



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR213
  - Application for review by Mr Kenneth More against the decision of an Appointed Officer of Moray Council
  - Planning Application 18/00694/APP – Installation of a 6kW Kingspan wind turbine (22.8m to tip and rotor diameter 5.6m) at Inchmore, Drybridge, Buckie
  - Unaccompanied site inspection carried out by the MLRB on 20 September 2018
  - Date of decision notice: 22 October 2018
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#### **Decision**

The MLRB agreed to uphold the request for review and grant planning permission, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

#### **1. Preliminary**

- 1.1 This Notice constitutes the formal decision of the MLRB as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 27 September 2018.
- 1.3 The MLRB was attended by Councillors Patience (Chair), Alexander, Bremner, Coy, Gatt and R McLean

#### **2. MLRB Consideration of Request for Review**

- 2.1 A request was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application on the grounds that:

Noise emissions from the proposed turbine will on occasion adversely affect the amenity of nearby residential property, such that the proposal would therefore be contrary to Moray Local Development Plan (MLDP)

2015 Policies EP8 Pollution, ER1 Renewable Energy Proposals, IMP1 Developer Requirements and Moray Onshore Wind Energy Supplementary Guidance (2017).

- 2.2 A Summary of Information report set out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.3 With regard to the unaccompanied site inspection carried out on 20 September 2018, the Chair stated that all members of the Moray Local Review Body (MLRB) present, with the exception of Councillor R McLean, were shown the site where the proposed development would take place and had before them papers which set out both the reasons for refusal and the Applicant's grounds for review.
- 2.4 In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, both the Legal and Planning Advisers advised that they had nothing to raise at this time.
- 2.5 The Chair then asked the MLRB if they had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information.
- 2.6 Councillor Bremner, having had the opportunity to visit the site and consider the Applicant's grounds for review, was of the opinion that any noise generated from the start up of the turbine would be no greater than the significant ambient noise that had been observed on the site visit due to the windy conditions and considered the development would not have any detrimental impact on the neighbouring property. He further stated that, given that the turbine was not going to add significantly to the existing ambient noise, in his view the application was not contrary to MLDP 2015 Policies EP8 Pollution, ER1 Renewable Energy Proposals, IMP1 Developer Requirements and Moray Onshore Wind Energy Supplementary Guidance 2017 and moved that the appeal be upheld and planning permission granted in respect of planning application 18/00694/APP. This was seconded by Councillor Coy.
- 2.7 In response, the Planning Adviser advised that the Environmental Health response stated that, although ambient noise may be greater in high wind conditions, the assessment of noise levels and correlation with wind speed should be carried out to the standards highlighted within ETSU-R-97 and the associated Institute of Acoustics Good Practice Guide Practice guide set out in the Moray Onshore Wind Energy Supplementary Guidance and that the Applicant's methodology used to assess the noise had not been undertaken in accordance with this Guide.
- 2.8 Councillor Gatt, having had the opportunity to visit the site and consider the Applicant's grounds for review was of the view that the Moray Onshore Wind Energy Supplementary Guidance was clear with regard to the methodology required to measure noise and, given that the Applicant had been advised on 2 occasions that failure to assess the noise in accordance with the appropriate Guidance would result in a refusal, moved that the appeal be rejected and the original decision of the Appointed Officer upheld for the reasons stated within the report. This was seconded by Councillor R McLean.

2.9 On a division there voted:

Motion (3): Councillors Bremner, Coy and Patience  
Amendment (3): Councillors Gatt, R McLean and Alexander  
Abstentions (0): Nil

2.10 There being an equality of votes, the Chair, in terms of Standing Order 62 (e), cast her casting vote in favour of the Motion.

2.11 Accordingly the Motion became the finding of the Meeting and it was agreed that the MLRB uphold the appeal and grant planning permission in respect of planning application 18/00694/APP subject to standard conditions as it was agreed the turbine was not going to add significantly to the existing ambient noise and was therefore not contrary to MLDP 2015 Policies EP8 Pollution, ER1 Renewable Energy Proposals, IMP1 Developer Requirements and Moray Onshore Wind Energy Supplementary Guidance 2017.

**Mrs A Scott**  
**Legal Services Manager**  
**Legal Adviser to the MLRB**

## 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 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013**

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.

## IMPORTANT NOTE

### YOU ARE OBLIGED TO COMPLY WITH THESE CONDITIONS AND NOTES

#### SCHEDULE OF CONDITIONS

By this Notice, Moray Council has **GRANTED PLANNING PERMISSION** for this proposal subject to conditions as appropriate to ensure implementation of the proposal under the Town & Country Planning (Scotland) Act 1997, as amended. **It is important that these conditions are adhered to and failure to comply may result in enforcement action being taken.**

#### CONDITION(S)

Permission is granted subject to the following conditions: -

Before development begins written evidence must be submitted to the Council, as planning authority which demonstrates that the applicant has submitted the following information to the Safeguarding Officer, Safeguarding - Wind Energy, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands, B75 7RL (email - [Claire.duddy532@mod.gov.uk](mailto:Claire.duddy532@mod.gov.uk))

- I. the date construction starts and ends
- II. the maximum height of construction equipment
- III. the latitude and longitude of the turbine.

Reason: To ensure an acceptable form of development in the interests of military aviation and radar, as advised by the Defence Infrastructure Organisation (Ministry of Defence).

#### ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

The following notes are provided for your information, including comments received from consultees:-

##### **THE ENVIRONMENTAL HEALTH MANAGER, has commented that:-**

Noise emissions from the turbine shall not give rise to a statutory nuisance in terms of the Environmental Protection Act 1990.

##### **THE TRANSPORTATION MANAGER, has commented that:-**

Planning consent does not carry with it the right to carry out works within the public road boundary.

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

#### LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title

## **IMPORTANT NOTES ABOUT THIS DECISION**

### **DURATION OF THIS PERMISSION**

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, the development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

### **COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT**

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

#### **NOTIFICATION OF INITIATION OF DEVELOPMENT**

S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to Moray Council, as planning authority, the attached Notification of Initiation of Development.

#### **NOTIFICATION OF COMPLETION OF DEVELOPMENT**

S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to Moray Council, as planning authority the attached Notification of Completion of Development.

#### **NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT**

Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete.

When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.



## THE MORAY COUNCIL

### NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued

Location and Description of  
Development

**Please note that all suspensive conditions must be discharged prior to  
commencement of development**

<b>Date works are to Commence</b>	
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**Name, Address and contact details of developer**

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**The Full name and Address and contact details of the landowner, if a different  
person**

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**Where an agent is appointed, their full name and contact details**

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Signed

Name (Print)

Date

**Please complete and return this form to:**

**The Moray Council, Development Management Manager, Council Offices, High  
Street, Elgin, Moray IV30 6UG**

**OR**

**E-mail: [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)**



## THE MORAY COUNCIL

### NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued  
Location and Description of  
Development

<b>Date of completion of works</b>	
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**Name, Address and contact details of developer**

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**The Full name and Address and contact details of the landowner, if a different person**

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**Where an agent is appointed, their full name and contact details**

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Signed

Name (Print)

Date

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**Please complete and return this form to:**

**The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG**

**E-mail: [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)**