



## MORAY COUNCIL LOCAL REVIEW BODY

### Review Decision Notice

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Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 007
- Site address: Myreton Crossroads, Grange
- Application for review by Mr Clive Streeter against the decision by an Appointed Officer of Moray Council.
- Application 09/00247/FUL : Full planning permission for the erection of two 800kw wind turbines.
- Unaccompanied site inspection carried out by the MLRB on Monday 28 June 2010.

Date of Decision Notice: 19 July 2010

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#### **Decision**

The MLRB reverses the decision of the Appointed Officer and grants Full Planning Permission, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

This permission does not carry with it any necessary consent or approval to the proposed development under the Building (Scotland) Act 1959 as amended or other enactments.

#### **1.0 Preliminary**

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for planning permission in principle was considered by the MLRB at meetings on 22 April and 30 June 2010. The Review Body was attended at both meetings by Councillors P Paul (Chair), B Jarvis and J MacKay.

## **2.0 Proposal**

- 2.1 This is an application for full planning permission for the erection of two 800kw wind turbines for commercial use at Myreton Crossroads, Grange, Keith AB55 6NJ. The turbines would be in addition to an existing single turbine, which was granted planning consent in February 2008 (ref 07/01102/FUL) on adjoining ground to the north/northeast. The turbines would have hub heights of 55 and 65 metres and a rotor diameter of 48 metres, giving overall heights of 79 and 89 metres. Associated works include installation of 1.5km of overhead power lines (poles), which would connect to the existing 275kv electricity line on pylons to the west. The site is on ground to the north east of Myreton, on the south western shoulder of Lurg Hill. The proposed turbines are on an open section of the hillside, which lies within the applicant's ownership. The hillside comprises plantations of coniferous trees and rough pasture. There are 8 houses within 1km of the site. Access is to be via an extended access track, consented in July 2009, which joins onto B9018 Keith-Cullen road to the west.

## **3.0 MLRB Consideration of request for review**

- 3.1 At the meeting of the MLRB on 22 April 2010 it was agreed that there was insufficient information in order to proceed to determine the request for review and agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies 2(b) and 2(l) of the Moray Structure Plan 2007 and ER1 and IMP1 of the Moray Local Plan 2008. In this regard it was also agreed that the application site be viewed from a number of vantage points within the vicinity taking into account the content of the Report of Handling and the applicant's submissions. The MLRB also requested that the Planning Adviser to the MLRB be in attendance.
- 3.2 At the meeting on 22 April 2010 the MLRB also noted that the appropriate section of the 2010 Scottish Planning Policy (SPP) guidance and the Council's recent Policy Interpretation for Wind Turbine Developments, approved at the meeting of the Council's Planning & Regulatory Services Committee on 6 April 2010 (para 5 of the Minute refers), would require to be taken into account as material considerations. In this regard the MLRB agreed to seek the views of the Applicant, the Appointed Officer and Interested Parties, under the 'Written Submissions' procedure in terms of Regulation 15, of the Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008, on the relevance of these documents to the request for review. It was also agreed that the responses to the written submissions procedure be circulated to members of the MLRB prior to undertaking the unaccompanied site inspection.
- 3.3 The unaccompanied site inspection was carried out on Monday 28 June 2010, which primarily looked at the various physical aspects of the proposal by viewing the position of the proposed two wind turbines from various vantage points, several of which were within the Cumulative Impact Assessment submitted by the applicant. The only advice given by the Planning Adviser to the MLRB was in regard to cumulative impact. This related to clarifying that whilst national guidance related to taking into account existing wind turbines, approvals and valid applications, whereas the Council's recent Policy Interpretation for Wind Turbine Developments requires applications to be considered on a 'first come' basis taking into account only existing wind turbines and approved applications.

- 3.4 Copies of the 'Written Submission' responses to the appropriate sections of the 2010 Scottish Planning Policy (SPP) guidance and the Council's recent Policy Interpretation for Wind Turbine Developments were submitted to the meeting of the MLRB on 30 June 2010. At that meeting the MLRB agreed that it now had sufficient information in order to proceed to determine the request for review and proceeded to consider the terms of refusal and grounds for review, taking into account the responses to the 'Written Submissions' procedure.
- 3.5 Prior to giving further consideration to the request for review the Chair, Councillor Paul, referred the meeting to the response to the 'Written Submissions' procedure from the Appointed Officer, which, on referring to the proposal subject of review, intimated that whilst the proposed turbines will be located outwith the 'Preferred Search Area' (PSA) and therefore a departure from policy ER1 of the Moray Local Plan 2008, it is considered that their scale and position is such that any impact can be mitigated to a satisfactory degree, in accordance with the new SPP guidance and the Moray Council's recent Policy Interpretation for Wind Turbine Developments. The submission also intimated that when this new advice is taken as material considerations new wind turbine proposals outwith the PSA should not be 'presumed against' but considered 'on their merits' depending on their impact on the landscape and other environmental criteria and in respect of the proposed development it was considered that, in this instance, a departure from policy ER1 could be justified. In terms of cumulative impact the meeting also noted that the Appointed Officer was of the view that whilst this would still occur to an extent, the general shift in emphasis towards supporting developments of this scale where there is no significant adverse impact on landscape character, the introduction of a threshold of up to 3 wind turbines being considered on their merits on a first come basis would indicate that the proposal subject of the review would accord with the new guidance. The meeting also noted that as the planning application for a wind farm, consisting of 13 wind turbines, at Aultmore was still to be determined and therefore whilst should be included in the cumulative impact assessment in terms of the SPP guidance it would not be included in terms of the Council's Policy Interpretation for Wind Turbine Developments and that it would be a matter for the MLRB to determine the level of weight it wished to apply to the new guidance documents.
- 3.6 The views of the members of the MLRB were then sought and Councillor Jarvis expressed the view that, in his opinion, based on the terms of the Appointed Officer's written submission and current policies and guidance, the proposed development would not create a significant build up or impact on the area.
- 3.7 Councillor MacKay referred members to third last paragraph in the submission from the Appointed Officer which intimated that given the positive thrust of the new SPP and the Council's recent policy interpretation the outcome of the application would have been different had this new guidance been a material consideration prior to the determination. Having given careful consideration to all aspects of the request for review and taking into account the new guidance and other members views Councillor Mackay was of the view that the application should be approved, subject to appropriate conditions.

- 3.8 Councillor MacKay's view was supported by Councillors Paul & Jarvis and the MLRB agreed that the request for review be granted and that the application for full planning permission be approved, subject to the attached conditions and informatives.

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**Rhona Gunn**  
**Legal Adviser to the MLRB**

## CONDITIONS

1. 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.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. This permission is for a period of 25 years from the date on the decision notice. Within 12 months of the expiry of this period the wind turbines and ancillary equipment shall be dismantled to ground level and removed from the site and the land shall be restored to the satisfaction of the Council (as Planning Authority).
4. Prior to work commencing on site the applicant shall complete the attached notification of initiation of development and submit it to the local planning authority.
5. Upon completion of the development or as soon as practicable after doing so the attached notification of completion of development shall be completed and submitted to the local planning authority.
6. An omni-directional 25 candela red light must be placed at the highest practical point of each turbine and kept in operation outwith daylight hours.
7. Where interference to domestic television reception is caused as a result of the development hereby approved the developer that take steps to make good the reception, either by eliminating the cause of the interference or by providing an alternative means by which television signals may be received. Within two weeks of being notified by the Council (as Planning Authority) of the existence of such interference (or within such longer period as the planning authority may allow) the developer shall submit to the Council for its approval proposals to make good the reception, including a programme show the time within which the proposal shall be completed. The proposals shall be carried out in accordance with the terms on which they are approved by the Council.
8. Prior to commencement of construction, the method of transporting the constituent parts of the turbine to the site shall be agreed with the Transportation Manager, and any necessary amendments to the road infrastructure, culverts or bridges to accommodate the loads involved shall be completed to the Moray Council Specification at the applicants expense.
9. The applicants must run a 'before and after' road condition video of the route, provide a copy for the Transportation Section of the Council and make good any damage detected to the road network as a result of the construction traffic.
10. A traffic movement plan shall be provided to the Transportation Section to show the methods of dealing with the large vehicles. This plan shall include methods of marshalling and manoeuvring at junctions on the public roads system. The applicant will have to survey the route in detail to assess any potential problems

11. At wind speeds not exceeding 12m/s, as measured or calculated at a height of 10m above ground level, the Wind Turbine Noise Level at any dwelling or other noise sensitive premises shall not exceed:-

a) during Night Hours, 38dB LA90, 10min, or the Night Hours LA90, 10m Background Noise Level 5dB(A), whichever is the greater.

b) During Quiet Waking Hours, 38dB LA90, 10 min, or the Quiet Waking Hours LA90 10 min Background Noise Level plus 5dB(A), which ever is the greater.

The condition shall only apply to dwellings or other Noise Sensitive Premises existing at the date of issuing planning consent. The method of assessment of noise levels shall be in accordance with "ETSU-R-97. The Assessment and Rating of Noise from Wind Farms".

12. At the reasonable request of the Planning Authority, following a complaint to The Moray Council relating to noise emissions from the wind turbines, the wind turbine operator shall measure at its own expense the level of noise emissions from the wind turbines (inclusive of background noise) using an La90 index over a minimum of 20 periods each of 10 minutes duration. At least 10 of the periods of measurement shall be made at wind speeds between the wind speed specified by the Council and a wind speed not less than 2 metres per second below that specified by the Council. Measurement of noise emissions shall, as far as is practically possible, be made in consecutive 10 minute periods provided that they fall within the wind speed range defined in this condition. Where considered appropriate by the Planning Authority the wind turbine operator will be required to carry out an assessment for tonal noise in accordance with the procedure recommended in Chapter 6 of the document " The assessment and Rating of Noise from Wind Farms (ETSU-R-97)" i.e. the procedure based on the Joint Nordic Method. Where the tone level above audibility is greater than 2dB a tonal penalty shall be applied to permitted noise levels, in accordance with Fig.16 of the document, so that permitted levels specified above will be reduced by the tonal penalty. Measurements made in accordance with the provisions of the above to demonstrate compliance shall be correlated with wind speeds.

13. The permission hereby granted shall not be exercised in addition to, or in conjunction with the permission approved under formal decision notice 06/02165/FUL, dated 10 October 2006.

14. That prior to commencement of construction, a full and detailed Construction Method Statement shall be submitted for consideration and approval by The Moray Council (as Planning Authority) in consultation Scottish Natural Heritage.

## **REASONS**

1. The time limit condition is imposed in order to comply with the requirements of Section 58(i) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.

2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area.

3. To ensure that the turbine is removed and the site reinstated at the end of the lifetime of the development.

4. To ensure that the planning authority is aware that development is about to commence and any suspensive conditions can be followed up.
5. To ensure that the planning authority is aware that the development is complete and is able to follow up any conditions.
6. In the interests of air traffic safety.
7. To ensure that any interference with the reception of television signals is remedied promptly.
8. In order to ensure that no damage is caused to the public road network or that repairs have to be made at the taxpayers expense.
9. In order to ensure that any damage caused to the public road network is repaired.
10. In the interests of road safety.
11. In the interests of amenity, public health and effective planning control.
12. In the interests of amenity, public health and effective planning control.
13. In order to ensure that an incompatibility of uses does not occur and in the interests of amenity and public health.
14. In the interests in minimising any environmental impact of the development during construction and to allow for further consideration of the means of construction.

#### **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

Comments and advice from SEPA will be forwarded to the applicant under separate cover.

In relation to the roads infrastructure works possibly required, prior and early contact should be made with Moray Council Consultancy (Mr Neil Fotheringham, Snr Engineer Structures 01343 562542) to discuss the suitability or otherwise of all bridge/culvert structures of the proposed route.

## 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.