

Directorate for Planning and Environmental Appeals

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Ms G Webster»
Highland Council

Our ref: PPA-270-2101

20 May 2014

Dear Ms Webster

PLANNING PERMISSION APPEAL: CONSTRUCTION OF A WINDFARM COMPRISING 10NO. WIND TURBINES WITH A TIP HEIGHT OF UP TO 99.5M, CRANE HARD-STANDINGS, ACCESS TRACKS, 64M ANEMOMETRY MAST; CONTROL BUILDING, BURIED CABLES, CONSTRUCTION COMPOUND AND 2 TEMPORARY BORROW PITS; LYTH WIND FARM NEAR LYTH WICK

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action.

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Christine Brown

CHRISTINE BROWN
Case Officer
Directorate for Planning and Environmental Appeals



Appeal Decision Notice

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Decision by Douglas G Hope, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2101
- Site address: Lyth Wind Farm, Near Lyth, Wick, KW1 4UD
- Appeal by Eurowind UK against the decision by The Highland Council
- Application for planning permission ref. no. 13/01832/FUL dated 22 May 2013 refused by notice dated 26 November 2013
- The development proposed: Construction of wind farm comprising 10no. wind turbines with a tip height of up to 99.5m, crane hard-standings, access tracks, 64m anemometry mast, control building, buried cables, construction compound and 2 temporary borrow pits.
- Date of site visit by Reporter: 27 & 28 April 2014

Date of appeal decision 20 May 2014

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. In this instance, reference is made to policies 28, 61 and 67 of the adopted Highland-wide Local Development Plan (HWLDP). Having regard to these provisions of the development plan, the main issues in this appeal are the visual effects of the proposed development, individually and cumulatively with the consented Stroupster wind farm, on the amenity of the properties/communities within the surrounding area and on landscape character, including the locally designated Dunnet Head Special Landscape Area. The Stroupster wind farm is under construction with completion expected by summer 2015.

2. The proposal involves the installation of 10 triple-bladed turbines with a hub height of 64 metres and a rotor blade diameter of 71 metres. They would be located on a site measuring 201 hectares situated around 4.5km north-east of the B876 and lying 3.0km north of the settlement of Lyth. The main part of the site, on which the proposed turbines would be located, comprises a slight hollow with rising ground to the north and a slight ridge to the south, which is covered by an immature forestry plantation. The proposed turbines



would be located, in two groups of five, on this higher ground. Outwith the site to the north lies a large coniferous plantation.

3. The application is supported by an Environmental Statement (ES), dated May 2013. The proposed development is summarised in Volume 1 of the ES, the Non-Technical Summary and in Chapter 2 of Volume 2 of the ES. An accompanying Design and Access Statement, dated May 2013 identifies the design principles employed in the preparation of the scheme. Supplementary information, including an addendum to Chapter 4 (LVIA) of the ES was produced in September 2013 to include the consented Stroupster wind farm in the description and analysis of visual impacts from the selected viewpoints. I have had regard to all the environmental information submitted in reaching my decision on the appeal.

Visual impact and visual amenity

4. The submitted evidence shows that there are five residential properties within 1km of the nearest turbine, all of which are financially involved with the proposal (see ES Figure 13.6). There are a further eighteen residential properties within 2km of the nearest turbine, three of which are financially involved with the proposal. No. 9 Lochend Holdings is the closest residential property, a distance of 800m from the nearest turbine. Burnside, Alterwall is the closest non-financially involved property at approximately 1.5km from the nearest turbine. The results of the Residential Amenity Study (Appendix 4.2 in the ES), which have not been challenged by the council, indicate that none of the fifteen non-financially involved residential properties that are adjudged to be within 2km of the nearest turbine are predicted to be impacted significantly in terms of EIA regulations.

5. The assessment indicates that eight properties would be the subject of 'Moderate' impacts on visual amenity. Whilst the main aspect of these dwellings is largely oriented away from the turbines, the turbines would be a dominant feature in some views from the outside of some of these properties and the 'outside' visual amenity may be significantly affected, i.e. views from gardens and driveways. The assessment concludes that, in terms of impact on living conditions, none of the properties assessed would be affected to the degree that views of turbines would be 'overbearing' or 'oppressive' and, therefore, none of the dwellings would become an undesirable place in which to live.

6. A cumulative assessment of the impact on residential amenity of Lyth wind farm, in conjunction with the approved Stroupster wind farm and the proposed Lochend and Brabster wind farms (see Appendix 4.2b in the ES), predicts that one property, (No. 16: Neuk) would experience 'Major' impacts resulting in significant cumulative effects. There are potentially oblique views available towards Stroupster from the main living areas of the dwelling and views are available towards Lyth, Lochend and Brabster from secondary rooms. From the garden and driveway, views of most of the turbines would potentially be available in simultaneous views. Eight other properties would experience 'Moderate' impacts on visual amenity.

7. Beyond a distance of 2km of the nearest turbine, the LVIA (Chapter 4-Table 4.8) predicts that five of the six settlements within 5 km of the proposed development would experience significant visual effects: Lyth, Bowermadden, Inkstack, Bower/Bowertower and

Barrock. Due to the scattered pattern of these settlements and the grouping of buildings, orientation towards the proposed development from individual properties varies from direct views to oblique views. Overall, it is concluded that several dwellings within each of these settlements would be the subject of significant visual effects but not the entire settlement. Greenland would be the subject of 'Moderate' effects, which are not judged to be significant.

8. The residents of communities are not confined to their dwellings and immediate surroundings. They use local roads to go about their daily business and receive visitors. The representative viewpoints provide an indication of the likely visual effects from the wider community and the road system in the surrounding area. Chapter 4 of the ES considers visual effects from 22 viewpoints (see Figure 4.8). Visualisations have been provided for each of these viewpoints. Significant effects are predicted to arise from the proposed development at four representative viewpoints: viewpoints VP1: North of Slickly, VP2: Lyth, VP3: Barrock and VP5: Bower. SNH considers that the assessment of significant effects on viewpoints VP1, VP2, VP3 and VP5, which broadly aligns with the LVIA's assessment of visual impacts, accurately predicts the impact of the proposal on views and amenity across the settlements of Lyth, Bowermadden, Inkstack, Bower/Bowertower and Barrock.

9. The Addendum to Chapter 4 of the LVIA identifies the effect of the proposed development in conjunction with the consented Stroupster Wind Farm (Table 2). It predicts that the cumulative visual effects for the majority of dwellings in Lyth, Bowermadden, Inkstack, Bower/Bowertower and Barrock will be significant. The assessment indicates that the proposed development would double the extent of the wind farm development skyline in most views from these settlements. Table 3 in the Addendum provides more detail on the magnitude of change at these representative viewpoints [in Table 3, viewpoints VP1 and VP2 have been inadvertently transposed].

10. From Lyth (VP1), all 10 turbines of the Lyth wind farm would be visible above the skyline although the lower parts of the towers of the more distant turbines would be obscured by intervening landform. Movement associated with the rotating turbine blades would be clearly discernable and the various elements of each blade (Nacelle, blades, tower) would be clearly visible. From the approach to Slickly (VP2), the full extent of the proposed Lyth turbines would appear as prominent vertical elements in an otherwise open, expansive landscape with no other vertical elements in view. Stroupster wind farm would be visible in the opposite direction, slightly further away. The elements of all the turbines in the proposed development and Stroupster, including blade movement, would be clearly discernable. The proposed development, therefore, extends the extent of turbine development into another view and would form a very prominent feature, despite the vast scale of the landscape. From Barrock (VP3), all 10 turbines of the Lyth wind farm would be visible on the moorland skyline, with only the lower parts of the towers of the five turbines located to right of the grouping hidden from view by the intervening landform. The proposed development would add another prominent feature to the Stroupster wind farm within the same view. In combination with the Stroupster development, the Lyth turbines would form dominant foci in the view. From a distance of 3.8km, movement associated with the rotating turbines would be clearly visible and individual elements clearly discernable.

From Bower (VP5), at a distance of 6.2km, the turbines would appear as a relatively well spaced group on the skyline in the middle distance. The view has an expansive horizontal grain, accentuated by the field pattern and boundary hedgerows. Although the turbines would appear as prominent vertical elements on the skyline, from this distance, they would not dominate the focus in this settled managed landscape.

11. The Addendum to Chapter 4 of the LVIA confirms that significant cumulative visual effects would be experienced at viewpoints VP1, VP2, VP3 and VP5. The Addendum does not identify any additional significant effects over and above the findings of Chapter 4 of the LVIA. The only slight modification is to the distance of significant effects. It concludes that, following re-assessment, the zone of significant effects remains within a 5km radius of the proposed turbines except for the area around Bower to the south-west, which is some 7km from the proposed development and which could also potentially be significantly adversely affected.

12. Based on all the submitted evidence, including the ZTV plans and viewpoint visualisations, and my site inspection of the site and surrounding area, I agree with the council that, as a result of the height of the turbines and the rotating motion of the blades, combined with their proximity to Lyth, Bowermadden, Inkstack, Bower/ Bowertower and Barrock, the individual and cumulative visual effects of the proposed development would be significantly detrimental in terms of visual impact and effects on the visual amenity of the surrounding communities. As a consequence, I find that the proposal does not have the full support of policy 67 of the HWLDP.

Impact on landscape character

13. The proposed turbines would be contained within the *Sweeping Moorland Landscape Character Type (LCT)* as identified in SNH's Landscape Character Assessment for Caithness and Sutherland (CSLCA) (see ES Figure 4.6). The southern part of the site, which is required to provide access to the development, is contained within the *Mixed Agriculture and Settlement LCT*, the boundary between the two LCTs roughly following the line of the Little Burn of Alterwall, immediately north of Alterwall. The land to the south, including Lyth, Reaster, Bowermadden and Bower/Bowertower is contained within the *Mixed Agriculture and Settlement LCT*, which also includes Lochend and Syster to the west. The Inkstack/Barrock area is contained within the *Small Farms and Crofts LCT*. The land to the east of the site, beyond the minor road leading northwards from Alterwall to Gills, is contained within the *Flat Peatland LCT*, within which the Stroupster windfarm is located.

14. The Landscape and Visual Impact Assessment (LVIA) has been undertaken in accordance with the Landscape Institute's Guidelines and with best practice. However, landscape and visual impact assessment is an extremely complex procedure, relying on value judgements at a number of stages. As is noted in Planning Advice Note 1/2013: Environmental Impact Assessment, identifying significant environmental effects is a matter of professional judgement.

15. Given the significance of this issue, before dealing with the submitted evidence, I would wish to respond to the appellants' concerns relating to the differing views on

landscape issues expressed by the appellants' and the council's professional advisors. I am satisfied that the evidence before me on landscape impact is sufficient to allow me to determine the appeal and that no further clarification is required. I am content with the council's evidence that both its Landscape Officer and SNH considered the submitted supplementary information and Addendum to the ES and that neither party chose to submit an updated response but decided to rest on the consultation responses already submitted in response to the planning application and accompanying ES.

16. The proposed turbines are located wholly within the *Sweeping Moorland LCT*, which is identified in the CSLCA as 'possessing a simple visual composition, its main elements being the sky, a horizontal or gently sloping, uninterrupted skyline and vegetation. There is generally an absence of dominant visual foci. It is usually characterised by a fairly flat or gently undulating landform, a character which is often highlighted in particular weather and light conditions'. The adjoining *Mixed Agriculture and Settlement LCT* comprises 'a wide open landscape, generally dominated by a horizontal emphasis, with the occasional location of a hill or woodland defining spaces at a more detailed level'. It possesses an extremely complex visual composition and is also characterised by the endless, open space and skies. The *Small Farms and Crofts LCT* is described as possessing a complex visual composition. The *Flat Peatland LCT* is a sub-type of the *Sweeping Moorland LCT* and shares the same key landscape characteristics but with subtle differences.

17. In relation to wind energy development, the CSLCA states that the *Sweeping Moorland LCT* may be favoured for windfarm development on account of its typically consistent and high wind speeds, and its open space and fairly flat landform. The CSLCA suggests that a windfarm will relate to the exposed, wind dominated character of this landscape, and can appear as a spectacular, futuristic-looking and sculptural addition. It also warns that it may also conflict with the sense of remoteness and 'wild land' within many areas, particularly if a development requires associated facilities such as tracks and substations. The guidance for the *Mixed Agriculture and Settlement LCT* makes no specific reference to wind farms but suggests that the introduction of new elements will tend to confuse the existing complex composition of landscape characteristics. The guidance for the *Small Farms and Crofts LCT* also makes no specific reference to wind farms but also suggests that it is very difficult to incorporate new elements into this landscape without confusing the existing composition of landscape characteristics. The guidance on the *Flat Peatland LCT* also makes no specific reference to wind farms but points to the difficulty of locating and designing new elements in this landscape where there are few features or land differentiation to which they can relate.

18. The ES, in Chapter 4, concludes that the *Sweeping Moorland LCT*, the *Mixed Agriculture and Settlement LCT* and the *Flat Peatland LCT* sub-type would experience significant effects within 5km of the proposed development. The ES points out that the most visible part of the proposed development, i.e. the 10 turbines, are wholly located within the *Sweeping Moorland LCT* and that there is no risk of 'blurring distinctions' between two different LCTs. The ES also suggests that, where the development is visible on the skyline, the turbines have a linear arrangement and regular, even spaced appearance. This appears to relate to the simple, regular rhythm characteristics of the

sweeping moorland landscape. It is acknowledged that the proposed turbines would form a 'visual foci' in some views. However, from a large number of locations, views are often partially obscured by coniferous plantations and/or the subtleties and complexities of the local landform and vertical elements such as overhead lines. From other locations, due to distance, although the proposed development may appear on the skyline, it would not appear to 'dominate' within the context of the wider, panoramic view.

19. The Addendum to Chapter 4 of the ES, suggests that, where visible, the proposed development will generally be visible within the same angle of view as Stroupster. Nevertheless, due to the relative amount of spacing between the developments, they would be perceived within the wider landscape as two separate developments. It is considered, in the Addendum, that although the proposed development will increase the influence of wind farm development in localised areas, its addition will not make wind farms a defining component of the moorland landscape, rather, the receiving landscape has the capacity, characteristics and qualities to absorb such developments. The introduction of the proposed development is assessed to be an appropriate addition due to it mirroring the Stroupster development in terms of its characteristics. In contrast, it is judged that the addition of Lochend and Brabster would add visual confusion to views towards the simple moorland skyline.

20. In its consultation response on the proposed development, SNH considers that, in addition to the significant adverse landscape impacts on the *Sweeping Moorland LCT*, the *Mixed Agriculture and Settlement LCT* and the *Flat Peatland LCT* sub-type within 5km of the proposed development identified in the LVIA, there will also be significant adverse landscape impacts on the *Small Farms and Crofts LCT* at Barrock/Inkstack. It is also considered that the significant adverse landscape impacts on the *Mixed Agriculture and Settlement LCT* would extend beyond 5km in the proximity of Bower. According to SNH, from this area, the proposed development would appear dominant in comparison to the small scale managed landscape, affecting the area's rural landscape character and extending and heightening the impacts produced by the consented Stroupster wind farm.

21. In relation to the visual effects upon the Dunnet Head Special Landscape Area (SLA), according to the ES, about half the SLA area has some theoretical visibility of the proposed development. The appellants suggest that, looking inland from Dunnet Head, which is almost 12km from the nearest Lyth turbine, the proposed development, cumulatively with the Stroupster wind farm, is easily absorbed by the vast and extensive landscape. From the viewpoint of Dunnet Head (viewpoint VP12), all ten turbines would be visible above the skyline at a similar distance to Stroupster and in the same field of view. In the words of the Addendum to Chapter 4 of the ES, '*Although the proposed development will add a separate cluster of turbines into this view thereby doubling the extent of wind turbines visible, it will not dominate the focus of the view. Both developments will be absorbed into the expansive scale with a modest impact on the view.*' The ES identifies a 'Moderate' impact on the Dunnet Head SLA.

22. According to the CSLCA, the key characteristics of the Dunnet Head SLA include "spectacular panorama both seaward and inland to distant mountain peaks" and "elevated views from the peninsula revealing a pattern of pasture and arable fields to the south; these

form a distinct transition between the exposed headland and the settled agricultural lowlands to the south”. SNH considers that these characteristics are likely to be adversely affected to a significant degree by the proposed development and that, given the proximity of the proposed site to the SLA, the extent of visibility across the SLA and the recognition that landward views contribute to the characteristics and special qualities of the SLA, the ES should have identified a significant impact. SNH also considers that the proposed Lyth wind farm would exacerbate impacts arising from the consented Stroupster wind farm, forming a cluster that occupies a notably larger proportion of the field of view to the south-east. The council also disagrees with the appellant’s view that the proposed development ‘cumulatively with Stroupster can be easily accommodated by the vast and expansive landscape’ as stated by the appellants. Based on my site inspection, including three visits (one accompanied) to the Dunnet Head viewpoint, I remain to be persuaded that the proposed wind farm would not appear out of scale with the large-scale expansive landscape to the south and form a prominent feature, which would detract from the view of the Caithness Hills. I consider that, in association with the Stroupster wind farm, the proposed development would have a significant adverse effect on the vast distinctive inland panorama from the Dunnet Head viewpoint, and thus the special qualities of the Dunnet Head SLA. Consequently, I find that the proposal does not have the support of policy 67 in relation to impact not only on the landscape character of the surrounding area as described in paragraphs 16-20 above but also in relation to the impact on the Dunnet Head SLA.

Compliance with development plan

23. The appellants submit that the emphasis given by the council to landscape and visual issues in the context of policy 67 of the HWLDP is disproportionate, when this policy states that proposals will be supported where they will not be significantly detrimental overall, either individually or cumulatively with other developments [my under-lining]. In relation to the visual impact of the proposal on the local communities, there is no dubiety about the significant adverse visual effects on the local area, which generally comprises the communities of Lyth, Bowermadden, Inkstack, Bower/ Bowertower and Barrock, within a 5km radius of the proposed development, stretching to 7km to the south-west to include Bower. As previously intimated, I find that the proposal does not, therefore, have the full support of policy 67 of the HWLDP. Policy 28 is also relevant here. It, more clearly states, that developments which are judged to be significantly detrimental in terms of, amongst other things, impact on individual and community residential amenity and landscape (not only within designated areas) will not accord with the HWLDP. Accordingly, I find that the proposal does not accord with policy 28 of the HWLDP.

24. The appellants consider that, based on the findings of the LVIA, reinforced by the submitted Addendum, that the large-scale sweeping moorland landscape with its expansive and wide, open horizon has the capacity to accommodate both Stroupster and Lyth wind farms. The appellants consider that, taking the identified adverse significant effects into account in the proper balance, the proposal should not be considered to have unacceptable adverse impacts. This is one view, a view not shared by SNH or the council. Whilst the CSLCA suggests that the *Sweeping Moorland LCT* may be favoured for wind farm developments and that a windfarm will relate to the exposed, wind dominated character of this landscape, it also warns that it may also conflict with the sense of remoteness and ‘wild

land' within many areas. On my site inspection, my attention was drawn, on a number of occasions, to the distant Nybster water tower and to the fact that the proposed turbines would be some five times as high to the blade tip and much closer to the surrounding communities. Although only some 20 metres in height, this tower stands out on the skyline from a number of viewpoints and serves to illustrate the impact of vertical features over a wide area in this expansive landscape.

25. I am acutely aware of the substantial and comprehensive environmental assessment that has been undertaken in this case and the effort that has been made to design a scheme that fits with the landscape. However, I do not support the notion that the proposal's significant adverse visual impact on the surrounding communities and on the character of the surrounding landscape should be set aside. The descriptions in the CSLCA of the key characteristics of the landscape character types and their capacity to accept development relate to the whole of Caithness and Sutherland and, by definition, are somewhat generalised. The proposed wind farm would introduce a significant change to the landscape character of this particular area and create a significant visual focus, emphasised by the rotation of the turbine blades. I agree entirely with the view expressed by the council's landscape officer that the proposed development, together with the consented Stroupster wind farm, would become dominating and defining features of the landscape, to the detriment of this relatively small area of *Sweeping Moorland LCT* in the north-easterly corner (north and east of the B876) of Caithness. Accordingly, I find that, on landscape grounds, the proposal does not have the support of policy 67 of the HWLDP and does not accord with policies 28 and 61 of the HWLDP.

26. Policy 67 indicates that the contribution of the proposed development towards meeting renewable energy generation targets and any positive or negative effect on the local and national economy should be considered and, taking account of any mitigating measures, balanced with any adverse environmental effects. The proposed development comprises ten turbines, each with a power output of around 2.3MW with an overall generation capacity of around 23MW, a modest contribution to the Scottish Government's target of 100% of Scotland's electricity demand to be generated from renewable sources by 2020. It is also estimated that the Lyth wind farm would result in 8 full-time equivalent jobs during the construction phase and 5 full-time equivalent jobs during the operation period.

27. There are a number of specific criteria in policy 67 of the HWLDP in respect of which there would be no material impact or where the impact could be mitigated by way of condition, including the effects of the proposal in relation to natural, built and cultural heritage features, species and habitats, residential amenity in terms of noise, ice throw and shadow flicker, surface water and groundwater, roads, traffic and access, public access, safe use of airports and aviation interest, communications and electro-magnetic interference, and tourism and recreation interests. The appellants argue that the proposal's contribution towards renewable energy targets and the lack of any adverse impacts in relation to the above criteria constitutes compliance with policy 67 overall. However, I attach considerable weight to the visual impact of the proposal on local communities within 5km of the proposed turbines and to the significant adverse effects of the proposal on the landscape character of the surrounding area. The proposal's inability to satisfy these criteria prevents me from determining that the proposal is fully supported by policy 67. More importantly, the proposal clearly fails to satisfy the requirements of policies 28 and 61.

I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan.

Material considerations

28. Reference is made to the council's Interim Supplementary Guidance on Onshore Wind Energy (ISG), approved in March 2012. The site lies within a Stage 3 'Area of Search' in this ISG where '*appropriate proposals are likely to be supported subject to detailed consideration against the Highland-wide Local Development Plan, in particular policies 57 and 67*'. The ISG and its earlier draft were relied upon by the appellants in bringing forward the site. The appellants suggest that it is inconsistent to refuse an application on account of the limited but inevitable local visual effects. They consider a broader approach to assessing significant visual impact is required. Nevertheless, the ISG, which has not been adopted and does not form part of the development plan, reiterates the requirement to satisfy policy 67 of the HWLDP. It offers a fuller interpretation of the eleven criteria within policy 67 and advice on assessing the degree and significance of impacts but provides no justification for departing from the requirements of policy 67 of the adopted local development plan.

29. As regards the contents of the April 2011 draft Interim Supplementary Guidance, I note the references to the potential for large-scale wind farm development in the Slickly Sub-area. I am aware that this document was a consultative document and has now been superseded by the March 2012 version. I, therefore, attach little weight to its contents.

30. In relation to Scottish Government policy and advice, whilst there is strong support in principle for the development of renewable energy schemes, the location of wind turbines should be considered carefully to ensure that landscape and visual impact is minimised. Paragraph 187 of SPP indicates that such proposals should be supported in locations where they can operate efficiently and where environmental and cumulative impacts can be satisfactorily addressed. Particular mention is made of the need for the design and location of any wind farm development to reflect the scale and character of the landscape. In this case, I have determined that the landscape and visual impacts of the proposal, individually and cumulatively with the Stroupster wind farm, would be unacceptable and that the proposal does not reflect the scale and character of the surrounding landscape. Consequently, I can find no justification in Scottish Government policy for over-riding the provisions of the adopted local development plan.

31. I have considered all the other matters raised, including the representations made by those who oppose and support the proposal, but there are none which would lead me to alter my conclusions. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

Douglas G Hope

Reporter