. Walker's evidence tells the Inquiry that Chapter 6: *Assessment of Alternatives* "functions as (sic) a Design Statement" and is *her* key document. Chapter 6 (6.7) onwards of the ES lists generic features which, it is submitted, would obviously be considered for any windfarm, however large or small, and culminates with the description of Dorenell as "an excellent site" for the reasons given in Table 6.1. To be frank, any of the criteria there except the wind speed could have been drawn from a close reading of the OS Map. The "superlative" opinion is that of the applicant alone, and eschews any consideration of qualitative issues, such as 'wildness' or, of course, the inclusion of the site within a AGLV.

Nevertheless, Schedule 2, Part II, paragraph 4 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 requires inclusion in an ES of *"4. The main alternatives studied by the applicant and the main reasons for his choice, taking into account the environmental effects."* No study has been produced of the factors actually differentiating the site at Dorenell from those others which were considered by the applicant. From the information produced, including Ms Walker's evidence, the informed reader cannot follow the site assessment and site selection process followed by the applicants. It is submitted that if choices of "alternatives" are claimed to have been considered, then they should be listed and the main reason for their rejection set out. If they are not so listed (as is the case) then no claims of the systematic consideration of alternatives should be entertained.

The inquiry has no evidence at all of the nature of the "sieve" through which this site is said to have passed. Nothing which is reported in the ES marks Dorenell out as the winner of a site selection exercise.

However, the Regulations do require justification of reasons for the choice of location and design; it is for judgment whether that requirement has been fulfilled. At Dorenell, it is submitted that it is clear that the overall design of the proposal has been dictated by constraints, not by positive site-specific factors. Avoidance of

- MoD installations

- Raptor territory
- Wader territory and
- Excessively steep topography, were all necessary, according to Ms Walker, before the design was “finalised”.

In the result, the SBA submits that the choice of this site means that part of the EIA Regulations have not been complied with, since we have no idea of how the site itself as chosen, beyond the general criteria set out in the ES. More importantly, part of the Schedule 9 test has *not* been passed; these applicants have clearly not done all that they reasonably could to mitigate the effects of the development. Beginning with site selection, followed by a process of design by constraint, they have quite failed to demonstrate the best of all form of mitigation, which is the selection of a site for a windfarm of a size and configuration which imposes itself least on its environs, and the primary receptors who make use of those environs.

For this reason alone, the application should be recommended for refusal.

Taking the evidence as a whole, there will be very few hilltops within the vicinity of the development that will not have prominent views of the proposed turbines. Many of them to the south and south east of the site display wild land characteristics. The immediate proximity of the National Park speaks for itself. The design finally selected *ensures* that visual confusion is not minimized, such as one might expect, for example, from a straight line development or one confined to lower elevations, avoiding ridges and skylines, as the guidance suggests, but to the contrary is maximized consistent with fitting as many turbines into the site wherever they can be accommodated on the ground.

Due to the variations in elevation of the turbines, and across skylines, the turbines appear, are lost to view and then reappear behind and over skylines. A viewpoint such as Dead Wife’s Hillock where one might expect to see most of the turbines *and tracks* is not assessed at all.

Further judgments about the lack of balance in the composition of turbines in the views is frustrated and limited by the absence of closer viewpoints – to which the answer of Mr Welch (Welch Xn) is that from any close viewpoint a windfarm will be prominent, or dominant. Quite so.

The point is that the proposals for this site allows both close and long distance views of a large array of Scotland's near-tallest wind turbines in such a way as to ensure prominence from almost any direction, subject always to distance. In that respect, the graphic material is eloquent. Perceived '*outliers*' from the main group of turbines are not eliminated, (again as the guidance suggests) while the turbine layout does not read as a discrete feature and will of course (as is fairly acknowledged) be seen cumulatively with other wind farms. The substation and borrow pit are poorly located and do not '*relate to the collective wind farm development*'. There has been no assessment of the inevitably reduced landscape and visual impacts which would flow from a reduction in turbine heights.

It is therefore neither far fetched nor an exaggeration to conclude that the final layout of this windfarm arises from a series of site constraints rather than from a positive design led approach.

Landscape and visual issues

Landscape and Visual issues are of course highly significant in this inquiry. The site extends to >1000 hectares, and would occupy a plateau with three summits, extending its influence over two valleys lying east and west, namely those of the Blackwater River, and the River Fiddich. Glenlivet, lying to the southwest, would be influenced by the proposal. The Cairngorms National Park lies to the west of the site at a distance of a mere 1 ½ miles or thereby. The site itself is at the very core of an AGLV. The Council's recommendation to refuse the s.36 application stems from breaches of a key Local Plan policy designed to protect the landscape.

Aside from their names, which resonate with the interests of the SBA's members, these are extra-ordinary places. Glenfiddich Estate is a corner of Scotland requiring significant effort for its appreciation. Its lonely upland character is marked by its designation as being of *Great* Landscape Value – a local designation, but not to be dismissed lightly, as the policy session shows. Core Paths created since the legislation of 2003 were once Rights of Way, and no doubt those determined to walk longer distances have been able to overcome any perceived landlord resistance to recreational walking. Access may be assumed since 2003's Land Reform (Scotland) Act.

Pervasive evidence of the hand of man is sparse, and extends little beyond grouse moor management in the form of muirburn in some locations. There has been no direct evidence of this; only the aerial photographs, and , it may be, the site inspection. There are no visible grouse butts; no forestry tracks; no new tracks to summits nor for stalking; no new housing; extensive dereliction of existing buildings; no quarrying; and no bridge rebuilding or footpath improvement. The access difficulties encountered on the site visit speak for themselves.

The evidence for the SBA comes in the form of two appendices (one for Siting and design; Hearing: and one for Landscape and Visual: Inquiry and a precognition from Mr Mark Steele, a Chartered Landscape Architect. Despite a somewhat half-hearted attempt to belittle his experience, which is hardly the issue, it is submitted that it is perfectly clear that Mr Steele has the necessary credentials, qualifications and experience to carry out and explain the work for which he has been commissioned. It is clear also that he has followed an adopted and accepted methodology, namely that of the GLVIA, without material adaptation. His approach is fully set out in his reports and precognition.

Viewpoint selection for the ES (ES critique 2.2.5) limited the number of viewpoints from locations under 5km to one only. That process, carried out by horner + maclennan, who compiled the ES but were unable to attend to discuss it, was seen not to have followed the guidance contained in Visual Representation of Windfarms (VRW) (SNH 2006) of which

horner + maclennan were authors. Neither did it follow the GLVIA. These apparent omissions remain unexplained, and ought to be the subject of firm criticism.

The SEI introduced two more VPs, one of which has no visibility of any turbine, but which could be seen on the site visit to conceal all views of all turbines for only a short distance. The other was not assessed in any of the ES, the SEI, or Mr Welch's evidence.

For the sake of brevity, SBA has a series of issues with the graphic material within the ES and SEI as to the completeness of their portrayal of the landscape and visual effects. The Core Paths situation is not addressed at all, and there will, inescapably, be an adverse effect on the character of the landscape (as best seen from the aerial photographs; on the AGLV; and *a fortiori* on the Cairngorms National Park.

For landscape and visual reasons alone, the application should be recommended for refusal.

Tourism and recreation

Professor Terry Stevens, a very experienced witness, was impugned from the start by a pejorative cross examination which was, in SBA's submission, misdirected and misinformed. However, this is not the place to trade insults. Professor Stephens has carried out a great deal of tourism research and analysis work for Moray Council, which he describes in his precognition. This work lies at the heart of his evidence for this inquiry and provides credence and *gravitas* to his evidence.

The Reporter and Ministers are invited to remember that Ministers' policy towards tourism in one of unrestrained enthusiasm for expansion, and that this is given force in the following passage from SPP at paragraph 125 (page 26) where it is stated that "Scotland's landscape and natural heritage are internationally renowned, and important, *underpinning significant industries such as the food, drink and tourism industries....*" [emphasis added] That is the case that SBA have made to this inquiry, and of which Mr Graham Blackett, the applicant's economist, said in cross-examination that he agreed that the SBA was "right to be

concerned.” These are the core industries of this area, with which SBA’s members are all concerned; whisky distilling, food manufacture and tourism. But for the concern for those long established, successful and dynamic industries, SBA would not be at this inquiry.

The Moffat Study (and Professor Stephens) evidence widespread and general support for the fact that, from a tourism perspective, wind farms should not be located in primary designated landscape areas or be visible from these primary designated areas. One might suppose that that is why the TMC Policy ERI is as it is.

Professor Stephens advised of the importance of scale; the cognitive connection between perceptions of wildness in or near a location, and the erosion of those qualities by development of any kind, including wind turbines. The area of Speyside is identified without challenge as the most powerful aspect of ‘Brand Moray’, but it is high order niche-marketing, and vulnerable to damage to its image. Of course, no one has said that there *will* be damage to these interests, amounting in sum to a specified percentage; that cannot be proved until it is too late. But the connection among visitors, whisky distilling and locally produced food is undeniable, and it is suggested that this is one of the reasons why the AGLV, for example is where it is, and why the policy ER 1 is written in the way it is.

In conclusion on this topic, it is worth simply repeating what Professor Stephens says, for emphasis.

“Moray is a destination that has recognised the need for a more aggressive approach to growing its tourism economy. This will involve working with a range of internationally renowned businesses whose products are the direct result of the area’s heritage, culture and environment.”

Right at the heart of the case advanced by SBA lies reliance on the successful promotion and marketing of these products (many of which are iconic Scottish brands) to a wide global range of customers. Grant Gordon gave the inquiry details of the scope and reach of the effort, and the degree of success, in terms of local dependence on these products, and their successful export.

The images created by this brand identification substantiate perceptions of this part of Scotland in particular as a location of very high quality landscapes and scenery which, for 92% of tourists to Scotland, is the important reason for them choosing Scotland as a destination of choice.

The area of Strathbogie and Cabrach is embarking upon a tourism development strategy based upon increasing the use of local trails for walking, cycling and equestrian activities. These specialist

activities are based upon tourists having an intimate involvement with the countryside. One of the strengths of this area is its relative remoteness, wildness and the absence of dominant and intrusive structures in the landscape. These types of development would diminish the 'wild' experience for these emerging markets.

Moray is developing and positioning its tourism offer and the interrelationship between tourism destination branding and other consumer brands can be seen to be critical to the future of the area's economy.

Targets

It is common ground that the 2010 targets have been exceeded. It is also common ground that Scotland is well on course for the Ministers' 2020 target. Nevertheless, the generation of renewable energy must be recognised as a valuable aspiration, both politically and for society as a whole, and work towards a target as an important political goal. Targets are not a cap, whether they are scientifically derived or not. All generation counts; but it is simply not the case that it counts to the exclusion of all other considerations. If that aspiration, expressed as a target, is to work as a counterbalancing material consideration to a long series of defined and identifiable environmental disbenefits, however, then there must be some *measure* of what is proposed, so that society may see what it is getting for the disadvantages which are identified as flowing from that which is now proposed.

It is not Scottish Ministers' policy that the generation of renewables outweighs all other disadvantages. This is not the place to conduct a large scale analysis of climate change documents; policy is what it is. However, it was urged on the inquiry by Mr Bell that we should also be mindful of the UK position, and even if Scottish success in reaching for targets has been significant, we should not forget the UK position. The UK Low Carbon Transition Plan - National Strategy for Climate and Energy again highlights the English position, and it talks about a wide range of technologies including a range of renewables, carbon capture and storage and nuclear generation. Page 181 deals with "Further action in Scotland". Energy efficiency measures, emissions targets, reporting under the Climate

Change (S) Act, waste reduction and recycling are all briefly mentioned in one column on one page. There is no mention of wind power expansion. Not a single word.

Just as the key planning guidance is the new SPP, the key energy strategy document is the July 2009 UK Renewable Energy Strategy. It is *not* legislation. It does not change the s. 36 and s. 25 tests. It does not demand the inclusion of anything new in the decision making balance, for example, a presumption in favour. Chapter 4, entitled 'Swifter Delivery' in fact emphasises the strict role of the planning system in delivering consents; emphasises that planning in Scotland is largely a devolved issue; and that the measures identified in the publication predominantly apply to England, although UK wide measures are identified where relevant.

In particular, there is no call in this strategy for wind power stations to be located in unsuitable locations. How else should one describe Dorenell? The document is part workbook, part political tract and in part a statement of intentions to work towards and increase renewables output by various means. Even at its most politically optimistic, this document still recognizes that environmental management and controls are part of the British system. One could argue quite convincingly that in this regard, Scotland, with its new Planning Act, is more advanced than elsewhere in the UK.

Determining issues

Following these submissions, it thus respectfully seems to the SBA that the determining issues for this application are as follows

- 1 Does the application meet the requirements of EA89 s. 36 and the limited tests in Sch. 9?
- 2 If it does, does TCP(S)A97, s. 57 apply?
- 3 If it does, then does the application comply with the Moray Development Plan?
- 4 If it does, are there any material considerations which indicate that the application should nevertheless be refused?

- 5 If it does not, are there any material considerations which indicate that it should nevertheless be permitted?
- 6 Are there any other legal issues which are a barrier to consent, all other things being equal? And if there are, can that barrier or those barriers be overcome?

For the reasons given, the answers are submitted to be

- 1 No
- 2 Yes
- 3 No
- 4 Yes, but this question is superceded by question No 3
- 5 No
- 6 No

Conclusion

This is an application conceived on a grand scale, but with no policy nor compatibility justification.

In the circumstances, it is respectfully submitted by SBA that this application should be recommended to Scottish Ministers for a prompt refusal.

JOHN CAMPBELL QC
For Speyside Business Alliance

Oracle Chambers,
Gorebridge
Midlothian EH23 4RN
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