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Our ref: P/PPA/270/2043
Your ref: MAS/KER/50566.4

14 June 2013

Dear Dr Sales

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

PLANNING APPEAL: 17 WIND TURBINES, ASSOCIATED ACCESS TRACKS AND INFRASTRUCTURE, 2 TEMPORARY CONSTRUCTION COMPOUNDS AND 2 TEMPORARY BORROW WORKINGS; APPROXIMATELY 8km NORTH EAST OF TOMATIN

1. This letter contains the Scottish Ministers' decision on the appeal lodged on behalf of your client, Nanclach Ltd, against the decision by The Highland Council to refuse a planning application for the above.

2. Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1987, as amended, the appeal came into a class to be determined by a person appointed by the Scottish Ministers, rather than by the Scottish Ministers themselves. However, in exercise of the powers under paragraph 3(1) of Schedule 4 to the Town and Country Planning (Scotland) Act 1997, the Scottish Ministers directed, on 28 February 2011, that they would determine the appeal themselves. This was for Scottish Ministers to consider this proposal jointly with the proposed wind farm at Glenkirk. The appeal has been considered by written submissions, site inspections and inquiry sessions by the appointed Reporter, Mr Dannie Onn BSc(Hons) Dip Arch RIBA IHBC. A copy of Mr Onn's report to Scottish Ministers is enclosed.

3. The parties who appeared at the inquiry sessions are listed in the Appendices attached to the report. Chapters 1 and 2 of the report provide relevant background, site description, legislative framework and policy context.

4. In Chapter 4 of the report, the Reporter provides summaries of cases for the parties, his findings of fact, and his conclusions and formal recommendations.

The Reporter's Consideration

5. The Reporter's overall findings and recommendations are contained in Chapter 5.

The Scottish Ministers' Decision

6. The Scottish Ministers have carefully considered all the evidence presented by the Reporter and accept the Reporter's findings of fact, agree with his reasoning and recommendation and adopt them for the purpose of their own decision.

7. Accordingly, the Scottish Ministers hereby uphold the appeal and grant planning permission for the construction of a wind farm comprising 17 wind turbines with a maximum blade tip height above ground level of 110M, associated access tracks and infrastructure, 2 temporary construction compounds and 2 temporary borrow workings; approximately 8km North East Of Tomatin, subject to the conditions set out in the Annex to this letter.

8. The foregoing decision of the Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date hereof. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

9. A copy of this letter and the Reporter's report has been sent to The Highland Council and to the other parties that appeared at the inquiry sessions.

10. If any parties wish to collect their productions (listed in the Appendices of the report) they should contact this office to make the necessary arrangements after the 6 week appeal period mentioned above has elapsed. If not collected, they will be disposed of after 3 months.

Yours sincerely

LYNDSEY MURRAY

ANNEX

PLANNING CONDITIONS ATTACHED TO THE GRANT OF PLANNING PERMISSION FOR THE PROPOSED CONSTRUCTION OF WIND FARM COMPRISING 17 WIND TURBINES WITH A MAXIMUM BLADE TIP HEIGHT ABOVE GROUND LEVEL OF 110M, ASSOCIATED ACCESS TRACKS AND INFRASTRUCTURE, 2 TEMPORARY CONSTRUCTION COMPOUNDS AND 2 TEMPORARY BORROW WORKINGS; APPROXIMATELY 8 km NORTH EAST OF TOMATIN (KNOWN AS TOM NAN CLACH WIND FARM)

General

1. Unless otherwise agreed with the Planning Authority, the development shall be constructed and operated in accordance with the provisions of the application, the submitted plans, and the Environmental Statement. This permission shall be for a maximum of 17 turbines, two borrow pits and 1 anemometer mast, to be sited as shown on the site layout drawing (WIPL93260 SITE LAYOUT\01 RevE) and contained within the Third Addendum to the Environmental Statement for the Tom nan Clach Wind Farm, April 2010. The prior written approval of the Planning Authority shall be required for the siting of any wind turbine or access track more than 30 metres from the approved location. Any such submission shall include a revised site layout for the location of all turbines and access roads.

[Reason: In order to clarify the terms of permission and to ensure restoration of the site.]

2. Permission is granted for a limited period of twenty-six years from the date that electricity is first sold to the grid network. Within six months of the date of expiry of the permission, all wind turbines, buildings and ancillary equipment shall be dismantled and removed from the site and the ground fully reinstated in accordance with details first submitted to and approved in writing by the Planning Authority.

[Reason: to avoid unnecessary development in the Highland landscape.]

Prior to commencement

3. No development shall start on site until evidence of a bond or other financial provision to cover all decommissioning and site restoration costs is in place has been submitted to and agreed by the Planning Authority. Such agreed bond, or other such provision, shall be maintained throughout the duration of the development but will be subject to five yearly review in consultation with the Planning Authority.

[Reason: To safeguard the proper restoration of the site.]

4. No development shall start on site until a Construction Environmental Management Document is submitted to and agreed in writing by the Planning Authority. The Document shall include:

- An updated Schedule of Mitigation (SM) including all mitigation proposed in support of the planning application, other relevant agreed mitigation (e.g. as required by agencies) and set out in the relevant planning conditions
- Processes to control / action changes from the agreed Schedule of Mitigation.

- The following specific Construction and Environmental Management Plans (CEMP):
 - (i) Peat management plan
 - (ii) Habitat management plan
 - (iii) Pollution prevention plan
 - (iv) Drainage management plan - to address both construction and post construction
 - (v) Chemical pollution plan
 - (vi) Site waste management plan
 - (vii) Measures to protect private water supplies; including an emergency response plan
 - (viii) Pre-construction survey for otter, wild cat and water vole and subsequent management plan
 - (ix) Measures to safeguard nesting plovers, including buffer zones as necessary
 - (x) Road Safety and Traffic Management Plan – including identification of necessary road improvements and their maintenance
 - (xi) A site specific scheme of all waterbody engineering and buffers to water bodies
- Details of the appointment of an appropriately qualified Ecological Clerk of Works with roles and responsibilities.
- Methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, Planning Authority and other relevant parties.
- Statement of responsibility to 'stop the job or activity' if a potential breach of mitigation or legislation occurs.

Unless otherwise agreed in writing by the Planning Authority the development shall proceed in accordance with the agreed Document.

[Reason: To protect the environment from the construction and operation of the development.]

5. No development shall start on site until arrangements for an archaeological watching brief to be carried out on site clearance and excavation works has been submitted to approved in writing by the Planning Authority. This shall be prepared in accordance with a specification obtained in advance from the Council Archaeology Unit. No site clearance or excavation works shall take place until that approval has been given and all such works shall thereafter be implemented in accordance with the approved arrangements.

[Reason: In order to protect any features of archaeological importance.]

6. No development shall start on site until the applicant has provided the Ministry of Defence (Defence Estates - Safeguarding) with the following information; a copy of which shall be submitted to the Planning Authority –

- proposed date of commencement of the construction;
- estimated date of completion of the construction;
- height above ground level of the tallest structure;

- maximum extension height of any construction equipment;
- position of the turbines in latitude and longitude plus eastings and northings;

[Reason: In order to ensure the safety of low flying military aircraft.]

7. No development shall start on site until the final specification of wind turbine has been submitted to and agreed in writing by the Planning Authority. The details shall including the make, model, design, power rating and sound power levels. For the avoidance of doubt, wind turbines on this site shall not exceed 110m to blade tip from ground level and 75m to hub height from ground level.

[Reason: In order to clarify the terms of permission and retain effective control over the development.]

8. No development shall start on site until the final specification of the means of access, fencing, design, materials, colours/external finishes and construction of all ancillary elements to the development, including the proposed control building, has been submitted to and agreed in writing by the Planning Authority. The development shall be implemented in accordance with the agreed details.

[Reason: In the interests of visual amenity.]

Construction

9. Access to the site by heavy goods vehicles shall be restricted to 07.00 to 19.00 on Mondays to Fridays and from 07.00 to 12.00 on Saturdays with no such access on Sundays. Unless agreed in writing by the Planning Authority in advance, any construction activity involving audible noise from cutting, hammering and welding shall be subject to the foregoing hours.

[Reason: In order to control noise in the interest of amenity.]

10. Prior to the commencement of delivery of abnormal loads along the public road network, all the necessary and approved improvements and modifications to such parts of the network in order to accommodate the transport of abnormal loads shall have been implemented to the written approval of the Planning Authority.

[Reason: In order to minimise the impact of construction of the development on the public road network and its users.]

11. MOD accredited aviation lighting shall be installed on the corner most turbines and sufficient turbines in the middle of the proposal to indicate the size and layout of the wind farm. The aviation lighting should be 25 candela omni-directional red lighting or infrared lighting (one or the other but not a combination of both types of lighting) with an optimised flash pattern of 60 flashes per minute of 200 ms to 500 ms duration at the highest practical point.

[Reason: In the interests of air safety.]

12. The wind turbines shall be finished in a non-reflective semi-matt pale grey colour, and that colour shall not be altered thereafter unless previously agreed in writing by the Planning Authority.

[Reason: In the interest of visual amenity.]

13. Unless otherwise agreed in writing by the Planning Authority no work shall be carried out on the borrow pit outwith the hours 07.00 to 19.00 Mondays to Fridays and 07.00 to 12.00 on Saturdays.

[Reason: In order to control noise in the interest of residential amenity.]

14. Noise associated with the borrow pit shall not exceed 48dB LAeq (1hour) at any noise sensitive premises.

[Reason: In order to control noise in the interest of residential amenity.]

15. No blasting shall be carried out outwith the hours 10.00 to 12.00 and 14.00 to 16.00 Mondays to Fridays and from 10.00 to 12.00 on Saturdays.

[Reason: In order to control noise in the interest of residential amenity.]

Other suspensive

16. Within three months of the issue of this planning permission, detailed proposals for ornithological monitoring, including arrangements for submitting the results of monitoring, shall be submitted to and approved in writing by the Planning Authority. As far as is practicable, monitoring will be carried out prior to, during, and at intervals after the date that the wind farm becomes operational, in accordance with the approved proposals.

[Reason: In order to safeguard the conservation interest of the site.]

17. Not later than 12 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted to and agreed in writing by the Planning Authority. This scheme shall include details of the removal of all above-ground elements of the development, the method of ground reinstatement, the timing of any works and a Construction Environmental Management Document (CEMD). The agreed scheme shall be implemented.

[Reason: To ensure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and the restoration of the site, in the interests of safety, amenity and environmental protection.]

18. Within twelve months of the date of electricity first being sold to the grid network, such date to be notified in writing to the Planning Authority within three months of this time, an indicative scheme for the ultimate reinstatement of the site, including the removal of all wind turbines and ground reinstatement, shall be submitted to and agreed in writing by the Planning Authority. Such scheme will be reviewed and amended as necessary taking into account scheme operation and monitoring at least twelve months prior to actual decommissioning and reinstatement works.

[Reason: In order to ensure restoration of the site.]

Operational

19. The site shall not be permanently illuminated by lighting without the prior written approval of the Planning Authority which, if the lighting is required by law, shall not unreasonably be withheld.

[Reason: In the interest of visual amenity.]

20. No symbols, signs, logos or other lettering shall be displayed on any part of the wind turbines nor any other buildings or structures without the prior written approval of the Planning Authority.

[Reason: In the interest of visual amenity.]

21. In the event that any wind turbine fails to produce electricity supplied to a local grid for a continuous period of six months not due to it being under repair or

replacement, then it shall be deemed to have ceased to be required and, unless otherwise agreed in writing with the Planning Authority, the wind turbine and its ancillary equipment shall be dismantled and removed from the site within the following six months and the ground fully reinstated in accordance with the indicative scheme agreed under condition 18.

[Reason: to remove unnecessary development from the Highland landscape.]

22. The Wind Farm Operator shall log wind speed and wind direction data continually and shall retain the data which has been obtained for a period of no less than the previous 12 months. The data shall include the average wind speed in metres per second for each 10 minute period. The measuring periods shall be set to commence on the hour or in 10 minute increments thereafter. The wind speed data shall be made available to the Planning Authority on request. The data shall be provided on a Microsoft Excel spreadsheet in electronic format. In the case where the wind speed is measured at a height other than 10 metres, the data shall be supplemented by adjusted values which allow for wind shear, normalised to 10 metre height. Details of the wind shear calculation shall be provided. At Wind Speeds not exceeding 12 metres/second, as measured or calculated at a height of 10 metres above ground level (at the location shown on Figure 2) the Wind Turbine Noise Level at any dwelling or other noise sensitive premises, shall not exceed:-

(a) during Night Hours, 38 dB LA90,10min, or the Night Hours LA90,10min Background Noise Level plus 5 dB(A), whichever is the greater;

(b) during Quiet Waking Hours, 35 dB LA90,10min or the Quiet Waking Hours LA90,10min Background Noise Level plus 5 dB(A), whichever is the greater.

providing that this condition shall only apply to dwellings or other Noise Sensitive Premises existing at the date of this Planning Permission.

At the request of the Planning Authority, following a valid complaint to the Planning Authority relating to noise emissions from the wind turbines, the Wind Farm Operator shall measure, at its own expense, the level of noise emissions from the wind turbines. The measurement and calculation of noise levels shall be undertaken in accordance with "The Assessment and Rating of Noise from Wind Farms", September 1996, ESTU report number ETSU-R-97 having regard to paragraphs 1-3 and 5-11 inclusive, of The Schedule, pages 95 to 97; and Supplementary Guidance Notes to the Planning Obligation, pages 99 to 109. In comparing measured Wind Turbine Noise Levels with Background Noise Levels, regard shall be had to the prevailing Background Noise Levels as measured at specified properties and shown by the best fit curves in the Environmental Statement submitted with this planning application. In the event of a complaint from a property other than one of the specified properties in the Environmental Statement, the measured Wind Turbine Noise Levels at that other property shall be compared to the prevailing Background Noise Levels at the specified property which is most likely to have similar background noise levels.

"Wind Turbine Noise Level" means the rated noise level due to the combined effect of all the Wind Turbines, excluding existing background noise level but including any tonal penalty incurred under the methodology described in ETSU-R -97, pages 99 – 109.

“Background Noise Level” means the ambient noise level already present within the environment (in the absence of noise generated by the development) as measured and correlated with Wind Speeds.

“Wind Speeds” means wind speeds measured or calculated at a height of 10 metres above ground level on the site at a specified Ordnance Survey grid reference agreed with the Planning Authority.

“Night hours” means 23:00 – 07:00 hours on all days.

“Quiet Waking Hours” means 18:00 – 23:00 hours on all days, plus 07:00 – 18:00 on Sundays and 13:00 – 18:00 hours on Saturdays.

“Noise Sensitive Premises” means existing premises, the occupants of which could be exposed to noise from the wind farm and includes hospitals, residential homes, nursing homes, etc.

Should the noise levels be exceeded, the Wind Farm Operator shall take immediate steps to ensure that noise emissions from the Wind Farm are reduced to the aforementioned noise levels or less, to the written satisfaction of the Planning Authority.

[Reason: In order to control noise in the interest of amenity.]

Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 2. 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).)
- 3. 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).)
- 4. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.)