

T: 0300 244 1240
E: robert.logan@scotland.gsi.gov.uk

Mr K McCorquodale
Planning and Development Service
The Highland Council
Glenurquhart Road
Inverness IV3 5NX

11 June 2013

Dear Mr McCorquodale

**ELECTRICITY ACT 1989
THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND)
REGULATIONS 2000:
SECTION 36 APPLICATION FOR THE DUNBEATH WIND POWERED ELECTRICITY
GENERATING STATION, DUNBEATH ESTATE, CAITHNESS, IN THE PLANNING AREA
OF THE HIGHLAND COUNCIL.**

I refer to the application dated 1 March 2005 made to the Scottish Ministers by West Coast Energy Ltd under Section 36 of the Electricity Act 1989 for consent to construct and operate the Dunbeath wind powered electricity generating station. Scottish Ministers announced today that they have refused consent for this development.

I enclose a copy of the decision letter issued to the developer which outlines the issues Scottish Ministers considered in arriving at this determination.

I would be grateful if you could place this decision on the planning register. A copy of the decision letter and the consent will also be placed on the Scottish Government website at the following link:

<http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Applications-Database>

Yours sincerely

ROBERT LOGAN

ANNEX D

Energy and Climate Change Directorate
Energy Division

T: 0300 244 1238 F: 0300 244 1140
E: Simon.Coote@scotland.gsi.gov.uk



Mr Simon Green
West Coast Energy Ltd
Mynydd Awel
Mold Business Park
Mold
CH7 1XN



7 June 2013

Dear Mr Green,

REFUSAL OF CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH MINISTERS FOR THE CONSTRUCTION AND OPERATION OF THE DUNBEATH WIND POWERED ELECTRICITY GENERATING STATION, DUNBEATH ESTATE, CAITHNESS, IN THE PLANNING AREA OF THE HIGHLAND COUNCIL.

Application

I refer to the Application made by West Coast Energy Ltd, ("the Company") dated 1 March 2005, as read with the Supplementary Environmental Information to the application received on 18 October 2006, 24 October 2007, 23 July 2009 and 17 March 2010 (from here on together referred to as "the Application"), for:

- (i) consent under section 36 of the Electricity Act 1989 ("the Electricity Act") for construction and operation of Dunbeath Wind Farm electricity generating station west of Dunbeath in the Highlands with a generation capacity of up to 69MW ("the development").
- (ii) a direction under section 57 (2) of the Town and Country Planning (Scotland) Act 1997 that planning permission be deemed to be granted in respect of that generating station and any ancillary developments (as described in Annex 1).

Consultation

In accordance with statutory requirements, advertisements of the Application had to be placed in the local and national press. The Scottish Ministers note that these requirements have been met. Under Schedule 8 of the Electricity Act, the relevant

Planning Authority requires to be notified in respect of a section 36 consent application. Notifications were sent to the Highland Council, as the relevant planning authority. In order to comply with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 they consulted with Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA). A wide range of relevant organisations were also consulted. A total of 1,573 public representations - 784 objections and 789 in support – were received.

Having considered all objections, together with all other material considerations, the Scottish Ministers determined under paragraph 3(2) of Schedule 8 to the Electricity Act 1989 that a public inquiry should be held.

Public Inquiry

The PLI was held in Dunbeath with Inquiry sessions occurring between 18 and 21 July 2011 and concluding with a hearing session on 27 July 2011 in Dunbeath Community Centre. The Reporter conducted an accompanied inspection of the site and its surroundings on 22 July 2011, with unaccompanied inspections of the area taking place before during and after the inquiry.

The Reporter, Mr S M Ferrie considered the application under section 36 of the Electricity Act 1989, and whether a direction should be made under section 57(2) of the Town and Country Planning (Scotland) Act 1997. The report was received by the Scottish Government on 12 October 2012.

The Reporter outlines and summarises the cases for and against the development made by the Company, Highland Council, SNH, RSPB, Historic Scotland, Dunbeath Preservation Trust, Welbeck Estates and various parties in Chapters 3 to 10 of the report. The report contains 6 appendices which include details of the pre-examination meetings, further procedures of the Inquiry, a list of persons appearing at inquiry and a list of relevant documents. A list of legal agreements and conditions are also attached as an Appendix.

The Reporter's reasoned conclusions and recommendations are outlined in full at Chapter 11 of the Report and conclude that both section 36 consent and deemed planning permission should be refused. The Scottish Ministers have considered fully and carefully the Reporter's findings, reasoning, conclusions and recommendations.

Claims for Expenses

Appendix 6 of the final Report provides the detailed background to the claims for expenses and outlines in full the Reporter's findings and recommendations. The Scottish Ministers have carefully considered the evidence presented in the Report in conjunction with the Reporter's detailed conclusions.

Environmental matters

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 the Company submitted an environmental statement in relation to the application. The environmental information, as defined in those

Regulations, has been taken into consideration and the Scottish Ministers are satisfied that the applicable procedures regarding publicity and consultation laid down in the Regulations have been followed.

Schedule 9 of the Electricity Act places a duty on the Company to have regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. It requires the Company to do what it reasonably can to mitigate the effects that the Development would have on these features. As required by Schedule 9, Scottish Ministers have had regard to these features and the extent to which the Company has complied with this duty. The Scottish Ministers are satisfied that the Company has had due regard to these features and have complied with the duty in Schedule 9.

The Scottish Ministers Considerations

Scottish Ministers aim to achieve a thriving renewables industry in Scotland, the focus being to enhance Scotland's manufacturing capacity, to develop new indigenous industries, particularly in rural areas, and to provide significant export opportunities. Scottish Ministers have considered material details of how this proposal can contribute to local or national economic development priorities as stated in Scottish Planning Policy (SPP). Ministers are satisfied that this development would make a valuable contribution towards renewable energy targets.

The Scottish Ministers have considered fully and carefully the Application and Addenda, in particular the final proposed scheme of 17 turbines and detailed SEI report, in addition to the appropriate assessments, all relevant consultation responses from consultees and third party representations received, and the report to the PLI and its relevant interested parties' submissions.

Ecology and Habitats

SNH's initial objections due to the likely adverse impacts on Caithness and Sutherland's SPA and SAC and the East Caithness Cliffs SPA were all withdrawn after the 3rd (third) Addendum when the information considered led them to conclude that whilst there would still be likely adverse impacts these could be mitigated by way of specific conditions. Appropriate Assessments were requested and Scottish Ministers completed these, in conjunction with advice from SNH, concluding that providing the proposed mitigation measures and conditions were adopted and implemented in accordance with the obligations outlined then the integrity of the designated sites would not be adversely affected and the objectives maintained. This view was also accepted by the Reporter in his conclusions.

Impact on watercourses/peat slide risks

Welbeck Estates were critical of the nature and adequacy of the site investigations and the subsequent environmental information on peat and hydrology management. A Consolidated Report on Peat, Hydrology and Habitat Management, dated October 2011, was considered by the Reporter and found to be sufficient to properly consider

this issue, in addition with exchanges of written submissions, and that this enabled an appropriate understanding of the proposal and the differences of opinion without the need for oral examination. SNH confirm that the site investigations carried out were adequate to indicate any likely environmental impacts. This was a view which was also supported by SEPA, who confirmed that many developments, such as this one, can and have been successfully constructed on similar sites, and that there is nothing unusual or unique to indicate that this should not be the case here. Historic Scotland also confirmed that they were satisfied regarding on this issue. Forestry Commission Engineering, consulted by Energy Consents and Deployment Unit, reviewed the peatslide information, including the most recent consolidated Report and confirmed that all outstanding issues were satisfactorily addressed. The Reporter concluded that there was no evidence that consent would be withheld on the basis of this issue. SEPA have provided relevant mitigation conditions which would ensure any impacts on watercourse would be appropriately managed and a Construction and Environmental Management Plan condition outlined by the Reporter at Appendix 6 of the report would also ensure appropriate peat management. Scottish Ministers are therefore satisfied that the expert consultees have properly considered these issues and that the outlined conditions would ensure proper prevention or mitigation of impacts.

Landscape and Visual Impacts

Scottish Ministers have had regard to the clearly defined objections of SNH on the basis of landscape and visual impacts, and related sequential cumulative impacts with other nearby wind farms. This is a view maintained by SNH throughout the consultation process and during the PLI submissions. The view given by SNH outlines that there would be significant impacts on key landscape characteristics and that the proposed removal of 5 turbines from the original application proposal to satisfy the planning authority would in fact reduce the wind farms overall cohesion as a single development. The Reporter's assessment considered the effects on Sweeping Moorland Landscape Character Type (LCT), Berriedale Coast and Flow Country Special Landscape Area (SLA), the impact on nearby Wild Land and the visual impacts on a residential and recreational basis. The overall conclusions confirm that there would be significant adverse impacts to the key landscape characteristics, there would be no safeguarding of the nearby Wild Land resource in the area if this development was approved, cumulative impacts from other nearby wind farms would be significant and there would be significant adverse visual impacts on recreational receptors and on road users. The Reporter also concludes that there would be adverse impacts on nearby residential receptors however these would not on the whole be overbearing. The Scottish Ministers accept and agree with the Reporter's detailed conclusions in this regard.

Archaeological Impacts

Historic Scotland (HS) outlined that there were two affected Scheduled monuments but that in their view only one would raise issues of national importance. However, they were content that micro siting of a group of turbines within close proximity to that scheduled monument would be sufficient to mitigate any impacts to a reasonable degree. As a result HS withdrew their initial objection and were content that any impacts could be adequately mitigated by way of condition. At the PLI

Dunbeath Preservation Trust raised issues relating to other historic features but Ministers consider that whilst there would be impacts these would not be so significant to warrant refusal of the proposal on this basis alone. The Reporter did not agree with HS's view that only one scheduled monument would raise issues of national importance. He concluded that the turbine layout would adversely affect the setting of both monuments but found that this would not be to an unacceptable degree. However, the Scottish Ministers consider that the mitigation condition suggested by HS would reduce impacts in this regard to ensure that there would not be unacceptable adverse impacts on the scheduled monuments.

Economic Impacts

The development would be likely to result in positive economic impacts in the form of additional jobs, particularly in the construction phase and to a lesser degree during the operational phase. There would be clear financial benefits to the developer, to the landowner and to tenants of the land. Scottish Ministers note that the landowner has invested heavily in the Dunbeath Estate and in a related local engineering business and there are reasonable prospects that financial benefits accruing to the landowner from the proposed development would be used at least in part to support and further develop the operation of the Estate and the engineering business. Ministers are of the opinion that both of these contribute significantly to local employment and the local economy and that the development would reinforce these positive economic benefits.

The significant considerations raised by Welbeck Estates in their representations and at the PLI refer to the potential loss of access on the public Braemore road to the estate land and properties at the end of this road during the construction phase of the development. The Welbeck Estates are a contributor to the local economy supporting around 20 local jobs and at least two outside contracts at any time. This would lead to inconvenience in terms of access for residential services, farming and sporting activities. In their view there is no acceptable mitigation other than omission of the use of road for access to the development site. However the Reporter has outlined a Construction Traffic Management Plan condition which would see this issue being appropriately mitigated and the Scottish Ministers agree with that approach and are satisfied this would sufficiently mitigate these concerns.

Compliance with Local and National Policy

The proposed development was assessed against the principal policy of the Highland-wide LDP - Policy 67 Renewable Energy Developments. The policy is supportive of renewable energy development proposals, provided the Council can be satisfied that the location site and design would not be significantly detrimental overall, individually or cumulatively, having regards to 11 criteria. In assessing the proposal against Policy 67, there is no disagreement between the parties that the proposal would be well located to take advantage of the wind resource. It is clear that the proposal would make a significant contribution towards meeting the 2020 renewable energy generation targets and would have modest beneficial national and local economic impacts. Scottish Ministers view on this aspect is that the development is consistent with renewable energy targets and would contribute to local and national economic priorities, as stated within SPP.

However SNH's assertion, and that of Welbeck Estates, is that this development fails to fully comply with Policy 67 of the LDP and fails to satisfy criteria relating to likely effects to the landscape and visual and the natural, built and cultural heritage. Highland Council, however, took a different view and concluded that the development would not be significantly detrimental. The Reporter's conclusion agreed with SNH and Welbeck Estates that the development would have significant adverse impacts such that these would outweigh any benefits and as a result did not comply with Policy 67. Having regard to the representations, consultation responses and the evidence presented at the PLI the Scottish Ministers accept the conclusions of the Reporter that this development would not comply with the Highland-wide LDP Policy and that given the likely significant adverse impacts to the landscape and surrounding area is not consistent with SPP or NPF2.

Public Representations

Scottish Ministers have also considered the objections raised and supporting arguments within the 1,573 public representations.

The issues the objections raised covered a wide range of environmental, archaeological, wildlife and habitat impacts as well as concerns over the proximity of the turbines to the local community and impacts to a neighbouring estate. The main objection issues were concerned with the unacceptable landscape and visual impact of the proposal in conjunction with the unacceptable cumulative impact of other wind farm developments in the area and with the fact that the proposal was contrary to development plan policies and the HRES.

The grounds for support related to the need to address climate change concerns; the need to secure a clean energy supply; the assertion that the proposal would assist in meeting government renewable energy targets; the positive economic impact; the resultant environmental benefits; the reduction in carbon emissions and the assertion that wind farm projects would not deter visitors to the area.

Scottish Ministers are satisfied that many of the environmental issues can be appropriately addressed by way of mitigation, but are not satisfied the environmental benefits outweigh the detrimental impact on landscape and visual amenity.

PLI Expenses

The Scottish Ministers have considered the Reporter's detailed considerations and recommendations regarding all parties claims for expenses. The details are outlined in full at Appendix 6 of the Report. Ministers are in agreement with the reporter's recommendations and conclude that **no award of expenses** should be made.

The Scottish Ministers' Determination

In reaching their decision, the Scottish Ministers have taken into account the environmental information submitted with the Application, including the Environmental Statement, the representations made by statutory consultative bodies and further representations received, including all objections, in accordance with the

Electricity Works (Environmental Impact Assessment)(Scotland) Regulations 2000, and in the context of the expert advice provided by statutory consultees and Government energy and climate change policy.

Scottish Ministers have also considered carefully the Reporter's findings, reasoning, conclusions and recommendations thereon. Scottish Ministers, other than to the extent that they are inconsistent with the views expressed above, adopt the Reporter's findings, reasoning and conclusions, and agree with the Reporter. Accordingly they determine that consent under section 36 of the Electricity Act 1989 should be refused and that no deemed planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997 should be granted.

For the reasons given by the Reporter the Scottish Ministers find that no awards of expenses should be made.

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended), the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality in which the land to which the Application relates is situated.

Copies of this letter have been sent to the Planning Authority. This letter has also been published on the Scottish Government Energy Consents and Deployment Unit website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine Applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts –

<http://www.scotcourts.gov.uk/session/rules/print/rules/CHAP58.pdf>.. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely

A black rectangular redaction box covering the signature of Simon Coote.

SIMON COOTE

Head of Energy Consents and Deployment Unit
A member of the staff of the Scottish Ministers