

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Abbey Mains Farm, Haddington, East Lothian

Application for Review by SK Playfair & Sons against decision by an appointed officer of East Lothian Council.

Application Ref: 12/00278/P

Application Drawings: DWG001, DWG002, DWG003 and DWG004

Date of Review Decision Notice – 30th October 2013

Decision

The ELLRB upholds the decision to refuse planning permission for the reasons given below and dismisses the review.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

1 Introduction

1.1 The above application for planning permission was considered by the ELLRB, at a meeting held on 24th October 2013. The Review Body was constituted by Councillor Tim Day (Chair), Councillor John McMillan, Councillor Jim Gillies and Councillor Peter MacKenzie. All four Members of the ELLRB had attended an unaccompanied site visit in respect of this application on 24th October 2013.

1.2 The following persons were also present at the meeting of the ELLRB:-

Phil McLean, Planning Adviser (in attendance on Site Visit)
Morag Ferguson, Legal Adviser
Fiona Stewart, Clerk.

2 Proposal

2.1 The application site is at Abbey Mains Farm in a countryside location around 1.5 miles to the east of Haddington. The application is for a single 50kW wind turbine of three-bladed horizontal axis design, measuring 24.6m to the hub with a blade radius of 9.6m, giving a total height to blade tip of 34.2m. The turbine is proposed to be sited to the north-west of the farm complex. The application was originally registered on 19th April 2012 and was refused under delegated powers on 24th May 2013. The notice of review is dated 29th July 2013.

The reasons for refusal were set out in full in the Decision Notice and are, in summary, that, the proposed turbine would be contrary to the Council's Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011) and that, due to its positioning, form, height and scale, the proposed turbine would appear as a highly exposed and obtrusive skyline feature that would harmfully detract from the landscape character of the area in which it is located, all contrary to planning policy and guidance. The Applicant applied to the ELLRB to review the decision to refuse planning consent.

3 Preliminaries

3.1 The ELLRB Members were provided with copies of the following:-

1	The drawings specified above
2	The application for planning permission
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 24 th May 2013
5	Copy of the EIA Screening Opinion
6	Copies of Policies 1B and 10 of the approved SESplan, which replaced Policies ENV3 and ENV6 of the Edinburgh and the Lothians Structure Plan 2015 respectively
7	Copy of Policies DC1, DP13, NRG3, ENV7 and T2 of the adopted East Lothian Local Plan 2008
8	Extract from the East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011)
9	Copy of East Lothian Council's Planning Guidance for Lowland Wind Turbines (June 2013) which replaced the Council's Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian (December 2010)
10	Copy of Consultation Responses from CAA and from NATS and from East Lothian Council's Senior Environmental and Consumer Services Manager, Transportation Service, Archaeology Officer, Biodiversity Officer and Policy and Projects (Landscape Section)
11	Copy of Public Objections and Representations
12	Schedule of Proposed Conditions
13	Notice of Review dated 29 th July 2013 and supporting review statement, including design and access statement, location plan, block plan, elevation drawings, acoustic report and land ownership statement

4 Findings and Conclusions

4.1 The ELLRB confirmed that the application for a review of the original decision permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it.

The Members asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members reminding them that planning legislation requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise. He advised Members of the change to the development plan since the delegated decision was taken on this application, namely that the Strategic Development Plan for South East Scotland (SESplan) has now been approved and has replaced the Edinburgh and the Lothians Structure Plan. He indicated that there are no SESplan policies of direct relevance to this proposal, although Policy 1B states that Local Development Plans will conserve and enhance the natural and built environment and will contribute to the response to climate change and Policy 10 states that Local Development Plans will set a framework for the encouragement of renewable energy proposals, taking account of relevant environmental and other considerations.

He advised that, in terms of the Adopted East Lothian Local Plan 2008, the broad policy context for development in the countryside is provided Policy DC1. Essentially, this seeks to restrict development in the countryside to protect its character, while allowing some limited forms of appropriate development. He confirmed that it is generally accepted that wind turbines have an operational requirement for a countryside location and that the policy contains a number of criteria to be satisfied, including visual and landscape impact and impacts on other nearby uses. He outlined Local Plan policy on renewable energy development, which seeks to weigh the benefits of renewable energy generation against the impact on the local environment and features of interest and to protect valued landscape features and advised that the key policy in this regard is Policy NRG3, which requires proposals to be assessed in terms of landscape character, visual impact, noise, shadow flicker, water environment, potential alternative sites and

cumulative impacts. He noted that Local Plan Policy NRG4 is also relevant and seeks to ensure suitable restoration of the site when electricity generation has ceased.

He outlined a number of other development plan policies that may be relevant to this application, namely Local Plan Policy ENV3, which provides protection to listed buildings and their settings; Local Plan Policy DP13, which requires biodiversity to be taken into account in development proposals; and Local Plan Policy T2, which requires new development to have no significant adverse consequences for road safety.

He advised Members that there are a number of other documents relevant to consideration of this application, including Scottish Planning Policy, the Government's onshore wind turbines guidance, the Council's wind turbine planning guidance document and its supplementary landscape capacity study of 2011. He summarised the key provisions, namely that Scottish Planning Policy advises planning authorities to support wind farm development in locations where environmental and cumulative impacts can be satisfactorily addressed and the Government's online advice note on onshore wind turbines contains further advice on a wide range of matters such as landscape impact, biodiversity and impacts on communities. He confirmed that the Council's planning guidance document on lowland wind turbines – revised and republished in June 2013 – provides detailed guidance on relevant planning policies and their implications, expanding on the provisions of the development plan and noted that the revised document incorporates the findings of the 2011 supplementary capacity study. That study identifies the site as being within the 'Agricultural Plain – sub area 1: East' landscape character area, where it advises there are very limited opportunities to accommodate typology C turbines but these should be at the lower end of the band, below 30m in height.

He reminded the Members that the appointed officer refused the application for two reasons, set out in full in the report of handling, which also contains the case officer's assessment of the application and the reasoning for his decision. In summary, the case officer considered that the proposals were contrary to the recommendations of the Council's Supplementary Landscape Capacity Study, and furthermore that the turbine would appear as a highly exposed and obtrusive skyline feature that would have a harmful landscape impact. He considered this latter impact would be contrary to relevant local and national policies and planning guidance and he did not consider the benefits of the turbine as a renewable source of energy would outweigh this impact. He noted that the case officer considered the proposals were acceptable in other respects, including in terms of noise, shadow flicker, road safety, biodiversity, and impacts on the historic environment, and compliant with relevant policies.

He advised that the applicant's agent has provided a statement to accompany the Notice of Review, which argues that the turbine will not be detrimental to the area and its visual impact is reduced by the proposed siting of the turbine behind the farm buildings.

Turning to consultee comments, the Planning Adviser noted that there were no objections from the Council's Environmental Protection Manager, Head of Transportation or Biodiversity Officer, or from the Civil Aviation Authority or National Air Traffic Services. He advised that the Council's Archaeology Officer raised no objections subject to a planning condition being imposed for an archaeological programme of works. However, he noted that the Council's Landscape Officer did not support the proposals. He advised that the proposals do not comply with the Supplementary Landscape Capacity Study and stated that there may be impacts on the Garleton Hills Area of Great Landscape Value, and views of the Hopetoun Monument, as well as cumulative visual impacts but that these issues are not adequately considered in the application and no Landscape and Visual Impact Assessment had been submitted.

The Planning Adviser reminded Members that 28 objections were received to the original application and that Members had had the opportunity of reading these and the points raised are also summarised in the case officer's report.

The Planning Adviser summarised the main questions for the ELLRB to consider in reviewing the case, namely, whether the proposal complies with development plan policy in respect of development in the countryside, renewable energy, landscape, historic environment, biodiversity and road safety; and whether there are any other material considerations that should be taken

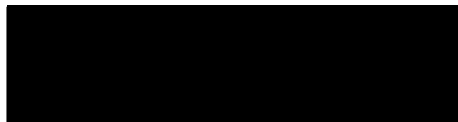
into account, such as national policy, and whether any of these outweigh the provisions of the development plan in this case.

Finally, he reminded Members that they have the option of seeking further information if necessary before making a decision, either through further written submissions, a hearing session, a further site visit, or a combination of these procedures.

The Chair asked the Members to consider whether they had sufficient information to enable them to proceed to make a decision in respect of this matter. All Members considered that they did have sufficient information. Accordingly, the decision of the ELLRB was that they would proceed to reach a decision at this meeting.

- 4.2 Councillor MacKenzie noted that the Council's guidance on landscape capacity for turbines characterises this area as Agricultural Plain and, following the site visit, he was satisfied that this is an accurate description of this area. The turbine would be an exposed and intrusive feature in this area and he was satisfied that the original decision to refuse planning consent was appropriate and thus he would uphold that decision. Councillor McMillan confirmed that he agreed with Councillor MacKenzie; the proposal does not accord with the terms of the planning guidance on this issue and he was particularly concerned about the landscape impact in views of the Garleton hills and Traprain Law. Accordingly, he could not support this application on the grounds of landscape impact. Councillor Gillies considered that the site visit had been useful in confirming that this was an unsuitable site for a turbine of this height. He considered that the open aspect of the site was such that the terms of the guidance should be applied in terms and that the application should be refused on the basis of landscape impact.
- 4.3 Councillor Day summarised the views of the ELLRB, namely that the Council had taken time and effort to put in place detailed guidance on the siting of turbines and that a turbine of this height in this location would be contrary to that guidance. He considered that there was nothing in the application or observed by the Members on the site visit that persuaded them to depart from the terms of the guidance in this case. Accordingly Members were of the view that the application should be refused.
- 4.4 Accordingly, the ELLRB unanimously agreed that the Review should be dismissed and the original decision to refuse this application should be upheld, for the reasons set out in the original Decision Letter of 24th May 2013.

The Review Application was accordingly dismissed.



Morag Ferguson
Legal Adviser to ELLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision 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.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

