

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Richard Dent, a reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2087
Site address: land at Davidston Farm, near Cromarty IV11 8XX
- Appeal by Bright Spark Energy Ltd, against the decision by The Highland Council dated 21 January 2013
- Application for planning permission (reference 12/01650FUL) dated 27 April 2012
- The development proposed: erection of three 800kw wind turbines on towers 49.7 metres to the hub and blades with a diameter of 48 metres
- Date of site visit by reporter: 21 May 2013

Date of appeal decision: 14 June 2013

Decision

I dismiss the appeal and refuse to grant planning permission.

Reasoning

1. The determining issue in this case is whether the proposed turbines would result in any unacceptable impacts. This assessment must be undertaken in the context of the development plan.
2. I have considered a range of impacts and find that all but one can be regarded as acceptable.
3. A number of third parties express concern about the effects on natural heritage, including effects on Special Protection Areas (SPA), particular bird species and other protected species. Scottish Natural Heritage (SNH) confirms that the proposal would have a significant effect on the qualifying interests of the nearby Cromarty Firth SPA although the integrity of the site would not be adversely affected. Predicted collisions involving greylag geese would be low. Overall, SNH considers that there would be no adverse impact on the conservation status of any bird in the wider countryside identified as endangered under Annex 1 of the EU Bird Directive. Similarly, there would be no disturbance or displacement of any Annex 1 listed bird.

4. SNH believes the environmental statement has shortcomings in respect of otters and bats but suggests additional mitigation measures to overcome any problems. Mitigation measures are also suggested in the event that traces of wild cats are discovered.
5. The opinion of SNH carries significant weight and, noting the site itself is not subject to any formal designations, I accept, subject to mitigation measures, the proposal would not have a significantly adverse impact in terms of natural heritage.
6. The environmental statement assesses the historic environment and considers the impact of the proposal on the setting of heritage assets would be negligible. Several third parties express concern about detrimental impact but Historic Scotland agrees with the findings of the environmental statement. In view of the weight to be attached to the opinion of Historic Scotland, I accept that any impact on cultural heritage features would not be significant.
7. Impacts on road safety at the time of construction and during the operational life of the turbines are further aspects of concern by third parties. Both the council's Technical Services department and Transport Scotland have been consulted and neither objects to the proposal. Standards for the access have been stipulated and a full programme of works would be required, including a method statement for the delivery of components. Although particular concern has been expressed about the school bus collection point for children at Davidston, I do not believe the proposal would have any significant effect on current levels of safety. No compelling evidence has been provided to suggest that the turbines would provide a significant distraction to drivers. I therefore conclude the turbines could be constructed and operated without significant impact on road safety.
8. Third parties fear that there would be a significant adverse impact on tourism including detrimental effects on cruise ships visiting the Cromarty Firth, the historic settlement of Cromarty and the wider range of recreational activities undertaken in the Black Isle. This is not a matter assessed in the environmental statement and the council's report of handling states that, despite various studies, it is not possible to quantify the impact on tourism. I agree that the lack of tangible evidence causes difficulty in assessing any effect on tourism. However, I do not believe it has been demonstrated that tourism would suffer adverse economic impact to justify the refusal of the proposal.
9. Shadow flicker, noise impacts and vibration are concerns of local residents. In respect of shadow flicker, Scottish Government guidance on Onshore Wind Turbines explains that this effect may occur when the sun passes behind a rotor and casts a shadow over neighbouring properties. When the blades rotate, the shadow flicks on and off. This effect occurs only within buildings where the flicker appears through a narrow window opening. Where separation is provided between wind turbines and nearby dwellings (as a general rule, 10 rotor diameters), the guidance states that shadow flicker should not be a problem. The environmental statement explains that the nearest residential property is Braehead Cottage, which is connected to the proposal by means of land ownership, but all other properties are at a distance of more than 15 rotor diameters. The report on handling does not question the terms of the environmental statement and I accept that the risk of shadow flicker would be minimal.

10. In terms of noise, the environmental statement explains that a study has been undertaken to demonstrate compliance with the council's noise impact requirements other than at Braehead Cottage. On this basis, the council's environmental health department has offered no objection to the proposal. Government guidance states report ETSU-R-97, The Assessment and Rating of Noise from Wind Farms, should be followed by applicants and consultees, and used by planning authorities to assess and rate noise from wind energy developments. The report of handling points out that noise levels at Braehead Cottage would meet the criteria set out in ETSU-R-47 and I conclude that noise impact would therefore be within acceptable levels.
11. I have no evidence to suggest that vibration would bring about an unacceptable impact.
12. Turning to landscape character and visual impacts, I note the extent of third party objections.
13. The environmental statement considers that the landscape has the capacity to easily absorb the proposed development. It is claimed the impact of the turbines would have a low magnitude of effect within a landscape that is assessed as having low sensitivity. Overall significance of the landscape impact, says the environmental statement, would be negligible. The report of handling accepts that, at local level, the introduction of the turbines would bring change to the character of the area but, beyond the immediate area, the report states, the turbines would not dominate the landscape character. SNH explains that the appeal site lies within the "Open Farmed Slopes" landscape character type having an open and diverse character. No formal landscape designations apply. Although SNH recognises the turbines would have an impact on the special qualities of the Cromarty Soutors, Rosemarkie and Fort George Special Landscape Area, there would be no significant adverse impact on the integrity of the designation.
14. I accept that the effect on landscape character would be essentially local and consequently, in a wider context, the turbines would have a relatively minor impact. I conclude that this level of impact would not justify the withholding of planning permission.
15. Visual impact is assessed in the environmental statement through a process involving a study of theoretical visibility, a selection of viewpoints, site visits, and generation and assessment of photomontage and wireframe images. Overall, the environmental statement maintains the visual impact of the proposal would be "low/negligible". The report of handling believes that when approaching the site from along the A832 from the south-west, woodland would reduce the visual impact of the turbines. Rising land and woodland would obscure the turbines when approaching from the east along the A832. The appearance of the turbines, states the report, would be very dramatic when coming into the field of view. The report of handling acknowledges that the full scale of the turbines would be most visible for some distance when travelling in either direction along the Eathie Road to the south of the site although other features in the landscape would offset the impact from this road.
16. The environmental statement draws attention to the disposition of the land between Davidston and the turbines. The lower 20 metres of the towers would be obscured and this would appear to shorten the structures. Although Eathie Mains is only 875 metres from the

nearest proposed turbine, the environmental statement argues that the orientation of the house is such that the main internal views are in other directions. Landform and other features would also detract from visual impact.

17. I have considered the impact on residential property, particularly the houses in Canon Street, Davidston. The houses on the north side of Canon Street are single storey and one and a half storey properties. In my opinion, the disposition of the land, as described above, would ensure that the impact of the turbines would not be unacceptable in terms of visual amenity. Houses to the south of Canon Street, including two relatively new one and a half storey properties, would be marginally closer to the turbines. They are at a higher elevation than houses on the north side of the road and have garden areas to the rear. Nevertheless, I concur with the conclusions set out in the report of handling and do not believe the turbines would be so dominant as to warrant refusal because of the impact on these properties.

18. Insofar as Eathie Mains farmhouse is concerned, despite the proximity to the nearest proposed turbine, I accept the analysis in the environmental statement indicating that the orientation of the property would reduce the visual impact. As explained in the report of handling, other features in the landscape, especially the dominant Millbuie Ridge, would also offset the impact and I agree with the report that the refusal of planning permission would not be justified because of the impact on Eathie Mains.

19. Should the turbines be constructed, I consider there are no other residential properties which would suffer significantly detrimental visual impact and loss of amenity. More distant views, for instance, from the north bank of the Cromarty Firth and from the south bank of the Moray Firth, would experience insignificant visual impacts.

20. It is my opinion that the visual impact of the proposed turbines from the A832 is the crucial factor in the overall assessment of the development. I accept road users, especially car-borne, are not included in the most sensitive category of receptors. The transient nature of views generally reduces the magnitude of impact. In this case, visibility from passing cars would be limited to a relatively brief period of time. On the other hand, I have noted the terms of Scottish Planning Policy (SPP) that the location of turbines should be considered carefully to ensure that landscape and visual impact is minimised. I have also noted that SNH considers the proposal is located in an area of high visibility. SNH additionally states that the introduction of such a scale of development in a landscape of coastal farmland is relatively uncommon in this part of Scotland. I believe it is particularly significant that the report of handling considers the appearance of the turbines would be very dramatic.

21. I consider that the three turbines, within the low-lying farmland setting, between approximately 350 and 550 metres from the A832, would lead to a visual impact of an unacceptably adverse level. I therefore believe that the proposal does not comply with SPP guidance to minimise visual impact. In reaching this conclusion I have taken account of other features in the general area including the Eathie transmitter, the construction yard at Nigg, and other oil related infrastructure. None of these features impacts visually on the coastal farmland or the A832 to the extent of the proposed turbines.

22. I have also considered the cumulative impacts. As explained, in landscape character terms, the impact would be localised and I do not think there would be a cumulative impact. Visually, although other wind farms can be seen from the vicinity of the appeal site, these are distant and have negligible impacts in their own right. I conclude the proposed turbines would not be significant in cumulative visual impact terms.

23. My conclusion in respect of visual impact leads me to further conclude that the proposal would be contrary to the Highland Wide Local Development Plan (HwLDP), 2012, Policy 67, Renewable Energy Developments. Policy 67 supports renewable energy development proposals where they are not significantly detrimental overall having regard in particular to any significant effects on, amongst other criteria, visual impact.

24. Insofar as the proposal would have an adverse visual impact, I also believe that the turbines would be scenically detrimental, at least locally. In turn, HwLDP Policy 28, Sustainable Development, which requires an assessment of the impact on scenery, would not support the development.

25. HwLDP Policy 36, Development in the Wider Countryside, requires renewable energy proposals to be assessed against the Highland Renewable Energy Strategy. However, the report of handling explains that this non-statutory document, approved in 2006, has, in fact, been superseded by the local development plan although it remains relevant in strategy terms. The report of handling also draws attention to the council's interim supplementary guidance, Onshore Wind Energy, March 2012. This document is said to provide guidance for large wind farm proposals although the report believes the proposal should be assessed against the spatial framework. I note the document refers to the SPP requirement to minimise visual impact and, indeed, that this is part of the principles underpinning the council's approach to planning for onshore wind energy. On this basis, I consider that the interim supplementary guidance does not support the proposal.

26. Overall, in terms of the development plan, I conclude that the proposal does not fulfil the requirements of several policies and this points to the refusal of planning permission. In the light of this conclusion it is necessary to consider whether material considerations warrant the granting of planning permission despite development plan provisions.

27. National Planning Framework 2 is clear in its support for the generation of electricity from renewable sources stating the Scottish Government's commitment to working towards deriving 20% of total energy use from renewables by 2020. The 2020 Renewable Routemap for Scotland – Update, October 2012, states the target is now to meet the equivalent of 100% of Scotland's electricity demand from renewable sources by 2020. The vast majority of the new target will still be met by hydro and by onshore wind power. The document recognises that the development of onshore wind "in the right places" has provided the rationale and underpinned the approval for and investment in grid upgrades. SPP requires planning authorities to support the development of wind farms in locations where the technology can operate efficiently and environmental and cumulative impacts can be overcome. As previously discussed, SPP points to the necessity of minimising visual impact.

28. The wider support of the Scottish Government for onshore wind generation of electricity is clear and undoubted but, importantly, qualifications apply to guidance on location. In this instance, I note particularly, the reference to visual impact and therefore I am not persuaded that planning permission should be granted. In terms of the Routemap, I do not consider that the proposal is located “in the right place”. I have previously made reference to other material considerations including the council’s Highland Renewable Energy Strategy and, more relevantly, the interim supplementary guidance, Onshore Wind Energy. I have also noted the third party support for the proposal. None of these considerations leads me to alter my conclusions.

29. The appellant has indicated a belief that certain procedural defects during the consideration of the application by the committee were unfair and prejudicial to the outcome. The council has responded to these criticisms. The appellant has also expressed concern in respect of the terms of the reasons for refusal. My decision does not rely on the committee’s decision-making process. Rather, I have had regard to the reasons for refusal as set out in the decision notice. In my opinion, the reasons are intelligible and, although I have not agreed with all aspects of the two reasons, my endorsement of the concern about visual impact has led to the appeal being dismissed.

Richard Dent
Reporter