

Directorate for Planning and Environmental Appeals

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Mr K McCorquodale
Highland Council
Sent By E-mail



Our ref: PPA-270-2119

12 May 2015

Dear Mr McCorquodale

PLANNING PERMISSION APPEAL: LAND 1300M EAST OF SPITTAL HILL SPITTAL, CAITHNESS

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.

Yours sincerely

Jane Robertson

JANE ROBERTSON
Case Officer
Directorate for Planning and Environmental Appeals



Appeal Decision Notice

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Decision by Timothy Brian, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2119
- Site address: Land to east of Spittal Hill, Caithness
- Appeal by Spittal Hill Windfarm Ltd against the decision by The Highland Council
- Application for planning permission reference 13/04559/FUL dated 2 December 2013 refused by notice dated 11 September 2014
- The development proposed: Wind farm comprising 7 wind turbines with a maximum height of 100m, and with an installed generating capacity of up to 21MW. Associated infrastructure includes wind turbine transformers, a meteorological mast, new and upgraded access tracks, control building and substation, underground cables, and a temporary construction compound
- Date of site visits by Reporter: 2-4 March 2015

Date of appeal decision: 12 May 2015

Decision

I dismiss the appeal and refuse planning permission for the development to which it relates.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this case is the Highland-wide Local Development Plan. Scottish Planning Policy (issued in June 2014), which sets out Scottish Ministers' policy on onshore wind energy developments, is another important consideration.

2. Having regard to the provisions of the development plan the main issues in this appeal are landscape/visual impact and residential impact, including cumulative impact. Other material considerations include natural heritage, water and drainage, peat, cultural heritage, noise, economic impact and tourism, roads/traffic and public access. The planning history of the site is also relevant.

Previous wind farm proposal

3. A previous application under section 36 of the Electricity Act 1989 for a 30 turbine wind farm, with a generating capacity of up to 77.5 megawatts (MW), on an area of 980 hectares at Spittal Hill was rejected by Scottish Ministers following a public inquiry in 2011. All but three of the turbines would have been 110 metres (m) high. The

development would have placed 88 properties, including the entire village of Spittal, within 2 kilometres (km) of the proposed turbines.

4. The Reporter found that “..on balance, the landscape and visual impacts, including cumulative impacts, and the significantly adverse and detrimental effects on residential amenity provide justification for refusing to grant consent.”

5. In recommending refusal the Reporter nonetheless agreed with Scottish Natural Heritage (SNH) that “the site is capable of accommodating some turbines.” The appellant submits that this statement (and Ministers’ subsequent approval of the report) is an important material consideration which should be afforded significant weight in the current appeal.

The current proposal

6. The appeal proposal seeks to develop a substantially smaller wind farm comprising 7 wind turbines (with a generating capacity of up to 21MW) on a much reduced site. The turbines would have a hub height of 60m, and would be 100m high to blade tip.

7. The application was supported by an Environmental Statement (ES) produced in November 2013, and supplemented by additional visualisations, operational noise assessment and design statement inserts in March 2014.

8. The appeal site of 102.5 hectares is located between Thurso and Wick. It lies approximately 12km south east of Thurso, and around 2km north east of the village of Spittal. The turbines would be installed on the eastern slopes of Spittal Hill, a low hill with a maximum height of 176m above ordnance datum (AOD). The appeal site, which rises from 49m to 140m AOD, comprises an area of moorland used as rough grazing.

9. The northerly section (Latheron-Thurso) of the A9 trunk road runs to the west of Spittal Hill, whereas the A882 (Wick to Thurso) passes to the east of the site. The Thurso-Wick railway line is to the north.

Representations/consultations

10. The council’s report of handling records that there were 1,150 objections to the application, and 587 letters of support. A local ballot by Watten Community Council found 255 people against the proposal and 63 in favour. Spittal Windfarm Opposition Group (SWOG) advises that a wider community ballot conducted in association with The Highland Council found that over 80% were opposed to the proposed development. Objectors were concerned about the ‘proliferation’ of wind farm developments in this part of Caithness. A further 42 letters of objection and 11 letters in support were lodged at the appeal stage.

11. There were no objections from the external or internal consultees, but SNH commented that the proposed turbines were too high.

Policy context

12. The Highland-wide Local Development Plan (April 2012) recognises that the Highland area has great potential for renewable energy production, including onshore wind.

13. Policy 67: Renewable Energy Developments states that the council will consider the contribution of the proposal towards renewable energy targets, and any positive and negative effects on the local and national economy, amongst other factors. Subject to balancing with these considerations and taking into account any mitigation measures, the council will support proposals where it is satisfied that they are located, sited and designed such that they will not be significantly detrimental overall, either individually or cumulatively with other developments.

14. The policy requires the consideration of any significant effects, including natural, built and cultural heritage features, species and habitats, visual impact, impact on landscape character, amenity at sensitive locations including residential properties, noise, shadow flicker, ground and surface water, public access, tourism and recreation, and traffic and transport.

15. The appeal site falls within a Stage 3 Area – Areas of Search for wind energy identified in the council's Interim Supplementary Guidance on Onshore Wind Energy (March 2012), where proposals require to be assessed against policy 67 of the local development plan.

16. Scottish Planning Policy (SPP), published in June 2014, reaffirms the Scottish Government's support for the expansion of renewable energy generation capacity, including onshore wind. Planning authorities are required to set out in the development plan a spatial framework identifying those areas that are likely to be most appropriate for onshore wind farms. An area not exceeding 2km is recommended for community separation around villages. The approach set out in Table 1 of SPP would place the appeal site in Group 3: Areas with potential for wind farm development. Wind energy proposals require to be assessed against the considerations set out in paragraph 169 of SPP.

Design and layout

17. The appellant states that the height and number of turbines in the current proposal addresses the previous Reporter's findings, and the views of SNH. The irregular layout is consistent with other wind farms in the vicinity.

18. The appellant considered a number of schemes involving different turbine numbers and layout. The layout sought to: maximise the separation from residential properties and main roads; locate turbines solely within moorland cover, away from the summit of Spittal Hill, and separate from the village of Spittal; and minimise the stacking (lining up) of turbines.

19. However I note that the highest turbine would still have a base elevation of 120m – only 56m below the summit of Spittal Hill.

20. In its consultation response SNH commented with regard to turbine layout and numbers that the proposal forms a reasonably balanced grouping of turbines and adopts an appropriate semi-regular layout that relates to the form of other nearby operational and consented wind farms. But SNH also considered that “..the turbine height is too large and so the current proposal would dominate the scale of the landscape..”, and advised that “..there would be significant adverse cumulative impacts on local communities in the Spittal

area when the proposal is seen in combination with the consented Halsary wind farm.” SNH suggested considering lower turbines 74-80m high.

21. However the appellant points out that turbines at all wind farms within 15km of the site are between 93-115m high, with 53 out of 61 turbines being 100m high to blade tip, so it cannot be said that they are out of scale with other turbines in the area.

Landscape impact

22. I do not consider that the proposal would have a material impact on any landscape designation in the area. There are no national landscape designations in the 35km study area used for the landscape and visual impact assessment, nor any designated landscapes on the site.

23. The proposal would not have a tangible impact on wild land. SNH raised no concern about the potential impact of the proposal on the identified wild land areas in Caithness. The nearest wild land area is some 8km to the south, beyond the existing and consented wind farms at Causeymire, Halsary, Achlachan and Bad a Cheo.

24. The nearest landscape designation, approximately 10km to the south, is the Flow Country and Berriedale Coast Special Landscape Area (SLA). I agree with the council that there would only be a minor impact on that SLA, because of the screening effect of Spittal Hill, the distance involved and the existing and consented wind farms in between.

25. The ES also anticipates no significant effect on the Dunnet Head SLA some 15-20km to the north, but the council disagrees with that assessment, noting that the citation for the SLA highlights its sensitivity to development that could impinge on views towards the headland or from Dunnet Head itself. The citation also suggests that large structures on or near the headland could compromise its perceived large scale and extensive character of the interior moorland.

26. However, having visited Dunnet Head I am not convinced that the turbines would be noticeable from that viewpoint. The new turbines would be visible but at a distance of some 20km, and would form a tiny proportion of the sweeping 360 degree panorama which features the Pentland Firth and Orkney to the north, and the mountains to the south-west. Even in combination with existing turbines on the distant skyline I agree that an additional seven turbines at Spittal Hill would not have a significant effect on the Dunnet Head SLA.

27. Nonetheless, on the basis of the assessment in the ES and my site visits, it is clear that the proposal would have a significant detrimental impact on the landscape character of the area. The appeal site lies in the settled north-eastern area of Caithness broad landscape character area, and within two landscape character types (LCTs).

28. The development would have a major significant effect on the *small farms and crofts: fringe crofting and historic features* LCT, which is found in relatively small areas across Caithness. Within the small farms and crofts landscape it is very difficult to incorporate new elements without confusing the existing composition of characteristics by adding a new layer of complexity. Additional elements can also disrupt the balance between components, as one element becomes more dominant than the others. The ES

acknowledges that the development would have a defining influence on the character of this area, both from within it and in views of it from the wider landscape.

29. Significant effects are also predicted within the *mixed agriculture and settlement* LCT, and the nearby *open intensive farmland* LCT.

30. The council correctly points out that Spittal Hill is a highly visible local landmark which is seen from long distances, and that it offers separation and screening to provide relief from the cumulative impact of the various wind farms in the area. I consider that the presence of 100m turbines on the north east slopes of this low hill would serve to diminish and detract from this local landscape feature, and would extend northwards the influence of turbines in the landscape already experienced along the section of the A9 to the south of Spittal. I find that the proposed turbines would appear out of scale with the low hill which would serve as a backcloth to the development.

31. Further, I agree with SNH that the 100m turbines would overwhelm the scale of the small buildings close to the site when viewed from viewpoints VP4 (Spittal) and VP14 (Backlass). The ES also predicts significant effects on landscape character from the A882 at viewpoints VP8, VP9 and VP10, and from the B870 at VP16 (Loch Watten).

Visual impact

32. The proposed wind farm would also have a substantial detrimental visual impact, especially from viewpoints up to around 4km from the site. Significant visual effects were anticipated from 8 of the 23 representative viewpoints (VPs) selected for the landscape and visual impact assessment (VPs 2-4, 8-10 and 14 and 16).

33. From the elevated viewpoint (VP2) at the junction of the A9 and A882, where all 7 turbines would be visible at a distance of around 4km, there would be a significant visual effect for road users. There would also be a significant visual effect from VP3 on the A9 approximately 2km from the site, where all of the turbines (or parts of them) would be visible. From VP4 on the A9 on the southern edge of Spittal, 2.45km from the nearest turbine, all 7 turbines would be seen but parts would be screened by vegetation.

34. From VP8 on the A882 to the east of the site, where all 7 turbines would be in clear view (with virtually no screening) at a distance of 1.69km, there would be a significant effect on road users, as the turbines would become the key feature in this view. There would also be a major impact on residents in Lower Dunn facing towards the proposed wind farm, and on views from the nearby caravan park.

35. From VP9, also on the A882 (about 1km north west of VP8), the nearest turbine is only 1.45km away. Despite the low hedge on the roadside, all 7 turbines would be conspicuous at a short distance. There is a house opposite facing the site and others at Larel which would face or back on to the site. I agree with the ES that there would be a major impact on residential properties (see below).

36. VP10 on the A882 near Clayock is almost 3km to the north of the nearest turbine, but all or parts of the 7 turbines would be prominent on the skyline, resulting in a major impact on residential properties.

37. At VP14 on the B870 near Backlass, 1.9km from the nearest turbine, despite partial screening by trees and properties, the turbines would create a somewhat jarring impression as they would appear out of scale and would protrude above the houses on the near skyline. This would result in a significant effect for road users and on residential properties.

38. Although VP16 at Loch Watten is over 6km from the nearest turbine, this is a sensitive location from where the turbines would be conspicuous on the skyline. There would be a significant effect on landscape character and on users of the picnic area.

39. I generally accept the appellant's assessment of the other viewpoints, though I note that all 7 turbines would also be clearly seen from: the B876 near Cooper's Hill (VP17) at a distance of 9.35km; Glengolly (VP19) at a distance of 12.39km; and Ben Dorrery (VP21) at a distance of 11.34km.

Residential impact

40. The assessment of potential effects on residential visual amenity in the ES is helpful in informing a judgement on impact. This is a settled landscape, and there is a substantial number of houses in close proximity to the proposed wind farm: 51 residential properties within 2km of the nearest turbine, and 10 non-stakeholder properties within 1-1.5km. The closest property without a financial interest is 1.15km from the nearest turbine. The greatest impacts would be on properties around Dunn Road and the A882.

41. The ES identifies 23 properties which would experience a significant effect, 20 of which would be moderate. Of the three properties experiencing a major effect, two have a financial interest in the project. The non-related property, Balnasmurich, a modern two storey house in an elevated position west of Dunn Road, 1.35km from the nearest turbine, would experience turbines in a part of the outlook which is currently turbine free, albeit the assessment finds the proposed wind farm would not dominate the property.

42. Most of the significantly affected properties would be on or near to the A882 in the vicinity of Larel and Lower Dunn, which would experience a significant impact at distances of 1.5-1.8km. The impact would be particularly acute when the wind farm is introduced into a main aspect of a dwelling within a relatively short distance. At 20 Larel (1.76km from the nearest turbine) for example the turbines are likely to be visible from front windows and garden areas to the front and side of the property. Similarly, the view from 31 Larel looks directly to the proposed wind farm at a distance of 1.51km. The significant impact on properties on the A882 is illustrated by the visualisations at viewpoints VP8, VP9, VP10 and VP14, which suggest that the turbines are likely to be dominant features in views from some of the affected properties.

43. Overall, whilst I accept that no individual residential properties would be overwhelmed or dominated by the turbines, I find that a substantial number would experience significant detrimental visual impact which would make them less pleasant places to live.

44. There would be a significant effect on the visual character of the village of Spittal. The proposal would introduce views of a wind farm to the north, which in combination with the strong influence of the four wind farms built or approved to the south at Achlachan,

Causeymire, Halsary and Bad a Cheo would create a partial sense of enclosure. I address the issue of cumulative impacts below.

Cumulative landscape and visual impact

45. Paragraph 169 of SPP identifies cumulative impact as one of the considerations which will apply to wind farm proposals, recognising that in some areas the cumulative impact of existing and consented energy development may limit the capacity for further development.

46. SNH points out that the cumulative context of the Spittal Hill proposal has changed since the 2011 public inquiry.

47. Caithness in general, and this area in particular, have seen a number of proposals for wind farm developments in recent years. There are now operational wind farms at Boulfruich, Causeymire, Camster, Flex Hill, Wathegar, Achairn, Baillie Hill, and Forss 1 & 2, and consented wind farms at Halsary, Achlachen, Wathegar (extension), Burn of Whilk, Stroupster, Strathy North, Bad a Cheo and Lochend (December 2014). In addition there are current undetermined applications at Limekiln and Strathy South, and many more proposals at scoping stage. I can therefore understand the concern of local residents that the area is changing its character to a landscape strongly influenced by turbines.

48. The cumulative zones of theoretical visibility (ZTVs) in the ES illustrate the wide extent of theoretical combined visibility of the proposed Spittal Hill wind farm with the other wind farms in the area, notably the 54 turbines in the nearby cluster around the A9 comprising Causeymire, Halsary, Bad a Cheo and Achlachen. They also show a considerable area where there could be combined visibility with a separate wind farm cluster around the A882 comprising Achairn, Flex Hill and Wathegar 1 & 2.

49. The council considers that the proposed development would potentially expand the Causeymire, Halsary, Achlachen and Bad a Cheo cluster northwards in a prominent way. In contrast, the appellant suggests that the Spittal Hill wind farm would effectively mark a 'book-end' to the Causeymire, etc. cluster on the A9 and the cluster formed by Achairn, Wathegar 1 and 2, Flex Hill and Camster on the A882.

50. I acknowledge that the proposed wind farm at Spittal Hill would be slightly apart from the cluster of wind farms at Causeymire, Halsary, Achlachen and Bad a Cheo, which sits in a separate watershed. However I agree with the council that it would increase the visual extent of the cluster, particularly when viewed from further afield, and would bring the cluster beyond the barrier formed by the ridgeline between Spittal Hill and Backlass.

51. There would be significant adverse cumulative impacts in the Spittal area when the proposal is seen in combination with the consented Halsary wind farm on the east side of the A882. In particular there would be significant cumulative effects on visual amenity viewed from the B870 in the Backlass area, and from within and around residential properties on the southern slopes of Spittal Hill. These effects would occur as the Spittal Hill turbines and those at Halsary and Causeymire are seen together and in sequence at close distances of 2-3km.

52. As already discussed, I agree with SNH that the proposal would make a substantial contribution to cumulative effects in views from the A9 on the southern edge of Spittal (VP4), and would thereby adversely affect the setting of the village and local visual amenity. From that position the viewer would have the sense of being partly encircled by turbines.

53. Although I can find no reference to the concept of 'respite' in national policy or guidance, it is widely recognised that cumulative effects on visual amenity can be caused by 'combined visibility' and/or 'sequential effects'. The latter effects may arise when features appear regularly and with short time lapses in between. The ES recognises the significant impact on road users. The council raises concern about the sequential impact experienced by visitors to Caithness, particularly tourists.

54. The sequential assessment in the ES found that there would be significant effects on the A882/A9 between Wick and Thurso (both directions) and the B874 (both directions). In particular there would be a high magnitude of change in the section of road between Loch Watten and Clayock when travelling in either direction, because of the increased extent of the route from where the turbines would be visible and prominent in places. The effects on the B874 would be similar.

Conclusion on landscape and visual impact

55. Overall on this issue I therefore conclude that the proposal would have substantial detrimental landscape and visual impacts, including residential impacts, on its own and in combination with other wind farm developments in the area.

Noise impact

56. Having considered the applicant's revised noise assessment the council's environmental health officer was satisfied that operational noise, including cumulative noise, could comply with recommended limits, and proposed conditions to achieve that objective. I have no reason to dispute that judgement, or the council's conclusion that shadow flicker would not be an issue in this case.

Natural heritage

57. There are no reasons to refuse planning permission on natural heritage grounds. SNH confirmed that any natural heritage interests of international importance in the East Caithness Cliffs Special Protection Area (SPA) would not be adversely affected by the proposed development. Any impacts could be minimised by imposing appropriate mitigation measures.

Water, drainage and peat

58. There are no private water supplies in or close to the appeal site. SEPA is satisfied that its concerns could be addressed by conditions requiring a site specific construction environmental management plan, a minimum buffer of 20m to water courses, micro-siting to avoid deep peat, and submission of a restoration and aftercare plan. On that basis there is no reason to object to the proposal on the grounds of impact to water, drainage or peat.

Cultural heritage

59. There are 29 scheduled monuments and 13 listed buildings within 6.5km of the proposed turbines. However Historic Scotland did not consider that the significance of impacts on the setting of these assets warranted an objection, and I accept that conclusion.

Economic impact and tourism

60. The proposed development would generate £27 million in capital investment, and create around 30 full time equivalent jobs during construction, and 2-3 regular maintenance jobs during the 25 year life of the wind farm. There would be short term, minor positive effects through the increase in employment and business opportunities, but only a very modest positive impact in the longer term. I agree with the conclusion of the ES that the impact on tourism would be negligible.

Roads/traffic and public access

61. The site could be accessed from the A9 or A882. Transport Scotland does not consider that the impact of additional traffic on the A9 during construction would be significant. Transport Scotland and the council's road engineers would require conditions to be attached to any consent, relating to access arrangements, site management, and localised road improvements.

62. No core paths or recorded rights of way would be affected by the development, and an access management plan could improve facilities for recreational users.

Assessment against policy and other material considerations

63. Returning to Highland-wide Local Development Plan Policy 67, I accept that the proposal would make a worthwhile, if small, contribution towards meeting renewable energy targets and would have a minor positive economic impact in the short term. However, I consider that these modest benefits are substantially outweighed in this case by the significant landscape, visual and residential impacts, including cumulative impacts, of the scheme overall, which I have identified above. I therefore conclude that the proposed development is contrary to the terms of Policy 67, which is the key relevant policy of the development plan.

64. As a renewable energy proposal the development attracts general support from SPP, which confirms the Scottish Government's commitment to derive the equivalent of 100% of electricity demand from renewable sources by 2020. However the Government's support is not unqualified. Paragraph 169 highlights the considerations to be taken into account when appraising wind farm proposals, which include landscape and visual impacts, residential amenity and cumulative impacts. I have already found that, overall, the Spittal Hill proposal would have significant landscape, visual and residential impacts and cumulative impacts. I therefore find that the proposed development is inconsistent with SPP.

65. Overall I conclude that the proposal is contrary to the relevant provisions of the development plan and is not consistent with Scottish Planning Policy.

66. I note the reference to the previous Reporter's report regarding a different scheme in 2011, but I am required to consider the current proposal in the light of the up-to-date environmental information and policy context before me, together with the submissions by the parties, consultation responses, representations, and the findings of my site visits. It is evident that the cumulative context has changed since 2011, which is likely to have reduced the capacity of the area to accommodate additional turbines.

Overall conclusions

67. 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.

Timothy Brian

Assistant Chief Reporter