

16/00141/S36 – Variation of Condition 2 of the Fallago Rig Wind Farm to extend the operational life of the wind farm by a further 5 years

PART 1 - Conditions applying only to section 36 consent

For information the conditions imposed by Scottish Ministers on the Section consent are as follows:

General

1. The consent is for a period to 24 January 2043. Written confirmation of the date of decommissioning shall be provided to Scottish Ministers, the Planning Authority and to national Air Traffic Services within six months of the date of consent, UNLESS the Company provides written confirmation to the same parties of the Commissioning of Fallago Rig 2. In the event that the Company provides written confirmation of the Commissioning of Fallago Rig 2, this consent is for a period from the date of this consent until the date occurring 25 years after the date of the Commissioning of Fallago Rig 2

Reason: In accordance with s58 of the Town and Country Planning (Scotland) Act 1997. To avoid uncertainty and ensure that the consent is implemented within a reasonable period.

2. In the event of the Development not generating electricity on a commercial basis to the grid network for a continuous period of 12 months from 50% or more turbines installed and commissioned from time to time, the Company must immediately notify the Scottish Ministers in writing of that situation and shall, if the Scottish Ministers direct, decommission the Development and reinstate the site in accordance with the restoration and aftercare scheme referred to in condition 34 or otherwise approved by the Scottish Ministers. The Scottish Ministers shall have due regard to the circumstances surrounding the failure to generate and shall take the decision on decommissioning following discussions with the Company, the Planning Authority and other such parties as the Scottish Ministers consider appropriate.

Assignment of Consent

3. The Company shall not be permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers shall consult with the Ministry of Defence before issuing such authorisation and may grant consent (with or without conditions) or refuse such authorisation as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

PART 2 - Conditions applying to only the deemed planning permission

Construction

4. All turbine blades shall rotate in the same direction.
5. No symbols, signs or logos or other lettering, other than those required for health and safety and for traffic management, shall be displayed on any part of the turbines nor any other building or structures without the written consent of the Planning Authority.

Roads/Transportation

6. Prior to the Commencement of Development, apart from the enabling works as provided for in condition 16, a programme of monitoring the condition of the public roads serving the site before, during and after the construction and decommissioning phases of the Development shall be agreed in writing with the Planning Authority. Thereafter, any remedial works, as approved by the Planning Authority, or payment of extraordinary maintenance costs incurred by Scottish Borders Council as a result of the site traffic, are to be carried out or paid within three months of completion of the construction or decommissioning of the wind farm.

Rights of Way

7. Prior to the Commencement of Development, a plan shall be submitted to the Planning Authority showing the existing paths and rights of way within the site. Access along such paths and rights of way shall not be disturbed or disrupted during construction and Decommissioning, unless a detailed plan with respect thereto has been submitted for the approval of the Planning Authority and thereafter implemented in accordance with the terms and timescales set therein. Such plan shall include:
 - (a) the identification of any area proposed to be excluded from statutory access rights and the reasons for such exclusion;
 - (b) details of the closure or temporary diversion of any identified rights of way at the site and any associated signage;
 - (c) details of the measures to ensure safe public access along the identified or diverted paths, tracks and rights of way during the construction and decommissioning phases of the Development; and
 - (d) details for the reinstatement and upgrading of the affected routes, including details of way-marking and route interpretation.

This condition is without prejudice to the need to obtain any other consent, permission or order in connection with the disturbance or disruption of use of a path or right of way.

Noise

8. Noise monitoring arrangements for the proposed turbines shall be undertaken in accordance with a programme of work to be agreed with the Planning Authority. The programme shall be submitted to and approved by the Planning Authority prior to the installation of the turbines.
9. When assessed in accordance with the attached guidance notes, noise limits at the agreed sensitive receptors identified within section 8 of the Environmental Statement will be met inclusive of any tonal penalty.
10. Noise levels at any Noise Sensitive Premises from the combined effect of the wind turbines where the proprietor or the occupier of the property has no financial interest in the Development shall not exceed an external free-field LA90, 10 min level of the greater of 40dB(A) or 5dB at any 10 metre height wind speed up to 12m/s above the prevailing background noise level from 07:00-23:00, and the greater of 43dB(A) or 5 dB at any 10 metre wind speed height up to 12 m/s above the prevailing background noise level from 23:00-0:700. The data provided in the noise assessment presented in the Environmental Statement provides the prevailing background noise level at various wind speeds and the methodology used within that document should be the basis for assessment of future investigations for consistency's sake. Any

assessment of compliance with this condition shall be made in accordance with the guidance notes attached to this consent.

11. Wind speed data must be maintained for a period of no less than 12 months from the Commissioning of the Development, and for each 12 month period of operation of the Development and be made available to the Planning Authority on request.

Ecological issues

12. (a) Prior to the Commencement of Development (including the enabling works), the Company shall appoint an independent full-time Ecological Clerk of Works (ECoW) acceptable to the Planning Authority, in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency. The terms of the appointment shall be submitted for the approval of the Planning Authority, in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency, and shall include that the appointment shall be for the period of wind farm construction, including micro-siting and the finalisation of the wind farm layout, as well as subsequent post-construction restoration.

(b) The ECoW's in terms of appointment are to impose a duty to monitor compliance with all the ecological and hydrological aspects of the Construction Method Statement, including post-construction restoration, which have been approved under the terms of condition 16 above. The ECoW's terms of appointment are to require the ECoW to report promptly to the Company's nominated Construction Project Manager any non-compliance with the hydrological or ecological aspects of the Construction Method Statement. The Company shall confer on (and comply instructions given in the exercise of) the ECoW shall have the power to stop any construction or restoration activity on-site which in his or her view (acting reasonably) could lead to significant effects on the River Tweed SAC, and shall without delay, report the stoppage, with reasons, to the applicant's nominated Construction Project Manager and to the Planning Authority, Scottish Natural Heritage and the Scottish Environmental Protection Agency.
13. Prior to the Final Commissioning of the Development, plans for the method, frequency and duration of ecological monitoring over the operational life-span of the proposed Development are to be submitted to, and approved in writing by, the Planning Authority, in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency. The monitoring shall be carried out in strict accordance with the terms set out in the agreed monitoring plan.
14. Prior to the Final Commissioning of the Development, the Company shall submit an operational protocol for approval in writing by the Planning Authority, in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency. This will set out details for working practice and wind farm maintenance over the operational life-span of the wind farm. The wind farm shall be operated in strict accordance with the terms of the operational protocol.
15. Prior to the Commencement of Development save in respect of any enabling works as provided for in condition 16, the applicant will submit a detailed Land Management Plan for approval in writing by the Planning Authority in consultation with Scottish Natural Heritage. The Land Management Plan will set out proposed long-term management of the wind farm site and should provide for the maintenance of dwarf shrub heath habitat on site. The Land Management Plan, as approved shall be implemented to the satisfaction of the Planning Authority in consultation with Scottish Natural Heritage.

Decommissioning and restoration

16. Within 12 months after the end of the period of the consent granted under section 36 of the Electricity Act 1989 as provided for in condition 2, those parts of the Development requiring decommissioning and restoration in accordance with the conditions of this consent shall be removed and the land restored, in accordance with the decommissioning restoration and aftercare scheme required by the planning condition 34.
17. Within 5 years prior to the expiry of the consent granted under section 36 of the Electricity Act 1989, a decommissioning restoration and aftercare scheme shall be submitted for the approval of the Planning Authority outlining the programme of decommissioning of the Development and the restoration and aftercare of the site. The decommissioning restoration and aftercare scheme will include details of all site decommissioning including the removal of all wind turbines together with their foundations to a depth of 1.2m, ancillary equipment and buildings to be dismantled and work to remove other infrastructure from the site and details of site restoration and aftercare to restore the land to its former condition or other such condition as may be agreed with the Planning Authority. It will include provision for the appointment of an Ecological Clerk of Works acceptable to the Planning Authority (in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency), whose role will be to oversee implementation of the plans so approved. The decommissioning restoration and aftercare scheme will include the method, frequency and duration of ecological monitoring, particularly of watercourses, over the decommissioning period of the Development. Six months prior to the expiry of the section 36 consent, the decommissioning restoration and aftercare scheme shall be reviewed by the Company and the Planning Authority, and any alterations deemed appropriate and mutually acceptable shall be made. Within twelve months, or any alternative timescale agreed by the Planning Authority, of the wind farm ceasing to be used for the generation of electricity, the decommissioning restoration and aftercare scheme as referred to above shall be submitted to the Planning Authority. Within this submission a timescale for completion of the restoration of the site shall be agreed with the Planning Authority, thereafter the works shall be completed in accordance with the agreed timescales.
18. The site shall be restored to such condition as set out in the agreed decommissioning restoration and aftercare scheme
19. Following the decommissioning and restoration of the site in accordance with planning condition 33 and aftercare requirements contained in the decommissioning restoration and aftercare scheme required by condition 34 shall be implemented in accordance with the programme approved therein.

Financial Bond

20. (a) Prior to the Commencement of Development, the Company shall provide to the Planning Authority details of the bond or other financial provision which it proposes to put in place to cover all decommissioning and site restoration costs on the expiry of this consent.

(b) No development shall commence on the site until the Company has provided documentary evidence that the proposed bond or other financial provision is in place and written confirmation has been given by the Planning Authority that the proposed bond or other financial provision is satisfactory.

(c) The Company shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent.

(d) The bond or other financial provision will be subject to a five yearly review, paid for by the Company, from the Commencement of Development, to be conducted by a competent independent professional who has relevant experience within the wind energy sector and provided to the Company, the landowners, and the Planning Authority.

Appendix 1 – Drawing Numbers

Figure 1.1 Site Context
Figure 1.2 Site Boundary

Appendix 2

GUIDANCE NOTES RELATING TO CONDITIONS 9 and 10

The Guidance Notes 1 – 4 appended to the original Fallago Rig Deemed Planning Permission and the updated consent, ref 13/01268/FUL should be referred to for noise monitoring obligations listed within Condition 9 and 10 of this permission.