

**ARGYLL AND BUTE COUNCIL
DEVELOPMENT AND ECONOMIC GROWTH**

PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE

**UPDATE ON RECENT SCOTTISH MINISTERS SECTION 36 NARACHAN WIND FARM
DECISION**

OUR REFERENCE: 20/00212/S36

ECU REFERENCE: ECU00001884

DPEA REFERENCE: WIN-130-6

**CASE DETAIL: ERECTION OF 11 TURBINES OF UP TO 180M TO BLADE TIP AND
ASSOCIATED INFRASTRUCTURE**

SITE ADDRESS: NARACHAN HILL, LAND EAST OF TAYINLOAN

APPLICANT: ENERGIEKONTOR UK LTD

STATUS: REFUSED BY SCOTTISH MINISTERS ON 8TH MARCH 2024

1. INTRODUCTION

- 1.1 In Scotland, any application to construct or operate an onshore power generating station, with an installed capacity of over 50 megawatts (MW) requires the consent of Scottish Ministers under Section 36 of the Electricity Act 1989. Any ministerial authorisation given includes a 'deemed planning permission' and in these circumstances there is then no requirement for a planning application to be made to the Council as Planning Authority. The Council's role in this process is one of a consultee along with various other consultation bodies. It is open to the Council to either support or object to the proposal, and to recommend conditions it would wish to see imposed if authorisation is given by the Scottish Government.
- 1.2 Argyll & Bute Council did not object to this application, consequently, a Public Inquiry was not required on these grounds. However, the Electricity Act provides that where the Scottish Ministers are not required to cause a Public Inquiry to be held, if other objections have been received, they shall be considered together with all other material considerations by the Scottish Ministers with a view to determining whether a Public Inquiry should be held. NatureScot, a statutory consultee, objected to the proposed development on the basis of the significant adverse daytime and night time effects it would have on the Special Qualities of the North Arran National Scenic Area. The Applicant disagreed that the NSA would be compromised. The Scottish Ministers decided that while the proposed Development has the potential to make a valuable contribution to renewable energy targets, the importance of the NSA and the desirability of safeguarding its character was a significant consideration. Consequently, Ministers considered that it was appropriate to cause a Public Inquiry to be held.
- 1.3 The Inquiry, which Officers participated in was conducted by a Reporter(s) appointed by the Directorate for Planning and Environmental Appeals (14th – 17th March 2023).

- 1.4 This report summarises the decision made by Scottish Ministers to REFUSE Section 36 consent and deemed planning permission for Narachan wind farm.

2. RECOMMENDATION

- 2.1 Members are asked to note the contents of the report.

3. REPORTERS CONCLUSIONS AND RECOMMENDATION TO SCOTTISH MINISTERS

Reporter's Conclusions

- 3.1 It is clear that there is now increased support within national policy and guidance for onshore wind developments in order to meet net zero ambitions and address the climate and nature crises. This proposal would make a valuable contribution towards meeting national and UK renewable energy targets, tackling climate change and achieving net zero. In particular, it would assist in the "mission critical" delivery of onshore wind towards the Scottish Government's target of 20 GW of installed onshore wind capacity by 2030. As a proposal having National Development status these benefits are of national importance.
- 3.2 National policy also gives support to such developments where net economic impact, including local and community socio-economic benefits would be maximised. It is predicted that during the construction phase the proposal would have short term, minor, beneficial socio-economic effects at the regional and national scale and would have minor adverse effects on tourism. However, no assessment was made of the significance of the longer term direct and indirect socio-economic effects and it has not been demonstrated that local economic benefits would be maximised.
- 3.3 The policy context of NPF4 and OWPS make it clear that larger turbines are to be now expected. While NPF4 gives strong support for onshore wind developments outwith National Scenic Areas and recognises that significant landscape and visual impacts are to be expected it does not suggest that such effects will always be acceptable.
- 3.4 Where impacts are localised and/or appropriate design mitigation has been applied, they will generally be considered to be acceptable.
- 3.5 The Reporter concluded that there would be significant adverse daytime visual and cumulative effects and there would be potential for short term effects on residential properties due to construction noise. These effects would remain even with mitigation in place, albeit the construction effects would be short term.
- 3.6 The Reporter found that the daytime significant visual and cumulative effects would not be sufficient to constitute an evident and material change to the special landscape qualities of the North Arran NSA. However, the Reporter concluded that the effects of the aviation lighting as proposed, would have significant adverse effects on the special landscape qualities of the North Arran NSA and would compromise the integrity and objectives of the designation of the NSA. The Reporter was not satisfied that the applicant's proposed aviation lighting would mitigate the adverse effects on the NSA.
- 3.7 The effects of the wind farm as currently proposed would be neither localised nor mitigated. In order to comply with NPF4 Policy 4 ii) the significant adverse effects on the NSA require to be clearly outweighed by social, environmental or economic benefits of national importance.

- 3.8 The NSA is a resource of recognised national importance. NatureScot recommends a cautious approach be taken given the uncertainties involved in relation to the mitigation of aviation lighting. As the specialist advisors to the Scottish Ministers on landscape and natural heritage matters, the Reporter gives weight to NatureScots position on that matter.
- 3.9 NatureScot places particular importance upon this NSA due to its proximity and accessibility to the main centres of population and the combination of high scenic quality and wildness which is considered to be unusual in a south of Scotland context. While the Reporter acknowledges the high scenic quality of this NSA there is no hierarchy of importance that applies to these designated areas. The proposal requires to be considered in terms of its effects upon this particular NSA.
- 3.10 In balancing the factors for and against the proposal it is the Reporters conclusion that the effects of the proposed aviation lighting would be sufficiently adverse that they would outweigh the positive aspects of the proposal, including those of national importance. However, the Reporter is satisfied that the incorporation of an Aircraft Detection Lighting Scheme would acceptably mitigate those effects. Therefore the Reporter recommended that consent be granted subject to a suspensive planning condition requiring that the aviation lighting to be used at this wind farm shall incorporate and utilise an aircraft detection lighting system.
- 3.11 The Reporter acknowledged that there could potentially be a delay in obtaining approval from the CAA for such aviation lighting. The Reporter considered that a delay in implementing the consent, if granted by Ministers, would be outweighed by the importance of protecting the NSA. Any need to vary the five years commencement period is permitted within the terms of the proposed conditions, subject to the approval of the Scottish Ministers.
- 3.12 Should Ministers disagree with the Reporters findings regarding the requirement for an aircraft detection lighting system then it is the Reporters recommendation that consent be refused.

Reporters Recommendation to Scottish Ministers

- 3.13 The Reporter recommended that consent should be granted under section 36 of the Electricity Act 1989 and planning permission should be deemed to be granted under section 57 of the Town and Country Planning (Scotland) Act 1997 (as amended), subject to the conditions listed in Appendix 1. Consent may not be granted prior to the satisfactory completion of an Appropriate Assessment in relation to the effects of the proposal on the Kintyre Goose Roosts Special Protection Area.

4.0 The Scottish Ministers' Conclusions

Reasoned Conclusions on the Environment

- 4.1 The Scottish Ministers are satisfied that the EIA Report and its AI 2021, AI 2022 and SEI have been produced in accordance with the EIA Regulations, and that the relevant procedures regarding publicity and consultation laid down in those Regulations have been followed.
- 4.2 The Scottish Ministers have fully considered the EIA Report, AI 2021, AI 2022, the consultation responses, representations, the findings, conclusions, and recommendation of the PI Report and are satisfied that the environmental impacts of

the proposed Development have been sufficiently assessed. The Scottish Ministers have taken the environmental information into account when reaching their decision.

- 4.3 Taking the above assessment into account the Scottish Ministers consider that the proposed Development would have significant adverse localised landscape impacts and significant visual and cumulative impacts that go beyond localised which cannot be mitigated. There are also significant impacts on the SQs of the North Arran NSA as a consequence of the proposed Development's aviation lighting which are not mitigated by the currently proposed aviation lighting scheme.
- 4.4 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion addresses the likely significant effects of the proposed Development on the environment. The Scottish Ministers are satisfied that this reasoned conclusion is up to date.

The Scottish Ministers Determination

- 4.5 As set out above, the seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a priority for the Scottish Ministers. Scotland's renewable energy and climate change targets, energy policies and planning policies are all relevant considerations when weighing up the proposed Development. NPF4, Scotland's Energy Strategy and the Onshore Wind Policy Statement make it clear that renewable energy deployment remains a priority of the Scottish Government. These are all matters which should be afforded significant weight in favour of the proposed Development.
- 4.6 The Scottish Ministers consider that the proposed Development, if deployed, would create net economic benefits and deliver renewable energy benefits that would contribute to supporting climate change mitigation and are wholly in accordance with Scottish Government's climate change ambitions. The proposed Development in these respects would contribute to sustainable development and this has been taken into account when reaching a decision. These benefits however must be considered carefully in the context of the negative impacts on the natural environment and whether or not, on balance, they are acceptable.
- 4.7 The Scottish Ministers acknowledge, in accordance with both NPF4 and the OWPS, that meeting our climate ambitions will require a rapid transformation across all sectors of our economy and society, however this does not negate the continuing requirement to ensure that the right development happens in the right place.
- 4.8 The Scottish Ministers, having considered the Application, the EIA Report, AI 2021, AI 2022, SEI, consultation responses and public representations alongside the Reporter's considerations and subsequent conclusions, consider that although the significant visual impacts of the proposed Development would be overall outweighed when balanced against the net economic benefits and the renewable energy benefits that would be delivered if the proposed Development were to be deployed, the significant adverse effects on the SQs of the North Arran NSA would not. The Scottish Ministers do not consider that the social, environmental or economic benefits of the proposed Development can be construed as significant or nationally important to the extent that they clearly outweigh the significant adverse effects on the SQs for which the North Arran NSA has been designated.
- 4.9 The Scottish Ministers have carefully considered the option of imposing a suspensive condition to secure the installation of an ADLS, prior to construction of the proposed Development, but do not find that the evidence provided to date on the matter affords

sufficient assurance that either method would be capable of being installed on the proposed Development within the next 5 years. As such, taking account of the resulting uncertainty on timescales for the deployment of the proposed Development if it were to be consented, the Scottish Ministers consider it would not be appropriate in this case to impose the suspensive condition proposed by the Reporter to mitigate the effects of the proposed Development's lighting on the SQs of the North Arran NSA.

- 4.10 This leads the Scottish Ministers to the conclusion that despite the many factors in favour of the proposed Development this is not the right Development in the right place and the proposed Development is therefore not acceptable overall.
- 4.11 The Scottish Ministers therefore consider the Application for consent under Section 36 of the Electricity Act 1989 for the construction and operation of Narachan Wind Farm, wholly within the planning authority area of Argyll & Bute Council, should be refused.
- 4.12 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent.
- 4.13 The Reporters Inquiry Report and Scottish Ministers decision can be viewed on the DPEA (Directorate of Planning Environmental Appeals) website at the following link:

[Scottish Government - DPEA - Case Details \(scotland.gov.uk\)](https://www.scotland.gov.uk/Topics/Planning/Environmental%20Appeals/Case%20Details)

5.0 IMPLICATIONS

Policy: None.
Financial: None.
Personnel: None
Equal Opportunities: None

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