

## Appeal Decision Notice

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

- Planning appeal reference: PPA-170-2107
- Site address: Land to the north of A75, between Gatehouse of Fleet and Creetown, approximately 1.3 km east of the village of Carsluith, DG8 7DX
- Appeal by Skylark Energy Ltd against the failure to determine an application (deemed refusal) by Dumfries and Galloway Council
- Application for planning permission reference 15/P/2/0053 dated 13 February 2015
- The development proposed: The erection, 25 year operation and subsequent decommissioning of a wind energy development comprising 7 wind turbines, each with a maximum overall height to vertical blade tip of 110 metres, with ancillary development including access tracks, associated watercourse crossings, crane pad areas, turbine foundations, underground cabling, electricity substation, temporary construction compound, site access works and two borrow areas on agricultural grazing land north of the A75
- Date of site visit by Reporter: 6 and 7 April 2016

Date of appeal decision: 19 July 2016

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### Decision

I dismiss the appeal and refuse planning permission.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan, on the basis of the submissions and my site inspections, the main issues in this appeal are the landscape and visual effects, the impacts on residential amenity and on scheduled historic monuments, and the contribution to renewable electricity generation.

2. The development is an Environmental Impact Assessment (EIA) development under the terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. This requires an EIA and Environmental Statement (ES) to be prepared. This has been done and submitted with the appeal. Despite some inaccuracies and relatively minor criticisms I am satisfied that it fulfils the terms of the regulations and provides a sound basis, subject to my own interpretation and conclusions, for determining the appeal.



### *The site and proposed development*

3. The appeal site is approximately 58 hectares of land predominantly on the western slopes of Cairnholy Hill, some 4.3 kilometres east of Creetown. It comprises mainly rough grazing. It lies within a wider land holding, which is predominantly used for agriculture and grazing, with some forestry in the areas surrounding the site. It falls within the Galloway Hills Regional Scenic Area.
4. The proposal includes the following key infrastructure components:
- seven variable pitch (three bladed) wind turbines (each a maximum of 110 metres to vertical blade tip) including foundations with possible external transformer;
  - crane pad areas at each turbine base (each with a maximum area of 1,261 square metres);
  - onsite access tracks with associated watercourse crossings and passing places from the site entrance on the A75 east of Carsluith to the turbines and ancillary development (approximately 4.1 kilometres);
  - underground cabling to an onsite grid connection substation (approximately 10 metres long by five metres wide by four metres high, within a compound approximately 225 square metres); and
  - a new vehicular access off the A75.
5. In addition to the above components of the proposed wind farm, the construction phase would also involve the following temporary infrastructure components:
- a temporary construction compound; and
  - two borrow areas.
6. The construction period is anticipated to be 15 months duration. Connection to the grid would be likely to be via Newton Stewart, approximately 15 kilometres to the north-west of the appeal site. Any such connection would be subject of a separate application by the District Network Operator.

### *The development plan*

7. The development plan consists of the Dumfries and Galloway Local Development Plan, adopted in September 2014.
8. The key relevant policies to the appeal are NE2, IN1, IN2, and HE3. Policy NE2 Regional Scenic areas states that the siting and design of development within the regional scenic area should respect the special qualities of the area. Development may be supported where the landscape character and scenic interest for which the area has been designated would not be significantly adversely affected or there is a specific need for a development at that location which could not be located in a less sensitive area.
9. Policy IN1: Renewable Energy supports all renewable energy development which would not have an unacceptable significant adverse impact on a number of listed criteria including landscape and cultural heritage.
10. Policy IN2: Wind Energy is in two parts. Part 1 provides a list of considerations against which wind energy development is to be assessed. This includes the extent to

which the proposal addresses the guidance in the Dumfries and Galloway Wind Farm Landscape Capacity Study (DGWLCS). Part 2 of the policy outlines an ‘interim’ spatial framework for wind energy development. For ‘large’ developments like the appeal proposal, the mapping indicates that the site proposed is within ‘Other Areas’ – those areas neither within Areas of Greatest Potential for wind farms nor, conversely, within Areas Requiring Significant Protection.

11. For both policies IN1 and IN2, acceptability is to be determined through an assessment of the details of the proposal including its benefits and the extent to which its environmental and cumulative impacts can be satisfactorily addressed.

12. Policy HE3: Archaeology supports development that protects significant archaeological and historic assets, and the wider historic environment from adverse effects. The council needs to be satisfied that the development preserves or enhances the setting of the site in –situ and that due consideration has been given to the significance and value of the site in relation to the long-term benefit and specific need for the development in the location proposed.

#### *Landscape impact*

13. The DGWLCS locates the application site within the Foothills (LCT 18) Cairnharrow landscape character type. Cairnharrow is the large hill that rises to the north-east of Cairnholy Hill to a height of 456 metres above ordnance datum. It is prominent in the landscape and when seen from across Wigtown Bay would provide a backcloth for much of the proposed windfarm. From its summit, viewpoint 6, looking west-south-west the turbines would be prominent in the foreground with some standing out against the waters of the bay.

14. The landscape character type is described in the DGWLCS (page 105) as a distinctively rugged arc of hills with southern slopes falling steeply to the coast, with knolly lower tops and defined higher peaks. It says the hills are not extensive and their importance in providing a rugged open backdrop to settled coast and valleys severely limits opportunities for larger typology machines, over 50 metres to blade tip height. It has a high sensitivity to units greater than 80 metres to blade tip.

15. I agree with these assessments. The ES plays down the magnitude of effect within the Galloway Hills Regional Scenic Area, within which the character type largely lies (paragraph 7.4.187). This is on the basis that the area affected area would be limited to one part of the coastal fringe and have a high magnitude of change only within 2.5 kilometres, but within the designation as a whole low-medium. It says the apparent change would be only in this area (*close to the site* – my emphasis) so that whilst levels of effect would be higher here, taken across the designation as a whole the effect would be moderate to moderate/minor and therefore not significant in ES terms.

16. I am unable to accept this approach, which by averaging out the impact effectively seeks to diminish those impacts where the adverse effects are significant and substantial. The western slopes of Cairnholy, where the proposed turbines would stand, are prominent in the wider landscape and seen in relation to the background hills and to the coast. This is shown particularly well from viewpoints 10, Wigtown Harbour, and 12, Wigtown Martyrs’ Monument, but it is the same from many points on the Machars on the western shore of the

bay, as I found on my unaccompanied site inspections. The turbines would be prominent, breaking the skyline in some cases, and appearing out of scale with the landscape. They would have a significant adverse impact, beyond the 2.5 kilometres suggested in the ES.

17. Although not objecting to the proposal on grounds of national interest SNH makes critical comments about the proposal in relation to its effect on the RSA and the LCT. It is particularly concerned about the significant adverse effects on the RSA; the setting of Cairnharrow Hill in relation to the scenic backdrop to the bay and consequent significant effects on the LCT; and the significant adverse effects on views from the well settled coast and the west including the Machars and Wigtown. These comments, set out and expanded on in annex 1 of its comments on the original planning application, confirm my own conclusions set out above.

### *Visual impact*

18. The ES scoped over 50 properties within 2 kilometres of the proposed turbines. Some 47 were scoped out as not having significant effects whilst six were subject to further study.

19. Bagbie Sheds, viewpoint 1, would be 730 metres from the nearest turbine, on the hill road to Cambret. The detailed assessment, appendix 7.6 page 7.6-19 states that because the turbines would not be in direct line of sight from the front or sides of the property, views of them would be oblique and partially screened by trees. Magnitude of change is assessed as medium/high and of major/moderate significance. It predicts that residents would not have their visual amenity altered in a potentially unacceptable way and the proposal would not have an overbearing effect on living conditions.

20. The impact on living conditions is not however just a question of the angle of view from the windows of the house, nor the amount of vegetation cover on the premises. It was clear from my accompanied site inspection that the turbines would be prominent from the road leading up to the house across largely open ground, at least five being within one kilometre. This would be especially so where the road turns south-east to lead up to the property and some turbines would be in close to direct line of site. As the house is reached and occupants go about their daily business it would be impossible to avoid views of the turbines. In my opinion they would have an overbearing impact on the property

21. Cambret lies at the end of the hill road, viewpoint 2, with the nearest turbine 800 metres away. There is more developed screening here in the form of a group of coniferous trees, and to the north, away from the appeal site, agricultural buildings restrict the view. The assessment conclusion of medium magnitude of change and moderate/major significant effect depend on the maintenance of this tree cover. As with Bagbie Sheds the turbines would be prominent along the access road but there is less scope for seeing the turbines from within the property, despite their close proximity. Whilst they may not be overbearing, as with Bagbie they would, in my opinion, seriously detract from the amenity of the property.

22. Claughreid is south-east of Cambret but just across the watershed and approached by a separate access from the south. Although only 842 metres from the nearest turbine the orientation of the property and intervening landform mean that views of it would be

restricted. I accept the assessment's conclusion of medium/low magnitude of change and moderate effect that would not be significant.

23. Bayview House would be 1.6 kilometres from the nearest turbine near Carsluith village. The assessment found the main views from the property to be unclear, with most being from upper floor windows. Views of the turbines would be restricted to three, with most not featuring any at all. In these circumstances I am content with the assessment rating of medium/low magnitude of change and moderate significance.

24. Anchorlee is located just off the A75 and would be 1.88 kilometres from the nearest turbine. The property sits in relatively open ground with main views towards Wigtown Bay. A number of turbines would be seen from the rear within the context of the A75, other settlement, communication lines and hillside woodlands, as well as being at the extreme right of the views from windows. I accept the assessment of medium to low magnitude of change and moderate effect that is not significant.

25. Bagbie Cottage, close to Bagbie Farm just off the road to Cambret, would be 1.26 kilometres from the nearest turbine. Principal views are to the south-west towards Wigtown Bay. Some turbines would be seen from windows at the rear of the single storey property, with a larger number from an amenity area to the rear. Some of these views would be oblique and the assessment considers magnitude of change would be medium with a moderate/major significant effect. This is not judged as being overbearing and I accept this.

26. Appendix 7.5 of the ES sets out visual assessment schedules for the photomontage viewpoints, settlements, places of interest within 10 kilometres, locally important viewpoints, long distance trails, heritage paths and core paths, rights of way and cycle routes and vehicle routes.

27. A small number of significant effects are recorded from a number of points including rights of way, core paths, settlements (notably Wigtown), and a number of viewpoints. Whilst some of these locations help justify my conclusions on landscape impact I am satisfied that taken in isolation these would not be sufficient to justify refusal of the appeal solely in terms of visual impact. Collectively they add to the concerns expressed in submissions as to the overall visual impact of the proposal.

### *Cumulative landscape and visual impact*

28. Potential cumulative impact schemes were addressed within a 35 kilometre radius of the appeal site (ES page 7-59). The majority of existing and planned schemes are located within an area 10 kilometres to 35 kilometres to the west and north-west with smaller groups to the east and north-east at similar separation distances. No significant effects were identified on sensitive landscape and visual receptors and I accept this judgement.

### *Cultural heritage*

29. Historic Scotland (now Historic Environment Scotland - HES) has objected to the proposal on grounds of significant adverse impact on the setting of the scheduled monuments of Claughreid stone circle, Bagbie cairn and stone setting, and Standing Stone of Bagbie standing stone. All were designated in 1928. HES accepts there is enough information in the environmental statement to come to a conclusion on the application, and that the methodology used for the cultural heritage assessment is broadly acceptable. As the Scottish Government's principal advisor on matters affecting the historic environment its views carry substantial weight, and in practice it does not object to applications unless the impact on relevant historic features would be serious and unacceptable.

30. As I was uncertain as to the national significance of these monuments I made a further information request to HES asking for their significance to be set out. There are more than 300 stone circles in Scotland and Claughreid is of particular significance being one of a small group with a central monolith. Additionally it has not been damaged by excavation and has the potential to reveal information about ceremonial and ritual practices and the structure of Neolithic or early Bronze Age society.

31. Most of the circles with central monoliths are on south-west Scotland. Claughreid is on moorland near the watershed of the Carluith and Kirkdale Burns. Its isolation and unobtrusive siting are important parts of its cultural significance. This distinctive setting is not replicated in similar examples in the general area. Its importance is enhanced by its association with a wider cluster of later prehistoric remains.

32. The ES states, paragraphs 13.5.16 – 13.5.18, that the character of the areas would be altered and that the nearest turbine in particular would alter the appreciation of Claughreid and its position within the landscape. As a high sensitivity receptor the magnitude of change would be major with a large/very large significant effect.

33. Wireline photomontage illustrates this impact. The nearest turbine would be seen in its entirety only 370 metres from the stone circle. Its visual impact would be so great that in the montage the upper blade is almost entirely off the montage. All the turbines would be seen from at least hub-height or greater when looking across the moorland towards the coast.

34. It was clear from my accompanied site inspection, despite being held in adverse weather conditions with rain and strong winds, that a full appreciation of the setting of the circle relies on its location amid open moorland with relatively unrestricted views. The most important of these appeared to me to be those over the open country of the proposed site, towards the south-west, as this gave the most significant impression of the open landscape.

35. It is this view however that would be the one compromised by the proposed turbines. The nearest one, by virtue of its proximity and full height exposure would alone dominate the stone circle, in my opinion destroying the very characteristics the site is valued for in visual terms. This would be made worse by the presence of the other turbines. The setting would be irretrievably damaged for the 25 year life of the turbines. The ES describes this as temporary, which I consider significantly understates the situation.

36. HES dates Bagbie cairn and stone setting and the Standing Stone of Bagbie to between 3500 and 1500 BC. They lie on semi-improved fields with the nearest turbines

1.16 and 1.11 kilometres away respectively. It says the cairn and four poster stone circle survive in good condition and, as with Claughreid have the potential to inform on the practices and structure of Bronze Age society.

37. Four poster stone circles are said to be fairly restricted, with most examples in north Perthshire. Bagbie is the only example in south-west Scotland and its association with a well preserved cairn is unusual, enhancing its significance. HES considers it of cultural significance in national terms because of the potential to make a significant contribution to our understanding of the past, particularly the nature of ritual and burial practices and their significance on Bronze Age society. The cairn is a prominent feature in the immediate surrounding landscape, which emphasises its form despite the small scale.

38. This was demonstrated by my own visual appreciation at the site inspection. Again the significance of the setting is the open character of the landscape. Whilst the cairn and stone would not be dominated by the turbines to the same extent as Claughreid, because of the slightly further separating distance, the wider open setting to the south-east would be significantly damaged. The ES describes the impact as medium but significant, and again temporary. This understates the effect as with Claughreid.

39. The site of Bagbie Standing Stone is in an adjacent field to the cairn and 50 metres closer to the turbines. HES says it is prominent in the landscape and carefully placed. Its cultural significance is again nationally important because of its potential to make a significant addition to our understanding of the past. Its prominence on a low ridge in many views from the surrounding area indicates that despite its small scale it was and remains a locally impressive feature.

40. The inter-relationship between the stone and the cairn were clear from my site inspection, despite the dividing wall along the edge of the field. Despite the proximity to the cairn, when seen from the stone the turbines would protrude slightly higher above the skyline, thus increasing their dominance in the wider landscape. The impact is described in the ES as the same as for the cairn, although with no mention of the adverse impact being temporary, which may be an error.

41. Overall I find the impact of the turbines would have a significant major adverse impact on the setting of these three monuments. No mitigation is proposed and it is difficult to see how any could be effective.

42. I have considered carefully the other cultural heritage assets examined in the ES. These include other scheduled monuments, listed buildings and conservation areas. I have found none where the impact could not be mitigated to an acceptable extent or where the impact would be sufficiently adverse as to justify the refusal of the appeal.

#### *Other matters*

43. The ES also includes detailed assessments on ecology, ornithology, noise, access and transportation, socio-economics, tourism, recreation, and land use, shadow flicker, aviation and telecommunications.

44. Regarding noise it is proposed that the final turbine choice would be based on meeting ETSU-R-97 noise limits to be achieved at surrounding properties. The appellant proposes conditions based on ETSU-R-97 noise limits to be used as a base for operational noise limits to be applied too individual properties.

45. Shadow flicker is predicted to occur at seven properties for between 23.37 and 2.73 hours per year. Conditions could be imposed to ensure measures are taken to avoid this by shutting down turbines in conditions where shadow flicker could theoretically occur.

46. I am satisfied that there are no other issues that could not be mitigated and dealt with by conditions or legal agreements on any permission imposed.

### *Benefits*

47. The impacts of the proposal on climate change are set out in chapter 15 of the environmental statement. Detailed calculations are provided in appendix 15.1.

48. The installed capacity is expected to be 21MW assuming seven turbines at 3MW per turbine. Assuming a 25% capacity factor, plus an allowance for noise mode running, the annual output is projected at 44.6GWh. It is estimated that the proposed wind farm would supply the renewable energy equivalent of 8,900 typical Dumfries and Galloway houses per annum.

49. If this were to displace fossil-fuel mix generation it would result in carbon savings of 31,289 tonnes of CO<sub>2</sub> per year during its lifetime. With a standard grid mix including fossil fuel and other forms of renewables and nuclear savings would be 20,264 tonnes per year.

50. Carbon payback calculations show a payback period of between 1 and 1.5 years for the development. There would thus be carbon savings of between 23.5 and 24 years once the carbon losses associated with the development have been paid back.

51. In overall terms these are significant benefits that would provide a small but useful contribution to Scottish Government renewable energy targets. There would also be a short-term economic benefit from construction activity. When operational there would be an ongoing contribution to the landowner with capacity for reinvestment in the local economy. These benefits must also be weighed against the proposal's negative benefits.

### *Compliance with the development plan*

52. For the reasons set out above the proposal does not accord with policies NE2, IN1, or IN2 because of the significant adverse impacts the proposal would have on the regional scenic area and the landscape. No significant mitigation has been put forward with regard to landscape impact and the ES underestimates the effect that the proposal would have on the regional scenic area and the wider landscape surrounding Wigtown Bay. With regard to policy NE2 it has not been demonstrated that the development must take place at this location or that no other suitable sites are available.

53. For the reasons set out above the proposal does not accord with policy HE3 because of the significant adverse impact the proposals would have on the settings of three

scheduled monuments, and that it has not been demonstrated that an acceptable alternative site is not available.

54. Overall I find the proposal does not accord with the development plan.

#### *National policy*

55. The National Planning Framework (NPF3) and Scottish Planning Policy (SPP) support renewable energy developments, while requiring regard to impacts on communities and individual dwellings, and to landscape and visual impacts. SPP sets out a presumption in favour of development that contributes to sustainable development. This involves balancing the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

SPP sets out guiding principles which include:

- giving due weight to net economic benefit;
- supporting good design and the qualities of successful places;
- supporting delivery of infrastructure, including energy;
- supporting climate change mitigation and adaptation;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment; and
- avoiding over-development, protecting the amenity of existing development and considering the implications of development for water, air and soil quality.

56. While the proposal would make a positive contribution to infrastructure and to mitigating climate change, it would not protect the landscape or the wider environment. In my opinion, on balance the negative aspects of the proposal outweigh the benefits.

57. SPP makes it clear that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. For proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained and the SPP and the presumption in favour of development that contributes to sustainable development will be material considerations. The local development plan was adopted in 2014 and can therefore be taken as an up to date statement of the settled view of the council.

58. Historic Environment Scotland has just launched Historic Environment Scotland Policy Statement, which replaces the Scottish Environment Policy 2011 (SHEP 2011). The statement updates the operational policy set out in SHEP 2011 reflecting legislative changes introduced in the Historic Environment Scotland Act 2014. As such the main policy is in substantially the same form as SHEP 2011 and I do not therefore consider it necessary to consult parties as to any relevance it may have to the appeal.

59. SHEP 2011 was supported by a series of non-statutory guides on Managing Change in the Historic Environment. These are now being updated and republished but in the meantime the original guide on Setting can help inform my determination of the appeal. For the reasons set out above the proposed development does not meet the guidance set out on assessing the impact of proposals on the setting of scheduled monuments.

### *Other material considerations*

60. Although not directly affecting the appeal the council received more than 1,200 individual representations against the proposal. Most of these concerned the landscape issues and effects on local communities and these have been dealt with above. There were over 100 representations in support of the proposal.

61. There is no support in national policy because of the significant adverse impact of the proposal on landscape and visual impact and on the historic environment.

62. There are no material considerations that justify the granting of planning permission contrary to the development plan and national policy.

### *Conclusion*

63. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. The appellant has acknowledged that the proposal does not accord with the development plan but maintains that other material considerations, notably the renewable energy and climate change benefits of the scheme justify approval. I do not consider that the undoubted renewable energy benefits of the proposal are sufficient to outweigh the adverse impacts on landscape, visual receptors and the cultural heritage. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Trevor A Croft*

Reporter