

## Appeal Decision Notice

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Decision by Robert Seaton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2138
- Site address: land at Carn Ghriogair, Aberarder Estate, Aberarder, Inverness
- Appeal by RES Limited against the decision by the Highland Council
- Application for planning permission dated 7 May 2015 refused by notice dated 29 June 2015
- The development proposed: erection of 50 metre guyed mast to facilitate meteorological measurements and community broadband relating to the proposed Aberarder Wind Farm
- Application drawings: location plan (number 02835D0101-01) and elevations (number 02835D5401-01)
- Date of site visit by Reporter: 12 November 2015

Date of appeal decision: 12 January 2016

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### Decision

I allow the appeal and grant planning permission subject to the five conditions listed at the end of the decision notice. Attention is drawn to the two advisory notes at the end of the notice.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan, the main issues in this appeal are the landscape impact and sensitivity of the siting of the proposed mast. Various other matters have been raised by objectors including impact on recreation and tourism, impact on ecology and particularly protected raptor species, and carbon emissions as a consequence of the proposed development. There is also contention as to whether the provision of community broadband for the life of the mast is a material planning consideration, and whether the application for the proposed development should have been made as part of the application for Aberarder Wind Farm.

### The development, the site and its context

3. The proposed development is a mast with a height of 50 metres to which equipment would be attached to gather wind speed data “predominantly in connection with the proposed Aberarder Wind Farm” (in the appellants’ words). The structure would be a

pole 22 centimetres in diameter stabilised by guy wires. Equipment fixed to the top of the mast would increase the overall height to 51.5 metres. The meteorological mast would be temporary, and would be removed after two years. The appellants also propose to attach equipment to provide a trial community broadband service.

4. The appeal site is not designated in respect of its natural or cultural heritage or ecological value, nor is it designated as wild land. The key characteristics of the landscape in which the appeal site is set are listed in the Inverness District Landscape Character Assessment pages 29 to 31.

5. The appellants describe the site as being on the slopes of Carn Ghrioghair. It lies within an upland moor, which forms a shallow saucer tilting towards a ridge running north-east to south-west. The ridge is topped by a number of knolls of which Carn Ghriogair is the highest. The appeal site is near the saucer's western lip, relatively close to the incised glen of the Crom-Allt Beag (a tributary of the River Nairn). The moor is largely surrounded by higher hills.

6. Although the area is not designated as wild land, the immediate context of the appeal site might fairly be described as remote and uninhabited (qualities referred to in the Landscape Character Assessment). However, there is clear evidence of human activity. Although the committee report records that the nearest residential property is 4.3 kilometres away, there is a shooting bothy about a kilometre and a half away beside the Allt Mor. Several tracks lead from the bothy including a track crossing the moor to the glen of the Crom-Allt Beag and ultimately to a terminus relatively close to the summit of Carn Ghriogair. This track passes relatively close to the appeal site. In addition to the bothy and tracks leading to and from it, there was also an existing tall mast erected close to the summit of Carn Ghriogair. This existing mast is prominent in views from the moor in which the appeal site is located, although when arriving by the track from the B851, it does not become prominent until a point close to the bothy on the Allt Mor.

7. The moor is largely surrounded by higher hills although a view towards the hills surrounding Loch Ness can be obtained close to the Allt Mor bothy. Views from the appeal site, however, are largely contained by the surrounding hills.

### **Landscape impact of the proposed development**

8. Although the mast would be prominent in very local views, from most views even in the context of the moor within which it would be set, it would be seen against a backdrop of hills or rolling moorland rising behind it. The landscape effects of a slim structure like the proposed mast, when backclothed in this way, are likely to diminish over a relatively short distance. Although the mast would be tall, as the Landscape Character Assessment predicts (page 30, first bullet), it is likely to be difficult to judge the size of such a structure given the absence of elements in the landscape against which to scale it (this is certainly the case with the existing mast). The mast would not dominate the large scale moorland that forms the site's context. Although the proposed development would represent a further intrusion of human infrastructure in the area, it would not be the first. The impact of the proposed mast is likely to be considerably less than that of the existing mast, given the latter's more prominent location at a high point just beyond the brow of the ridge. I find therefore that any significant landscape effects of the proposed mast are likely to be very

local. There is likely to be no effect at all beyond the immediately surrounding hills, and certainly none beyond the boundaries of the rolling hills landscape character area.

9. A number of objectors suggest that there would be a cumulative effect on landscape as a consequence of the erection of the proposed mast when taken together with other consented and proposed developments in the area, or even with the proposed Aberarder Wind Farm itself. Given the limited effects and limited life of the proposed mast, I do not find evidence for any cumulative effects in respect of other proposed or consented windfarms that would be greater than negligible.

### Siting

10. Given that the mast is proposed in order to gather wind data for the proposed Aberarder Wind Farm, there would have been little choice as regards the broad area in which it was proposed. Within that context, I find that the siting of the proposed mast complies with the guidance given on pages 38 to 39 of the Landscape Character Assessment, and is not otherwise insensitive.

### Other matters

11. Tourism and recreation: There is no evidence before me that the area is popular with walkers (no objector suggests that Carn Ghrioghair or any of its neighbours is a popular destination for walks, or even that any are included in mountain lists, or that any of the tracks are public rights of way). The area would appear to be well used by shooting parties, given the presence of the bothy and track network. However, given that visitors on a shooting party would primarily be there for the activity, I doubt that the limited landscape impact of the proposed development would have any more than negligible effect. No other specific mechanism has been suggested to me for an effect on tourism or recreation. Therefore I find that any effect on tourism or recreation would be negligible.

12. Ecology: No evidence has been submitted to me that the bird deflectors proposed to be attached to the guy wires would not adequately mitigate any risk to protected bird species. Although the possibility of other impacts on ecology have been raised by objectors, there is no evidence before me on the basis of which I might find there is any other significant ecological impact.

13. Community broadband: with regard to the factors set out in Annex A paragraph 3 of Circular 3/2013 *Development Management Procedures*, I find that the appellants' proposal to install community broadband equipment and subsequently provide a trial community broadband service is capable of being a material planning consideration. However, given the limited life of the proposed development and therefore of the proposed trial broadband service, I do not find this consideration to be determinative.

14. Carbon emissions: there is no evidence before me that there would be anything more than a negligible impact in terms of carbon emissions as a consequence of the proposed development.

15. Procedural: There is no reason in law why an application should not be made for the proposed mast separately from the proposed Aberarder Wind Farm.

## Compliance with the development plan

16. In its reasons for refusal, the Council asserts that the proposed development would be contrary to policy 61 and criteria 8 and 9 of policy 28 of the Highland Wide Local Development Plan.

17. Policy 28 (sustainable design) identifies a number of considerations against which development proposals are to be assessed, including (a) impact on certain resources including landscape and scenery and (b) the sensitivity of their siting and their design quality in keeping with local character – the considerations cited by the Council in their refusal. If a proposal is judged to be significantly detrimental in terms of these considerations, it will not accord with the plan. In view of my findings above in respect of the landscape impact and siting of the proposed mast, I find that the proposal is not significantly detrimental in respect of the policy 28 considerations, and therefore accords with the policy.

18. Policy 61 (landscape) states that new development should reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area for which they are proposed. I have not found the landscape impact of the development or its siting to be unacceptable. I also find that it does reflect the special qualities identified in the Landscape Character Assessment and takes account of the advice it gives for development of windfarm infrastructure.

19. In addition I find that policy 67 is material to the determining issues in this appeal. The policy is plainly intended to deal primarily with development of actual generating capacity for renewable energy rather than a mast such as that proposed. However, the proposed development is clearly a minor development associated with the development of onshore wind generating capacity, a type of development the plan supports subject to its meeting the criteria of policy 67. Furthermore, the policy provides as follows:

*“Renewable energy development proposals should be well related to the source of the primary renewable resources that are needed for their operation”*

I take this to mean that the Council expect an onshore wind development to be located in a reasonably windy place, and expects applicants to be in a position to demonstrate that to the Council. Use of equipment to monitor wind data would therefore appear to be envisaged by policy 67. The policy also refers to the adoption by the Council of an onshore wind spatial framework to guide development. I find that, given its role in site investigation, an application for a temporary mast - such as that proposed - in an area identified in the Council's spatial framework as having some capacity for wind turbine development can draw some significant support in principle from the development plan, subject to detailed planning considerations including those listed in policy 67. I comment below on the spatial framework for onshore wind. There is nothing in the detailed criteria in policy 67 that would indicate the application should be refused.

20. Overall, I find that the proposed development complies with the development plan.

## Compliance with other relevant planning policy and guidance

21. I understand that the Council's intention was to adopt statutory supplementary guidance incorporating the spatial framework as required by policy 67, but it has not yet done so. The Council did adopt non-statutory supplementary guidance on a spatial framework in 2012 and has consulted upon draft statutory guidance. The present adopted interim policy (map 3) shows the proposed mast as being in an area of search for wind farm development. The new draft guidance is only a consultation draft, and therefore at a stage in the formulation process where it carries limited weight. While the area of the proposed mast appears to be shown as an "area of significant protection", the consultation draft would not rule out wind farm development at the appeal site (indeed, it indicates there is some capacity for extension of existing windfarms). Furthermore, in terms of Scottish Planning Policy's policy for a development plan's onshore wind spatial framework (set out in table 1), the site of the proposed mast falls in Group 3: Areas with potential for wind farm development. Therefore, I find that the appeal site is within a broad area in which planning policy indicates there is capacity for wind farm development, subject to detailed planning considerations.

22. The Council has also submitted a copy of its Renewable Energy Strategy of May 2006. This also includes spatial guidance. However I find that that spatial guidance was superseded by the adoption of the interim spatial framework in 2012 (if not before). The Strategy also provides detailed discussion of a number of planning considerations. I note that it requires developers to demonstrate that the proposal is an efficient and productive use of the available resource. I have seen nothing in the strategy that would justify refusal of the present application.

## Conclusion

23. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan. There are no material considerations that would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

24. The appellants made a claim for the expenses of the appeal. I will respond to the claim in a separate letter.

*Robert Seaton*

Reporter

## Conditions

1. Prior to becoming operational, the mast shall be fitted with a minimum intensity 25 candela omni-directional flashing red light or equivalent infra-red light fitted at the highest practicable point of the structure.

**Reason :** In the interests of air safety.

2. No development shall commence until notification has been made to UK DVOF & Powerlines at the Defence Geographic Centre with the following information:

- Precise location of development
- Date of commencement of construction

- Date of completion of construction
- The height above ground level of the tallest structure
- The maximum extension height of any construction equipment
- Details of aviation warning lights fitted to the structure

This information can be sent by email to [icgdgc-aero@mod.uk](mailto:icgdgc-aero@mod.uk) or posted to DUKDVOF & Powerlines, Air Information Centre, DGIA, Elmwood Avenue, Feltham, Middlesex, TW13 7AH. Confirmation shall be provided to the Council that such notice has been given.

**Reason :** In the interests of air safety.

3. Planning permission is hereby granted for a temporary period only and shall cease to have effect 24 months from the date that the erection of the mast is completed, such date to be notified in writing to the Planning Authority within one week of completion. Within one month of the end of this 24 month period, the application site shall be cleared of all development approved under the terms of this permission (including any subsequent ancillary works, infrastructure and fixtures) and the ground reinstated to a condition comparable with that of the adjoining land, to the satisfaction of the Planning Authority.

**Reason :** In order to ensure that the equipment is removed and the ground reinstated in a timely manner.

4. Bird flight diverters shall be attached to the structure as per the approved drawings prior to the structure becoming operational. The diverters shall be inspected at least once a year to determine if any diverters are damaged or missing. Should any diverter be found to be damaged or missing that diverter shall be replaced by the developer within 28 days of the inspection. If this period falls within the main bird breeding season of April to July inclusive the diverters shall be replaced within 28 days of the conclusion of this period.

**Reason :** In order to minimise the risk of birds colliding with the guyed supports of the anemometer mast and to minimise any potential adverse impact on birds and wildlife from damaged or missing diverters.

5. Unless the development hereby permitted has been commenced, this planning permission will lapse after a period of three years from the date of this permission.

**Reason:** No time limit is applied by section 58 of the Town and Country Planning (Scotland) Act 1997 for commencement of permission granted for a temporary period. Therefore, specific provision is required by condition so that the planning permission hereby granted expires after three years if not implemented. Such provision is necessary to ensure proper planning control.

### Advisory notes

1. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).



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Decision by Robert Seaton, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2138
- Site address: Land at Carn Ghriogair, Aberarder Estate, Aberarder, Inverness
- Claim for expenses by RES Limited, the appellant against the Highland Council

Date of decision: 20 January 2016

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## Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

## Reasoning

1. The claim was made at the appropriate stage of the proceedings.
2. The appellants claim that the Council acted unreasonably in determining the application because it accepted

*“an incorrect description of the landscape character of the appeal site, and thereby [reached] an inaccurate assessment of the impact of the appeal proposal against development plan policies 28 and 61”.*

3. As regards their claim that the committee accepted an inaccurate description of the appeal site, the appellants cite the reference by one committee member to the site being wild land (although it is not designated as such by Scottish Natural Heritage). They claim this led members to *“an incorrect assertion of the landscape character of the area, and thereby the appropriateness of the appeal proposal within [the] landscape”*. The difficulty with this claim is that there is nothing expressed in the reasons for refusal that directly indicates the committee regarded the site as wild land (i.e. land designated as such by Scottish Natural Heritage). Furthermore, the evidence from the record of proceedings in the minute and video does not support a claim that the committee as a whole fell into this error. Indeed I do not find the record of proceedings to support a claim even that the member who referred to the site as “wild land” was doing anything more than giving a layperson’s shortcut description of an area that is remote and uninhabited (as opposed to suggesting that the site was in fact in land designated as wild land by Scottish Natural Heritage).



4. I do not understand the appellants' criticisms of either the committee's failure to carry out a site visit or its failure to ensure the Landscape Character Assessment was in the papers before it to be a separate head of the expenses claim. Even if it is, I do not find that these two facts alone are sufficient evidence to establish unreasonable behaviour on the part of the committee.

5. For these reasons, I reject the claim for expenses.

*Robert Seaton*

Reporter