

## Directorate for Planning and Environmental Appeals

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Mr N Brockie  
Highland Council  
Sent By E-mail



Our ref: PPA-270-2128

18 August 2015

Dear Mr Brockie

### **PLANNING PERMISSION APPEAL: LAND 265M NW OF UPPER NORTHFIELD FARM HEMPRIGGS THRUMSTER, 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

*Colin Bell*

**COLIN BELL**  
**Case Officer**  
**Directorate for Planning and Environmental Appeals**



## Appeal Decision Notice

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Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2128
- Site address: Land 265 metres north-west of Upper Northfield Farm, Hempriggs, Thrumster, Wick, Highland, KW1 5TP
- Appeal by Fine Energy Ltd against the decision by Highland Council
- Application for planning permission reference 14/03832/FUL dated 8 October 2014 refused by notice dated 2 April 2015
- The development proposed: Erection of 50 kilowatt single wind turbine, 32.4 metres height to blade tip and 24 metres to hub.
- Application drawings: 01 Block plan, 02 Site layout plan, 03 Location plan, Details1 Rev.A Elevation, and Details1 Rev.A General plan.
- Date of site visit by Reporter: 16 July 2015

Date of appeal decision: 18 August 2015

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### Decision

I allow the appeal and grant planning permission subject to the nine conditions listed at the end of the decision notice. Attention is drawn to the two advisory notes at the end of the notice.

I direct that unless the development hereby permitted has already begun, this permission will lapse after a period of three years beginning with the date of this permission. This direction replaces section 58(1) of the Town and Country Planning (Scotland) Act 1997, as amended, for this permission, as that section of the Act does not apply to permissions granted for a limited period such as this one.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. From my site inspection and the submissions I consider the main issues in this case to be the landscape and visual impact of the proposal, including cumulative impact, and whether other material considerations indicate a different decision. The latter includes the potential impact on the East Caithness Cliffs Special Protection Area.
2. The relevant development plan policies quoted in the reasons for refusal are from the Highland-wide Local Development Plan 2012.
  - Policy 28 Sustainable design;



- Policy 57 Natural, built and cultural heritage;
- Policy 61 Landscape; and
- Policy 67 Renewable energy developments.

No other policies have been drawn to my attention and I do not consider there are any of particular relevance other than policy 58 regarding protected species.

3. In brief policy 28 supports developments promoting and enhancing the social, economic and environmental wellbeing of the people of Highland. These are assessed on a number of criteria including impact on resources including landscape and scenery. Policy 57 requires that developments should not have an unacceptable impact on features of local importance. Policy 58 requires surveys to be carried out to establish the presence of any protected species and if necessary provide a mitigation plan to avoid or minimise any impacts. Policy 61 requires new developments to reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area. Policy 67 supports proposals able to demonstrate significant benefits including making use of existing infrastructure and subject to a number of criteria including landscape and visual impact.

4. The council has some criticisms of the visualisations included with the environmental statement. Many of these are points of detail and are set out in the committee report. I accept these. It would also have been helpful to have a better drawing showing the relationship between the appeal site and the existing pylon close by. Despite this, I am satisfied that if used carefully the visualisations, and associated text, provide an adequate basis for assessing the proposal.

#### *Landscape impact*

5. The appeal site is located some 880 metres to the north-west of the A99, about 1.6 kilometres from the southern edge of Wick. It is part of Northfield Farm and the site itself is within an agricultural field, largely made up of rough grazing and boggy ground. Seen from the A99 the surrounding area appears almost flat, but with a gentle rise to the west. There is an existing turbine of similar type and same size as the proposed one, standing 125 metres to the south-west. Upper Northfield Farm lies about 250 metres to the south, and comprises two large agricultural sheds, a farmhouse and some smaller structures. Northfield itself is nearly 600 metres to the east-south-east, with a farm house and semi-derelict looking large building. Both houses face away from the site.

6. The appeal site lies within a mixed character landscape type, as identified in Scottish Natural Heritage's Caithness and Sutherland Landscape Character Assessment. This is primarily mixed agriculture and settlement, close to the town of Wick. To the north-west and south-west the landscape develops into sweeping moorland, but this is very gentle and there are no really dominant hills within view.

7. The views of the appeal site seen by most people are from the busy A99 trunk road, which is the main road artery from the south serving north-east Caithness. The road is straight and virtually level for some two kilometres passing Upper Northfield, with clear visibility. From my site inspection most traffic appears to pass at the national speed limit, and drivers' attention should be focused on the road ahead.

8. I stopped at a number of points along the road in addition to viewpoints 3, 4, 6 and 9 in the visualisations. From viewpoint 4, the closest to Upper Northfield, and other points nearby the site is seen across hay meadows. Whilst the existing turbine is a relatively prominent feature from close to it is by no means dominating within the landscape, despite being seen largely above the skyline. Indeed the further away the viewpoint it appears little more noticeable than a line of wooden poles carrying a local electricity supply, depending in part on lighting conditions, which can affect the appearance of both the poles and the turbines. At 34.2 metres to blade tip it is at the lower end of commercial, as opposed to domestic, turbine size. From the A99, other than opposite the farm, it is largely subsumed within the broad scale of the open landscape. As the proposed turbine would be the same height, it would not appear unduly intrusive when seen from these viewpoints.

9. The closest viewpoint to the appeal site is 1, Hill of Newton farm, 585 metres to the north-north-east. The road to this serves only the farm and it is unlikely to be visited by many people. Being very slightly elevated it looks down on the site and from this point the close landscape looks unkempt in farming terms with a predominance of boggy looking ground and scrub vegetation. The two turbines would be prominent because of their proximity, and largely above the skyline. They would not however be dominating features in the landscape.

10. Viewpoint 2, 1.1 kilometres distant is a former public countryside access point now closed because of ground contamination. Without access it is not a significant viewpoint. Viewpoint 7, close by, is a Forestry Commission access point with car park, so potentially well used. The existing and proposed turbine would be slightly less prominent than from the A99 because of increased distance. The turbines would also be seen more closely associated with the scrub vegetation and forestry. Again I do not consider either turbine dominating within the landscape.

11. From the more distant viewpoints 5, 8, 10 and 11 at up to 3.24 kilometres distant the turbines appear correspondingly smaller. My overall conclusion in relation to landscape is that the existing turbine sits well within the broad scale of the landscape and I have no reason to suggest the proposed one would be any different. This view appears to be shared by the council's landscape officer, albeit on the basis of sound local knowledge rather than a site inspection.

### *Visual impact*

12. The council's committee report states the original turbine was accepted on the basis of its singular nature and the scale and association of its form and function with the adjoining farm complex. It says two turbines would: "change the dynamics and relationship between them and the associated buildings." It adds they would: "present a transition with an industrialisation of the landscape which would significantly alter and impact on the character and setting of this area by establishing a pattern of development which would take on a visual prominence emphasised by their kinetic movement.....a single turbine has a more sculptural quality with a simplicity of form and impact that adds less to the 'complexity' of the perceived landscape.

13. I find this a particularly academic argument that I am unable to accept. If the turbines were much larger then it may have some validity, but with a tip height of less than 35 metres and relatively small rotor diameter the visual impact would not be unacceptable.

14. The committee report does not comment on residential visual amenity. The main windows of Upper Northfield farm house face away from the site, and the occupiers are an interested party. Northfield farm house windows also face away but it is also screened by the farm buildings. Hill of Newton Farm is 585 metres away, far enough for the turbines not to have an unacceptable impact on visual amenity.

#### *Cumulative impact*

15. The principal cumulative impact is with the existing turbine at Upper Northfield. The committee report effectively repeats the arguments set out in relation to the landscape and visual effects, claiming that the second turbine would change the dynamics of the open agrarian landscape. For the reasons set out above, and in response to those arguments, I do not consider the second turbine to have an unacceptable landscape effect when taken cumulatively with the existing turbine.

16. There are three windfarms nearby that are the main consideration regarding cumulative impact. These are Camster 1 (25 turbines 7.8 kilometres to the west); Achairn/Wathegar (3/9 turbines 5 kilometres to the north-west); and Burn of Whilk (9 turbines 7.5 kilometres to the south-west). There is also a proposal for a Camster 2 less than 3 kilometres to the west but this is still under preparation and does not affect my determination.

17. From the A99 close to the site there is no intervisibility between these and the appeal site. From viewpoint 1 Burn of Whilk is seen on the distant skyline, although not shown on the wirescape. The distance is such that there is no significant cumulative effect.

18. Seen from the viewpoints to the west, and the public access point viewpoint 7 the Achairn/Wathegar turbines are prominent but in the opposite direction to the appeal site, and there is no significant cumulative impact. Camster 1 is also in the opposite direction to the view, but its farther distance again means there is no significant cumulative impact.

19. There are also a number of individual turbines within a five kilometre radius of the appeal site, but there is no intervisibility because of the topography, vegetation or intervening buildings. Overall the size of the proposed turbine is such that that there is no significant cumulative effect with existing turbines.

#### *Wildlife impact*

20. The appeal site lies some 1,750 metres to the west of the East Caithness Cliffs Special Protection Area. This includes most of the sea-cliff areas between Wick and Helmsdale. Under the requirements of the Conservation (Natural Habitats &c.) Regulations 1974, as amended, I must consider the effects of the proposal on the protected area before planning permission can be granted.

21. Scottish Natural Heritage has stated that the proposal is likely to have a significant effect on the herring and great black-backed gulls from the area. Under the regulations I must therefore carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interest. This includes the herring gull in its own right during the breeding season, and the great black-backed gull during the breeding season as part of a seabird assemblage of international importance.

22. To assist with this Scottish Natural Heritage carried out vantage point surveys at the proposed site. These recorded herring gulls and great black-backed gulls at collision risk height. Collision risk modelling was carried out for herring gulls. This predicted a collision risk of 5.54 gulls per breeding season after avoidance (98%). Great black-backed gulls' flight numbers were so low that no collision risk modelling was undertaken. To account for sabbatical and non-breeding birds, that is non-protected area birds, the collision risk for herring gulls was reduced to 2.05 birds per breeding season.

23. For surveys of this type the recommended level is 36 hours, but in this case 30 hours were completed by Scottish Natural Heritage. I am satisfied however that because of the very small numbers involved this reduced figure is acceptable in this case, without prejudice to requirements for any future cases.

24. Scottish Natural Heritage concluded that in combination with other proposals affecting this protected area, both onshore and offshore, the collision risk for these species will not affect the conservation objectives for the site.

25. Determining whether a proposal will not have an adverse effect on site integrity is always a matter for scientific judgement. I am satisfied that Scottish Natural Heritage's surveys are scientifically sound, enabling proper reasoning for my appropriate assessment. I have considered carefully the survey results. Set against a herring gull population of more than 9,000 pairs and a seabird assemblage of over 300,000 birds (Joint Nature Conservation Committee figures), my judgement is that the proposed development, both individually and cumulatively will not adversely impact the protected area population.

#### *Assessment against the development plan*

26. For the reasons set out above I find the proposal supported by policy 67 on renewable energy. In relation to the other policies quoted I find no significant conflict with the provisions of the development plan.

#### *Other material considerations*

27. Scottish Government energy policy is supportive of renewable energy development such as the appeal proposal, with a target of generating 100% equivalent of national electricity consumption by 2020. Although the proposed turbine would only be a very small proportion of this the appellant estimates it would generate 214,050 kilowatt hours per annum. This is the equivalent of powering 49 homes per year, using Ofgem's medium typical consumption figure of 4,300 kilowatt hours per annum per property.

28. This is followed up in Scottish Planning Policy, which sets out development management criteria against which energy infrastructure developments should be

assessed. Many of these apply in this case, but none suggests the proposed turbine should not be granted planning permission.

29. No objections were raised by any of the council's consultees, including Scottish Natural Heritage and Historic Scotland. I have considered the wildlife and landscape issues above. Scheduled monuments and listed buildings are listed in the environmental statement. I am satisfied there would be no significant adverse impacts on any of these.

30. The council's environmental health department asked for conditions to be imposed regarding noise levels at the nearest noise sensitive properties. No issues have been raised regarding shadow-flicker.

31. Tannach and District Community Council made comments on points of detail and whether approving the proposal would set a precedent for further small turbines. In this regard each proposal should be judged on its own merits and the appeal proposal should not be seen as setting a precedent for further single turbine developments.

32. There were no representations from members of the public either supporting or opposing the proposal.

#### *Overall conclusion*

33. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

#### *Conditions*

34. The council has submitted nine conditions to be imposed in the event of planning permission being granted. I consider these are in accordance with circular 4/1998 regarding the use of conditions in planning permissions. Subject to minor editing I have adopted these for the planning permission.

*Trevor A Croft*

Reporter

#### **Conditions**

1. This planning permission shall expire and cease to have effect after a period of 26 years from the date of this decision notice. Upon the expiration of a period of 25 years from the date of this decision notice, the wind turbine shall be decommissioned and removed from the site, with decommissioning and restoration works undertaken in accordance with the terms of the Decommissioning and Restoration Plan approved under condition 2 of this permission.

**Reason:** *wind turbines have a projected lifespan of 25 years, after which their condition is likely to be such that they require to be replaced, both in terms of technical and environmental considerations. This limited consent period also enables a review and, if required, reassessment to be made of the environmental impacts of the development and the success, or otherwise, of noise impact, species protection, habitat management and mitigation measures. The 26 year cessation date allows for a 1 year period to complete commissioning and site restoration work.*

2. No development shall commence until a draft Decommissioning and Restoration Plan (DRP) for the application site has been submitted to, and approved in writing by, the Planning Authority in consultation with SNH and SEPA. Thereafter, and no later than 12 months prior to the decommissioning of the development, a detailed DRP, based upon the principles of the approved draft plan, shall be submitted to, and approved in writing by, the planning authority. For the avoidance of doubt, the DRP shall include the removal of all above-ground elements of the development, the treatment of ground surfaces, management and timing of the works, environmental management provisions and a traffic management plan to address any traffic impact issues during the decommissioning period. The approved detailed Decommissioning and Restoration Plan shall be implemented as approved.

**Reason:** *to ensure that the decommissioning of the development and restoration of the site are carried out in an appropriate and environmentally acceptable manner.*

3. The developer shall, at all times after the date when electricity is first exported from the approved wind turbine, record information regarding the monthly supply of electricity and retain the information for a period of at least 12 months. The information shall be made available to the planning authority within one month of any request by them. In the event that the wind turbine, once installed and commissioned, fails to supply electricity for a continuous period of 6 months, then the wind turbine in question shall be deemed to have ceased to be required. Under such circumstances, the wind turbine, along with any ancillary equipment, fixtures and fittings not required in connection with retained turbines, shall, within 3 months of the end of the said continuous 6 month period, be dismantled and removed from the site and the surrounding land fully reinstated in accordance with a Decommissioning and Restoration Plan which shall first be submitted to, and approved in writing by, the Planning Authority.

**Reason:** *To ensure that a record is retained as evidence of the functionality of the wind turbine and that if redundant or non-functional it shall be removed from site; in the interests of safety, amenity and environmental protection.*

4. The wind turbine shall be finished, and thereafter maintained, in a non-reflective pale grey semi-matt colour, the specific RAL code (or similar) of which shall first be approved in writing by the planning authority, and no symbols, signs, logos or other lettering shall be displayed on any part of the wind turbines nor any other buildings or structures within the application site unless required by law or as otherwise approved in writing by the planning authority.

**Reason:** *to ensure that the wind turbine is not overly prominent within the landscape, and to ensure that it is not used for advertising, in the interests of visual amenity.*

5. The developer shall ensure that the wind turbine and all plant, machinery or equipment installed or forming part of the development shall be so installed and thereafter



operated and maintained that no interference or disruption occurs to telecommunications equipment, transmitting or receiving systems, including navigation and surveillance systems, TV and radio reception and associated infrastructure. Within 12 months of the final commissioning of the development, any claim by any individual person regarding TV picture loss or interference at their house, business premises or other building, shall be investigated by a qualified engineer appointed by the developer and the results shall be submitted to the Planning Authority. Should any impairment to the TV signal be attributable to the development, the developer shall remedy such impairment so that the standard of reception at the affected property is equivalent to the TV reception experienced prior to the completion of the development.

**Reason:** *to ensure the Turbine operates within set parameters to safeguard the operation of existing infrastructure within the vicinity of the turbine in accordance with Policy 67 of the Highland-wide Local Development Plan.*

6. The Wind Turbine Noise Level, including the application of any tonal penalty specified in ETSU-R-97 at pages 99-109, shall not exceed 35 dB LA90,10min at any Noise-Sensitive Premises. This condition shall only apply at wind speeds up to 10m/s measured or calculated using the methods described in "Prediction and Assessment of Wind Turbine Noise" (published in IOA Bulletin March/April 2009).

**Reason:** *to ensure that the noise impact of the development does not exceed the predicted noise levels set out within the supporting noise assessment.*

7. The turbine operator shall, beginning with the first day upon which the turbine becomes operational, log wind speed and wind direction data continually and shall retain the data for a period of at least 12 months from the date that it was logged. The data shall include the average wind speed, measured in metres per second, over 10 minute measuring periods. These measuring periods shall be set to commence on the hour and at 10 minute consecutive increments thereafter. Measurements shall be calculated at 10m above ground level using the methods described in A Good Practice Guide To The Application Of ETSU-R-97 For The Assessment And Rating Of Wind Turbine Noise published by the Institute of Acoustics. All wind speed data shall be made available to the planning authority on request in Microsoft Excel compatible electronic spread sheet format.

**Reason:** *to ensure that the noise impact of the development can be assessed, if necessary following a complaint, in order to demonstrate that it does/does not exceed the predicted noise levels set out within the supporting noise assessment.*

8. At the reasonable request of the Planning Authority, the Wind Farm Operator shall assess, at its own expense and using a suitably qualified consultant(s) not involved in the original noise assessment, the level of noise emissions from the Wind Turbines. Assessment shall be carried out in accordance with the Noise Measurement and Mitigation Scheme approved under this planning permission and a report of assessment shall be submitted to the planning authority within two months of a request under this condition, unless an alternative timescale is otherwise agreed in writing by the Planning Authority. If noise emissions are found to exceed limits prescribed under this planning permission, then the turbine operator shall implement mitigation measures in full accordance with the approved Noise Measurement and Mitigation Scheme, or alternative equal or better mitigation measures as may first be approved in writing by the planning authority, in order to reduce noise levels to comply with prescribed limits. The time period for implementing

mitigation measures shall be as outlined in the approved Noise Measurement and Mitigation Scheme or as otherwise may be specified writing by the planning authority.

**Reason:** *to ensure that the noise impact of the development can be assessed, if necessary following a complaint, in order to demonstrate that it does/does not exceed the predicted noise levels set out within the supporting noise assessment.*

9. No development shall commence until a Noise Measurement and Mitigation Scheme has been submitted to, and approved in writing by, the planning authority.

The scheme shall include:

i. A framework for the measurement and calculation of noise levels to be undertaken in accordance with "The Assessment & Rating of Noise from Wind Farms", September 1996, ETSU report number ETSU-R-97 having regard to paragraphs 1-3 and 5-11 inclusive, of The Schedule, pages 95 to 97; and Supplementary Guidance Notes to the Planning Obligation, pages 99 to 109. Wind speeds shall be determined using the methods in "Prediction and Assessment of Wind Turbine Noise" (published in IOA Bulletin March/April 2009); and

ii. Mitigation measures to be enacted, along with a timetable(s) for implementation, should noise emissions exceed the limits prescribed under this planning permission. The development shall be undertaken in accordance with the agreed Noise Measurement and Mitigation Scheme.

**Reason:** *to ensure that the noise impact of the development can be assessed, if necessary following a complaint, in order to demonstrate that it does/does not exceed the predicted noise levels set out within the supporting noise assessment.*

#### **Advisory notes**

1. **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)).

2. **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)