

Highland Wide Local Development Plan (HWLDP)

Examination

Issue 68 – Policy 68

Further Submission on behalf of Graham and Sibbald Clients

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Background

1. Renewable energy developments, particularly on shore wind turbines, have been and continue to be the most prevalent force for change in the landscape of the Highlands. There is therefore considerable interest in the planning policy framework for such developments. Policy 68 in the Proposed HWLDP sets out the Council's proposed policy in relation to renewable energy. The proposed policy is designed to be operated in association with supplementary guidance. Objections were lodged on behalf of number of clients and these objections, along with others on the same topic, are now being considered by Reporters as part of the Examination of unresolved objections. Those objections remain valid and remain unresolved.
2. On 5th September the Reporters wrote to the Council raising a number of matters in relation to policy 68 and seeking further information. The Council were asked to respond by 19th September. The Council did not respond until the 18th October. Their response, in addressing the information requested by the Reporters, effectively suggested material alterations to the operation of policy 68.
3. Contrary to the clear intentions set out in SPP, the Reporters had intended to progress consideration of these new matters without any further evidence process whatsoever. Considerable concern was expressed, on behalf of our clients, about this approach and the Reporters were advised that consideration was being given to seeking authority for a pre-action letter (followed by Review, if appropriate). Following a number of email exchanges, the Reporters changed their minds and decided that they would seek further, limited written submissions from interested parties.
4. This document forms the submission on behalf of the clients represented by Graham and Sibbald. However, **the primary submission is that further procedure, in the form of oral evidence, is required in order to address the various outstanding aspects of this key planning policy issue.** It is considered that a structured Hearing Session, perhaps over two days, might be the most appropriate way forward. However, given the terms of the Council's response of the 18th October, it is considered that there is now also a case for taking the Council's evidence in an Inquiry Session so that cross examination can take place.

The Reporter's Letter of 5th September 2011

5. It is agreed that the main principles of any proposed Supplementary Guidance should be set out within the policy text so that parties can fully understand the basis of the Council's assessment of renewable energy applications. However, that text needs to be available now and parties must be given the opportunity to assess it and comment on it before the policy becomes adopted. Without further process that proper consultation opportunity will be lost.
6. It is agreed that greater clarity is needed on the consideration and proposed operation of community benefits within the terms of Planning Circular 1/2010. It is agreed that examples would be helpful.
7. It is considered that the points raised by the Reporters in terms of significant detriment/balance and weight go to the heart of concerns about the operation of the proposed policy, and indeed they reflect concerns raised in objection submissions. The Reporters sought a proposed rewording of the policy. It is agreed that a rewording is required, but it is also submitted that interested parties must be given the opportunity to contribute to and assess that revised wording and to make objections to it, if considered appropriate to do so.

The Council's Response of the 18th October

8. Overall, it is considered that the Council's response has had the effect of complicating matters rather than clarifying the policy approach.
9. The Council's response in terms of the supplementary guidance is considered to be not acceptable. The Council already takes an inconsistent approach in the application of the existing HRES. They do not intend to re-adopt HRES but want, at their own discretion, to retain and use unspecified parts of the guidance in cases, but that will not be set out in any way in the HWLDP. That provides no basis for being able to advice clients on renewable energy projects and it means that applications could be determined on the basis of a consideration that is simply completely absent from the Development Plan. It is submitted that such an approach is unacceptable.
10. The letter is silent on the matter of the new Supplementary Guidance on renewable energy (wind turbines) which, in draft, has been the subject of considerable criticism, including criticism from SNH who were the part sponsors of the related consultancy work. It is considered that, as a minimum, the principles of both the Guidance and the related spatial strategy must be set out in the HWLDP policy in order to avoid what would effectively be the adoption of policy, determinative for applications, without the veracity of that policy ever having been tested in any way.
11. The Council's proposed approach to community benefit is considered to be unacceptable and, indeed, may not be lawful. It appears that the Council wishes to consider, as a material consideration, confidential information and related benefits. It is considered that such an approach would not comply with the Circular. The

approach being proposed by the Council would also need a clear definition of what would constitute a (quantifiable, verifiable and project specific) socio-economic or environmental community benefit arrangement related to the implementation of the renewable energy development itself. It is submitted that this could not include any form of assumed wider environmental or societal benefit that is already factored into the favourable policy environment.

12. The Council's proposed approach to the key issues of significant detriment/balance and weight would effectively leave it entirely to themselves, on a case by case basis, to decide relative importance and how to balance the positive and negative effects. It also leaves the Council with the opportunity, again at their sole discretion, to introduce an unspecified test of an overall good fit with policies. Such an open ended approach would represent a significant disadvantage to both applicants and objectors as it would be almost impossible, in advance, for an external party to properly and accurately carry out a prior assessment and balancing exercise simply using the specific policy – policy 68. Yet, that is precisely what they should be able to do to advise clients, based on a precisely expressed policy that includes the key principles of the Supplementary Guidance and its related spatial guidance. On behalf of our clients we would object to the Council's proposed approach.
13. Given paragraph 12 above, we would also object to the Council's proposed amendments to the wording of the policy.

Conclusion and Submission

14. The exchange of correspondence between the Reporters and the Council has not clarified matters in relation to issue 68 (policy 68). Rather it has had the effect of further complicating matters whilst introducing further uncertainties.
15. Various comments have been set out above. **However, the primary submission is that further procedure, in the form of oral evidence, is required in order to address the various outstanding aspects of this key planning policy issue.** It is considered that a structured Hearing Session, perhaps over two days, might be the most appropriate way forward. However, given the terms of the Council's response of the 18th October, it is considered that there is now also a case for taking the Council's evidence in an Inquiry Session so that cross examination can take place.
16. Without such a proper Examination process, involving oral evidence sessions, there is a danger that both the policy, and any subsequent Supplementary Guidance, could be attacked at the first major development management Public Inquiry for a renewable energy project and, depending on the outcome, the Guidance could effectively be set aside (or used in a partial and inconsistent way), without there having been an opportunity for all interested parties to contribute. This is exactly what happened with the Council's HRES and such an outcome must be avoided now in relation to issue 68.