

The Highland Council (the Planning Authority) and CWAG (Local Objectors)

Town and Country Planning (Scotland) Act 1997

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000

Section 36 Application for the proposed Baillie Wind Farm, Caithness

**PROPOSED ERECTION OF 21 WIND TURBINES (EACH 110M HIGH) ON LAND AT
BARNAHEIGH FARM, WESTFIELD, BY THURSO**

Ref: IEC/3/105/3

Public Inquiry

PRECOGNITION – SUMMARY

Ian Kelly,

Head of Planning, Graham and Sibbald

Planning Policy and Related Material Considerations

Background

1. I am Ian Kelly MRTPI, Head of Planning at Graham and Sibbald, and I am a chartered planner with some thirty years experience.
2. I appear at this Inquiry on behalf of The Highland Council (THC) and the Caithness West Action Group (CWAG).
3. I focus on the key determining issues in respect of a section 36 consultation which THC decided to object to thus triggering this Public Inquiry.
4. THC and CWAG agreed that a joint case would be presented to the Inquiry.
5. I was first contacted in relation to this application in mid November 2008. My formal appointment was from the first working day in 2009. Following a site visit and client meetings I was able to confirm that I was able to act for the Council.
6. My evidence focuses on the decision taken by THC and on the consideration of the proposal in the light of the Development Plan and other material considerations.
7. I am aware of my duties to the Inquiry as an expert.

The Statutory Tests

8. Should Ministers decide to grant permission under section 36 of the Electricity Act (the 1989 Act), then section 57(2) of the Town and Country Planning (Scotland) Act provides that planning permission can be deemed to be granted at the same time.
9. Paragraph 3 of Schedule 9 of the 1989 Act provides specific requirements on the Scottish Ministers and the applicants.
10. These requirements do not give a specific set of criteria or thresholds. Indeed they set a very low level of acceptability in the generality of their expression. However, they do identify that there is a balance to be struck.
11. A Section 25 Planning Act test should also be carried out in order to consider whether the proposed development complies with the Development Plan and also to consider material issues in the normal way.

National Energy Policy

12. I have read the applicant's Renewable Energy Policy Report (**BWL 13**).
13. Scottish Ministers have set clear targets for renewable electricity. Ministers want 50% of the demand for Scottish Electricity from renewable sources by 2020, with an interim milestone of 31% by 2010.
14. The Planning System has already played its part in ensuring that the 2010 target has been met. Policy is clear that on shore wind farms are only to be permitted where they can be satisfactorily accommodated and where the benefits of the scheme outweigh its adverse impacts.
15. However, I would caution against the use of such targets in the absence of them being translated into proper spatial planning frameworks at national and regional level.
16. I maintain my approach of fully assessing the application in terms of the Development Plan and other material considerations.

The Submitted ES, Addenda and Updates

17. I have read the original ES from 2004 (**CD 2 A**) and the Addendum from 2006 (**CD 2 B**). The only matter on which I comment is that of alternatives.

The Proposed Development and Its Benefits

18. In this case the applicant has not set out any claimed environmental benefits in relation to the proposal nor is there any claimed climate change benefit. The ES does not give any detail on the proposed economic benefits. It is difficult to make a balanced assessment of the proposal other than on the basis of generic assumptions.

Consideration of the Proposals by THC

19. The application was assessed by Planning Officers. Their report is lodged as **CD 5**. I identify a number of aspects where fuller advice could have been given to Members.

20. Members were presented with an uncertain set of conclusions and they were not presented with any firm conclusions in relation to either Development Plan policy or in relation to HRES.
21. The Officer's report was considered at the Committee on 15th January 2008. The meeting proceeded by way of a formal Hearings procedure. The Committee unanimously agreed to object to the proposals.

The Lodged Written Submissions

22. I have read the written representation from **RSPB Scotland** along with the various appendices. I note that they maintain their objection.
23. I have read the Written Submission from **SNH** in relation to Natura impacts. No Appropriate Assessment is before the Inquiry.
24. There is considerable concern on the part of the RSPB and CWAG that there are likely to be significant adverse effects that could affect the integrity of the Caithness Lochs SPA. It would have been much preferable for SNH to give oral evidence to the Inquiry.
25. The SNH position in respect of landscape and visual impacts is assessed in their letter of 10th March 2006.
26. I would partly agree with SNH that, for landscape and visual impacts, the cumulative impact is a crucial factor. The matter is addressed in three short paragraphs by SNH. There is no indication of the methodology used to reach the conclusions. There is no indication of what the threshold is of acceptable cumulative impact. There is no indication of how the different combination of sites might then relate to such a threshold. I am of the view that SNH should be in attendance at the Inquiry to also give oral evidence on these aspects.

Consideration in relation to the Development Plan

27. I first consider the **Approved Structure Plan March 2001 (CD 8)**.
28. The Structure Plan's tourism policies do not provide a policy basis for the assessment of the likely impact of other developments on tourism strategy and tourism interests.

29. Policy **E2 Wind Energy Developments** is the key Structure Plan policy directly relating to wind farms. It provides that proposals will be supported provided that the impacts are not shown to be significantly detrimental. I conclude that the proposed development will have:

- a. Significantly detrimental local visual impacts
- b. Significantly detrimental noise impacts
- c. No significantly detrimental electro-magnetic interference
- d. No significantly detrimental impacts on roads, bridges and traffic (although I do consider that there are aspects which require further consideration)
- e. No significantly detrimental impacts on aircraft flightpaths or MOD interests
- f. Significantly detrimental cumulative impacts in terms of landscape and visual effects

I therefore conclude that the proposed development is not in accord with Structure Plan policy E2 on account of its significantly detrimental impacts.

30. In terms of the **Approved Structure Plan**, I conclude that the proposed development is not in accord with the Structure Plan on account of its breach of policies G2 (in part), G3, and E2 (on three out of six criteria).

31. I now consider the **Adopted Caithness Local Plan September 2002 (CD 9)**.

32. The development site lies partly in an area covered by Primary Policy PP2 and partly in an area covered by Primary Policy PP3. The application site also lies within 5km of the Dounreay site.

33. The Plan also contains a number of **supporting policies**.

34. In relation to the Adopted Local Plan I conclude that the proposed development is not in accord with the Local Plan on account of its breach of policies PP3 and SP1. It is possible that there is also a breach of policy PP2.

35. Overall, in terms of the Development Plan, the proposed development is in breach of the specified Structure Plan and Local Plan policies. Therefore, the presumption is for refusal of the proposed development.

Material Considerations

36. **SPP (CD 16)** sets out the Scottish Government's view of the purpose of planning and of the objectives for the planning system. The generality of this advice does not change any of the evidence that I wish to present to the Inquiry.
37. **SPP6 (CD 18)** sets out the Government's policy approach to renewable energy. Wind farms are addressed in paragraphs 23 to 25 and specific guidance for wind farms of over 20MW is given in Annex A.
38. Annex A guidance is directed at Development Plans, but the principal issues are addressed in evidence before the Inquiry.
39. Within Annex A, on page 18, reference is made to the 2km distance mentioned in **PAN 45**. This indicates the sensitivity of the relationship between turbines and houses. It is also noted that HRES proposes a separation distance of 1km with a presumption against major developments where this is not achieved.
40. I refer to paragraph 52 of **SPP6** for its terms on the securing of benefits.
41. It would be appropriate to have some form of programme to enhance the local economic development opportunities arising from the project if it is consented.
42. That leaves the potential greenhouse gas savings and the associated climate change impacts. It is proposed that the requested section 75 agreement should set out a means for the independent verification of the annual output of the site, the related greenhouse gas emissions savings and climate change benefits that the developer may claim for the project. Should, at the end of any year, the development fails to meet these specified benefit levels then, unless agreed otherwise by the Planning Authority, the development shall be dismantled.
43. In relation to national planning policy on the Historic Environment the Statement of Case from Historic Scotland clearly sets out that extensive evidence will be led in that regard.
44. National Planning Policy and advice on Natural Heritage is set out **NPPG 14 (CD 15)** from January 1999 and in **PAN 60 (CD 26)** from August 2000. I consider that the relevant aspects of these are captured in the Development Plan.

45. **PAN 45 (CD 23)** provides advice on renewable energy technologies. I take the view that specific evidence on the various aspects raised will already be before the Inquiry.
46. **Pan 56 (CD 24)** sets out advice on planning and noise. Noise is fully assessed by Mr Bowdler.
47. CWAG has lodged copies of two previous appeal decisions for wind turbines proposals for sites that are in the vicinity of this application site. Both proposals were found to be contrary to the Development Plan on account of adverse impacts, principally visual and amenity impacts.
48. The applicants have also lodged various appeal decision letters. They demonstrate that wind farm proposals fall to be considered in a balanced way, within a planning policy framework, of comparing and balancing their benefits with any adverse impacts.
49. A key material consideration is **HRES (CD 10)**. The Baillie wind farm site lies wholly within an area where there is a presumption against major onshore wind development. No detailed assessment of alternative sites has been given as required by the strategy in these circumstances. Currently, it is not possible to comply with the guideline levels for local content as set out by the Council.
50. HRES has been criticised at Inquiries and HRES does not fully comply with the guidance in SPP6 Annex A nor with the very recent guidance in PAN 45 Annex 2. Work is underway to prepare new SPG, which will replace the wind energy section of HRES.
51. Having regard to all of the above material considerations there is nothing in them that leads me to change my conclusions based on the Development Plan assessment.

Other matters

52. CWAG witnesses will give evidence in relation to previous planning applications in relation to this site, in relation to breaches of planning control and in relation to the community consultation undertaken by the applicants.
53. CWAG witnesses will also raise health and health and safety issues. I recognise that these are validly held concerns that are of considerable importance to the local objectors.

Section 75 Agreement and Conditions

54. Conditions were set out in the report to Committee and these will form the basis of the discussion of conditions at the Inquiry.
55. In relation to conditions the decision maker cannot (at present) rely on the proper monitoring or enforcement of conditions by THC. The current budgetary issues facing THC planning service will only make this situation worse.
56. The report to Committee advised that the position of “not objecting” should be subject to a prior legal agreement covering:
- a. Site restoration
 - b. Safeguarding against radio or communications interference
 - c. A “wear and tear” agreement to cover any damage to the local road network
57. These requirements remain as matters to be addressed. The legal agreement should also seek to secure the local and national environmental, social and economic benefits that will arise from the project.

Conclusions

58. The Electricity Act tests set a very low level of acceptability. There are no thresholds or tests set out. In my view the tests do not provide a sound basis, in planning terms, for the overall assessment of proposals.
59. In relation to the requirements of Section 25 of the Act I have assessed the application against the Development Plan.
60. I conclude that the proposed development is contrary to the Development Plan. Therefore, the presumption, in law, is in favour of the refusal of deemed planning permission.
61. There are no material considerations that would change that conclusion.
62. I would respectfully request that you should recommend rejection of this proposal both in terms of the section 36 consent and the deemed planning permission.