

APPENDIX 1

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

5 OCTOBER 2020

THE ELECTRICITY ACT 1989 (SECTION 36C) THE ELECTRICITY GENERATING STATIONS (APPLICATIONS FOR VARIATION OF CONSENT) (SCOTLAND) REGULATIONS 2013

ITEM:	REFERENCE NUMBER: 20/00789/S36
OFFICER:	Mr Craig Miller
WARD:	Tweeddale West
PROPOSAL:	Variation to operating life from 25-30 years, increasing tip height from 133.5m to 136.5m and clarification on drawing listed as Annex E on consent
SITE:	Whitelaw Brae Wind Farm, Fruid, Tweedsmuir
APPLICANT:	Whitelaw Brae Wind Farm Limited

PLANNING PROCESSING AGREEMENT:

A timescale for response has been agreed with the Energy Consent Unit (ECU) and the applicants for this variation to be considered at the October meeting of the PBS Committee.

PURPOSE OF REPORT

To advise the Scottish Government of the response from Scottish Borders Council (SBC) on an application submitted under section 36C of the Electricity Act 1989 to vary the existing section 36 consent and section 57 of the Town and Country Planning (Scotland) Act 1997 to vary the deemed planning permission at Whitelaw Brae Wind Farm, Fruid, Tweedsmuir.

PROCEDURE

Members will be aware from previous Section 36 applications coming before this Committee that Scottish Borders Council (SBC) is a consultee as a 'relevant planning authority' for the purposes of this application process. The views of SBC will be passed to the Energy Consents Unit (ECU) at Scottish Government, the body responsible for processing and determining onshore Section 36 planning applications. The ECU advertises the application and carries out consultation with other interested bodies. There is, therefore, no need for SBC to undertake a tandem process although consultation has taken place with relevant specialists within the Council.

It should be noted that if permission is granted, the local authority (rather than the ECU) would become the relevant enforcement authority responsible for monitoring compliance with the terms of an approval and any conditions imposed thereon.

SCHEDULE 9 OF THE ELECTRICITY ACT 1989

Schedule 9 of the Electricity Act 1989 imposes specific obligations on electricity companies in respect of the environment. They:

- (a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and
- (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

In determining the variation against the provisions of the Development Plan, there must also be consideration of the requirements of Schedule 9 of the Electricity Act. This is particularly so for the ECU as the decision-making body on the variation request.

SITE DESCRIPTION

The application site covers the same area as that of the consented Whitelaw Brae wind farm which is located 3km south of Tweedsmuir and directly west of the Fruid Reservoir. Development works have not yet commenced on site.

PLANNING HISTORY

Whitelaw Brae Wind Farm was granted consent on 7 December 2017 by the Scottish Ministers following a Public Local Inquiry after SBC objected to the proposals.

The consented development comprises of 14 turbines with a tip height of 133.5m and hub height of 80m, along with ancillary works and buildings including tracks, foundations, substation, battery storage, borrow pits and compounds.

Development works have not yet commenced but the applicants have begun to purify a number of suspensive pre-commencement planning conditions with the Council. A five year timescale to commence the development was imposed, therefore, the consent remains implementable once all suspensive conditions are purified.

PROPOSED DEVELOPMENT

The variation request seeks three amendments to the consent:

1. Extension of the 25 year operating life of the development to 30 years (Conditions 1 and 24 of the S36 consent)
2. Increase in tip height of all turbines from 133.5 to 136.5m (Condition 6 of the deemed planning permission)
3. Condition 5 of the deemed planning permission referred to Annex E listing the approved drawings but no Annex E was attached. Variation suggests cross-referring Annex E to Figure FE1 3.1 of the original scheme showing the site layout

The variation makes it clear that no other elements of the scheme are changing. The turbines are in exactly the same positions and all ancillary elements remain as originally proposed. Whilst the nearest “best fit” turbines to those candidate turbines in the original Environmental Assessment result in greater rotor diameters (from 107m to 117m), this still does not mean any further tip height increase than the 3m sought and

also would mean a consequent reduction in the hub height of two metres. The applicant points out that no variation has been sought for the rotor diameter change as only the tip height is controlled in the consent.

The application for variation has been supported by:

- A supporting letter with annexes
- Planning Statement
- EIA Screening Report

A screening exercise undertaken by the ECU, after consultation with the Council, concluded that the proposed development variation would not require an EIA.

REPRESENTATION SUMMARY

Third party representations are submitted to the ECU for their consideration in dealing with the S36C variation request. One representation was received by the Council but this is for the ECU to consider, relating principally to the delay in implementation and the Eskdalemuir Noise Budget (ENB). It is the responsibility of the ECU to carry out any other consultations on a variation request as they see fit, including the MOD. It is noted that the MOD have objected to the ECU on the basis the scheme now exceeds the ENB allowance for the site.

DEVELOPMENT PLAN POLICIES:

SESplan Strategic Development Plan June 2013:

Policy 1B: The Spatial Strategy: Development Principles
Policy 10: Sustainable Energy Technologies

Local Development Plan 2016:

PMD1: Sustainability
PMD2: Quality Standards
ED9: Renewable Energy Development
HD3: Protection of Residential Amenity
EP1: International Nature Conservation Sites and Protected Species
EP2: National Nature Conservation Sites and Protected Species
EP3: Local Biodiversity
EP5: Special Landscape Areas
EP7: Listed Buildings
EP8: Archaeology
EP9: Conservation Areas
EP10: Gardens and Designed Landscapes
EP13: Trees, Woodlands and Hedgerows
EP15: Development Affecting the Water Environment
IS2: Developer Contributions
IS5: Protection of Access Routes
IS8: Flooding
IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

OTHER PLANNING CONSIDERATIONS:

Adopted SBC Supplementary Planning Guidance (SPG) and other documents:

- Renewable Energy 2018
- Biodiversity 2005
- Local Landscape Designations 2012
- Developer Contributions 2011
- Visibility Mapping for Windfarm Development 2003
- Ironside Farrar Study on Wind Energy Consultancy Landscape Capacity and Cumulative Impact 2016
- Borders Landscape Assessment 1998 Ash Consulting Group- updated SNH 2019

Scottish Government Policy and Guidance:

- The Climate Change (Scotland) Act 2009
- The Scottish Renewable Action Plan 2009
- 2020 Routemap for Renewable Energy in Scotland – Update 2015
- National Planning Framework for Scotland (3) June 2014
- Scottish Planning Policy (SPP) June 2014
- Scottish Planning Policy and Electricity Generation Policy Statement 2013
- Onshore Wind Turbines – Planning Advice 2014
- Climate Change Plan 2018
- Onshore Wind Policy Statement 2017
- Scottish Energy Strategy 2017
- Climate Change (Emissions Reductions Targets) (Scotland) Bill 2019
- Climate Change Committee Progress Report 2019
- Climate Change Committee Annual Report 2020
- Advisory Group Report on Economic Recovery 2020

Scottish Government On-line Advice:

- Circular 3/2011 Environmental Impact Assessment (Scotland) Regulations
- PAN 69 Flood Risk 2015
- PAN 60 Planning for Natural Heritage 2008
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 75 Planning for Transport
- PAN 81 Community Engagement Planning with People
- PAN 1/2011 Planning and Noise
- PAN 2/2011 Planning and Archaeology
- PAN 1/2013 Environmental Impact Assessment
- Scottish Government Good Practice Principles for Shared Ownership of Onshore Renewable Energy Development 2016

Historic Environment Scotland Publications:

- Historic Environment Scotland Policy Statement June 2016

SNH Publications:

- Siting and Designing Windfarms in the Landscape Version 3 February 2017
- Visual Representation of Wind Farms Version 2.2 February 2017
- Assessing the Cumulative Impact of Onshore Wind Energy Developments 2012
- Spatial Planning for Onshore Wind Turbines – Natural Heritage Considerations 2015

Other Publications:

- ETSU-R-97: The Assessment and Rating of Noise from Wind Farms

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Access Officer: Response awaited

Archaeology Officer: The existing consent is subject to conditions including a written scheme of investigation and interpretation of fieldwork by the Biggar Archaeological Group. Whilst there may be further archaeological implications as a result of the variation request, these can be addressed in the existing conditions.

Ecology Officer: Noted that the variation was supported by an update to the collision risk modelling which indicated a slight increase in collision risk for certain bird species such as pink-footed goose, merlin, curlew etc. This could be addressed in a revised Habitat Management and Enhancement Plan. However, further information is now available in relation to Schedule 1A species at the site and notes that SNH consider the original baseline of bird species using the site is out of date and a further year of Schedule 1A survey is necessary. Whilst the original conditions should be amended to account for the operational life of the wind farm, further information on Schedule 1A species impacts is still needed. If consent is granted, then conditions should be revised to account for impacts on Schedule 1A species.

Environmental Health: Requires an updated noise impact assessment before any increase in tip height and rotor diameter can be supported

Landscape Architect: Acknowledges that rotor diameter will be increased but the effect of that is very difficult to convey and has not been attempted. Assessed the comparative wirelines and agree that the change in rotor dimensions, reduction in tower height and slight increase in tip height would be only barely perceptible and have very limited visual impacts so are unlikely to increase the significance of effects to such an extent that she would have further serious concerns.

Roads Planning Service: Response awaited

Statutory Consultees

Statutory consultees are reported to the ECU and are available on the Government's planning portal. At the time of writing this Report, it is known that the MOD have objected due to the scheme now exceeding its allocated allowance under the Eskdalemuir Noise Budget. It is also known that SNH are seeking a further year of Schedule 1A bird surveys.

KEY PLANNING ISSUES:

Whether a 3m increase to the tip height of all turbines, and an increase in operating life to 30 years, will cause unacceptable adverse landscape, visual or any other material planning impacts over and above the perceived impacts of the turbines already consented. Assessed against the provisions of the Development Plan and Schedule 9 of the Electricity Act.

ASSESSMENT OF APPLICATION:

Planning Policy Principle

The determination of the Scottish Ministers to grant consent for the development of Whitelaw Brae Wind Farm at this site (which included the erection of 14 turbines 133.5m to tip height) is a significant material consideration in the determination of this variation application. The original S36 consent remains implementable regardless of any decision on this variation application. Although the Council objected to the scheme on grounds of impacts on landscape character, wild land, visual effects, cultural heritage and residential amenity effects. Ministers approved the scheme and only the variations and associated impacts must be assessed against current national and local Policies and Guidance. The principle of the development cannot be questioned afresh. A wind farm of the scale and siting consented is acceptable at this location and in line with Policies and Guidance.

The developer has concluded, after researching turbines within the candidate range of the original S36 consent, that a 3m tip height increase will lift the output from the turbines by an appreciable amount, ranging from 2.93 GW to 6.21 GW. Their argument is that this increase in yield, added to the additional five year operating life sought, both improves viability of the scheme but also complies with the various changes in UK and Scottish Government emphasis resulting from climate change and Covid-19 crises. They also claim an increase in CO2 savings.

Taking into account the variations sought to the consent and in considering the requirements of the Development Plan (Policy ED9 and the Renewable Energy SPG), the main impacts likely to result from the tip height and increased operating life involve landscape and visual effects, residential amenity, noise and ornithology. This report considers these matters below.

Landscape and Visual Impact

The Council had objected to the original scheme due to the perceived unacceptable and significantly adverse effects on the Talla Hart Fell Wild Land designation, the Tweedsmuir Uplands SLA, public receptors including roads and dwellinghouses and cumulative impacts resulting from the Clyde and Glenkerie wind farms. All these issues of landscape and visual impact were fully considered by the Reporters who presided over the Public Local Inquiry, in their recommendations to the Scottish Ministers, and in the Decision Notice from the Ministers.

The Reporters concluded as follows, in consenting the scheme:

“We conclude that the negative effects of the proposal would be localised and would generally be limited in scale. Our principal concern is with effects on the visual amenity of the Fruid valley, where the proposed turbines would be prominent and harmful additions to a landscape that is unexceptional and already strongly influenced by human development but nevertheless a quiet and attractive place. The sensitivity of this valley is increased by the presence of a number of residential properties, the residents of which would see many of the proposed turbines not only from their homes and gardens but from the approaches to their properties, which we acknowledge to be important to their residential amenity.

In assessing the weight to be given to this issue, we have had regard to the fact that, although clearly visible, none of the proposed turbines would be so close to, or would have such a visually dominant effect upon, the valley and its residents that it could

reasonably be said to have an overbearing presence. There can be no doubt that the turbines would significantly change the experience of valley residents and of those who visit it for recreation or other purposes, as the proposed turbines would become the main visual focal point on the western horizon. However, the visual context within which they would be seen is one that already features a visually unexceptional valley side, a reservoir, dam and other man-made features.”

The Reporters also took into account the renewable energy and greenhouse gas reduction benefits of the scheme and felt that any adverse effects were outweighed by the contribution to the “...very clear Scottish Government aspirations” in those regards.

Taking into account the assessment by the Reporters that the negative effects of the original scheme would be localised and limited in scale, there must firstly be consideration of whether a 3m tip height increase on turbines, that were already consented at 133.5m, would introduce a scale and degree of adverse landscape and visual impact to the extent that the scheme would no longer be compliant with national and local Policies and guidance. The potential effects should also be balanced against the benefits of increased yield of output described by the applicants in their variation request.

As part of their variation application, the applicants have stated that the candidate turbines being investigated would also have a wider rotor diameter than those detailed in the original Environmental Statement, increasing from 107m to 117m. They consider that the consent does not specify a rotor diameter or hub height and have, therefore, not requested a variation from the ECU for this amendment. Nevertheless, as Condition 6 of the deemed consent states that the proposed turbines should be “consistent with the candidate turbine or range assessment in the environmental statement”, they have informed the ECU of the likely rotor increase. However, had there been no intention to increase the tip height, it is doubtful that the rotor increase, in itself, would have needed a formal variation and it could have been considered that the turbines were still consistent with the range identified in the environmental statement.

In effect, it is likely that the rotor diameter increase would be more noticeable from distance than the 3m tip height increase. Whilst there would be a wider sweep of blades and a reduction in separation between the blades of each turbine, the visual impact would also be slightly offset by the reduced hub height and vertical extent of the towers. Although the Landscape Architect has considered the rotor diameter increase (together with the hub height increase), and whilst she recognises the difficulty of attempting to demonstrate the change in effects as a result, she still considers that the resulting impact would be very limited and the change in effects barely perceptible.

The impacts of the tip height increase are considered by the applicant in their request for a Screening Opinion to the ECU, the landscape and visual effects of the increase being assessed by their Landscape Consultants as unchanged and as previously reported to, and accepted by, the Reporters and Scottish Ministers. They also state that, in their opinion, a 3m increase and associated rotor diameter change “...would be barely perceptible when considered in the context of the scale and nature of the existing consented scheme”.

Their assessment of landscape and visual effects includes a ZTV, four wirelines and a cumulative narrative, all comparing the consented scheme with the proposed variation. The assessment also takes into account changes in landscape policy and guidance since the initial scheme was considered, including the SBC “Renewable Energy” SPG.

It concludes no change to their previous findings on landscape character, sensitive receptors, landscape designations or cumulative effects. They consider that the changes will be negligible and barely perceptible, as demonstrated by the comparative wirelines and ZTV.

The ZTV only demonstrates very small areas of additional visibility to the south of Moffat and in the M74/Beattock area. Assessing the submitted comparative material and taking into account the small scale nature of the tip height increase (2.2% of the overall vertical height), the proposed variation will have a negligible effect and does not give rise to any additional significantly adverse and unacceptable landscape or visual impacts, including impacts on the wild land designation. The Reporters agreed with the applicant that the original scheme did not compromise the wild land designation and, therefore, it is accepted that the negligible tip height increase and additional five year operating life would not change this assessment.

The four wirelines also demonstrate such minor changes that it is certainly difficult to perceive any amendment from the consented scheme. Viewpoint 2 from the A701 at Glenbreck perhaps reveals the wider sweep of the blades but this is offset by the lowering of the hub heights. Certainly, it is very difficult to perceive any height increase and, thus, any consequent adverse landscape or visual effects. Similarly, Viewpoint 3 from the A701 at Tweedhopefoot does not reveal any more turbines breaking the skyline than the five from the consented scheme, albeit increased blade lengths are perhaps more noticeable from the outlying turbines T3 and T11. In reality, however, the increase is so marginal that vegetation and screening will probably render the increase imperceptible.

Viewpoint 4 from the minor road flanking the Fruid Reservoir was of particular concern to the Council during consideration of the previous scheme and the Reporters did not disagree that the visual impacts in the Fruid Valley were probably greatest and most significant, compared to all other effects of the scheme. Nevertheless, and despite being part of a Special Landscape Area, they considered the landscape to be unremarkable and already impacted by man-made interventions including the reservoir and dam. Whilst they recognised the magnitude of change in this area, including to residents at either end of the reservoir, they did not consider the effects to be of a magnitude that would outweigh the other benefits of the scheme in the overall planning balance.

Comparing the consented and proposed wirelines from Viewpoint 4, the scheme will already have a significant impact and it is difficult to perceive any real change. Whilst some of the foreground turbines might appear very slightly more dominant, the fact that most of these turbines are visible from, or near to, their bases determines that the 2.2% tip height increase is being compared to almost the full height, meaning that the change is visually insignificant. Some of the background turbines, indeed, recede in impact slightly due to the two metre hub height drop and despite the 3m blade tip increase. The final submitted comparative viewpoint is a more distant one from Right of Way BT100 but the changes are, again, very difficult to perceive.

In terms of impacts on residential amenity, the Council were concerned mostly with the impacts on the limited number of properties at either end of the Fruid Reservoir. Whilst other properties were affected in the Tweed valley along the A701 corridor, it was these properties within the intimate and small scale nature of the Fruid Reservoir and valley that would have experienced the most significant effects. In consenting the scheme, the Reporters did recognise that these residents would see many of the turbines from their homes, gardens and approaches. However, they did not consider the turbines

would have such a visually dominant effect that they could be considered to be overbearing.

Whilst the Council had partly objected to the original scheme for reasons of impact on residential amenity, it is accepted that the Reporters did not feel the impact was overbearing nor sufficiently dominant to warrant refusing the S36 application. Given their opinion, in assessing the minimal changes proposed to the scheme of a 3m tip height increase and how perceptible that is in terms of visual effects, it is concluded that the changes would not result in an overbearing impact on residential amenity. Viewpoint 4 is probably the most representative of residential amenity impacts, of the comparative viewpoints provided with the S36C variation request. As mentioned above, it is considered that any change in impact is difficult to perceive from this viewpoint.

There should also be consideration of cumulative impacts in terms of the variation request and also the extended operating time over which the effects would be experienced. The applicant notes that the biggest change in the cumulative assessment since initially carried out is the withdrawal of the Earlshaugh scheme, together with the implementation of the Minnygap and Clyde Extension schemes. Whilst significant cumulative effects were originally identified on summit viewpoints, in the Fruid valley and from Right of Way BT100, the 3m tip height increase and extended operating life do not exacerbate the cumulative effects, especially when taking into account the withdrawal of the Earlshaugh scheme.

The applicant's submission had a cut-off date of 15 April 2020 for the inclusion of wind farm schemes for the purpose of cumulative assessment. A new 27 turbine wind farm scheme ("Grayside") with 200m tip heights has now also been submitted for Scoping to the ECU, adjoining the Scottish Borders administrative boundary with South Lanarkshire. This wind farm appears as a northern extension to the Clyde Wind Farm extension. It is nearer to Whitelaw Brae than Glenkerie but further away than the Clyde extension. Had the Scoping request been submitted before 15 April, then the applicant would have clearly considered this to be a significant change to the baseline cumulative position.

In terms of the impacts on this variation application, whilst any scheme in relation to cumulative effects should be taken into account given its proximity, less weight should be given to schemes at planning stages, compared to schemes with consent or under construction. "Grayside" is only at Scoping stage and, indeed, the impacts of the Whitelaw Brae existing consent would have more of a significant bearing on decisions over the "Grayside" S36 application when that application is lodged and considered. Furthermore, it is not the cumulative impact of the Whitelaw Brae existing consent compared with "Grayside" that should be considered, but only the variation which is the 3m tip height increase and extra five year operating life. Given the very slight changes in visibility as demonstrated by the ZTV, the inclusion of "Grayside" within the cumulative assessment would not change the significance of the visual impacts.

Since 15 April 2020, a Scoping submission to the ECU has also been made for a wind farm at Scawd Law north-east of Walkerburn. As this is just outside the 35km Cumulative Assessment study area, the impacts on the variation request at Whitelaw Brae will be extremely limited.

Overall the proposed variation is judged to have a negligible effect which does not give rise to any unacceptable landscape or visual impacts, when considering the requirements of Local Development Plan Policy ED9 and the "Renewable Energy"

SPG. Similarly, landscape and visual effects have been fully considered under Schedule 9 of the Electricity Act.

Noise

The approved scheme was subject to conditions to limit the noise levels in order to avoid adverse impacts on the amenity of residential properties and also set procedures in the event of a statutory noise complaint. This position was accepted by the Reporters and by the Council.

In being consulted on the variation request, the Environmental Health Officer has asked for an updated noise impact assessment. However, the position of the applicant is that as no changes to the layout and the same number of turbines are intended, Condition 19 on the deemed consent sets the maximum dB limits at specified properties and this will still apply to the variation. It is also the case that had there not been a tip height increase but only an increase in rotor diameter, then no variation to the S36 consent would have been sought and there would have been no opportunity to seek a revised noise assessment.

Ultimately, and whilst the Environmental Health Officer's request is noted, the slight increase in tip height and the fact that the original noise limits on residential locations still remain, do not justify the requirement for a new noise impact assessment. It remains the responsibility of the developer to ensure that they operate within these limits previously imposed.

Cultural Heritage

The original scheme was partly objected to as it was considered there would be significant detrimental impacts on two archaeological sites of national significance, Asset HA5 and the Scheduled Hawkshaw Castle. However, the Reporters noted the mitigation proposed by the applicant which involved removal and moving of turbines in relation to Hawkshaw Castle, and relocation of the site compound and a programme of interpretation in relation to Asset HA5. They concluded that the mitigation was acceptable and met with the requirements of Schedule 9 of the Electricity Act.

The applicant submitted an assessment of cultural heritage impacts within the Screening request (including comparative wirelines) and concluded that, although there have been changes to historic environment policy and guidance since the original assessment and decision, the slight tip height increase and longer operational life of the wind farm will not change the impacts on the aforementioned assets nor the mitigation. The Council Heritage Officer has commented that the existing consent is subject to conditions including a written scheme of investigation and interpretation of fieldwork by the Biggar Archaeological Group. Whilst there may be further archaeological implications as a result of the variation request, he considers that these can be addressed in the existing conditions which should still apply to the variation.

Given this, the Reporters' previous acceptance of the cultural heritage impacts and the negligible changes intended in the variation, it is not considered that the variation, in itself, would result in significant adverse effects on cultural heritage.

Seismology

Policy ED9 seeks to ensure that wind farm developments must consider their impact on aviation and defence infrastructure. The increase in the height of turbines and operating life could potentially impact both of these interests. It is important to note,

however, that the main consultees such as the MOD, NATS, Edinburgh Airport etc. make their responses directly to the ECU on S36 applications and the Council are not required to undertake duplicate consultations. It will then be for the ECU to assess any responses they receive in relation to aviation and defence matters. This is the reason why, on the original application, the Council did not address aviation and defence matters. Had it been a planning application, then consultations would have been carried out, and responses considered by, the Council as part of the overall assessment of the application and reflecting the Council's role as decision-makers.

For the advice of Members, however, it is known at the time of writing this report that the ECU had consulted the MOD on the variation request and they have objected to the request for reasons of impact on the Eskdalemuir Seismological Recording Station. They state the following:

“The noise budget required for this revised development, exceeds the amount of budget previously allocated to the Whitelaw Brae Wind Farm Application Win-140-4 that was granted at appeal in December 2017. Therefore, the MOD objects to the variation as it will result in the exceedance of the allocated budget.”

It is known that the applicant is discussing the matter with the MOD but their stated position, at the time of writing this report, is that the tip height increase would result in the noise budget being exceeded. It is a matter for the ECU to consider how the MOD objection should influence their decision on the variation request and it is not for the Council to duplicate that objection in relation to defence matters.

Other aviation matters would still be addressed by the original conditions attached to the S36 and deemed planning permissions, including agreement of a radar mitigation scheme in liaison with NATS.

Ecology and ornithology

There were no ecological reasons to oppose the original scheme and Reporters were content to approve the development subject to a number of associated conditions. These included appointment of an Ecological Clerk of Works, Construction and Habitat Environmental Management Plans and Species Mitigation Plans.

However, the extension of the tip heights and operating life has the potential to affect ornithology, primarily by increasing the risk of collision and disturbing habitats. As part of the Screening submission preceding the variation request, further collision risk information was submitted by the applicants who calculated the increased risk from a tip and rotor diameter increase, over the extended period. The results were negligible across all species and were considered acceptable

The Council Ecology Officer has considered this information and the overall variation request. He comments that further information is now available in relation to Schedule 1A species at the site and that further Schedule 1A surveys are now necessary. If consent is granted, then conditions should be revised to account for impacts on Schedule 1A species. It is also known that the ECU have also received responses from SNH and the RSPB. SNH are advising that as Schedule 1A species are now known to be using the site, they require a further year of bird surveys to ascertain what potentially significant effects there might be. The RSPB refer to the black grouse habitat enhancement measures by condition and seek to provide input into the process.

It would appear that there has been a change to the baseline information with regard to Schedule 1A bird species at or near to the site. However, there is already a valid

consent for a scheme subject to Condition 15 which seeks a Species Mitigation and Protection Plan. The Condition is worded as follows:

“Prior to the commencement of any works or development on the site a Species Mitigation and Management Plan in accordance with the Draft Species Protection Plan contained within the ES at Technical appendices 7.7 (including bats, otter, badger, red squirrel, breeding curlew, black grouse birds and reptiles) shall be submitted to and approved in writing by the Planning Authority in consultation with SNH. All on-site works and development shall thereafter be carried out in accordance with the approved Plan unless otherwise agreed in writing with the Planning Authority in consultation with SNH.”

Whilst this lists specific species that had already been identified in the Environmental Statement (ES), the list is not exhaustive nor complete as it uses the word “including” and it also states “birds” as well as specific birds such as black grouse and breeding curlew. Whilst there is no doubt the original ES does not reflect the latest findings of a new Schedule 1A species at the site, it is considered that the wording of original condition 16 could provide sufficient protection and control as a result of the list of species not being exhaustive and also including reference to birds generally. This condition will need to be discharged for the existing consent even if the variation request is either denied or allowed but not proceeded with. Furthermore, should the discharge of that condition require further surveys which could take time to compile, then the applicant is already seeking a five year extension to the operating life of the wind farm and this should offset the impacts of any delay in undertaking the necessary survey work.

However, the wording of Condition 15 could be made more specific to include further survey and species protection for the Schedule 1 species now identified at the site. In the circumstances, it is suggested that there is justification to recommend to the ECU that they amend Condition 15 appropriately, should the variation request be granted. Subject to this, there are no ecological or ornithological reasons to oppose the variation request and, thus, the scheme is still compliant with Policy ED9 and Schedule 9 of the Electricity Act.

Annex E

Condition 5 of the deemed planning consent stated that the development should be carried out in accordance with approved drawings listed at Annex E of the consent. However, as no Annex E was actually attached to the consent, the applicant is suggesting the original site layout drawing (Figure FEI 3.1) is specifically referred to in the Condition. As there has been no changes to the number or siting of any turbine, referring implementation of the development to this drawing is acceptable. The tip height and appearance of the turbines is controlled by Condition 6, for which a separate variation is sought to lift the tip heights.

Suggested Variations

Table 1 of the submitted variation request identifies proposed amendments which are required to the consent issued for Whitelaw Brae should consent be granted for the variation. This would require amendment to the following parts;

- Operating life
- Annex 1 blade tip height
- Condition 5 – reference to Figure FEI 3.1 Site Layout as Annex E

- Condition 6 – design and operation of the turbines
- Condition 24 – site decommissioning, restoration

The variations proposed to each of the above are judged to be acceptable and will continue to adequately control the increased tip heights and operating life duration followed by decommissioning. If Members are minded to offer no objections to this proposal, it is recommended that this is subject to the imposition of the proposed variations noted in the aforementioned Table 1.

CONCLUSION

Provided all the previously imposed conditions are still applied to the variation, including an adjustment to Condition 15 to include Schedule 1A species, it is considered that the impacts arising from the 3m increase in height of the turbines and 5 year extension to their operating life would not be significant. The proposed development is, therefore, consistent with the Development Plan and does not raise any other material considerations that would justify departure from the Development Plan. It would also be in accordance with Schedule 9 of the Electricity Act through the identification of impacts on the natural environment and proposed mitigation.

RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:

That the Council indicate to the Scottish Government that it does not object to the application to increase the height of all turbines by 3m, extend their operating life to 30 years and refer to the original FEI Site Layout as Annex E of the S36 consent, subject to the imposition of the relevant conditions and informative notes of the original consent which remain necessary to adequately control this development, including an adjustment to Condition 15 to include Schedule 1A species.

DRAWING NUMBERS

Drawing Number	Date Received	Description
Figure 1.1	17.07.2020	Site Location Plan
Figure 1.2	17.07.2020	Application Site Boundary
Figure 3.1	17.07.2020	Proposed Site Layout

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

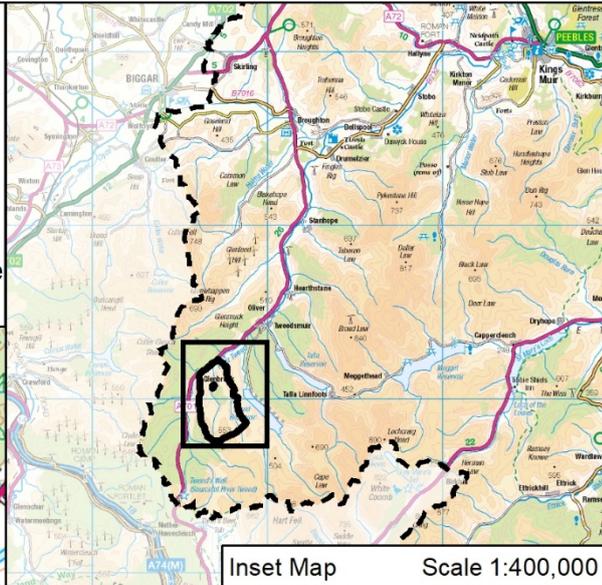
Author(s)

Name	Designation
Craig Miller	Principal Planning Officer



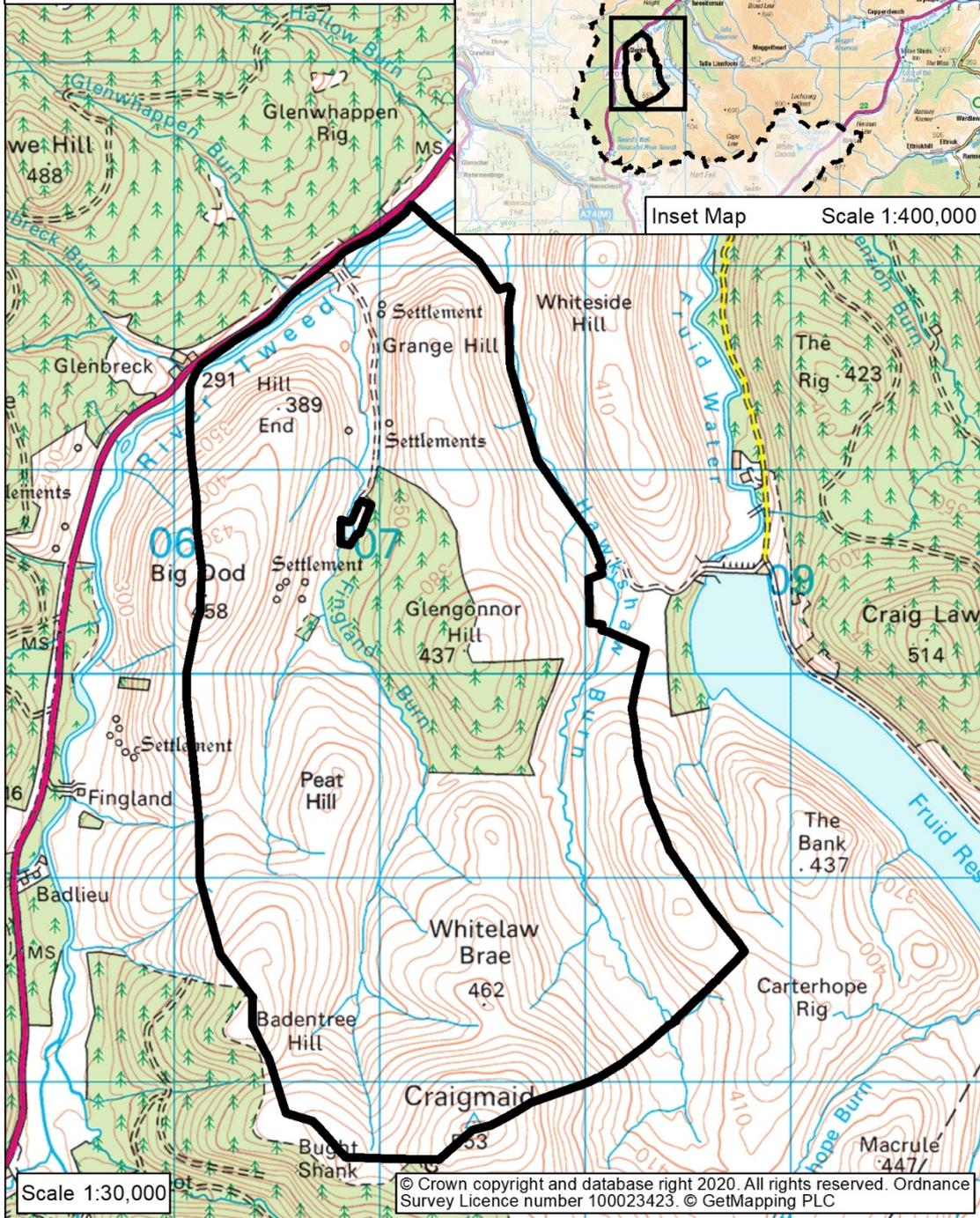
20/00789/S36

(Whitelaw Brae Wind Farm)
Land South East Of Glenbreck House
Tweedsmuir



Inset Map

Scale 1:400,000



Scale 1:30,000

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