

APPENDIX II

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY DECISION NOTICE**

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND
LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 15/00018/RREF

Planning Application Reference: 15/00179/FUL

Development Proposal: Erection of wind turbine 34.4m high to tip and associated infrastructure

Location: Land to the south west of Clackmae Farmhouse, Earlston

Applicant: Mr A Wilson

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission subject to conditions as set out in the decision notice

DEVELOPMENT PROPOSAL

The application is for the erection of a wind turbine 34.4m high to blade tip and associated infrastructure. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	06450/024/B
Location Plan	06450/015/B
Site Plan	06450/016B
Elevations	06450/017/A
General	06450/018/A

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 21st September 2015, that the review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included: (a) Decision Notice; (b) Notice of Review and supporting papers; (c) Report of Handling; (d) Consultations (e) Additional Representation (f) List of Policies, the Review Body concluded that it had sufficient information to determine the review and proceeded to consider the case. In coming to this conclusion, the Review Body considered the request from the applicants for further procedure in the form of a site visit.

The Notice of Review indicated that new evidence had been submitted to the Local Review Body that had not been before the appointed officer when the case was determined. This was in respect of Appendix RS1 : Earlston - Topography and Directory and Direction of Proposed Turbine and Appendix RS2 : Earlston – Primary Views and Turbine Visibility. The applicant had provided no explanation as to why this material could not have been submitted at an earlier stage, nor any evidence to suggest that the late submission was as a result of exceptional circumstances. Members therefore concluded in accordance with Section 43B of the Act, that this material was not properly raised and proceeded to determine the case without reference to it.

REASONING

The determining issues in this review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan 2013 and the consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- SESplan Policy 10
- Local Plan Policies: G1, BE1, BE2, BE3, BE4, NE1, NE4, EP1,EP2, H2, Inf2, Inf 4, Inf 6 and D4

Other material key considerations the Local Review Body took into account related to:

Other Material Considerations

- Supplementary Guidance on Wind Energy 2011
- Supplementary Planning Guidance on Landscape and Development 2008
- Supplementary Planning Guidance on Renewable Energy 2007
- Border Landscape Assessment ASH Consulting Group 1998
- Scottish Borders Proposed Local Development Plan 2013
- Scottish Planning Policy 2014
- National Planning Framework 2014

- Planning Advice Note 51: Planning, Environmental Protection and Regulation 2006
- Planning Advice Note 60: Planning for Natural Heritage 2008
- Planning Advice Note 73: Rural Diversification 2005
- Planning Advice Note 1/2011 Planning and Noise 2011

- Planning Advice Note 2/2011 Planning and Archaeology 2011
- Scottish Government On-line Renewables Advice: Onshore Wind Farms

The Review Body agreed with both the appointed officer and the applicant that the development complied with the majority of planning policy considerations relevant to such development proposals, and that it was only the degree of visual impact of the turbine from receptors within Earlston that was at dispute between the parties. Members therefore focussed the deliberations on this question

It was noted the applicant did not consider there were feasible alternative options for business purposes and that the proposal should be judged as submitted. The Review Body acknowledged that the turbine would be visible from receptors particularly in Earlston and in some parts of the town those were likely to be quite noticeable. This was particularly highlighted from Viewpoint 2 submitted as part of the application. This viewpoint was taken from the pitch at Earlston Rugby Club located within Mill Road. Here the impact of the turbine was heightened by the fact that it would breach the skyline. They considered this was likely to create an adverse impact.

However, as required by policy D4 any perceived adverse visual impacts should be weighed against any economic benefits of the turbine. It was agreed that the turbine would be beneficial to the operation of the working farm and this was enhanced by its location close to the dairy shed in close proximity to the turbine. The Local Review Body accepted the submissions made by the applicant as regards the benefits which would derive from the proposal. These included the direct benefit of reducing the financial burden of the farm associated with its power need and the reduction of the farm's carbon footprint, contributing to national energy policy. In addition the Local Review Body accepted the farm needed to seek to utilise green technology to satisfy the requirements imposed by its biggest customer (Tesco) to ensure it retained that business. Consequently, on balance, it was considered that the economic benefits of the turbine outweighed any negative impacts the turbine might have.

It was also noted that within the Report of Handling the planning officer stated that he did not consider the siting of the meter house next to the turbine to be appropriate and an alternative location could be considered, e.g. closer to the dairy shed. Members agreed that the location of the proposed meter house was acceptable as submitted and would not have any significant adverse impact on the area.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with the Development Plan and that there were no other material considerations that would justify departure from the Development Plan.

DIRECTION

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006

CONDITIONS

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans, specifications, requirements and obligations as set out in the Environmental Statement and associated documentation submitted as part of the application. Any variation thereto must be agreed in writing by the Planning Authority.

Reason: To ensure that the development is carried out in accordance with the approved details.

2. This permission shall be for a period of 25 years from the date of final commissioning. No later than 18 months prior to the end of the period of this planning permission, or by such later date as may be agreed by the Planning Authority, unless a further planning application is submitted and approved, the applicants shall submit a method statement for the decommissioning of the windfarm and the restoration of the application site for the approval of the Planning Authority. Decommissioning in accordance with the approved method statement shall be completed within 6 months of the end of the period of this planning permission or any alternative timescale agreed with the Planning Authority in writing and shall include the dismantling and removal from the site of all turbines, buildings and ancillary development.

Reason: To ensure an indicative scheme is submitted by the developer and approved by the Planning Authority for the decommissioning of the wind farm at the end of its 25 year proposed lifespan.

3. The proposed route for any abnormal loads on the road network must be approved by the planning authority in liaison with the trunk roads authority prior to the movement of any abnormal load. Any accommodation measures required including the removal of street furniture, junction widening, traffic management must similarly be approved.

Reason: To maintain safety for road traffic and the traffic moving to and from the development and to ensure that the transportation of abnormal loads will not have any detrimental effect on the road network

4. Any additional signing or temporary traffic control measures deemed necessary due to the size or length of loads being delivered must be undertaken by a recognised Quality Assured traffic management consultant, to be approved by the planning authority in liaison with the trunk road authority before delivery commences.

Reason : To minimise interference with the safety and free flow of the traffic on the road.

5. At wind speeds not exceeding 10m/s at rotor centre height, the wind turbine noise level at each noise sensitive property shall not exceed the levels stated in table 1 within the Informative

Reason: To protect the amenity of noise sensitive properties.

6. At the request of the Planning Authority, in the event of a complaint to Scottish Borders Council relating to noise emissions from the wind turbine, the wind turbine operator shall shut down the turbine not later than 24 hours after receipt of the request and at his own expense employ an independent consultant, approved by the

Planning Authority, to assess the level of noise emissions from the wind turbine (inclusive of existing background noise). The background noise level shall also be measured without the wind turbine operating. The noise of the turbine alone can then be calculated by logarithmic subtraction. If requested by the Planning Authority the assessment of noise emissions shall include an investigation of amplitude modulation in a manner agreed with the Authority.

Reason : To protect the amenity of noise sensitive properties.

7. Should the wind turbine sound pressure level exceed the level specified in table 1 within the informative the turbine shall cease operation until such time as it has been demonstrated to the Planning Authority that the sound pressure level, referred to in condition 5, can be achieved.

Reason : To protect the amenity of noise sensitive properties.

8. The turbine to be fitted with 25 candela omni-directional red lighting or infrared lighting with optimised flash pattern of 60no flashes per minute of 200ms to 500ms duration at the highest practicable point. The Ministry of Defence to be advised of the date construction starts and ends, the maximum height of construction equipment and the latitude and longitude of the turbine erected

Reason : In the interests of Ministry of Defence safeguarding

Informative

As stated in condition no 5 noise levels should not exceed the following :

Table 1

Location		Wind speed at rotor height in m/s averaged over 1 minute periods. Sound pressure levels in dB LA90, 10mins						
Property Name	Map ref	4	5	6	7	8	9	10
3-4 CLACKMAE FARM COTTAGES	356061, 639247	26	31	32	32	32	30	31
1-2 CLACKMAE FARM COTTAGES	356069, 639307	25	30	31	31	31	29	31
GLENBURNIE FARMHOUSE	356051, 638802	23	28	29	29	29	27	29
CLACKMAE FARMHOUSE	356187, 639377	22	27	28	28	28	26	28
WEST LODGE, CAROLSIDE	355998, 639714	20	26	27	27	26	24	26
NETHER CAIRNIE	355969, 639764	20	25	26	26	26	24	26
CAIRNEY	354977,	17	22	23	23	23	21	22

MOUNT	639704							
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Notice Under Section 21 of the Town & 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 for 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.

Signed.. Councillor J Brown
Chairman of the Local Review Body

Date...29 September 2015
