

## Directorate for Planning and Environmental Appeals

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Ms K Lyons  
Highland Council  
Sent By E-mail

Our ref: PPA-270-2110

5 November 2014

Dear Ms Lyons

### **PLANNING PERMISSION APPEAL: LAND AT FARLEY ESTATE BY KILMORACK BEAULY**

Please find attached a copy of the decision on this appeal and the claim for award of expenses decision(s).

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

*Fiona Manson*

**FIONA MANSON**  
**Case Officer**  
**Directorate for Planning and Environmental Appeals**



ITEM 8



Directorate for Planning and Environmental Appeals

## Appeal Decision Notice

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Decision by Allison Coard, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2110
- Site address: Land at Farley Estate, by Kilmorack, Beaully
- Appeal by Allt Carach Wind Farm Limited against the decision by The Highland Council
- Application for planning permission 14/00644/FUL dated 13 February 2014 refused by notice dated 27 May 2014
- The development proposed: Erection of temporary 80 metre high meteorological mast and associated fencing
- Application drawings: as listed in schedule
- Date of site visit by Reporter: 21 October 2014

Date of appeal decision: 5 November 2014

### Decision

I allow the appeal and grant planning permission subject to the 5 conditions listed at the end of the decision notice. Attention is drawn to the 4 advisory notes at the end of the notice. I note that the appellant has claimed for an award of expenses. A separate decision notice, addressing this matter, has also been issued.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are:

- the landscape and visual impact of the proposal;
- the impact on residential amenity;
- the impact of the development on tourism; and
- the cumulative impact of infrastructure developments in the area.

### Preliminaries

2. The proposal is for a meteorological mast for a temporary period of 5 years. Many representations raise concerns regarding potential future windfarm development on the site. Whilst the purpose of the mast is to assess the wind resource conditions on the site, my assessment is focussed on the details of this current appeal for a temporary 80 metre high mast and associated fencing. Some concern has been expressed regarding the submission of new Zone of Theoretical Visibility (ZTV) mapping with this appeal. However,



Circular 4/2013 makes it clear that the restriction on raising new matters on appeal does not prevent the submission of new material on issues that were before the planning authority.

### Policy Context

3. The council's reasons for refusal state that due to its height and elevated position the mast would be readily visible from the surrounding landscape and community. As such it would be contrary to Policy 28 of the Highland Wide Local Development Plan. The council considers it would have a significantly detrimental impact on landscape and scenery and on individual and community residential amenity.

4. Policy 28: Sustainable Development supports development which will enhance the social, economic and environmental wellbeing of people in the highlands. Proposals will be assessed, amongst other things, on the extent to which they impact on individual and community residential amenity and demonstrate sensitive siting in keeping with local character and the natural environment. Development judged to be significantly detrimental in terms of these criteria will not accord with this local development plan.

5. Reference is also made in the submissions to Policy 67 on renewable energy. The purpose of the mast is to assess wind conditions, rather than to generate renewable energy. Nonetheless, in the absence of a specific policy on masts, Policy 67 includes a number of relevant considerations including impact on landscape and residential amenity, the amenity of users of core and other paths and the consideration of tourism interests.

### Landscape and Visual Impact.

6. Appeal document 35, dated 19 August 2014, is a technical memorandum produced on behalf of the appellants on the assessment of the landscape and visual effects of meteorological masts. Although no visualisations are produced for this proposal, the memorandum illustrates the visibility of a similar structure at various viewing distances. Visibility will of course vary with light conditions and the nature of the local landscape. However, I consider this serves to illustrate the mitigating effect of distance for a mast which is a single slender feature with no moving parts. I agree that visibility issues are likely to be most significant within a 2 kilometre range, with a reducing degree of visibility up to 5 kilometres. Beyond this I consider the proposed mast would become increasingly difficult to discern given the mitigating impact of distance and intervening features.

7. In terms of the immediate vicinity the mast would be higher than any other landscape feature. It would appear as a single isolated element in the landscape above the tree-line. The site is on open moorland at a height of 224 metres. It is set against ground which rises up to a height between 425-713 metres. I consider that the setting of the mast against this backcloth of hills provides a degree of mitigation to its localised landscape impact.

8. Close views are likely only to be experienced by walkers and those accessing the estate in four-wheel drive vehicles. Reference is made to the footpath network and the importance of local routes through the forest up onto the moorland and hills above. I note the paths referenced in the council's submission TH6. Appeal document 29 shows the formal footpaths in the area. I understand from the appellant's submission that the route referred to as the "pilgrims way" is not currently defined and runs some 15 kilometres from

the appeal site. On the evidence before me, the Erchless to Orrin and Erchless to Breakachy paths are the only documented paths which pass in proximity to the appeal site (around 500 metres). There are clear signs of recent felling of the commercial woodland and future clearance may increase the extent of visibility in areas to the south.

9. The main access points from the public road are gated and there are no waymark or other route signs, other than those indicating that the tracks are private for vehicular access. I accept that the mast would be a significant focal point on stretches of the path network and to anyone exploring the upland area beyond. However, the mast would be a single feature in a much wider landscape and it is only likely to have a significant visual impact on a relatively short section of these walks. Consequently, I do not consider this impact would be significantly detrimental to the overall enjoyment and amenity of those walking in this extensive area.

10. The river valley below is characterised by woodland. More expansive views to the slopes above and beyond are restricted by the nature of the landform and vegetation. The ZTV maps are helpful in defining those areas where the mast is considered theoretically visible. Such mapping is based on the nature of the landform. Consequently, intervening landscape features on the ground mean that actual visibility is likely to be more restricted.

11. The mast site is not within an area identified as wild land and Scottish Natural Heritage has made no comment on the application. The site is not affected by international or national heritage designations and is not within any other area of significant protection.

12. From my own site visits, I am satisfied that the intervening distances, local topography and landscape features combine to offer an element of screening or at least a significant degree of mitigation to reduce the landscape and visual impacts from local and wider viewpoints.

### Residential Impact

13. The ZTV mapping shows the distances from the mast at intervals of 5 kilometres up to 35 kilometres. I note concern that the distances quoted in the appeal submissions reflect road rather than direct distances. However, the relevant residential properties are shown on the submitted scale maps. On this basis the mapping shows the proposed mast to be 4.7 kilometres from any property with theoretical visibility. The mapping also illustrates the extent of theoretical visibility from other surrounding residential areas:

- Breakachy - no visibility from residential properties
- Farley - partial visibility from one property at a distance of 5.3 kilometres.
- Aigas, Eskadale, Erchless/Kinerras/Cruive - no visibility
- Struy - 13 residential properties within 4.7-7 kilometres of the proposal have theoretical visibility.

14. I consider the most notable visual impact is likely to occur when viewed by residents in and around Struy, particularly on the approach along the A831 from the west. However, the fact that the mast would be visible does not render its impact significant or unacceptable. On my site visit, I did not identify any residential location from which the mast would be visually dominant or obtrusive to an extent that would impact on residential

amenity. Where it would be seen it would be a single feature in a much wider view including a range of other features. As with the effect on the character of the landscape the slender form of the mast would ensure that, despite its height, no significant or unacceptable residential impact would occur.

#### Impact on wildlife

15. I note the appellant's submissions based on an ornithological study carried out over two years. This concluded no significant impacts on birds. From the evidence I find no reason to disagree with this conclusion. However, I agree with the council's planning officer that bird deflectors would be necessary to help mitigate any risk of collision. I consider a condition would address this matter along with an appropriate programme of maintenance.

#### Impact on tourism

16. Objectors state that the proposed development would have an adverse effect on tourism. I appreciate the value of the area for tourism and that local businesses rely on its notable scenic and environmental quality. I visited Eagle Brae and noted the open views from this elevated position. I also note potential visibility from areas close to the A831 around Struy. However, given my conclusions above I do not consider the proposal would have a significant or detrimental impact on this area as a tourist destination.

#### Cumulative impact of infrastructure developments in the area

17. The mast would be a single feature in the landscape. Whilst there have been other infrastructure developments in the area, most notably the Beauuly to Denny overhead lines, these are visually detached from this proposal and would not be seen in any proximity within the same view. I find no evidence that the proposal would have a significant or adverse cumulative impact.

#### Consistency with Policy 28 and 67

18. Without prejudging any future proposals for this particular site, the local development plan recognises the wider benefits of wind energy development. Such temporary masts are the usual means thorough which the necessary wind data can be collected. Given my reasoning above I find no significant detrimental impact on the landscape, the amenity of users of the path network, residential amenity or tourism. Consequently, I find the proposal is consistent with the relevant provisions of the development plan.

#### Conclusion

19. I appreciate the extent and volume of concern from local residents and others including those who run businesses reliant on the valuable scenic and environmental resource of this area. Nevertheless, from my reasoning above my conclusion is that the proposal accords overall with the relevant provisions of the development plan and there are no material considerations which would justify refusing to grant planning permission.

*Allison Coard*

Reporter

## Schedule of Plans

Location Plan (Drawing UK013-P-MO1)

Elevation Plan (Drawing UK013-P-M02)

## Conditions

1. On completion of the mast and prior to it becoming operational, the mast shall be fitted with a minimum intensity 25 candela omni-directional flashing red light or equivalent infra-red light fitted at the highest practicable point of the structure.

**Reason:** In the interests of air safety.

2. No development shall commence until:

(1) Notification has been made to UK DVOF & Powerlines at the Defence Geographic Centre with the following information:

- Precise location of development
- Date of commencement of construction
- Date of completion of construction
- The height above ground level of the tallest structure
- The maximum extension height of any construction equipment
- Details of aviation warning lights fitted to the structure

For the avoidance of doubt, this information should be sent by email to icgdgc-aero@mod.uk or posted to D-UKDVOF & Powerlines, Air Information Centre, DGIA, Elmwood Avenue, Feltham, Middlesex, TW13 7AH.

(2) Written confirmation has been provided to the planning authority that the notification requirements under point (1) have been undertaken.

**Reason:** to ensure that aeronautical charts and mapping records are accurately amended in the interests of air safety.

3. Planning permission is hereby granted for a temporary period only and shall cease to have effect 5 years from the date that the erection of the mast is completed, such date to be notified in writing to the Planning Authority within one week of completion. Within one month of the end of this 5 year period, the application site shall be cleared of all development approved under the terms of this permission (including any subsequent ancillary works, infrastructure and fixtures) and the ground reinstated to a condition comparable with that of the adjoining land, to the satisfaction of the Planning Authority.

**Reason:** In order to ensure that the equipment is removed and ground reinstated in a timely manner.

4. No development shall commence on site until a plan showing details of the guyed supports with additional bird deflector tags clearly marked is submitted to, and approved by, the Planning Authority. For the avoidance of doubt the bird deflectors should be sufficient

to ensure that all species of birds are adequately protected from bird strike. The bird deflectors, as approved, shall be attached to the guyed supports immediately following erection of the mast and shall be retained in situ throughout the duration of the permission hereby granted.

The bird flight diverters shall be inspected at least once a year to determine if any diverters are damaged or missing. Should any diverter be found to be damaged or missing that diverter shall be replaced by the developer within 28 days of the inspection. If this period falls within the main bird breeding season of April to July inclusive the diverters shall be replaced within 28 days of the conclusion of this period.

**Reason:** In order to minimise the risk of birds colliding with the guyed supports of the anemometer mast and to minimise any potential adverse impact on birds and wildlife from damaged or missing diverters.

5. Where ground conditions specifically require it, the mast, areas of hardstanding and tracks may be micro-sited within the application site boundary. However, unless otherwise approved in writing by the Planning Authority (in consultation with SEPA and SNH), micro-siting is subject to the following restrictions:

- i. No foundation shall be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on the original approved plans;
- ii. No mast, hardstanding or track shall be moved:
  - a. more than 25m from the position shown on the original approved plans;
  - b. so as to be located within 250m (for mast foundations) or 150m (for hardstanding, tracks or trenches) of Groundwater-dependent Terrestrial Ecosystems;
  - c. to a position within 50m of any watercourse or, where it outlines a lesser distance, to a position within a watercourse buffer zone identified within the approved plans;
  - d. to a position within an area identified within the approved plans as having a gradient constraint, being deep peat (that is peat with a depth of 1.5m or greater) or having a peat landslide hazard risk of 'significant' or greater;
- iii. No mast, hardstanding or track shall be moved where a change to its position, location or route has been proscribed under a condition of this permission.

**Reason:** To enable appropriate micro-siting within the site to enable the developer to respond to site-specific ground conditions.

### 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 2013).



Directorate for Planning and Environmental Appeals  
 Claim for an Award of Expenses Decision Notice

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Decision by Allison Coard, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2110
- Site address: Land at Farley Estate, by Kilmorack, Beauly
- Claim for expenses by Allt Carach Wind Farm Limited against The Highland Council

Date of decision: 5 November 2014

## Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

## Reasoning

1. The claim was made at the appropriate stage of the proceedings. The appellant claims that the council failed to give complete, precise and relevant reasons for refusal; that it reached its decision without reasonable planning grounds for doing so; that it refused planning permission solely on the grounds that it did not accord with the development plan; that it refused the application on the basis of local opposition rather than on valid planning reasons; and that its unreasonable conduct resulted in additional costs in preparing mapping to demonstrate the lack of justification for refusal.
2. The council's decision notice clearly states its reasons for refusal were based on the visual impact of the proposal. The fact that the weight it attached to the various considerations differed from that of the planning officer and from my subsequent conclusions on this appeal does not in itself demonstrate unreasonable conduct. The volume of objection from local residents indicates that visual impact was not only a relevant planning consideration but one of considerable concern to local residents.
3. The appellant chose to submit additional information with the appeal to refute the council's reason for refusal. Given my conclusion that the council's conduct was not unreasonable there is no reason to conclude it resulted in additional costs. In any event, it was open to the appellant to submit the mapping information earlier, in responding to local concerns raised on this matter. Consequently, I find no basis for an award of expenses.

*Allison Coard*  
 Reporter