

## Appeal Decision Notice

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

- Planning appeal reference: PPA-270-2015
- Site address: land to the north of Broubster Cottage, Shebster, near Thurso, Caithness
- Appeal by Mr & Mrs CW Sutherland and family against the decision by The Highland Council
- Application for planning permission, ref. 05/00594/FULCA, dated 19 December 2005, refused by notice dated 18 May 2009
- The development proposed: construction of five 2 megawatt wind turbines with infrastructure and, in principle, a visitor centre with car parking
- Date of site visit by reporter: 15 April 2010

Date of appeal decision: 3 June 2010

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### Decision

I dismiss the appeal and refuse planning permission for the five 2 megawatt wind turbines with infrastructure and refuse planning permission in principle for the visitor centre with car parking.

### Reasoning

#### WIND TURBINES AND INFRASTRUCTURE

1. In the first instance I have considered the proposal for the five wind turbines and infrastructure. The determining issues are:

- whether technical considerations would preclude development;
- whether there would be an unacceptable impact on tourism, natural heritage, including ecology and ornithology, and cultural heritage;
- whether there would be unacceptable landscape character and visual impacts, these impacts also requiring to be assessed in cumulative terms.

These issues require to be considered in the context of the development plan and national policy.

#### Technical considerations

2. The council accepts the local road network would be suitable and the proposed site access would meet the required standards. Despite concerns of third parties I consider that construction traffic could be managed to ensure there would not be an unacceptable impact.

3. Numerous third parties believe that public safety would be placed at risk because of the position of the two turbines (T3 and T5) closest to the adjacent road. The nearer of these structures (turbine T3) would be 100 metres from ground to maximum blade height and is shown to be approximately 140 metres from the road. Micro-siting could conceivably reduce the separation distance but not to the extent that the turbine would be within 100 metres of the road. Turbine T5 would be further from the road. Lacking any objections from the technical consultees and noting the advice in PAN 45, Renewable Energy Technologies, that a set-back of at least the height of the turbine should be provided, I regard the layout as being adequate in terms of public safety.

4. Potential shadow flicker is a further cause of concern to third parties. The environmental statement (ES) assesses the potential for shadow flicker and accepts that 8 houses could suffer from this effect. Two houses south of the road at Shebster would be the worst affected and could experience flicker for up to 30.1 hours and 33.1 hours a year respectively. Six other houses could experience flicker between 3.1 and 23 hours a year. The effect could occur between November and January when, states the ES, skies would be mainly overcast.

5. The ES considers the frequency range of the flicker would be much less than the range generally thought to induce photosensitive epilepsy. I also note that PAN 45 considers, as a general rule, that where the separation between turbines and houses is at least 10 rotor diameters, shadow flicker should not be a problem. In this case the proposed rotors would be 80 metres in diameter and the nearest property would be approximately 800 metres distant. The ES points out that the simplest and most effective measure for eliminating shadow flicker would be for the turbines to cease operating when these conditions could occur. The limited number of hours per year when the potential for shadow flicker would exist would mean that such a shut-down would be feasible. I accept this assessment and consider that a condition to this effect would be appropriate in the event of the approval of the scheme.

6. Many third parties also fear that the level of noise from the turbines would be excessive. PAN 45 points out that well-designed wind turbines are generally quiet in operation but recognises there is a perception that noise is a significant problem. The ES explains that noise levels have been assessed in respect of the three houses nearest to the proposed wind farm. The ES calculates that both the day-time and night-time noise levels would be below the limits stipulated in "The Assessment and Rating of Noise from Wind Farms" (ETSU-R-97), recommended by PAN 45 as representing good practice. The ES also points out that that the predicted noise levels would meet the lower limits set by The Highland

Council. I therefore conclude that noise would not lead to an unacceptable impact on residential property in the vicinity.

7. Overall, I conclude that no technical considerations would preclude the approval of the proposed wind farm.

#### Tourism

8. The council believes that the cumulative impact of wind farm developments in Caithness – constructed and approved – would have a significantly detrimental effect on tourist routes.

9. I can accept that economic activity in Caithness draws heavily on tourism and that the economy of the area should be regarded as fragile. However, I have no compelling evidence to suggest that wind farms significantly reduce the attraction of the area to tourists and, in turn, would bring about a downturn in the economy. To the contrary, the 2008 study, “The Economic Impacts of Wind Farms on Scottish Tourism” (the Moffat Report), found that the negative impact of wind farms on tourism nationally is small. More specifically, the report estimates that only some 15% of tourists to Caithness and Sutherland will not see a wind farm at some stage.

10. I note that recently further wind farms have been approved at Baillie Hill (21 turbines), a short distance to the north-east of the appeal site, and at Hill of Stroupster (12 turbines). The latter site is to the west of the A99 between Wick and John O’Groats and I anticipate that should these consents be implemented, especially Hill of Stroupster, an even higher proportion of tourists to the area will see at least one wind farm. Even if the terms of the Moffat Report are not accepted – although I have no evidence to refute its findings – it was clear from my inspection of the wider area that travellers on the main roads in the northern and eastern parts of Caithness will pass wind farm sites where construction has taken place or where approval has been given.

11. Along the A9 between Latheron and Thurso, the Causeymire wind farm (24 turbines including an extension) lies close to the road whilst Boulfruich (15 turbines) is clearly visible. On the A852 between Wick and Thurso there are two groups of three turbines each close to the road at Bibster. Six turbines at Forss lie close to the A836 between Thurso and Dounreay. As I have indicated, the Hill of Stroupster wind farm would lie to the west of the A99. The Baillie Hill wind farm, as demonstrated by the landscape and visual impact assessment, would be visible from the A836.

12. I believe that even if the Hill of Stroupster and Baillie Hill developments do not proceed, the five turbines at South Shebster would provide only a marginal additional impact to the perception of tourists. The structures would be visible from the A836 but only in limited views. Roads closer to the site are not recognised tourist routes. The road past the site from Achvarasdal via Shebster to Thurso is part of National Cycle Route 1. However, despite the concern of some third parties, I have no evidence to suggest that the proposed wind farm would be a significant detractor to the use of the route. In any event, I do not consider the proximity of the site to the National Cycle Route is a reason to refuse planning permission.

13. All-in-all I conclude that the construction of five wind turbines at South Shebster would not significantly detract from the tourist potential of Caithness and, in turn, would not threaten the local economy.

#### Natural heritage – ecology and ornithology

14. Numerous third parties have expressed concern about the effect on wildlife, especially birds.

15. The site lies in the proximity of several areas designated as being of international importance including the Caithness and Sutherland Peatlands Special Protection Area (SPA) and Ramsar site, the Caithness Lochs SPA and Ramsar site and the Broubster Leans Special Area of Conservation, which is close to the south-east of the site. Nearby nationally important designations include the East Halladale, Loch Calium Flows, Loch Calder and Broubster Leans SSSIs.

16. The environmental assessment included a detailed consideration of flora and fauna involving an iterative process with Scottish Natural Heritage (SNH). This process led to additional studies being undertaken. Ultimately, SNH was in a position to remove all its initial objections although it is considered that the proposal would have a likely significant effect on the greylag goose qualifying interest of the Caithness Lochs SPA and Ramsar site through collision risk. An appropriate assessment of the implications of the proposal for the site in terms of the conservation objectives for the greylag goose qualifying interest would therefore be required. Helpfully, SNH undertook an appraisal of the likely significant effect on the greylag goose and advised that the proposal would not adversely affect the integrity of the SPA. SNH was content to allow this appraisal to be the basis of any subsequent appropriate assessment.

17. The Royal Society for the Protection of Birds (RSPB) also had no objections subject to certain conditions being applied to any planning permission that may be granted.

18. Despite the concerns of third parties, I attach considerable importance to the opinion of SNH and also believe the comments of the RSPB should be afforded significant weight. On this basis I conclude that, subject to the imposition of appropriate conditions, the proposal would be acceptable insofar as ecological and ornithological interests are concerned

#### Cultural heritage

19. The ES evaluation accepts that the proposed site is rich in archaeology but argues that a carefully managed development could minimise any damage. There would be no direct impact on recorded archaeological remains. The council accepts this assessment although appropriate mitigation measures would be necessary should the development proceed. Despite the objections of third parties in respect of archaeological disturbance, I conclude that cultural heritage could be satisfactorily safeguarded through the imposition of appropriate conditions.

#### Landscape character and visual impacts

20. The predominant local landscape character is sweeping moorland which is described by SNH as being very simple in composition. I agree with SNH that the strong sense of open space is dominated by the horizontal emphasis and distant views to the hills. The proposed turbines would have a contrasting vertical emphasis which would be at odds with the grain of the landscape. The addendum to the ES indicates that a locally “substantial” adverse impact on the sweeping moorland local landscape character would result from the wind farm. However, the overall impact would be “slight” adverse as, for the most part, would be the impact on other, generally more distant, local landscape types. SNH believes that there would not be a significant adverse impact on landscape character in this part of Caithness.

21. I agree with the assessment of impact on landscape character and believe that, in itself, the relatively small and compact development proposed at South Shebster would not have a detrimental impact on landscape character to the extent that would warrant refusal.

22. The recent approval of the Baillie Hill wind farm has led to the potential for a development of 21 turbines, the southern-most of which would be within 2 kilometres of the northern row of 3 turbines proposed at South Shebster. In recommending approval of the Baillie Hill proposal, the reporter concluded the impact on landscape character as “major and significant and properly regarded as adverse”. However, he did not regard this level of impact as unacceptable in the context of local landscape character. I share this opinion and consider that the construction of a further 5 turbines at South Shebster, whilst adding to impact, would not further significantly detract from landscape character. I therefore conclude that, cumulatively, the proposed South Shebster development would not be unacceptable in landscape character terms.

23. Insofar as the visual impact of the South Shebster proposal is concerned, I can accept that the turbines would be a prominent feature but that the compact configuration of the 5 turbines would reduce the effect on panoramic views. I can therefore accept the assessment of the addendum to the ES that between 5km and 15km from the proposal the majority of visual impacts are not likely to be significant. Beyond 15km any visual impact is not likely to be significant.

24. The ES identifies “substantial” adverse visual impacts on a number of receptors within 1.5km which have direct views of the proposed development. These include 7 receptors at Shebster, 5 to the west of Shebster and 2 at Broubster to the south, all of which are residential properties. Further to the west and east of Shebster, the ES states that the adverse visual impact reduces to a “moderate” level. Overall, the ES contends that the adverse effects on the visual resource are not significant. I note that SNH also believes whilst some viewpoints in relatively close proximity to the site would be intimidated by the turbines, overall, the impact does not warrant objection.

25. Whilst I accept the generality of the visual impact assessment, I am concerned about the substantial adverse impacts on residential properties at and close to Shebster. As pointed out on behalf of the appellants and as stated by the reporter in the Baillie Hill appeal, there is no right to a view and adverse effects on views are not normally a matter to which much weight should be given. I note the Baillie Hill wind farm would have 6 houses within 500m of the nearest turbine, 30 within 1km and some 60 houses within 2km. The

reporter in that case made a judgement that the adverse effects on houses were not so great as to be unacceptable when considered against a balance of factors.

26. At Shebster, the number of residential properties which would suffer substantial adverse visual impacts would be relatively limited and this must be balanced against the various factors I have already considered. I believe it is particularly important in the assessment of the South Shebster proposal to take account of the cumulative visual impact having regard to the wind farm approved at Baillie Hill. Significantly, of the 21 Baillie Hill turbines, a line of 4 turbines to the west of Bardnaheigh Farm would be located to the south of, and parallel to, the existing 132kV pylon line to the north of Shebster.

27. The resulting situation, should both the Baillie Hill and South Shebster schemes proceed, would be that the properties at Shebster would experience turbines less than 1km to the north and approximately 1km to the south. The aspects of the principal rooms in the dwellings in Mackay Terrace face to the north and south. Whilst it may be that assessment of the South Shebster proposal, in its own right, might result in a balance in favour of approval, the prospect of the Baillie Hill scheme adds a further crucial dimension to the overall consideration. Indeed, in my opinion, the cumulative visual impact of the South Shebster scheme alongside the approved Baillie Hill project would be unacceptably detrimental to the residential amenity of the properties at and close to Shebster.

## DEVELOPMENT PLAN

28. In relating my analysis of issues to the development plan I note Policy E1 of the Highland Structure Plan offers general support for renewable energy developments. Policy E2 relates specifically to wind energy developments which will be supported subject to impacts that are not shown to be significantly detrimental. The criteria against which proposals are to be assessed include visual impact and cumulative effects. The text explains that potential constraints include proximity to dwellings in terms of visual impacts. In this respect I have found that the cumulative visual impact on some residential properties would be of such a level as to be unacceptable and, in turn, I conclude Policy E2 does not support the South Shebster proposal.

29. Policy G2, Design for Sustainability, requires development to be assessed in terms of impact on individual and community residential amenity. As explained, my conclusion in respect of cumulative visual impact leads me to believe that the impact on residential amenity would be significantly detrimental.

30. The Caithness Local Plan does not contain a policy relating specifically to wind farms but simply supports development of renewable energy opportunities in suitable locations that accord with the structure plan and national planning policy guidelines. The eastern part of the site is subject to General Policy PP2 where the council will favour development unless this would significantly affect important features. To the west, General Policy PP3 applies where the council will presume against development, particularly where there is significant damage to heritage, amenity or public health.

31. The refusal certificate states that the proposal fails to accord with policy PP3 but I do not believe significant weight can be attached to the local plan policies insofar as they do not directly relate to wind farm development.

32. I am of the opinion that the proposal is not contrary to development plan policies in most respects, for instance, in terms of tourism, natural heritage and cultural heritage. However, I conclude that the proposal does not accord with the provisions of the development plan, in particular, structure plan policies E2 and G2, insofar as I have concluded that there would be an unacceptable adverse impact on residential amenity.

## MATERIAL CONSIDERATIONS

33. In the light of this conclusion I must have regard to any material considerations which might justify exceptional approval of the proposal notwithstanding the terms of the development plan.

34. In the first instance, and most importantly, I must consider renewable energy policy as set out in Scottish Planning Policy (SPP). SPP is a statement of the Scottish Government's policy on nationally important land use planning matters, including renewable energy. Policy was formerly contained in Scottish Planning Policy 6, Renewable Energy, but this document has been revoked.

35. SPP states unequivocally that the commitment to increase the amount of electricity generated from renewable sources is a vital part of the response to climate change. Despite this very strong signal, to which I am bound to give much weight, a balance of considerations is necessary. Although it is clear that wind power is an important source of renewable energy, SPP indicates that planning authorities should support development in locations where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed. In my opinion, the cumulative impact at South Shebster is incapable of being satisfactorily addressed and, in turn, the provisions of SPP do not warrant exceptional approval of the proposal.

36. PAN 45 confirms that encouraging more electricity generation from renewable sources is an integral part of both the UK and Scottish Climate Change Programmes. There is a commitment to increasing the amount of renewable energy generated and used in Scotland. Nevertheless, the advice does not suggest that renewable energy projects should progress at any cost. PAN 45, Annex 2, Spatial Frameworks and Supplementary Planning Guidance for Wind Farms, also draws attention to the need to take account of cumulative impact.

37. Other documents including the Highland Renewable Energy Strategy and Planning Guidelines and the emerging Highland-Wide Local Development Plan are also material considerations. In the case of the guidelines, doubts have been cast on the value of the document when considered in the light of Government policy and the local development plan is at a relatively early stage of preparation.

38. I have also taken account of those representations submitted in support of the proposal but conclude that, overall, there are no material considerations to justify setting aside the

terms of the development plan and, accordingly, the proposal for five wind turbines and infrastructure should be refused.

## VISITOR CENTRE

39. Having determined that the wind farm element of the proposal should be refused, it is necessary to consider the application in principle for the visitor centre. Firstly, in this respect, it is appropriate to decide whether the proposed visitor centre should be assessed in its own right or whether it is an integral part of the application in total. The appellants' appeal statement indicates that it intended to establish a visitor centre at the site instead of the more commonly used community fund benefits. The ES explains that it was decided to submit an "outline" application for the visitor centre and, in the event of a successful planning application, full and detailed planning submissions would be made.

40. It therefore appears to me that the wind farm and the visitor centre are two components of a single proposal. As the visitor centre is integral to the wind farm development it would not be appropriate to reach separate decisions. Accordingly, I also refuse planning permission in principle for the visitor centre.

***This is a true and certified copy as issued to parties on 3 June 2010***

Richard Dent

Reporter