

Electricity Act 1989
Town and Country Planning (Scotland) Act 1997

JOINT STATEMENT OF CASE for

THE HIGHLAND COUNCIL

AND

CAITHNESS WEST ACTION GROUP

for a Public Local Inquiry

into an application by BAILLIE WIND FARM LTD

for the proposed construction of a wind power station comprising

21 wind generator turbines of 110m overall height, and associated development, on land

at

BARNAHEIGH FARM, WESTFIELD, BY THURSO, CAITHNESS

known as the 'BAILLIE HILL WINDFARM'

DPEA Ref IEC/3/105/3
Highland Council Ref. 04/00342/S36CA

Public Inquiry due to commence: 17 March 2009

Before: Mr David Russell, MA (Hons), MPhil, MRTPI, *Principal Inquiry Reporter*, DPEA

1 Introduction

1 This is a Joint Statement of Case for a Planning Authority (The Highland Council, or ‘THC’) and a Group of Third Party Objectors (Caithness West Action Group or ‘CWAG’) submitted in advance to the Reporter in accordance with a direction given at a pre Inquiry Meeting held in Halkirk on 5 November 2008. That timetable was later slightly adjusted.

2 THC is the planning authority for the area within which the proposal outlined below is proposed.

3 CWAG is a group of Third Party Objectors, now ‘relevant’ persons for the purposes of this Inquiry process.

4 THC and CWAG have decided to present a joint case to this inquiry. Both are opposed to the proposal, and submit that the Reporter should recommend to Scottish Ministers that s.36 consent and deemed planning permission should be refused.

5 This appeal arises from the refusal of an application for consent under the Electricity Act, 1989 s.36, and for related deemed planning permission under the Town and Country Planning (Scotland) Act 1997, s. 57, all for the construction of twenty one wind turbine generators and associated development at Barnaheigh Farm, Westfield, Caithness. (the Proposal). That location is situated among the communities of Westfield, Shebster, Stemster, Forss, Buldoo and Achreamie, all in Caithness.

6 The application was originally made in a different form to the Scottish Executive and THC in 2004, and after sundry procedure was unanimously refused (in its present form) at THC’s Caithness, Sutherland and Easter Ross Planning Applications and Review Committee meeting held on 15 January

2008.

- 7 On 30 January 2008, THC informed the Scottish Ministers of its objection to the proposed development, setting in motion the requirement for a Public Local Inquiry under the 1989 Act, Sch. 8. The Public Local Inquiry is scheduled to commence on 17 March 2009.

2 Development application management

THC recommended refusal of the application for the following reasons, ('RFRs') which are abbreviated here

- 1 that the Proposal is contrary to the Caithness Local Plan, the site being covered by a PP3 designation, which presumes against development;
- 2 that the proposal is contrary to SSPO6 in relation to its proximity to settlements, communities and dwelling houses;
- 3 that the Proposal is unacceptable in terms of its cumulative impact with other windfarms in its vicinity, and in relation to its likely impact on tourism, tourist routes and tourist destinations;
- 4 that the Proposal is unacceptable in terms of its adverse visual impact, and is contrary to HRES policy and related guidance;
- 5 that the application should be the subject of an Appropriate Assessment carried out to the satisfaction of SNH to address the issues raised by Historic Scotland and the RSPB.

THC and CWAG will support those RFRs and will lead evidence from the local Member, a planning consultant and a landscape architect to do so.

3 Submissions

- 1 THC has contended, and continues to contend that the Proposal is not supported by policy or national guidance as found in the development plan; Scottish national planning guidance, principally SPP6 and PAN 45; and

national energy policy as it appears in Scottish and UK Government publications. In addition, the site is not favoured by the Caithness and Sutherland Landscape Character Assessment. The proposal will impose significant adverse landscape and visual impacts, and will have a seriously adverse effect on local residential amenity.

- 2 CWAG has contended, and continues to contend that the combination of site and turbine configuration chosen by the developer provides
 - a significantly adverse combination of landscape and visual impacts (alone and with other wind energy development);
 - an inadequately detailed Environmental Statement ('ES')
 - enhanced safety risk;
 - significant transport and access issues;
 - enhanced risks from construction noise and other construction related impacts;
 - significantly adverse landscape, visual and noise impacts on residential amenity; significant potential for adverse impact on protected species; and
 - significant potential for adverse impacts on tourism in the area.

- 3 CWAG will support those contentions by leading, in cooperation with THC, a planning consultant, a landscape architect, an acoustic engineer, the local Bird Recorder and expert on geese, lay witnesses and residents.

- 4 The site is close to local housing and businesses, to the public road, and to affected tourist interests. The ES presented with this application is seriously deficient in a number of respects. Local public opinion is firmly opposed to the development for sound planning reasons. The graphic representations are insufficient, and in some cases inaccurate.

3 Grounds of Objection

Consistent with this position THC and CWAG's evidence will:

- a. Assess the development in its entirety, in its landscape context and in respect of its cumulative effects, applying the provisions of s. 25 of the 1997 Act, and Schedule 9 of the 1989 Act.
- b. Consider issues relevant to residential amenity, including noise, visual impact, shadow flicker, effects on human health, and public safety, and show that there would be a significant and long term significant detrimental effect upon the residential amenity of those living in the neighbourhood of the development;
- c. Demonstrate that the developer has failed to follow planning guidance in respect of site selection; that the developer has a poor record in following planning guidance and requirements, and that he has failed to follow accepted best practice in respect of the information he has included in the ES and addenda thereto;
- d. Demonstrate that there are significant flaws in the ES and addenda, including, without limitation:
 - failure to properly assess transport effects,
 - underplaying of the transport impacts from the Proposal,,
 - significant overstatement of the claimed carbon savings from the Proposal,;
 - the use of out of date turbine noise data for noise modelling,
 - the use of incorrect methodology for ornithological observations, and
 - the ignoring of existing data on bird observations in the area when compiling the ES;
 - examination of the potential impacts of the proposed scheme on public safety,
 - failure properly to calculate realistic estimates of turbine noise,
 - failure to assess the development properly in terms of Scottish Government planning advice on noise,

- failure properly to take account of the wind shear on the site and its affect on turbine noise immission levels.
 - failure to produce proper and sufficient graphic or photomontage representations of the proposal
- e. CWAG will further demonstrate that the development does not meet the limits proposed by ETSU R 97 either during the day or during the night.
- f. Examine local public opinion in relation to the development's planning issues;
- g. Consider other environmental effects of the proposal, including effects on Annex 1 Protected Species;
- h. Appraise and examine critically the assessment and presentation of environmental, landscape and visual impacts and other relevant matters, including the potential for capturing assumed benefits by means of a planning agreement as set out in the Environmental Statement and other material submitted by or on behalf of the applicants;

4 Evidence to be submitted and appearances at the Inquiry

THC and CWAG will lead

- 1 Councillor David Bremner
- 2 Mark Steele, Mark Steele Consultants, a landscape architect
- 3 Dick Bowdler, New Acoustics, an acoustic engineer
- 4 Ian Kelly, Graham & Sibbald, Perth, a planning consultant
- 5 David Craig, a local resident, who will coordinate and present the evidence relating to safety, transport, and errors and misrepresentations in the ES;
- 6 Alastair MacDonald, a local resident, who will discuss the Developer's history regarding planning requirements and other related local issues;
- 7 Stan Laybourne, an ornithologist, who will discuss ornithological issues;
- 8 Kenny Graham, RSPB, who will present a written statement regarding their position with SNH over Baillie ornithological issues;

In the interest of presenting a co-ordinated case to the Inquiry, Caithness West Action Group may seek to call additional relevant witnesses and if agreed incorporate the cases of other objectors. However, it will also seek to coordinate the evidence of Third Party Objectors so as to save inquiry time wherever possible.

The combined evidence of THC and CWAG is estimated to take will take 2-3 days.

THC and CWAG will be represented by senior counsel between 17 and 20 March. Thereafter they will either be represented by other counsel, or by Mr Ian Kelly.

5 Conclusion

THC and CWAG will accordingly ask the Reporter to conclude that because of its conflict with policy objectives; because of its significant and long term detrimental effects on local residents, and because of its numerous adverse effects on the countryside and local interests, the proposal is contrary to the existing development plan in force, emerging policies and to other relevant national and local guidance.

In its evidence, it will conclude that, on balance, such benefits as the proposal may produce would be far outweighed by these defects, and that there are no material considerations which would justify a finding otherwise. As a result, THC and CWAG will submit, the Reporter should determine that the proposal should be refused planning permission in agreement with the recommendations of Highland Council.

6 Documents

Reference may be made to planning policies and decisions which are in the public domain and which will be expected to be treated as core documents. Other relevant

published material is indicated in the Appendix to this Statement of Case. These parties and the appellants have agreed a list of Core Documents which is appended.

THC and CWAG may extend or amend this Statement of Case in matters affecting either its scope or its detail, in the light of any additional or amending information supplied by the parties or emerging from relevant sources in relation to the application.

JOHN CAMPBELL QC

Counsel for THC and CWAG

1 February 2008

APPENDIX:

PART 1 – CORE DOCUMENTS

CORE DOCUMENTS (agreed list)

Doc Ref	DOC No	Doc Name
Proposal		
CD	1.	Application Letter
CD	2.	Baillie Windfarm Environmental Statement comprising: A – Original ES, July 2004 B – Addendum January 2006 C – Addendum – Peat Slide Documents – January 2006
CD	3.	Consultation Responses in relation to original ES and Addendums
CD	4.	Objections in relation to original ES and Addendums
CD	5.	Report to Highland Council Planning Committee dated 22 November 2007
Planning		
CD	6.	The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000
CD	7.	The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)
CD	8.	Highland Council Structure Plan (2001)
CD	9.	Caithness Local Plan (2002)
CD	10.	Highland Renewable Energy Strategy and Planning Guidelines (HRES) (May, 2006)
CD	11.	National Planning Framework for Scotland, 2004
CD	12.	National Planning Framework (Discussion Draft), January 2008
CD	13.	Draft revised National Planning Framework, January 2008 (2)
CD	14.	National Planning Framework (December 2008, as laid before

		Parliament)
CD	15.	National Planning Policy Guidance 14 – Natural Heritage
CD	16.	SPP – Scottish Planning Policy November 2008, Parts 1 and 2
CD	17.	SPP 2 – Economic Development
CD	18.	SPP 6 – Renewable Energy
CD	19.	SPP 15 – Planning for Rural Development
CD	20.	SPP 23 Planning and the Historic Environment
CD	21.	Scottish Historic Environment Policy (October, 2008)
CD	22.	Planning Advice Note 42 – Archaeology and The Planning Process
CD	23.	PAN 45 – Renewable Energy Technologies and all Annexes
CD	24.	PAN 56 – Planning and Noise
CD	25.	PAN 58 – Environmental Impact Assessment
CD	26.	PAN 60 – Planning and Natural Heritage
CD	27.	Circular 10/1999 – Planning and Noise
CD	28.	Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997
CD	29.	Circular 17/1985: Development Control Priorities and Procedures
CD	30.	Circular 4/1998: The Use of Conditions in Planning Permissions
CD	31.	Circular 6/1990: Awards of Expenses in Appeals and Other Planning Proceedings
CD	32.	Circular 17/1998: Code of Practice For Public Inquiries
CD	33.	Circular 12/1996: Planning Agreements
CD	34.	Circular 6/2000: Nature Conservation: Implementation in Scotland of EC Directives on the Conservation of Natural Habitats and of Wild Flora and Fauna and the Conservation of Wild Birds (The Habitats and Birds Directives)
Tourism		
CD	35.	The Economic Impacts of Wind Farms on Tourism in Scotland – A Report for Glasgow Caledonian University, March 2008 (The Moffat Report)

Land scape		
CD	36.	Caithness and Sutherland Landscape Character Assessment
CD	37.	Guidelines for Landscape and Visual Impact Assessment, 2 nd Edition 2002.
CD	38.	SNH Guidance: Cumulative Effect of Windfarms (Version 2 revised 13.04.05)
CD	39.	SNH Guidance: Visual Assessment of Windfarms Good Practice Guidance, 29 March 2006.
CD	40.	SNH Guidance: Visual Assessment of Windfarms – Best Practice – 2002 (Report F01AA303A) University of Newcastle.
CD	41.	SNH Policy Statement 02/02: Strategic Locational Guidance for Onshore Wind Farms in respect of the Natural Heritage , (Update May 2005)
CD	42.	Countryside Agency Topic Paper 6: Techniques for Judging Capacity and Sensitivity
Noise		
CD	43.	Guidelines for Community Noise, World Health Organisation Noise (2000)
CD	44.	BS 8233:1997 Sound Insulation and Noise Reduction for Buildings, Code of Practice. BSI
CD	45.	BS 4142:1997 Method for – Rating industrial noise affecting mixed residential and industrial areas. BSI
CD	46.	BS 5228 parts 1 to 5 – Noise and Vibration Control on Construction and Open Sites. 1994 1997
CD	47.	ISO 9613 1 Attenuation of Sound During Propagation Outdoors Part 1
CD	48.	ISO 9613 2 Attenuation of Sound During Propagation Outdoors Part 2

PART 2 – THC ADDITIONAL DOCUMENTS

2	Committee Minute 19 September 2003
3	Notice of Refusal 1 October 2003
4	Highland Council Structure Plan 2001
5	Caithness Local Plan 2002
6	Caithness and Sutherland LCA.
7	Not used
8	Landscape and Visual Impact Report, Assessment and figures by Mark Steele Consultants.

PART 3 – CWAG ADDITIONAL DOCUMENTS

Birds

- 1 South Shebster Wind Farm and Visitor Centre Environmental Statement, October 2005, MR & Mrs CW Sutherland and family
- 2 South Shebster Proposed Wind Farm and Visitor Centre – SNH Ornithological Queries Report, Volume 1, April 2008
- 3 South Shebster Proposed Wind Farm and Visitor Centre – SNH Ornithological Queries Report, Volume 2, July 2008
- 4 Numbers and behaviour of Greenland White Fronted Geese in Caithness with special reference to daily routines of roosting and feeding. Winter 1993/94 with update of records from 1986/87. Report to SNH. S Laybourne and MIH Legg, 1994.
- 5 Survey of Winter Wildfowl using Caithness Lochs proposed Special Protection Area and RAMSAR Site, Winter 1996/97, Report to SNH. S Laybourne, 1997.
- 6 Report of the Caithness Green and White Fronted Goose Spring Census 1985, S Laybourne and AD Fox, Nature Conservancy Council, 1985.
- 7 The 2000 National Census of Pink Footed Geese and Icelandic Greylag Geese in Britain & Ireland, R Hearn, The Wildfowl & Wetlands Trust, June 2002
- 8 Wind Farm Development and Nature Conservation , RSPB, WWF UK, English Nature, BWEA, March 2001

Transport

- 9 Strathy South Wind Farm Environmental Statement, June 2007, Scottish and Southern Energy (SSE)
- 10 Proposed windfarm at Barnaheigh and Stempster , Environmental Statement, RPS Cairns Limited, for NGT (Scotland) Limited, July 1994
- 11 Baillie Wind Farm Scoping Report, prepared for Dudley Developments by RPS Consultants Ltd, CS\SGP 5004 \Scoping Report, Final version, 27 June 2003
- 12 Baillie Wind Farm Scoping Option, a response by Scottish Ministers, 18 August 2003
- 13 Baillie Wind Farm Environmental Statement July 2004, prepared for Baillie Wind Farm Ltd by RPS Consultants
- 14 Baillie Wind Farm Environmental Statement : Technical Appendices July 2004 , prepared for Baillie Wind Farm Ltd by RPS Consultants
- 15 Baillie Wind Farm Environmental Statement : Addendum January 2006 , prepared for Baillie Wind Farm Ltd by RPS Consultants
- 16 Baillie Wind Farm Environmental Statement : Second Addendum (Peat Slide CD), October 2007, Enviros Consulting Limited

Safety

- 17 The Health and Safety Risks and Regulatory Strategy Related to Energy Developments, Health and Safety Executive, June 2006.
- 18 BWEA Guidelines for Health & Safety in the Wind Energy Industry, October 2008
- 19 Wind Turbine Accident Compilation, database of wind turbine accidents and incidents.
- 20 Letter dated July 2005 from DTI Engineering Inspectorate regarding wind turbine accidents
- 21 Wind Turbine Ice Throw Studies In The Swiss Alps, René Cattin et. al. 2007
- 22 Vestas Mechanical Operating and Maintenance Manual, V90 – 3.0 MW, VCRS 60 Hz, Ref 964106.R00M , 29 June 2007

Health

- 23 Health Effects of Wind Turbine Noise, Dr N Pierpoint, March 2006
- 24 Wind Turbine Syndrome: Noise, shadow flicker and health, Dr N Pierpoint, August 2006
- 25 Wind Turbines, Noise and Health, Dr A Harry, February 2007
- 26 Le retentissement du fonctionnement des eoliennes sur la santé de l'homme, Academie nationale de medicine, Mars 2006 [*The effects of wind turbine operations on human health*, *National Academy of Medicine, France, March 2006*]
- 27 Looking into the noise about wind turbines, National Wind Watch, 5 December 2008

Planning

- 28 04/00178/FULCA Erection of Sixty meter high anemometer mast (retrospective) at Baillie Hill, Shebster, Thurso, report C/P/184/04, 9 August 2004
- 29 06/00185/FULCA Renewal of Planning Consent (04/00178/FULCA) for the erection of 60 metre high anemometer mast and ancillary equipment at the Site of Stemster Hill, Shebster, Caithness, KW1 6XJ, report C/P/119/06, 15 May 2006
- 30 letter 04/00342/s36CA DM/CC dated 30 January 2008 from David Mudie, Highland Council, to Lesley Rush, Scottish Government Energy Consents Unit, and accompanying minutes of Highland Council planning meeting 15 January 2008

Carbon savings

- 31 Promoters overstated the environmental benefit of windfarms, Daily Telegraph, 21 December 2008
- 32 Windfarm lobby bows to ASA and cuts CO2 saving figures Spinners' numbers overblown, The Register, 23 December 2008
- 33 Calculations for wind energy statistics, BWEA

Opinion

- 34 Letter January 2008 from David Sutherland, Highland Council Ward Manager for Thurso, Wick and Landward Caithness, to Derrick Milnes, Secretary, West Caithness Community Council, regarding the Postal Ballot for Baillie Wind Farm conducted in December 2007.
- 35 Residents say NO to wind farm ,John O'Groats Journal, 11 January 2008
- 36 Baillie decision hailed as a victory for democracy ,John O'Groats Journal, 18 January 2008

Noise

- 37 ETSU R 97 – The Assessment and Rating of Wind Farm Noise
- 38 BSEN 61400 11 – Wind Turbine Generator Systems. Acoustic Measurement Techniques.
- 39 Mountboy Wind Farm Environmental Statement
- 40 Bullmore – Precognition to the Tillyrie Public Inquiry.
- 41 ETSU W 13 386 – Noise Measurements in Windy Conditions
- 42 Bullmore et al. Wind Farm Noise Predictions – the Risk of Conservatism Second International Conference on Wind Turbine Noise.
- 43 G.P.van den Berg Do wind turbines produce significant low frequency sound levels? 11th International Meeting on Low Frequency Noise and Vibration. 2004.
- 44 The Measurement of Low Frequency Noise at Three UK Wind Farms produced for the DTI in the UK.
- 45 Malcolm Hayes. Report in connection with a nuisance case at Askam.
- 46 Research into Aerodynamic Modulation of Wind Turbine Noise: Final report by the University of Salford. BERR, UK
- 47 J H Bass, A J Bullmore, E Sloth. Development Of A Wind Farm Noise Propagation Prediction Model. Contract JOR3 CT95 0051.
- 48 Noise report and predictions by Dick Bowdler, New Acoustics Ltd

Other relevant reports

- 49 Planning Appeal by CRE Energy: proposed development of wind turbines and associated infrastructure at Borrowston Mains, Dounreay, Thurso, Caithness , P/PPA/270/285, WMH Patterson, Reporter, Scottish Executive Inquiry Reporters Unit, March 2005

- 50 Planning Appeal: proposed erection of three 3MW wind turbines at Hill of Lieurary, by Thurso, Caithness , P/PPA/270/369, David N Gordon, Reporter, Scottish Executive Inquiry Reporters Unit, March 2006