



Appeal Decision Notice

Decision by Mike Shiel, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2237-1
- Site address: land 1,645 metres south of 43 Farlary, Rogart, Sutherland IV28
- Appeal by South Kilbraur Wind Farm Limited against the decision by The Highland Council
- Application for planning permission no. 19/04826/FUL, dated 30 October 2019, refused by notice dated 4 September 2020
- The development proposed: installation of up to seven wind turbines of up to 149.9 metres in height and ancillary infrastructure
- Date of site visit by Reporter: 14 September 2022

Date of appeal decision: 19 October 2022

Decision

I dismiss the appeal and refuse planning permission.

Preliminary matters

This is the re-determination of an appeal decided on 16 February 2022, when the reporter dismissed the appeal and refused planning permission for the development. Following an appeal to the Court of Session by the appellant, that decision was quashed, and the appeal was returned to the Planning and Environmental Appeals Division for re-determination.

In view of the time that has elapsed since the original appeal was submitted, I gave an opportunity for the appellant and the council to update their positions if they wished to do so, and I have had regard to the information which they have subsequently submitted.

Environmental impact assessment

The proposed development is described as above, and at Chapter 3 of the EIA Report. It is EIA development. The determination of this appeal is therefore subject to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the 2017 EIA regulations").

I am required to examine the environmental information, reach a reasoned conclusion on the significant environmental effects of the proposed development and integrate that conclusion into this decision notice. In that respect I have taken the following into account:

- the EIA Report submitted on 30 October 2019;
- consultation responses from NatureScot, Historic Environment Scotland and the Scottish Environment Protection Agency; and
- representations from members of the public.

My conclusions on the significant environmental effects of the proposal are set out at paragraphs 45,55,56, 57, 60, 62, 65, 68, 70 and 71 below.

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:
 - a. the landscape and visual impact of the proposed development, including its cumulative impact with other wind farms that are completed, approved or under consideration;
 - b. the acceptability of any other relevant impacts; and
 - c. the overall planning balance to be drawn between the environmental impact of the development and its likely benefits.

The development plan

2. The development plan consists of the Highland-wide Local Development Plan 2012 (HwLDP), the Caithness and Sutherland Local Development Plan 2018 and associated adopted Supplementary Guidance. The latter plan does not contain any site-specific policies relevant to the appeal site. However, it provides details of the boundaries for designated Special Landscape Areas including the Loch Fleet, Loch Brora and Glen Loth Special Landscape Area, within which a small section of the site falls.

3. The HwLDP is more than five years old. Paragraph 33 of Scottish Planning Policy (SPP) states that, in such circumstances, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. I deal with that matter in the final section of this notice. However, the HwLDP remains the extant development plan and the proposal must firstly be assessed against its policies.

4. The most directly relevant of these is policy 67, which is concerned with renewable energy developments. It supports proposals that are located, sited and designed in such a way that they will not be significantly detrimental overall, either individually or cumulatively, with other developments and having regard to eleven specific criteria. These include landscape and visual impacts and impacts upon natural, built and cultural heritage features. The policy requires the decision-maker to consider the contribution a proposal makes to meeting renewable energy targets and any likely positive or negative economic effects at local and national level.

5. The Onshore Wind Energy Supplementary Guidance (2016) provides additional guidance on the principles set out in policy 67. The supplementary guidance includes a Spatial Framework for onshore wind energy which accords with Table 1 of SPP. According to the Spatial Framework, the majority of the site is identified as a Group 2 Area (an area of significant protection), due to being located within an area of carbon-rich soils and priority peatlands. In such areas, the applicant needs to demonstrate that any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation.

6. The supplementary guidance provides a methodology for judgments to be made on the likely impact of a development on certain thresholds, in order to assist the application of policy 67. The 10 criteria contained in the guidance include the consideration of landscape and visual impacts, together with cumulative impacts.

Landscape and visual impact assessment (LVIA)*Landscape impact*

7. The appeal site lies within three Landscape Character Types (LCT), as identified in the “Scottish Landscape Character Assessment” published by Scottish Natural Heritage in 2019 - Sweeping Moorland and Flows (LCT 134); Rounded Hills – Caithness & Sutherland (LCT 135); and Strath – Caithness and Sutherland (LCT 142). The majority of the site falls within the Sweeping Moorland LCT. The EIA Report considers that this LCT has a medium sensitivity, given that the landscape is already heavily influenced by existing human development, including wind farms; but also that there is a great sense of exposure in parts, largely resulting from long-range views to distinctive mountain skylines to the north and west. The ZTV drawings indicate that a large proportion of the LCT would be affected by the proposal. Within 15 kilometres, the proposal would have the potential to alter the character of this LCT when experienced in settled areas to the west (such as Knockarthur and East Langwell) but also from undulating upland areas to the north and north-west which are typically not settled.

8. The EIA Report assesses the magnitude of change to this LCT to be medium which would result in moderate (significant) landscape effects at the local level, but a minor (and thus not significant) impact on the LCT as a whole. Given the large extent of the Sweeping Moorlands and Flows LCT to the north-west, north and north-east of the site, I agree with the latter conclusion. I note, however, the previous reporter’s view that the change in character would not be limited just to the immediate surroundings, as contended in the EIA Report because of the site being contained by the enclosing rounded hills of the coastal ridge to the east, including Ben Lunndaidh and Cnoc na Gamhna. He noted that the turbines would protrude into the Sweeping Moorland LCT and be visible over a wide area to the north and north-west. It is a matter of judgement as to how far an impact on landscape character can be considered to be “local”. The EIA Report considers that, beyond a radius of about three kilometres from the nearest turbine, the landscape impact would gradually reduce with distance, given the existing influence of commercial forestry and existing wind farms. In its recent submission, the appellant has argued that the existing Kilbraur Wind Farm has already altered the landscape character and is already an established part of the character of this LCT. Thus, over increasing distances to the north and west, the new turbines would be seen in the context of that wind farm. This, of course, relates to the combined landscape impact of the development, which I consider further below.

9. I acknowledge that, in views from the north and west, the new turbines would only be visible alongside the present Kilbraur wind farm but, taking that into account, I consider that the development would, in its own right, have a significant, adverse impact on the character of this LCT extending out to about 10 kilometres to the north and north-west of the site.

10. The Rounded Hills LCT again extends over a large area to the north-east, south, south-west and north-west of the site; and I accept that, in that context, the landscape impact of the development on the whole of the LCT would be minor. The EIA Report concludes that this LCT has a high sensitivity to change in those parts which are covered by landscape designations, such as Wild Land and Special Landscape Areas, but a medium sensitivity in the remaining parts. It assesses the landscape impact of the proposed wind farm as moderate and, thus, significant. Although the EIA Report does not specifically state this, I think that it is important to recognise that this impact would be adverse.

11. The previous reporter noted that this LCT includes areas with a strong sense of wildness and remoteness with largely uninhabited interiors; as a result of which he

considered it to have a higher sensitivity to development, such as that proposed, than other character types. Given the LCT includes in the vicinity of the appeal site natural landmarks such as Ben Horn and Ben Lunndaidh (which he considered reflect the uninhabited interiors and to an extent the sense of wildness) and that three of the proposed turbines would be located in proximity to these within this LCT, he concluded that the magnitude of change would be substantial. In light of this, he considered that there would be major (significant) adverse landscape effects on the Rounded Hills LCT.

12. In its recent submission, the appellant has made the similar argument as for the Sweeping Moorland LCT; namely that the character of the Rounded Hills LCT has already been altered by existing wind farms. I accept that, in these circumstances, the magnitude of change to the landscape character of the LCT would not be as great as if it were the sole wind farm in this locality. Nonetheless, I consider it would still cause a moderate, adverse impact in its own right, albeit that this adverse impact is confined to an area within a radius of about 5-10 kilometres of the site.

13. The Strath LCT occurs as valleys leading inland from the coast through the rounded hills and into the interior moorland. Units forming part of this character type include Dunrobin Glen to the east and Strath Fleet to the south and south-west, both of which are within five kilometres of the proposal; and Strath Brora to the north-east and north, between five and ten kilometres. A small part of the appeal site lies within the Dunrobin Glen unit of this LCT but there would be no turbines within it. Any impact on this LCT would therefore be indirect. The EIA Report assesses the sensitivity of the LCT as high where it coincides with the Loch Fleet, Loch Brora and Glen Loth Special Landscape Area (SLA), but medium in the remaining areas. The section of Dunrobin Glen adjacent to the site is within the SLA and is, therefore, of high sensitivity. There is no existing influence from wind energy development on the Dunrobin Glen unit of the character type. The previous reporter considered that the introduction of the proposal would therefore alter the character of this area with the magnitude of change considered to be substantial (locally). In light of the sensitivity of this landscape and given the magnitude of change, he concluded that there would be major (significant) adverse landscape effects on the Dunrobin Glen unit of this character area. This, he considered, would represent a substantial deterioration to the existing environment.

14. He also acknowledged that wind energy development has an influence on the Strath Fleet unit to an extent and that this would be extended with the introduction of the proposal, resulting in a medium magnitude of change for this part of the LCT. Taking account of the landscape sensitivity and magnitude of change for this unit, he concurred with the landscape character assessment in the EIA Report that there would be a moderate, adverse impact on the landscape character of the Strath Fleet unit of this LCT.

15. The appellant has most recently argued that the landscape impact would be focussed on the western, upper extent of Dunrobin Glen; and that from large areas in the eastern part of the glen, visibility would be limited to blade tips, with no impact on the southern side. Whilst agreeing that the greatest impact would be at the western end of Dunrobin Glen, I note that the EIA Report concluded that the magnitude of change would be high locally (particularly within Dunrobin Glen and Strath Fleet); and that there would be a major landscape effect on the former area and a moderate impact on the latter. In both cases, these impacts would be significant and adverse. I agree with that assessment and, thus, concur with the previous reporter's conclusions.

16. The eastern edge of the appeal site falls within the boundary of the Loch Fleet, Loch Brora and Glen Loth SLA, but no part of the development would be in the SLA itself. Any

landscape impact of the development on this area would therefore be indirect. As described in the council's document "Assessment of Highland Special Landscape Areas", the key landscape features of this area include a relatively simple, uniform, rolling plateau of interior broad rounded hills, breached by major straths and glens which provide sheltered access routes through the hills and visual connections with the coastal shelf. The document describes its sensitivity to change as including additional large-scale features, in combination with existing wind turbines, which could diminish the perceived scale of the hills and their qualities of wildness and tranquillity. In addition, additional features within the moorland hills could appear to compromise the simplicity of the existing land cover and landform shape.

17. The EIA Report acknowledges that the proposal would be visible from a large part of Dunrobin Glen and could alter its sense of seclusion, tranquillity and intimacy from the coastal fringe. It notes that Dunrobin Glen is not influenced by existing wind farms. Despite this, the EIA Report concludes that the proposal would not diminish the special qualities to a notable degree, given that it would not be visible from the majority of the SLA. It considers that, where it would be visible, the effect would be similar to that arising from the existing Kilbraur Wind Farm. On this basis, the EIA Report concludes that the proposal would not undermine the integrity of the SLA designation and that there would be no significant landscape effects on the SLA.

18. The previous reporter noted that, whilst the interior of the SLA is largely screened by the edge of the hill landform, occasional views are obtained where glens intersect with the coastal shelf. Dunrobin Glen is one such area. It is readily accessible yet is sheltered, offering a sense of seclusion, tranquillity and intimacy in contrast with the busier coastal fringe. The proposal, sited at the western edge of the glen, would radically alter this characteristic.

19. Given the blade tip height of the proposed wind turbines and their siting, immediately west of the ridge of hills which form part of the SLA, he considered that the proposal would diminish the perceived scale of these hills. Cnoc na Gamhna at 371 metres AOD, is one of the higher hills in closest proximity to the proposal, and the proposed blade tip heights and siting of the turbines would diminish its scale by the introduction of a cluster of turbines to its west.

20. In addition, as illustrated in the photomontages from Viewpoints 5 and 7, the proposed turbines would be clearly visible from Ben Lunndaidh and Ben Horn respectively, both within the SLA. Whilst, from both viewpoints it would be seen in combination with the existing Kilbraur Wind Farm, it would extend the visual experience of wind turbines in close proximity to the SLA.

21. In its recent submission, the appellant has stated that parts of the SLA are already affected by views of wind farms; and that from higher viewpoints such as those referred to above, views are available in other directions, which would also draw the eye. Whilst it is recognised that the proposed development would intensify the effects of existing wind farms seen to the west of the SLA, this is not judged to diminish its special qualities.

22. I accept that, given that the proposed wind farm would not be visible from large parts of the SLA, its impact on the landscape character of the whole area would not be significant. However, from those parts where it would be seen (for example, the western part of Dunrobin Glen, Ben Horn and Ben Lundaidh), I agree with the view expressed by the previous reporter that the proposal would have an adverse impact on the characteristics and special qualities of that part of the SLA in proximity to the site; notwithstanding the

impact of existing wind farms. Whether it would “radically alter” the seclusion, tranquillity and intimacy of the western end of Dunrobin Glen, as he concluded, is largely a matter of judgement, but I do not consider that his conclusion was unjustified.

23. The EIA Report has assessed the landscape impact of the development on Wild Land Areas, the closest of which is the Ben Kilbreck-Armine Forest area, the closest point of which is some eight kilometres from the appeal site. Based on the views from three viewpoints within that area – 14 (Hope Hill), 16 (Ben Armine); and 17 (Ben Kilbreck) – the report concludes that the development would have a negligible impact on the perceived scale of the Wild Land landscape or its sense of emptiness and solitude; a view that is shared by NatureScot. I agree with that assessment. The development would also have no significant impacts on any nationally designated landscapes.

Cumulative landscape impact

24. It is clear from Figure 5-9 in the EIA Report that there is a large number of other wind farms, either operational, approved or within the planning process, within a radius of 60 kilometres of the appeal site; although many are at a considerable distance. I am satisfied that, in terms of cumulative landscape impact, the most significant are the original Kilbraur Wind Farm and its extension (a total of 27 turbines of 115-125 metres blade tip height, the closest of which is 3.4 kilometres from the appeal site); and Gordonbush Wind Farm and its extension, now built (a total of 50 turbines, of 110-130 metres blade tip height, the closest being 10.5 kilometres from the appeal site).

25. Both these wind farms lie within the Sweeping Moorland (134) and Rounded Hills (135) LCTs, and therefore have an impact on their landscape character. The EIA Report concludes that there would be a combined cumulative landscape effect on both these LCTs that would be significant. The proposed development on the appeal site would extend the line of wind farms in a south-westerly direction. Because of the large and fragmented extent of both these LCTs, I accept that the cumulative landscape impact would be relatively localised. Within the affected area, it would intensify the character of “landscape with wind farms”, but not create a transition to a “wind farm landscape”. The proposal would not significantly reduce the gap with the emerging wind farm cluster to the south-west (around Lairg and beyond).

26. All told I conclude that the existing wind farms at Gordonbush and Kilbraur have already had a significant adverse impact on the landscape character of the Sweeping Moorland and Rounded Hills LCTs over a distance of from 3-15 kilometres from the current appeal site, and that the present proposal would intensify that impact to a moderate extent.

Visual impact and cumulative impact

27. I have dealt with these two issues together because from most of the viewpoints considered in the EIA Report a number of existing wind farms are visible in combination with that proposed on the appeal site.

28. The Report assesses the visual impact from 22 viewpoints (VP), as agreed with the council and NatureScot, as well as from a number of surrounding settlements and routes. The Zone of Theoretical Visibility (ZTV) maps show that some parts of the proposed wind farm would be visible from a wide but fragmented area to the north, north-west and west. Wireframe diagrams produced for distant viewpoints in these directions – VP16 (Ben Armine, 23.7 kilometres north-west), VP17 (Ben Kilbreck, 31 kilometres north-west), VP18 (Ben Sgeireach, 32 kilometres west) – illustrate that in views to the east and south-east, the

proposed turbines would be visible in relatively close proximity to the existing Kilbraur Wind Farm, with Gordonbush at a greater distance away. From these very high viewpoints, it is also apparent that a large number of wind farms are theoretically visible in many directions. At the distances involved, the difference in size between the new turbines and those at Kilbraur would not be readily distinguishable. From VP14 (Ben Hope, 14 kilometres north), although both Gordonbush and Kilbraur are clearly visible, the present proposal would be seen as a relatively small extension of the latter. All told, I consider that, in these distant views, the visual impact of this development, either alone or in combination with existing wind farms, would not be significant.

29. The ZTV maps also show theoretical visibility at some distance to the south beyond the Dornoch Firth. However, from VP15 on the A9 north of Tain (20 kilometres south of the site), I am satisfied that any views of the turbines would be at such a distance as to be insignificant. They would be more prominent, however, in middle-distance views from the southern side of Strath Fleet – VP9 (Inchcape, 6.7 kilometres south-west), VP10 (Princess Cairn, 6.5 kilometres south) and VP11 (Meall Meadhonach, 6.3 kilometres south-west). From these viewpoints, the new turbines would be seen as significantly closer to the northern edge of the valley than the present turbines at Kilbraur. Depending on the direction of view, they would either be seen as distinctly separate from the existing wind farm (VPs 9 and 11), or with the existing turbines stacked behind them (VP10). From these distances, I consider that the larger size of the new turbines, and particularly their blades, would be clearly noticeable.

30. The EIA Report assesses the visual impact from these viewpoints as moderate, adverse (and therefore significant). The previous reporter concluded that the visual impact from VP11 in particular would be major, as the turbines would intrude directly into the view of Ben Horn, a prominent landmark in the area, and would significantly detract from the experience of recreational users of the core path at this location. In its recent submission, the appellant has argued that the previous reporter overstated the visual impact, particularly as the existing wind farms have already altered the view to the north-east; the proposed turbines would generally sit below the skyline; and the summit and profile of Ben Horn would remain legible. I accept that there is scope for differences in judgement on the visual impact of the proposed development from the southern side of Strath Fleet, and that the impact would vary with the angle of view. I also acknowledge that the views from these viewpoints have already been significantly affected by the existing Kilbraur Wind Farm and its extension. Nevertheless I consider that the EIA Report does understate the visual impact of the development from the area to the south of Strath Fleet, and that there would be a moderate/major adverse effect, significantly adding to the visual impact of the present wind farm. I accept, however, that from the floor of the valley, where the railway and A839 road run, there would be no views of the proposed turbines.

31. Turning to the visual impact on the more immediate surroundings of the site, which was the focus for the council's reason for the refusal of planning permission, the appellant has questioned whether there is a settlement in this area as against a "community", that would be affected by views of the new wind farm. I think that the pattern of settlement in this area is one of scattered houses and farms situated in the countryside to the north-west, west and south-west of the appeal site, with its core around Little Rogart and Rogart, further to the south-west, where there are the primary school and church. From this latter area, where the ground level is dropping into Strath Fleet, I accept that the proposed turbines would have little or no visibility.

32. From the more scattered part of the community, however, I consider that the proposed wind farm would have a significant and adverse visual impact. From the north-

west at VP12 (West Langwell at 7.43 kilometres from the site) and VP8 (East Langwell at 4.73 kilometres), the turbines would be prominent rising above the skyline of Cnoc na Gamhna behind. They would form a clearly separate cluster of turbines from those at Kilbraur Wind Farm, also visible in these views (although from East Langwell partly screened by intervening high ground). In particular, they would be seen south of the gap in the profile of the hills formed by Dunrobin Glen, thus spreading the visual impact of turbines to a new area of the moorland landscape currently unaffected by such development.

33. From the closer viewpoint at VP21 (Inchcomie cross-roads at 3.17 kilometres from the site), there would be a similar and greater visual impact, with the turbines rising well above the skyline. I agree with the previous reporter's view that this would diminish the scale of the hills further to the east. I noted from my site inspection that, from sections of the road leading northwards from Rogart towards the cross-roads, the new turbines would also be very prominent; much more so than the existing Kilbraur turbines. This road, and others in the vicinity, will be used by local residents on a daily basis, and they would therefore experience the increased visual impact of the proposed wind farm as a regular part of their lives. Although I consider the impact of the development on the visual amenity of specific houses in a later part of this notice, it should be recognised that residents are considered to be of high sensitivity, and the visual impact of the turbines would have a significant adverse impact on them.

34. VP4 at Knockarthur (2.22 kilometres north-west of the site) is at a higher level, with an extensive view to the south and south-east, into which the proposed turbines would substantially intrude. I accept that the existing Kilbraur Wind Farm is also very prominent to the east and north-east from this viewpoint, but the new development would significantly increase the extent of what the EIA Report recognises is a major (and I would add, adverse) visual impact. From this and other closer viewpoints, I think that the difference in size of the proposed turbines, and especially the diameter of the rotors, would be readily apparent.

35. From VP3, along the minor road providing access to a number of houses at Achork/Achvoan some 1.4 kilometres west of the site, the visual impact of the turbines would be somewhat reduced by the screening effect of the intervening ground. From this viewpoint, the Kilbraur turbines are visible at a greater distance. The EIA Report concludes that there would be a moderate visual impact from this viewpoint. I agree with that assessment, but would again emphasise that such an impact would still be adverse.

36. There are two houses at Farlary (VP2, at just over one kilometre from the nearest turbine) and the photomontages/wireframes in the EIA Report clearly illustrate the very major visual impact that the new development would have from this viewpoint. It is already heavily affected by close views of some of the existing Kilbraur turbines. In its Report of Handling for the planning application, the council stated:

"The proposed development as well as forming a new dominant focus when viewed from this location, will also contribute to a sense of encirclement by wind farm development."

37. The thrust of the council's argument in its reasons for the refusal of permission is that the cumulative visual impact that would be created by the proposed wind farm, in addition to that already experienced from the Kilbraur Wind Farm, would have a detrimental and unacceptable effect on the amenity of the local community, as exemplified by Farlary, Knockarthur, Achork/Achvoan, and East and West Langwell. The appellant position is that this community is, by now, already familiar with wind turbines, and the current proposal would not significantly alter or exacerbate that situation. I accept that, because from most of the affected community, views of the new turbines would essentially be in the same

quadrant as Kilbraur (north-east to south-east), they would not create a feeling of “encirclement” by wind farm developments, except to a limited extent from Farlary. They would, however, result in a significant increase in the extent of the view affected by wind turbines. Whether the existing presence of wind turbines in the view should lessen the sensitivity of receptors to further such development is, in my view, a matter of judgement, depending on the specific circumstances of each case.

38. Whilst most of the closer viewpoints involve views to the south-east, VP1 at Glen House (0.9 kilometres from the nearest turbine) illustrates the visual impact in the view towards the south-west. The proposed turbines would form a very substantial intrusion into the gap between the rising land on either side of the upper part of Dunrobin Glen, and the EIA Report, correctly in my view, assess this as a major impact. Although not specifically stated in the report, this impact would be adverse.

39. This view also illustrates what would become increasingly visible when approaching the area from the east along the road through Dunrobin Glen; a view that is currently largely unaffected by wind turbines, as only the blade tip of one of the Kilbraur turbines can currently be seen above the northern valley side. In his decision notice, the previous reporter, in addition to concluding that there would be a significant adverse landscape effect on Dunrobin Glen, also considered that the road access through the glen provides an important function connecting the settlements of the interior with Golspie and the coastal fringe, and is likely to be used frequently by residents. The current proposal would introduce large-scale turbines at a short distance to the south of that road.

40. In its recent submission, the appellant states that from large areas to the east of Dunrobin Glen, any visibility of the turbines would be limited to blade tips. Nevertheless, I consider that the current uninterrupted view westwards along the glen would become increasingly affected by views of parts of the proposed turbines in the dip in the skyline between Cnoc na Gamhna to the south and the rising ground to the north. In contrast to most other views considered in the preceding paragraphs, this would be in a view almost entirely unaffected by wind farm development at present. I therefore agree with the previous reporter that this would be a major adverse visual impact.

41. The previous reporter also concluded that there would be a major adverse visual impact from the summit of Ben Horn (VP7). I accept that from this high viewpoint, as also from Ben Lunndaidh (VP5), there is a 360 degree panoramic view available, much of which would be unaffected by the development. I also acknowledge that the existing Kilbraur turbines are prominent in the view from Ben Horn and that this has already reduced the sense of remoteness and “wildness” at this location. The proposal would, nonetheless, extend the visual impact of wind turbines further to the south-east, affecting an additional quadrant of the view from the mountain. The effect from VP5 would be somewhat different, with the new turbines partly screened by the intervening hill of Cnoc na Gamhna, but still very prominent, and the existing Kilbraur turbines further to the north. Notwithstanding the impact of the present turbines from both of these summits, I am inclined to agree with the previous reporter that the new wind farm would introduce a further high magnitude of change, resulting in a major adverse visual impact for recreational users of these mountains.

Residential visual amenity

42. Closely linked to the wider issue of visual impact is the effect of the development on the visual amenity of specific residential properties in the vicinity. Appendix 5-5 of the EIA Report considers this for nine individual properties or groups of properties within 2.5

kilometres of the site. It considers that in none of the properties would the impact reach what is referred to as the “Residential Visual Amenity Threshold”. This is defined as where it is considered that the development would have an overbearing effect on the visual amenity of a property, an approach that has developed through planning decisions in the past, and is sometimes known as the “Lavender test”, after the planning inspector who first developed the concept. The question to be determined in applying this “test” is whether the residential property would become an unattractive place in which to live.

43. The occupants of residential properties are generally judged to be of high sensitivity to visual impact. They would be affected by views of the proposed turbines not only from the windows of their houses, but from their gardens and on their journeys to and from their house on a daily basis. Whilst I accept that many of the residential properties assessed already have a view of the Kilbraur turbines, the new development would extend the range of view of such features from the houses, creating a greater visual influence on the everyday experience of local residents. It can be argued that their existing familiarity with wind turbines in their locality would lessen the impact of further such developments. Alternatively, it may serve to exacerbate any negative impact that they already consider they experience.

44. From the EIA assessment and my own observations, I consider that the proposed wind farm would have a major adverse impact on the amenity of the occupants of residential properties at Glen House, Farlary, Knockarthur and in the Achork/Achvoan area. As to the “Residential Visual Amenity Threshold”, although widely used it is not a statutory test, and it must be a matter of judgement as to whether a specific wind farm proposal exceeds what is a very high bar for unacceptability. I generally accept that, in this case, the proposed wind farm would be unlikely to create a situation whereby the affected properties would become unattractive places to live. However, I think that the situation at Glen House is very marginal. At present wholly unaffected by a view of wind turbines, the closest turbine in the present proposal would be only some 890 metres away, and I consider that it would have a somewhat overbearing presence. I note that this property is said to have a financial interest in the development, although it is not stated what that interest entails; for example, whether the occupants of the house gain a direct financial benefit from the development, or whether they are merely tenants of Sutherland Estates, on whose land the wind farm would be situated. In any event, there is no policy guidance (unlike for noise impact) that indicates that the inherent visual impact of a wind farm should be assessed any differently in such circumstances.

Overall conclusions in respect of LVIA

45. On the basis of the above-mentioned consideration of this issue, I reach the following conclusions:

- The development would have a significant, adverse impact on the character of the Sweeping Moorland LCT extending out to about 10 kilometres to the north and north-west of the site.
- It would cause a moderate, adverse impact on the Rounded Hills LCT, albeit that this adverse impact is confined to an area within a radius of about 5-10 kilometres of the site.
- There would be a major, adverse landscape effect on the Dunrobin Glen unit of the Straths LCT and a moderate impact on the Strath Fleet unit.
- The proposal would have an adverse indirect impact on the characteristics and special qualities of that part of the Loch Fleet, Loch Brora and Glen Loth SLA in proximity to the site; notwithstanding the impact of existing wind farms.

- The existing wind farms at Gordonbush and Kilbraur have already had a significant adverse impact on the landscape character of the Sweeping Moorland and Rounded Hills LCTs over a distance of from 3-15 kilometres from the current appeal site, and the present proposal would intensify that impact to a moderate extent.
- There would be a moderate/major adverse visual impact from a number of viewpoints on the southern side of Strath Fleet, significantly adding to the visual impact of the present Kilbraur Wind Farm.
- There would be no visual impact from the valley floor of Strath Fleet or from the lower settlement around Rogart and Little Rogart.
- The wind farm would have a significant adverse visual impact on the scattered settlement to the north-west of the site, extending as far as West Langwell.
- From many viewpoints, the new turbines would be seen south of the gap in the profile of the hills formed by Dunrobin Glen, thus spreading the visual impact of turbines to a new area of the moorland landscape currently unaffected by such development; and would diminish the scale of the hills further to the east.
- The development would have a major, adverse visual impact from the area around Knockarthur and Farlary, and a moderate impact from the Achork/Achvoan area because of the partial screening effect of the intervening topography.
- Whilst the new wind farm would not generally create a feeling of “encirclement” from these areas in combination with the existing Kilbraur Wind Farm, it would nevertheless increase the extent of wind turbines visible in the same quadrant of view (north-east to south-east).
- From the closest property, Glen House, the development would have a major, adverse visual impact.
- It would have a similar effect on the approach from the east along the road through Dunrobin Glen, increasingly intruding into the currently uninterrupted view westwards.
- Notwithstanding the impact of the present Kilbraur turbines from the summits of Ben Horn and Ben Lunndaidh, the new wind farm would introduce a further high magnitude of change from these viewpoints, resulting in a major adverse visual impact for recreational users of these mountains.
- The proposed wind farm would have a major adverse impact on the amenity of the occupants of residential properties at Glen House, Farlary, Knockarthur and in the Achork/Achvoan area.
- However, it would be unlikely to create a situation whereby the affected properties would become unattractive places to live, although the situation at Glen House is very marginal.

46. In the light of the above-mentioned conclusions, I have assessed the development against the relevant criteria in policy 67 of the HwLDP, as well as the associated Onshore Wind Energy Supplementary Guidance. Policy 67 states that renewable energy developments will be supported where they are located, sited and designed such that they will not be significantly detrimental overall, either individually or cumulatively with other developments, having regard to any significant effects on a number of factors, the most significant of which in the current context is:

“visual impact and impact on the landscape character of the surrounding area (the design and location of the proposal should reflect the scale and character of the landscape and seek to minimise landscape and visual impact, subject to other considerations);”

47. The Supplementary Guidance sets out ten criteria relating to landscape and visual aspects which the council will use as a framework for assessing onshore wind farm proposals.

48. Based in my conclusions in paragraph 45 above, I consider that the current proposal would have a significant adverse landscape and visual impact, and thus be contrary to policy 67 in that respect. I also consider that it would have an adverse impact on the amenity of a number of the nearby residential properties; again in conflict with that policy. Furthermore, I conclude that, in relation to the criteria in the Supplementary Guidance, the wind turbines would:

- be visually prominent in the majority of views from the scattered settlement to the north-west of the appeal site;
- would detract from the approach to the area on the road through Dunrobin Glen approaching from the east;
- would not contribute positively to the existing pattern of wind farms in the area;
- would not, especially because of the increased size of the turbines, maintain an appropriate and effective separation with existing wind farm developments;
- would diminish the apparent landscape scale; and
- would increase the perceived visual prominence of surrounding wind turbines.

49. All told, therefore, I conclude that the development would be contrary to HwLDP policy 67, and its associated Supplementary Guidance, insofar as its landscape and visual impact is concerned.

50. Consideration of its impact in relation to other factors of that policy and its overall relationship to the development plan will be considered in the following sections of this notice.

Other environmental impacts

51. In his decision, the previous reporter concluded that the development would not have any other significant adverse environmental effects. From my consideration of the information in the EIA Report, I find no reason to disagree with this conclusion. However, in order to ensure that this decision notice can be read on its own, I set out my conclusions on these matters below.

52. With regards to its **noise impact**, Chapter 9 of the EIA Report assesses this in relation to the 18 nearest residential properties, based on the guidance in “ETSU-R-97: The Assessment and Rating of Noise from Wind Farms”. Baseline noise measurements were taken at four locations. For the 18 properties, noise from the proposed turbines was predicted, as well as noise from the existing Kilbraur turbines, to give predicted cumulative noise levels.

53. ETSU-R-97 recommends that, where predicted noise levels are low at the nearest residential properties, a simplified limit can be applied such that noise is restricted to the minimum day time level of 35 dB L_{A90} . For night-time periods, the noise limit is 43 dB L_{A90} . In addition, where there is a financial involvement with the proposed development, both day- and night- time levels can be set at 45 dB L_{A90} . In this case, the EIA Report suggests that six of the affected properties should be subject to the simplified 35 dB L_{A90} level, whilst four should be subject to the financially involved fixed limit. Of these properties, Table 9.9 in the report indicates that six are predicted to experience cumulative noise levels significantly below the relevant fixed limit. Table 9.10 sets out a more detailed assessment for a further six properties, including the four monitoring locations, which shows that the relevant limits are met except in one case where there is a minor exceedance. It is pointed out that, if these locations meet the derived noise limits, any other locations assigned those limits would meet them by a larger margin as they are further from the proposed

development. Table A9.10 in Appendix 9-1 of the EIA Report therefore sets out proposed development specific operational noise limits for the six properties referred to above.

54. In his comments on the planning application, the council's Environmental Health Officer has stated that he has no objection to the proposal, subject to a suitably worded condition being agreed on the basis that: (a) for financially involved locations, noise levels should not exceed 40 dB LA90; and (b) for other properties, noise levels should be limited to 30 dB LA90 or 2 dB above predicted levels, whichever is the higher. From my experience, I am aware that there can be significant practical difficulties in monitoring noise levels from a wind farm where noise is also being generated by another wind farm nearby, over which the first operator has no control. Nevertheless, I accept that it should be possible to set noise limits for the present proposal that would ensure that it would not result in any significant adverse noise impact on surrounding residential properties.

55. The council has submitted details of the conditions that it would wish to see imposed if planning permission were to be granted. However, these did not include any details of the required noise condition(s). If I had been minded to grant permission, I would have needed further details of such conditions.

56. In terms of potential **shadow flicker**, the EIA Report predicts that Glen House, approximately 890 metres north-east of the nearest turbine might experience up to 21-30 hours per year of flicker; whilst properties at Achork (1,360 metres to the west) might experience 1-10 hours per year. Guidelines note that up to 30 hours per year is considered acceptable, whilst the actual exposure is likely to be substantially less than the worst case predicted. In the circumstances, I am satisfied that shadow flicker would not result in any significant loss of amenity to any surrounding residential properties.

57. The **ecological impact** of the development is considered in Chapter 6 of the EIA Report. There are no statutory or non-statutory nature conservation sites designated for non-avian ecological features on or within two kilometres of the proposed development. Whilst there would be some habitat loss as a result of the proposal, it would be relatively small and not significant. Impacts on fauna, specifically otter, water vole and bats, are assessed as not significant on the basis of mitigation measures including the avoidance of sensitive receptors as part of the design process; the production of a Construction Environmental Management Plan (CEMP) for the construction phase and the provision of an Ecological Clerk of Works (EcoW) to oversee construction and decommissioning; as well as an Outline Habitat Management Plan (OHMP) to protect and enhance habitats in the area. The OHMP would need to include provision for the reinstatement of any woodland removed as a result of the possible expansion of the borrow pit area at the northern extremity of the site. In its consultation response on the proposal, NatureScot raised no objections. Subject to the implementation of the above-mentioned measures, I am satisfied that the development would not have a significant adverse impact on the ecology of the area.

58. Chapter 8 of the EIA Report considers **impacts on hydrology, geology and hydrogeology**. As referred to in paragraph 5 above, according to the Spatial Framework in the council's Onshore Wind Energy Supplementary Guidance the majority of the site is identified as a Group 2 Area (an area of significant protection), because it is located within an area of carbon-rich soils and priority peatlands. However, one-third of the site has no peat cover, whilst another third has peat between 0.5 and one metre in thickness. The remaining third of the site has peat cover over one metre in thickness. There has been extensive historic and active peat cutting with up to 61 turbaries identified.

59. The EIA Report provides estimates of the volumes of excavated peat and the re-use proposals (the primary requirement being to reinstate the infrastructure on peatland areas followed by the reinstatement of borrow pits). The Scottish Environment Protection Agency (SEPA) originally objected to the development on the basis that there was inadequate information. It subsequently withdrew its objection following the submission of further information, subject to the imposition of conditions relating to the construction of the access tracks within the site; detailed drainage management proposals; and provisions for the protection of Groundwater Dependent Terrestrial Ecosystems within the site. SEPA was satisfied that all excavated peat would be appropriately re-used on site including for the infill of former peat turbaries. The imposition of a finalised Peat Management Plan, secured by condition, would provide that excavated peat was reused to restore parts of the peat body within the site. NatureScot accepted that, owing to grazing, tracking and drainage impacts on the site, there is scope for activities to improve its condition and compensate for peat loss. Chapter 8 of the EIA report states that no designated sites or private water supplies would be affected by the proposal; that there would be no increased risk of flooding as a result of the proposal; and that all proposed infrastructure would be located in areas of low to negligible peat slide risk.

60. All told, I am satisfied that, subject to the imposition of appropriate conditions, the development would not adversely affect the peatland interests of the site.

61. Potential **ornithological effects** are considered in Chapter 7 of the EIA report. NatureScot agreed with the assessment that the proposal has no connectivity to any Special Protection Area (SPA) within 20 kilometres of the proposed development. It therefore concluded that there would be no significant effect on any SPA qualifying interests either directly or indirectly. A significant number of bird species were recorded either flying over the site or using it for breeding and/or foraging. With regards to species present on and around the site, despite the removal of some habitat as part of the construction of the proposed wind farm, the EIA predicted that, because of the small extent of such loss, this would not have a significant impact on the affected species. The EIA Report includes an assessment of collision risk when the wind farm is operational. This concludes that for all species assessed – red-throated diver, golden eagle, golden plover, greylag goose, osprey, pink-footed goose, red kite and whooper swan – the likely loss of birds due to collision with the turbines during the 25-year life of the development would be very small, and no significant effect is anticipated as a result of the proposal. A similar conclusion was reached when assessing the cumulative impact of collision risk in combination with other wind farms in the area. NatureScot stated that, although several Annex 1 species were recorded during baseline surveys, it considered that none of the impacts described in the EIA documents would have a significant negative effect on the national or regional populations of any Annex 1 bird species in the wider countryside.

62. I am therefore satisfied that, on the basis of the available evidence, the proposed development would not have any significant adverse impact on the ornithological interests of the area.

63. Chapter 10 of the EIA Report considers the impact of the development on the **cultural heritage** of the area. Whilst there are no cultural heritage designations within the site itself, there are two Scheduled Monuments within one kilometre of it and a further 18 designated heritage sites within five kilometres. There are 40 non-designated prehistoric heritage assets recorded within the site, including a large number of hut circles, as well as clearance cairns, field systems and possible funerary cairns. The development has been designed to avoid direct effects on known heritage assets where possible. The prehistoric settlement remains are clustered into three distinct groups, one of which is located in the

central part of the development. The EIA Report considers that the prehistoric settlement remains and other assets within the site are of medium sensitivity to change, and that the magnitude of the impact of the wind farm on their setting would be medium; overall resulting in a minor, and thus not significant impact. The council Archaeological Team agrees with the proposed mitigation set out in the EIA Report, including marking out and fencing off sensitive areas to provide protection during construction and also a watching brief during groundworks. They also recommend that, where upstanding remains cannot be directly avoided by the development, they should be fully excavated before construction begins; and that on-site interpretation of the prehistoric settlement remains should be provided.

64. With regards to the potential impact of the wind farm on the setting of designated sites outwith the appeal site, the EIA Report concludes that this would not be significant, including when the cumulative effect from other wind farms is taken into account. Historic Environment Scotland (HES), in its consultation response, has not objected in terms of its remit. It has noted, however, that the proposal would increase the spread of turbines along the skyline of the upland moorland setting of five designated monuments in relatively close proximity to the site, thus adding a further industrial and distracting element and increasing the adverse effect on the setting of these monuments. HES is, however, content that the overall impact would be limited and not raise issues of national interest. HES has made a number of detailed criticisms of the methodology used in the EIA Report, particularly the lack of baseline information on the designated assets being assessed.

65. Notwithstanding the observations of HES, I conclude that, subject to the imposition of appropriate conditions relating to the protection, investigation and interpretation of the archaeological assets within the site, the proposed development would not have a significant adverse impact on the cultural heritage of the area.

66. Its **transport implications** are considered in Chapter 11 of the EIA Report. This identifies impacts on the local road network as a result of the type and volume of traffic that would be generated by the proposal, primarily during the construction period; and especially the transport of abnormal loads. It is envisaged that turbine components would be delivered to the port at Invergordon and, from there, travel along the A9 towards Golspie, before turning onto Queens Drive (U5317) before that village, continuing along a haul road through Ben Braggie Woods constructed for the existing Kilbraur Wind Farm, and then onto the U3103 road through Dunrobin Glen. This is a similar route to that used for Kilbraur and its extension. Appendix 11-1 of the EIA Report assesses the use of this route for abnormal loads and identifies pinch points where temporary mitigation works may be required.

67. The council's Transport Planning Team has indicated that the impacts should be addressed through appropriate mitigation measures including the submission and implementation of a Construction Traffic Management Plan, a draft of which is included as Appendix 11-2 of the EIA Report. The council would also require the conclusion of a legal agreement to ensure that the costs of repairing any damage to the public roads resulting from the construction traffic could be recovered. The provision of a Recreational Access Management Plan (a draft of which forms Appendix 11-3), secured by condition, would ensure, amongst other things, that the core paths in the vicinity of the site would remain open at all times. As a result, no significant public access issues would arise.

68. I note that the route proposed for construction traffic follows that used for the construction of the existing wind farm at Kilbraur. Whilst its use for the current project would no doubt cause some inconvenience to local road users, especially during the transport of abnormal loads, this would be for a relatively short duration. I am satisfied

that, subject to the appropriate mitigation measures, to be secured through conditions, the transport implications of the development would not have an unacceptable impact.

69. **Socio-economic effects** are considered in Chapter 12 of the EIA Report. It estimates that there could be within the region of £3 million construction costs sourced locally (Caithness and Sutherland) and that this would result in 5.6 full-time equivalent (FTE) jobs created in Scotland during construction and 1.6 FTE jobs locally. During the 25 years operational life of the proposal, it is estimated that this would support 3.6 FTE jobs in Scotland of which 1.4 jobs would be based in Caithness and Sutherland. Based on these estimates, I am satisfied that the proposal would have a positive economic impact, although this would be minor, relatively short term and localised.

70. Whilst some concerns have been expressed about the impact that the proposal would have on tourism, there is no persuasive evidence that wind farms in general have a significant impact on tourism. The most recent study on the impact of wind farms and tourism suggests that the majority of general tourists would not be adversely affected by such a proposal whilst acknowledging the potential for some reduction in visitor amenity value. In the circumstances, I consider that impacts on tourism would not be significant.

71. **Aviation and telecommunication interests** are considered in Chapter 13 of the EIA Report. No concern has been noted by aviation authorities. The council advises that, in the event that planning permission were to be granted, there would be a requirement for infra-red aviation lighting. I am satisfied that this matter could be dealt with by a planning condition. The appellant has confirmed that following consultation throughout the EIA process, the proposal is not expected to affect telecommunications. The potential for negative effects on domestic television reception is considered to be particularly low given the digital switchover across the UK which was completed in 2012.

72. Following my consideration of all the environmental information and the comments made on it, I have not identified any additional significant effects to those I have already highlighted in previous sections of this notice.

Conclusions in respect of the development plan

73. I stated in paragraph 4 above that policy 67 of the HwLDP is the most directly relevant to the consideration of this proposal. Of the 11 factors to be taken into consideration in that policy, I concluded in paragraph 45 above that the development would have a significant adverse visual impact and impact on the landscape character of the surrounding area, and would have an adverse impact on the amenity of a number of nearby residential properties; and thus be contrary to policy 67 in these respects. Based on my consideration of the other environmental factors in the preceding section of this notice, I consider that it would not conflict with the other parts of that policy, or with other development plan policies relating to specific topic issues.

74. Of the other development plan policies, the council cited policy 28 (Sustainable Design) in its reasons for the refusal of planning permission. I do not believe that this policy is particularly relevant to renewable energy developments or that it adds any weight to the refusal of permission.

75. It is not necessary for a development to meet all the requirements of development plan policies to be generally compliant with the development plan. In this case, however, I consider that the proposed wind farm would significantly conflict with the most relevant policy to an extent where I would normally judge it to be contrary to the development plan.

Policy 67 does, however, state that the council will consider the contribution of the proposed development towards meeting renewable energy generation targets, as well as any positive effects and benefits that it may have. It is not, therefore, possible to reach a definitive judgement on compliance with the development plan until that balancing exercise has been carried out. Before carrying out that exercise, I need to assess the proposal against other relevant material considerations at both the national and local level.

Other material considerations

National planning and energy policies

76. The third National Planning Framework (NPF3) (2014) provides a long-term strategy for Scotland and is the spatial expression of the Scottish Government's Economic Strategy and plans for development and investment in infrastructure. Its policies are required to be reflected in local development plans. NPF3 seeks to reduce reliance on fossil fuels and provides clear support in principle for renewable energy developments, although it no longer fully reflects the most recent Scottish Government climate change commitments. It nevertheless acknowledges the challenges in embracing a renewable and low carbon economy while protecting and sustaining environmental assets.

77. Scottish Planning Policy (SPP) (2014) sets out national planning policies which reflect Scottish Ministers' priorities for the operation of the planning system and for the development and use of land. It provides Scottish Government policy on how nationally important land use planning matters should be addressed.

78. SPP set outs four planning outcomes in paragraph 13 which focus on creating a successful sustainable place, a low carbon place, a natural, resilient place and a more connected place. SPP establishes a presumption in favour of development that contributes to sustainable development. Paragraph 28 explains that this is to be achieved by enabling development that balances the costs and benefits of a proposal over the longer term with the aim being "*to achieve the right development in the right place, but not to allow development at any cost*". Paragraph 29 outlines the 13 principles of sustainable development which should guide policies and decisions. Paragraph 33 of SPP states that, where the development plan is more than five years old, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. The HwLDP was adopted in April 2012, and is therefore well over five years old. Paragraph 33 therefore applies in this case.

79. Paragraph 154 states that the planning system should support a transformational change to a low carbon economy, consistent with national objectives and targets. As with NPF3, the targets in SPP do not fully reflect the latest national position on climate change action and renewable energy targets, but it is clear that renewable energy developments are a national priority.

80. SPP contains provisions which are specific to onshore wind at paragraphs 161 to 166. Local development plans are required to establish a spatial framework to consistently guide broad locational decisions for onshore wind energy proposals, based on the approach set by Table 1 of SPP. This approach has been followed in the council's Onshore Wind Energy Supplementary Guidance. Paragraph 169 acknowledges that considerations will vary for energy infrastructure developments, depending on their scale and the characteristics of the area. It sets out the considerations which are potentially relevant to the assessment of individual proposals. These encompass the factors contained in HwLDP policy 67.

81. In November 2021, the Scottish Government published a consultative draft of “Scotland 2045 – Our Fourth National Planning Framework” (NPF4). Prior to issuing his decision, the previous reporter gave the appellant and council the opportunity to comment on this document; and also on the Government’s “Onshore Wind Policy Statement Refresh 2021: Consultative Draft” (OWPS), published in October 2021. The draft NPF4 highlights the central role of planning decisions in achieving the Scottish Government’s target of net-zero emissions by 2045; and the need to make rapid progress by 2030. It also states that, when considering all development proposals, significant weight should be given to the Global Climate Emergency. Draft policy 19 (Green Energy) notes that it is likely that the onshore wind sector will play the greatest role in the coming years in helping to reduce carbon emissions. That policy no longer includes a specific spatial framework for wind farms. Outwith National Parks and National Scenic Areas, it states that renewable energy developments should be supported unless their impacts (including cumulative effects) are unacceptable.

82. With regards to the draft OPWS, it states that the transition to net zero will require a consistently higher rate of onshore wind and other renewables capacity year-on-year. It seeks views on an ambition for an additional 8-12 GW of onshore wind to be installed in Scotland by 2032. It also refers to the likely landscape implications that may result from the increased provision of onshore wind developments.

83. In view of the time that has elapsed since this appeal was originally submitted, I gave the principal parties an opportunity to update their submissions if they so wished. The appellant highlighted a raft of climate change policies and legislation that has come into effect since December 2020, at international, UK and Scottish level. These include the UK Energy White Paper (December 2020), the UK Net Zero Strategy (October 2021), and the Scottish Update to the Climate Change Plan (2018-2032) of December 2020.

84. I am in no doubt that the thrust of the most recent policy guidance, particularly from a planning point of view the draft NPF4 and OPWS, is to increase the weight to be given to the importance of renewable energy developments in helping to meet net-zero targets and respond to the climate emergency. This may affect the balance to be drawn in individual cases, but does not alter the fact that such a balancing exercise still has to be carried out. In one of its submissions, the appellant helpfully summarises the position as follows:

“The Appellant does not of course submit that this means that any and all proposed wind farms will be acceptable. However, it is clear that NPF4 recognises that the planning balance must give significant weight to the contribution of a proposed development towards combatting climate change and meeting net zero targets.”

85. I carry out the required balancing exercise in the following section of this notice.

Representations

86. Of the representations received to the original planning application, six expressed support for the development, for the following reasons:

- The existing Kilbraur Wind Farm was successfully constructed without problems and has not created any noise pollution.
- The community benefit fund for the existing Kilbraur scheme has substantially benefitted the communities of Rogart, Golspie and Brora.
- The development would help to address the climate emergency.

- The development would enable existing crofters to diversify, thus maintaining their viability, especially if there was a community share in the project.

87. There were some 60 representations objecting to the development, including from the Rogart Development Trust, whose objection was supported by Rogart Community Council. The principal grounds of objection were:

- The proposed development is too close to houses and would have an adverse impact on residential amenity.
- The living conditions of nearby properties would be affected by the development to such a degree that the residential visual amenity threshold will be reached, particularly at Knockarthur, Achvoan and Achork.
- Noise impact as the existing Kilbraur Wind Farm can be heard.
- Concern regarding shadow flicker.
- Cumulative visual impact from Knockarthur.
- The development would create a prominent and overbearing focus in the landscape.
- Adverse impact on the Loch Fleet, Loch Brora and Glen Loth SLA – the development could diminish the perceived scale of the hills and their qualities of wilderness and tranquillity. The impacts are significantly underplayed and wrongly assessed in the EIA Report.
- Reference is made to the refusal of the proposed wind farm at Tressady, with the reporter noting the potential for adverse cumulative impacts in this area.
- The findings of a survey undertaken by the K2 Protect Group noted that 68% of 176 respondents strongly agreed that the development would be visually intrusive and 70% strongly agreed that the development would mean encirclement by wind farms.
- Wildlife impact including on deer and birds already displaced from the existing Kilbraur Wind Farm.
- Destruction of natural habitats during a climate crisis.
- Concern about the release of carbon from the development due to peat removal.
- Adverse traffic impact during construction.
- Adverse impact on the archaeological landscape of the area.

88. Most of the matters referred to above have been covered in the previous sections of this notice. The possible provision of a community benefit fund is not a material consideration in the determination of this appeal.

89. Many of the objectors and the council (in its Report of Handling) make reference to an appeal decision in 2014 (reference PPA-270-2103), when permission was refused for the Tressady Wind Farm; a proposal for thirteen turbines of 115 metres blade tip height, situated to the north of East Langwell and west of Knockarthur. In dismissing that appeal, the reporter stated:

“I note the appellant considers that cumulative visual impact is mitigated by the degree of separation, the intervening area of settlement and the limited extent to which Kilbraur and Tressady would be seen together in the same view. I disagree. I consider that an additional windfarm in this visible location, of this scale and in such proximity to Kilbraur would create a landscape where windfarms become a dominant and defining feature surrounding local roads and houses.”

90. She also concluded that the significant cumulative change in the landscape resulting from that proposal would be experienced in close proximity and on a daily basis by local residents who live in and around Knockarthur, East Langwell and West Langwell. Residents around Knockarthur would live between and in close proximity to two windfarms. She considered that the proposal would also impact on the wider community in and around Rogart who may use the local road network on a regular basis; and found that the proposal would be to the significant detriment of the visual amenity and rural setting that local residents currently enjoy.

91. As I have indicated in paragraph 37 above, I accept that the current proposal would not result in the same degree of “encirclement” of the scattered settlement in the Knockarthur and surrounding area as would have arisen from the Tressady proposal. However, the other conclusions reached by the reporter in that case remain applicable today. The presence of the seven very large turbines on the appeal site would, in combination with the existing Kilbraur Wind Farm (as extended), substantially increase the visual impact of wind energy developments on the local community.

92. I acknowledge that the policy context has changed since that decision in 2014, especially with the recognition of the climate emergency and the need to meet net-zero targets. In addition, each proposal has to be considered on its individual merits. The overall balance to be drawn in this case is a matter that I consider in the following section.

The overall planning balance

93. As originally proposed, the development would comprise seven turbines of 4MW capacity, thereby providing a total capacity of 28MW. In its most recent submission, the appellant has indicated that technological advancements now allow 4.5MW rated turbines, increasing the installed capacity of the wind farm to 31.5MW.

94. I accept that, as a renewable energy development, this proposal would make a not insignificant contribution to sustainable development. Given the age of the development plan, this is a significant material consideration in this case. With specific regard to the principles of sustainability set out in paragraph 29 of SPP, insofar as they are relevant to the circumstances of this case, I find as follows:

- it would result in some net economic benefit (paragraph 69 above);
- it would not, as far as I am aware, respond to any local economic strategies;
- because of its adverse landscape and visual impact, it would not support good design;
- it would support climate change mitigation;
- it would not adversely affect the historic environment; and
- it would largely protect the natural heritage of the area.

95. I have noted that the policy context makes clear the ongoing and increasing importance of renewable energy, including onshore wind energy developments, in order to respond to the Scottish Government’s strategy for reducing carbon dioxide emissions and mitigating climate change. I have also noted, from the appellant’s most recent submission, the reference to the Inquiry Report for the Strathy Wood Wind Farm in 2021, in which the reporters stated:

“At the same we recognise that these current planning policy documents pre-date the recent changes to the energy and climate change position, in particular the declaration of a

climate emergency. Consequently, we consider it is appropriate to attribute greater importance to the benefits of renewable energy in the overall planning balance.”

96. At the same time I do not believe that this policy context implies that all wind farms should be granted permission, except in certain specified areas. As I have already indicated in paragraph 84 above, the appellant also recognises that this is the case.

97. I have identified in paragraph 45 above significant adverse landscape and visual impacts arising from this development, including its impact on the overall amenity of people living in the surrounding area. The appellant has argued that all wind farms have some adverse landscape and visual impacts; and that those in this case are relatively localised and not out of scale with other wind farms of a similar size. That does not, however, necessarily make the proposal acceptable.

98. I consider that, when viewed in the context of the existing Kilbraur Wind Farm, the current proposal would result in an excessive concentration of wind turbines in this locality. From viewpoints to the west and north-west, it would not be seen as a natural extension to the existing wind farm, but as an introduction of turbines to the south of the gap in the skyline formed by Dunrobin Glen, with the turbines rising above the skyline of Cnoc na Gamhna. The distinction with Kilbraur would be emphasised by the larger size of the new turbines, which I consider would be readily distinguishable in medium- to short-distance views, and which may also lead to a difference in the speed of blade revolution. The development would also introduce views of turbines into the approach from the east along Dunrobin Glen; a view which is presently largely unaffected by such developments.

99. The appellant has suggested that, because local residents already experience the effect of the Kilbraur Wind Farm, they would be less sensitive to the addition of additional turbines into the area. Whilst that is possible in some cases (and I have noted the support for the proposal from some residents), an alternative view is that the addition of a further, discrete wind farm in the locality would exacerbate the adverse visual impact already experienced by the community. I have noted the reference in some of the representations to the “line of steel” already extending from Gordonbush to Kilbraur. Although the former wind farm would generally not be seen in the same view as the current proposal (except at a distance from south of Strath Fleet), I can understand the feeling that this relatively small area is already dominated by wind farms; a situation that would be made worse by this development. Consequently, I agree with the views expressed by the reporter in the Tressady case (paragraphs 89 and 90 above) that the development would be to the significant detriment of the visual amenity and rural setting that local residents currently enjoy. Whilst the policy context may have changed somewhat since that decision was taken, the physical circumstances have not.

100. The Courts have introduced the concept of the “tilted balance” into the consideration of planning applications where the presumption in favour of development that contributes to sustainable development applies, as in this case. In such cases, the benefits of the proposal in relation to sustainable development can tilt the balance in favour of granting permission. However, the overall balance to be applied is still a matter of judgement. Whilst recognising that the development would make a contribution to sustainable development, I consider that the adverse effects that I have identified would significantly and demonstrably outweigh its benefits. Paragraph 28 of SPP states that the aim of the planning system is to achieve the right development in the right place. I do not believe that the appeal site is the right place for a wind farm of the scale proposed.

101. Returning to the development plan, as I have stated in paragraph 75 above, Policy 67 requires any adverse environmental effects of a renewable energy development to be balanced against the contribution it would make towards meeting renewable energy generation targets, as well as any positive effects and benefits that it may have. I have concluded in this case that the adverse landscape and visual impact of the development would significantly and demonstrably outweigh its benefits. Consequently, I find that the development would be contrary to the development plan.

Overall conclusion

102. 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 justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

M D Shiel

Reporter

Advisory notes

1. **Right to challenge this decision:** This decision is final, subject to the right of any person aggrieved by this decision to question its validity by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.
2. **Notification of this decision by the planning authority:** The planning authority is required (a) to inform the public and bodies consulted in respect of the EIA report of this decision by publishing a notice on the application website or newspaper circulating the in locality of the proposed development or by other reasonable means and (b) to make a copy of the decision available for public inspection in an office of the planning authority where its planning register may be inspected and on the application website.