

GS/Ardtaraig/IK

Town and Country Planning (Scotland) Acts 1997 and 2006

PROPOSED ARDTARAIG WIND FARM

Ardtaraig Wind Farm Ltd (an SPV)

INITIAL APPEAL STAGE SUBMISSION

On behalf of No Ardtaraig Wind Farm (NAW)

Appeal in respect of refusal of planning permission for a 7 turbine development (each turbine at 136.5m to blade tip) and associated infrastructure, including new tracks and a borrow pit, at Ardtaraig Estate, east of Glendaruel, Argyll and Bute

DPEA Ref: PPA-130-2073

Argyll and Bute Council Ref: 18/01516/PP

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Submitted: 24th July 2019 by email only

Background

1. This **initial appeal stage submission** in respect of the appeal against the refusal of planning permission for the proposed Ardtaraig wind farm (Argyll and Bute Council planning application reference 18/01516/PP) has been prepared for the local objector group No Ardtaraig Wind farm (NAW). The instructions in this case have been issued by Mr. Reg MacDonald on behalf of the group.
2. The wind farm proposal includes the following key elements:
 - a. Seven wind turbines, each with a tip height of 136.5m
 - b. Four on site borrow pits
 - c. New access tracks (alongside use of an existing wind farm access)
 - d. A sub-station and associated infrastructure including battery storage
 - e. A borrow pit with the potential to supply a considerable quantity of stone
3. The proposed wind farm lies just out with the Kyles of Bute National Scenic Area (NSA) where wind farms are not to be permitted as per Scottish Planning Policy (SPP2).
4. The NAW group submitted an objection to the proposed wind farm in December 2018, along with a supporting petition, and Mr. MacDonald spoke at the application Hearing convened by the Council on 26th March 2019.
5. This initial appeal stage response document has been prepared by Ian Kelly MRTPI, Consultant at Graham and Sibbald, and a chartered town planner with 40 years' experience in the public and private sectors, mainly in Scotland but also involving work south of the Border, and in Europe, mainly in Scandinavia. His relevant project work and other relevant experience has included some 20 years of professional work advising on a considerable number of wind farm planning applications and wind farm S36 Electricity Act applications. He has extensive Public Inquiry and Court of Session Judicial Review experience arising from that wind farm assessment work.

6. Mr Kelly has very recently given oral planning policy evidence in the Dulater Hill S36, Fallago 2 S36, Cnoc an Eas, Culachy, Druim Ba 2, Caplich S36, Limekiln 2 S36, and Drum Hollistan S36 wind farm Inquiries as well as providing written submissions for other wind farm appeal and Inquiry cases. Therefore, he has very up to date experience in the consideration of all of the relevant policy issues that will apply when considering wind farm proposals.

The NAW Objection and the Current Focus

7. The original NAW objection addressed the full suite of policy issues including the relevant Development Plan assessment and the relevant material considerations. That full objection, with the associated petition, remains as the core of the NAW case against this proposed wind farm. It should be considered alongside this initial submission.
8. However, for the appeal stage the areas of dispute between the Council and SNH on the one hand and the appellants on the other hand, are very clear and very focussed and primarily relate to the landscape and visual effects. Therefore, rather than address again the full suite of Development Plan policies and relevant material considerations, this initial appeal stage response for NAW proceeds by way of commenting on the recently submitted Grounds of Appeal Statement following on from some commentary on the application stage SNH response and the Council's assessment of the application.
9. Therefore, notwithstanding the full range of concerns as set out in the original objection, NAW agrees with the appellants that the key determining issues are the LVIA effects, especially on the NSA (but also on the APQ), and the policy considerations (both from LDP Policy 6 and SPP2) into which the consideration of those effects must be placed. Whilst there are some wider issues that do arise it is considered that taking a focussed approach in this response will assist the appointed Reporter.
10. It is noted that the Development Plan context has not changed since NAW submitted its objection and since the Council assessed and determined the application. Therefore, there is no need to repeat the LDP policy assessments contained in the

earlier NAW objection. As will be clear from this response the group's objection to the proposed wind farm has not changed either.

Precedent

11. The application and now the appeal raise a further particular concern. Based on the available information there is no evidence that unsubsidised small scale wind farms are being built anywhere in Scotland with the remaining limited market interest being for large scale wind farms with a considerable number of very tall turbines of 180m to 220m height to blade tip. The clear indication is that small wind farm proposals like Ardtaraig are simply not viable in the current market.
12. Therefore, there remains a very significant concern that this proposal is simply a lead into a very much larger wind farm proposal comprising Ardtaraig alongside the repowering of Cruach Mhor (currently nearing the end of its planned operational life) with much taller turbines and, thus resulting in a very large scale scheme with likely very wide LVIA impacts throughout the NSA. The NAW group are of the view that this strengthens the case for an early rejection of the current appeal.

The Position of SNH

13. Although the SNH appeal stage response is not yet available on the DPEA web site the seriousness of the issues raised by this wind farm proposal in this location might be judged by the fact that a development proposal of just seven turbines attracted a relatively rare, and very clearly expressed, formal national interest objection from SNH.
14. SNH responded to the application on 4th October 2018 in the form of an objection in terms of the adverse effects on the NSA which SNH considered could not be mitigated. The response makes clear that SNH had considerable concerns about a wind farm in this location and that those concerns had been made clear to the applicants at the Scoping stage in January 2017.
15. The Reporter will be able to review and consider the full terms of the SNH objection letter and the three appended annexes. However, NAW would wish to highlight the following aspects:

- a. In terms of the NSA it is noted that the detailed assessment in Annex 1 firstly addresses the strategic implications and precedent, before going on to consider the Special Qualities. Significant adverse effects on three Special Qualities are identified. The assessment then considers landscape effects and visual effects. NAW is fully content with the analysis set out in Annex 1
 - b. In terms of ornithology Annex 2 addresses the inadequacies of the survey work, and then looks at the predicted effects on Golden Eagles, ground nesting birds, and black grouse, before addressing cumulative impact. NAW did not seek to present ornithological evidence to the Council when it determined the application and, therefore, no detailed evidence is presented at this stage. Whilst the findings of SNH are welcome NAW is of the view that more weight should be attached to the inadequacy of survey work (in terms of leading to a refusal of the application/appeal). NAW also notes that other objector parties have concerns that the ornithological effects have been underestimated
 - c. In terms of Annex 3 the reasons why the peatland on the site is degraded are not explored. In the view of NAW the proper, responsible and sustainable management of this peatland should not be predicated on the granting of planning permission for a highly intrusive wind farm
- 16.** As noted earlier considerable weight should be given to the SNH objection as the national interest objection, itself a relatively rare SNH response, has been triggered by a proposal that consists of just seven turbines. This tends to confirm that it is the wind farm location that is the problem and that, therefore, such a problem cannot be mitigated away by design iterations.
- 17.** A representative from SNH was able to address the Council’s Committee Hearing in March 2019 and to answer questions from the Committee Members (see the following section in this response). Also, it is understood that some concerns held by the appellants and stemming from the terms of an earlier FOI response from SNH has now been addressed in an email from SNH that is available on the DPEA web site.

18. Finally, on the matter of the protection to be afforded to the NSA the Reporter will be aware that the new Planning (Scotland) Bill, as passed by the Scottish Parliament and awaiting Royal Assent, strengthens the wording on the protection of NSA's by removing the words "desirability of" meaning that the protection provision is now clearly an absolute requirement on Ministers (and thus the DPEA) when exercising functions under the Planning Acts. NAW is of the view that this emerging new legislation adds to the case for the rejection of this wind farm proposal on the edge of an NSA.

Consideration by the Argyll and Bute Council

19. The Council Planning Officers prepared a detailed Report on the application in March 2019. The Report, in a standard format used by the Council's Planning Service, addressed consultations, representations (both objections and support), a summary assessment, and summary reasons why the application should be refused. The Report then set out the detail of the recommended reasons for refusal. Appendix A to the Report contained a detailed planning land use and policy assessment. Part of that detailed assessment drew heavily on the SNH objection with significant sections of that objection being quoted verbatim.

20. Whilst NAW might have reached slightly different conclusions from the Council Officers on some aspects of the assessment of the application, the group was largely satisfied with what had been set out in the Report. That Report will be available to the Reporter thus avoiding any need to set out any detail from the Report in this initial appeal stage response on behalf of NAW.

21. The Council considered the Report on the application at the meeting of the Planning, Protective Services, and Licensing Committee held on 26th March 2019. Prior to determining the application the Committee had undertaken a site visit on the previous day. The Committee Meeting itself took the form of a discretionary Hearing prior to the determination of the application.

22. The Minute of the meeting shows that it was a lengthy affair, starting in the morning and continuing until after lunch. Following presentations by the Planning Officer, by the applicant, and by SNH, the Committee heard full submissions from supporters and

objectors (NAW was able to make a submission that reflected the full extent of the submitted objection) and who all had the opportunity to respond to detailed questions from the Members. There was then a concluding debate amongst the Members of the Committee.

23. Following on from what was ultimately a very full and detailed consideration of matters comprising a Report from Officers, a site visit, and a discretionary Hearing, the Committee voted by 8 to 4 that the application should be refused planning permission for the recommended four reasons. These are long and complicated, but can be summarised as below – a summary also set out by the appellants:

- a. Impacts on the Special Qualities and overall integrity of the Kyles of Bute NSA
- b. Impacts on the Kyles of Bute APQ and the setting of the NSA
- c. Visual impacts arising from the proposed development, and
- d. Perceived impacts on tourism and recreational interests which may deter visitors from visiting the area

24. The NAW group appreciated the detailed care that the Committee had taken in the consideration and determination of the application. NAW welcomed the decision of the Council to refuse planning permission and would refer the appointed Reporter to the full terms of the Officer's Report and the detailed Minute of the Council's consideration and determination of the application.

25. The Council's appeal stage response submission was not available on line at the time this NAW response was prepared.

The Submitted Grounds of Appeal

26. The Grounds document includes a lengthy Appeal Statement much of which is a detailed rebuttal of the LVIA/NSA and planning policy positions taken by SNH and the Council. There is also criticism of the Council's consideration of the application. Although the full Appeal Statement document has been read and considered it is clear that it will be primarily for SNH and the Council to respond more or less in a

paragraph by paragraph way to what is said. Therefore, NAW has tailored its response to the Appeal Statement in the expectation that both SNH and the Council will provide such full rebuttals. The section on third party objections within the LVIA/NSA section of the Appeal Statement is very brief and basically just says that the issues raised had all been evaluated in the ES LVIA.

27. In approaching the Appeal Statement it is firstly important to have clearly in mind that the proposed wind farm is very close to the boundary of the NSA. Had the proposal been relocated by just a couple of kilometres then SPP2 would have defined it as being in a location unacceptable in principle for a wind farm. That national planning policy stance can only reflect a clear view that there is a fundamental incompatibility between wind farms and national, valued landscapes. Therefore, the consideration of a wind farm proposal whose geographic location just misses out and no more on that national planning policy prohibition should proceed in the recognition of this accepted incompatibility. That is what happened in the Dulater Hill S36 wind farm case mentioned in the immediately following section of this response. Secondly, whilst the Planning Policy Assessment in Chapter 4 is very lengthy, the Local Development Plan policy position remains as before whilst there has been little significant change in the range of relevant material considerations. Therefore, much of that Chapter is simply a repackaging of what was said before by the then applicants.

28. Nonetheless, there are some aspects of the Appeal Statement, particularly in Chapters 2 and 4, that NAW wishes to comment on and those comments are set out below using the paragraph numbers in the Appeal Statement:

- a.** Para 2.8 – Mr Welch, as he has done in other cases, refers to the capacity of the landscape to “absorb” the proposed development. The Reporter is invited to look up the Cambridge Dictionary definition of the verb “absorb” and consider whether this word is a valid description of the effects from putting seven very tall, moving structures into the landscape just outside the boundary of an NSA
- b.** Para 2.15 – for this paragraph to be properly balanced it should be accepted that the NSA designations have also led to the refusal of wind farms elsewhere in Scotland

- c. Para 2.21 – NAW take the view that it would have been helpful if the Council’s Committee Report had contained a viewpoint based assessment by Officers. However, equally, NAW are of the view that it was not in any way incompetent or unreasonable for the Officers to place considerable reliance on the assessment by a key consultee in the form of SNH
- d. Para 2.24 – if OPEN wishes to refer to or rely on “survey evidence” of the effects of wind farms on tourism then that statement should be qualified by acknowledging that some such surveys have been severely criticised
- e. Para 2.31 – this paragraph claims that the wind farm is 2.93km from the NSA boundary. It is understood that the correct distance is 1.8km as stated in para 2.75
- f. Para 2.34 – NAW takes the view that the response from the LLTNPA was exceptionally weak. Indeed, the experience throughout Scotland shows that the two National Park Authorities do not have a strong and consistent record in assessing and successfully opposing wind farms that are close to but out with the Park boundaries but which have significant effects on receptors within the Parks. In this case NAW considers that, for this topic, greater weight should be placed on the assessment by SNH
- g. Para 2.45 – it is agreed that, at this point in time and for this proposal, cumulative LVIA effects are not a determining issue. However, there are spatial patterns and precedent concerns as set out in this response and as recognised by SNH
- h. Para 2.52 – it terms of strategic siting issues the map of cumulative wind farms considered in the assessment is helpful
- i. Para 2.56 – the perceived scale of the wind farm in the visualisations is partly a result of the panoramic images used (as opposed to single frame images) as these have the effects of significantly reducing the perceived vertical scale of the wind farm, and partly a result of poorly chosen viewpoint locations

- j.** Para 2.63 – OPEN could also have usefully highlighted/emphasised the last part of the quote which states “although larger turbines would be likely to be more visible on skylines”
- k.** Para 2.81 – a pattern of scattered dwellings sometimes referred to on maps as a named settlement is fairly normal in Argyll and Bute
- l.** Para 2.85 – the order of the principles informing the design process is quite clear – maximise electricity generation and only recognise environmental constraints and buffers “where possible”. This perhaps explains why the proposal is the way it is
- m.** Para 2.95 – the future enhanced protection of NSAs, from the new Planning Bill, is referenced elsewhere in this response
- n.** Para 2.106 – the effects on those experiencing the Special Qualities whilst sailing or on ferries should be fully recognised
- o.** Para 2.122 – the comparative case of Dulater Hill (see the immediately following section of this response) should be referred to when considering the aspects of the setting of the NSA
- p.** Para 2.140 – it is agreed that the Council does not explicitly set out any version of Special Qualities for the APQs. However, the LDP policy basis is clear and planning decision makers, over many years, have not previously found any difficulty in assessing the effects of proposed developments on any relevant APQ
- q.** Para 2.146 – in NAW’s view the Planning Officer assessed the LDP policy position in respect of the APQ
- r.** Para 2.152 – in respect of the Council’s LWECS OPEN reference the “subjective nature of the author’s opinions”. However, the author is a professional, experienced, chartered landscape architect and it is unclear why OPEN and Mr Welch classify her conclusions as “subjective” whereas they classify their own conclusions as “professional judgement”

- s. Para 2.211 – again the word “absorb” is used (incorrectly)
- t. Section 4 Planning – General Comment – the various planning policy cases for parties have all been fully set out earlier in the context of this being a planning application to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The planning policy context has not changed nor has the position of the parties. Therefore, it is unclear why a 35 page chapter is needed when all that would have been necessary is planning policy commentary on the reasons for refusal
- u. Para 4.6.1 – the requirements of SPP2 para 169 are for an assessment of net economic effects. This has not been done
- v. Para 4.6.2 – the risks associated with this financial product (which NAW understands cannot be promoted by Savills) should be fully set out in accordance with the relevant financial products legislation
- w. Para 4.15 – it is agreed that LDP 6 is the core LDP policy against which the appeal should be determined
- x. Para 4.23 – the author of this chapter refers to wind farms being “a necessary response to the threats posed by climate change”. **However, neither in this case nor in any other wind farm case known to NAW and its advisors has anyone acting for a wind farm company ever produced any evidence whatsoever to demonstrate any identifiable and verifiable effects of Scottish wind farms on climate.** This is a critical point. Planning decision makers, including Reporters, should deal with evidence, not virtue signalling political soundbites when considering renewable energy developments that have significant adverse effects. The Reporter for this case can approach this aspect in an interesting way by asking the appellants’ Planning Consultant to identify precisely how climate would now be different if we had never built wind farms in Scotland
- y. Para 4.54 – see the comments above

- z. Para 4.187 – the author of this chapter refers to the so called global climate emergency, but then completely and utterly fails to set out any evidence as to the identifiable and verifiable effects of this wind farm on any identifiable elements of the emergency

29. Despite what is set out in the lengthy Appeal Statement NAW is of the clear view that much of this information is simply a restating/repackaging of what was already in front of parties when they submitted objections, in front of SNH when it decided to formally object, and in front of the Council when it decided to refuse planning permission. There is very little that is completely new in this case at the appeal stage. The determining issues are clear and they remain the same as when the application was decisively refused planning permission.

The Outcome of the Dulater Hill S36 Wind Farm Application – NSA Effects

- 30. The issues arising from a proposed wind farm development very near to an NSA, but not actually in the NSA, was recently addressed in considerable detail in the Public Inquiry evidence, the Public Inquiry Report, and the determination by Scottish Ministers all in respect of the Dulater Hill S36 wind farm proposal. That case has the ECU reference of ECU00002079 and the DPEA reference of WIN-340-2. The nearest turbine to the NSA (Dunkeld and the River Tay) was at a distance of 1.5km, comparable with the 1.8km separation in this case.
- 31. Having considered all of the evidence from the Inquiry the Reporter concluded that the wind farm, although out with the NSA, would have significant and adverse effects on the Special Qualities of the NSA. Those effects were not outweighed by the benefits of the proposal. She recommended that S36 consent should not be granted and that deemed planning permission should be refused. Scottish Ministers agreed with and adopted the Reporter’s findings and recommendations and thus endorsed the findings in terms of the significant adverse effects on the NSA leading, inter alia, to rejection of the application.
- 32. The Reporter is referred to this Inquiry Report and Ministerial decision letter neither of which need be addressed further in detail in this initial submission save to say that the evidence and the outcome all point to a clear refusal for this appeal. In saying that

it is appreciated that there is no legally binding law of precedent within the planning system in Scotland. However, in line with what has been established in Judicial Review Court decisions, should the Reporter in this case disagree with the findings and conclusions reached by the Reporter for Dulater Hill (which findings and conclusions, as noted, were fully endorsed by Scottish Ministers) then a detailed reasoned explanation would be required.

The Need Case – Updated Considerations

33. The Reporter will already have extensive information on the need case, which is only a material consideration when it comes to planning application appeals. However, it is important to be aware of the most recent information.

34. It was reported last week in *Energy Voice*, a trade publication, that Scotland produced almost double the amount of wind energy required to power every home in the country between January and June 2019. There is no obvious route to market for this “excess” power, and so the question may legitimately be raised as to whether a windfarm with such a small potential energy output as Ardtaraig is in any way relevant to the country’s “need” for renewable energy or to combat climate change and/or harmful pollution, those being the principal claimed justifications for even small amounts of additional onshore wind driven generation. Logically, there can be no justification for producing power that nobody needs and which cannot be exported and which will often just result in excessive constraints payments being made. If the power effectively goes nowhere, it cannot benefit anyone. It is submitted therefore that a legitimate question for this Reporter is:

“If Scotland is generally producing wind generated power in excess of its requirements, and there is no identifiable export route for that power, is this proposed windfarm needed at all, or is it truly surplus to national requirements?”

35. As part of the context for this question, NAW would refer to the decision of Mr Michael Cunliffe in the Barrel Law 1 Inquiry (DPEA reference PPA-140-2046) where he said at para 38:

“However, the recent statistics indicate that 6.8 gigawatts of capacity was operational in March 2014, with a further 6.5 gigawatts under construction or

*consented, giving a total of 13.3 gigawatts and leaving only an additional 2.7 gigawatts required by 2020 to meet the target. Against that, proposals for 7.2 gigawatts were in planning, more than two and a half times the amount needed to close the gap. I accept that some of these proposals will be at an early stage and might not be capable of completion by 2020, and that some will fail to win approval. However, others have been approved since March. I also accept that the target is not a cap, and that any additional capacity will help to reduce the UK's carbon emissions. **However, the rate of progress and the availability of alternatives suggest that the weight that should be given to Barrel Law's contribution is not as great as it would have been with a larger shortfall against the target, or a lack of other schemes". (my emphasis)***

36. NAW would be very much obliged if the Reporter could consider this matter when he is reflecting on the need case.

Further Evidence Procedures

37. NAW would largely agree with the appellants in terms of further procedure. It is considered that this is a case where the LVIA/NSA issues could usefully be explored in an Inquiry Session, whilst the policy issues could then be addressed in a Hearing Session that followed on after the LVIA Inquiry Session. In accordance with the normal procedures a Hearing Session on conditions and agreements would be appropriate.
38. NAW would expect the Council and SNH to lead on the LVIA/NSA issues and, therefore, would not seek to present evidence on these matters on behalf of NAW. However, the group would wish to be represented at the LVIA Inquiry Session and might wish to ask a few questions of the LVIA witness for the appellant (but without straying into duplication or repetition). NAW would wish to contribute to the policy and conditions evidence by actively participating in those Hearing Sessions.
39. Finally, NAW would support the undertaking of an accompanied site visit to a limited number of key ES LVIA viewpoints and other locations. In terms of logistics, the accompanied element should only need to be a focussed part of the overall site visit work by the Reporter.

Overall Planning Policy Assessment and Conclusions

40. In reaching the overall conclusions in the initial objection the approach taken was to consider both the benefits of the proposal and the likely adverse impacts, or disbenefits of the proposal (the planning balance). For the reasons set out in the NAW objection (supported by the petition), it is considered that the material benefits of the proposed development are only the limited economic benefits and those generic, assumed environmental benefits associated with wind energy generation. These generic benefits (which are only assumed benefits) are already factored into the favourable policy environment for this type of development and should not be counted twice.
41. Based on the above it was also concluded that **the proposed wind farm is contrary to the Local Development Plan and the provisions of the Council’s LWECS**. This is principally on account of the significant adverse landscape and visual impacts, including adverse impacts on the nationally valued landscape of the NSA, and on viewpoints/routes, that cannot be mitigated. This range of significant adverse effects is not offset by the limited economic benefits of the schemes or by the assumed generic environmental benefits of the schemes.
42. Therefore, the overall conclusion of the submitted objection was that the proposed Ardtaraig wind farm was not in accordance with the Development Plan and the associated guidance.
43. A range of material considerations had been taken into account. In summary, it was concluded that there are no material considerations that would change the conclusions that arise from the Development Plan assessments. That led to the conclusion of a presumption of refusal.
44. It should be clarified that the specific consideration of the Appeal Statement that has been submitted by the appellants simply confirmed the concerns set out in the original NAW objection. There was nothing in that new material that led to any change to the conclusion that the application should be refused planning permission.

Overall Conclusion and Recommendation

45. Taking the above conclusions together with the full detail of the earlier NAW objection, the SNH objection, the Council’s assessment and determination of the application, and this initial appeal stage response from NAW it is, therefore, respectfully submitted that the Reporter should reject this appeal and refuse planning permission for the proposed Ardtaraig wind farm for the reasons that have been set out.
46. Furthermore, it is also submitted that the Reporter should look to determine this appeal at the earliest possible opportunity subject to arranging the requested oral evidence procedures and an associated accompanied site visit as noted earlier.

Later Submissions

47. As is often the case with the strict start of the appeal timetable required of local objectors (the people who would actually have to live with the adverse effects if this wind farm were permitted) the appeal stage responses from SNH and from the Council were not available at the time of submitting this initial response on behalf of NAW. Although the earlier position of both bodies is quite clear, it might be that if, when these appeal stage responses are lodged and posted on the DPEA web site, issues arise that are relevant to NAW and thus need to be commented upon. If that situation does arise then a later submission will be lodged with the DPEA.
48. It is accepted that, in such circumstances, it would be for the Reporter to determine whether or not he/she wished to take that later submission into account.

Contact Details

49. Any further correspondence on this appeal should be sent, preferably by email, to Ian Kelly as agent for NAW on this case.

[END]

Submitted: 24th July 2019

On behalf of NAW

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Consultant, Graham and Sibbald, Edinburgh