



## SCOTTISH EXECUTIVE

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Your ref: -  
Our ref: P/PPA/380/369

2 August 2007

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Dear Sirs

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND  
SCHEDULE 4  
PLANNING APPEAL: PROPOSED "ERECTION OF TWO 15KW WIND TURBINES 15M  
HIGH", AT MUIRHEAD FARM, CLEGHORN BY LANARK**

1. I refer to your appeal, which I have been appointed to determine, against the refusal by South Lanarkshire Council of planning permission for the above development. I have considered the written submissions and made an accompanied inspection of the appeal site, with unaccompanied viewing in the wider area beforehand and afterwards, on 10 July 2007.

2. The appeal site is over 270m above sea level, close to the north of the A721 road some 4 km north-north-east of Lanark and 3 km east-south-east of Kilncadzow. The highest ground in the vicinity approaches 300m to the south-west of the road and levels generally fall to the east and north-east. However, the buildings of the stock-rearing Muirhead Farm are on ground that shelves locally down to the south-east. The A721 at this elevation allows extensive views to the Clydesdale and Border hills to the south and east. To the north conspicuous features, where not hidden locally by the topography or shelter belts, are a tall telecommunications mast of lattice construction at Hill Rig (317m), some 1300m north-north-west of Muirhead Farm steading; and the considerable number of wind turbines at Black Law and Hare Hill around 6 km north of Muirhead. Some 200m to the north-west of the steading, on a SSW-NNE alignment, is a conifer shelter belt. There is a bungalow, apparently belonging with the steading, on the western side of the short access road to the steading.

3. The application for planning permission proposes two wind turbines a little over 100m from the main road. One would be next to the south-west corner of the steading complex, and the other some 50m to the north-west. Each would be 15m high to the centre of the hub, with towers of galvanised steel set into concrete foundation pads. From the ground to the tip of a vertical blade their height would be just over 20m. The turbine head and the blades would be finished in matt black polypropylene.



4. The last of the seven refusal reasons referred to an undesirable precedent, encouraging further similar applications, if planning permission were granted. The others stated that the proposal was contrary to:-

- policy 99 of the adopted Upper Clydesdale Local Plan as an inappropriate and incongruous form of development harmful to the environmental quality of the rural area, with adverse visual impact due to the scale, position and design of the turbines;
- policy ENV2 of the adopted Lower Clydesdale Local Plan as inappropriate in the Rural Area through harm to local visual amenity by the scale, position and design of the turbines;
- policy ENV4 of that plan through obtrusiveness and adverse visual impact on environmental quality and landscape character, by scale, position and design;
- policy ENV8 of that plan by failing to comply with criteria for renewable energy development as set out in policy SLP4, particularly (1) because siting and external appearance would harm amenity and (2) because there would be harm to the environment and landscape and the development would be inappropriate and incongruous in the Rural Area;
- policy STRAT 4 of the Finalised South Lanarkshire Local Plan as it would erode the high quality environment, harming visual amenity and landscape character;
- policy ENV15 of the finalised local plan through failure to comply with criteria for renewable energy development set out in policy ENV37, particularly C(3) as siting and external appearance would harm amenity and the turbines would be inappropriate and incongruous in the Rural Area.

5. There were no representations from members of the public on the application, which was advertised as a 'bad neighbour' development. In **consultations** the council's **Environmental Protection** function commented that a specialist report would be required about noise impacts on sensitive receptors, and possible required mitigation, before the development was begun; this matter was, however, not pursued. **Scottish Natural Heritage** made a formal objection on grounds of expected visual impact, but has since stated that the objection would most likely not have been maintained had more detailed information from the intended supplier been available initially.

### **Main points in support of the appeal**

6. The proposal is a farm diversification scheme approved as such for grant aid by the Scottish Executive Environment and Rural Affairs Department (SEERAD). It is in accord with national policy on small-scale wind energy developments and rural diversification. The turbines could not be placed farther from the main road because they would have been too near the overhead electricity lines to which surplus generated power, not needed on the farm, would be fed. The turbines would be in the Upper Clydesdale area, though the farm access road is in Lower Clydesdale. Unlike much of Upper Clydesdale the appeal site is not in an area designated for special scenic value.

7. The turbines would be only 15m to the top of the fixed component, which is the relevant part. They would not be out of scale with the farm buildings. They would be seen only briefly from vehicles on the public road, against farm buildings, the shelter belt and more distant views of telecommunications masts and a large wind farm. The council has ignored aspects of the policies, quoted in the refusal notice, which support renewable energy developments and farm diversification, or are concerned with large wind farm developments rather than small-scale adjuncts to a farm; it has also not mentioned proposed changes that would make the finalised local plan more welcoming to microrenewables. No community outside the farm is affected by the proposal. The scale of the scheme has had an upper limit imposed by the 30kV power line north of the steading, to which the turbines would be connected, and a lower limit imposed by the much greater unit cost of electricity at even smaller scales. The farm itself would use less than 10% of the expected output; if required as

a condition of grant aid, all could be fed into the grid. By their nature wind turbines need to be in windy places, which inevitably have some degree of prominence.

### **Main points for South Lanarkshire Council**

8. The applicants provided minimal information about the claimed farm diversification scheme. There has been no evidence of employment generation or retention, which is a criterion of policy ECON6, covering farm diversification, in the finalised local plan. Another criterion is visual impact. This is not relevant only in areas with special landscape or heritage designations. The turbines would be prominently located, without any backdrop to mitigate their visual impact. The application site shown on the location plan overlaps the local plan boundary between Lower and Upper Clydesdale Local Plans, so both are relevant.

9. Policies ENV2 and ENV4 in the Lower Clydesdale Local Plan encourage the diversification of rural businesses, but through appropriate development. It is not agreed that providing energy for the farm's own use is farm diversification, and the proposed means would be inappropriate through their adverse impact. The very limited economic benefits would not outweigh the environmental harm. The Scottish Executive's *A Forward Strategy for Scottish Agriculture* and SPP 15 *Rural Diversification* do not suggest that diversification should be supported regardless of environmental impacts. The applicants did not take sufficient steps to ensure that visual impact would be minimised by best siting and appropriately designed turbines. The proper measurement of height is to the tip of a vertical blade, and therefore 20m in this case. The impact of the Black Law wind farm in views at the application site is very limited because of the distance. Policy SLP4 enables operational efficiency to be taken into account while siting and external appearance of apparatus are required to minimise impacts on amenity. In this case operational efficiency seems to have precluded consideration of effects on amenity. The council did not attempt to prescribe how a better siting of the turbine farther from the steading could be achieved. Encouragement of microrenewables both in national and local plan policy is not to the exclusion of environmental interests. The council has granted planning permission for numerous more appropriate schemes than this one.

### **CONCLUSIONS**

10. Section 25 of the Act requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. I consider, from my inspection of the appeal site and the written submissions, that the issues to be determined are whether the proposal is consistent with the relevant provisions of the development plan and, if not, whether an exception to these provisions is justified by other material considerations.

11. The identification of the relevant development plan policies is complicated by the fact that the boundary between the two adopted local plans appears to follow an arbitrary straight line along the NS48 east-west gridline, which happens to pass right through the buildings at Muirhead. It would be absurdly legalistic if the outcome of the appeal were to hang on precise measurement of which side of the line the turbines would be placed; still more so if the decisions on the two turbines were to be different because of different policies either side of the line. It thus seems to me reasonable to take into account relevant policies from both adopted local plans, as the appeal site as outlined with a red line on a map certainly covers parts of both local plan areas. The finalised local plan and national planning policy statements can be material considerations. Before turning to the essential matters it may be useful for me to explain that when a single height is stated for a wind turbine it is customarily the maximum height to the tip of a blade; an alternative and useful way of

discussing heights is to give both the hub-centre height and the blade-tip height. In this case the proper single figure to be used is therefore 20m rather than 15m.

12. Assessment under the policies relied upon in the refusal notice, and the degree to which planning permission might form an undesirable encouragement to other applications, depend on whether the appeal case or the council's case is more convincing on the matter of impact on rural amenity. Two wind turbines, 15m to the hub and 20m to blade tip, could not fail to have some impact in any landscape. However, those in question would not impinge on the exceptionally fine, extensive and for southern Scotland elevated views from the A721 next to the appeal site. Those views are to the south and east, and are much more likely than northward views to demand the attention of anyone travelling on the road who is interested in enjoying the scenery and does not need to concentrate on traffic conditions. Northward views, whether from the road or from farther away, are also, dependent on precise viewpoint, likely to include a large telecommunications mast and one of the larger wind farms in southern Scotland, near enough to be a significant feature.

13. Whilst it would be wrong to suggest that further cumulative impacts would not matter where there is already a substantial visual impact from wind energy or other developments, the contrast between northward views and those to the east and south at this location cannot be ignored. Moreover, although the turbines would be markedly higher than the farm buildings, they would be of small scale compared to those on Black Law and they would fairly obviously be associated with the farm buildings and seen with them and partly against a backdrop of hillside and the conifer shelter belt, depending on direction of view. Thus the starting point for the assessment against policies is that there would be an adverse impact on rural amenity, but the significance of this would be limited by the particular characteristics of the location and markedly less serious than if the turbines would impinge in the spectacular eastward and southward views from the public road.

14. Policy 99 of the Upper Clydesdale Local Plan provides no specific guidance or criteria as it simply seeks to "*prevent or minimise damage to the environment and to conserve and enhance the environment ...*". Policy ENV2 Rural Area of the Lower Clydesdale Local Plan "*will generally favour development of an appropriate form. This should meet the needs of the rural community and support the rural economy, including the diversification of agricultural businesses. ... Isolated proposals will be resisted, along with those which ... by virtue of their scale or design would change the established character of an area. Any development within the rural area should conform to SLP 2 – Rural Areas Policy.*" I have considerable doubt about the degree to which the proposal can be regarded as diversification of an agricultural business, if all the electricity generated is to be sold off-site. This business of generating electricity could take place without any connection to the farm business, or even if farming ceased on the land. There could have been a stronger case for regarding the proposal as diversification of the farm enterprise if a main purpose of electricity generation had been to secure more economical supplies of electricity for the farm's own needs. However, notwithstanding those reservations the use of an upland resource, high average wind speeds, to generate both electricity and an income for members of the rural community would *meet the needs of the rural community and support the rural economy*, in accordance with the policy. The two relatively small-scale wind turbines associated with the farm would not change the character of the area. I have to assume that the Council's case does not rest on anything in policy SLP 2, as this has not been quoted or copied.

15. Policy ENV4 is titled *Rural Diversification* but its text refers to proposals "*for the economic diversification of agricultural units*". As it does not seem from the appeal submissions that the electricity generated would go directly to making the farm unit more productive or efficient, as already explained it does not seem to me that the proposal is strictly – in planning terms as distinct from other administrative terms – for diversification of Muirhead Farm as an agricultural unit; so

that this policy does not come into play. Policy ENV8 includes no criteria other than having regard to structure plan and government guidance and reference to criteria in policy SLP4 on Renewable Energy.

16. Policy SLP4 lists seven criteria of which some are not relevant in this case. These include safeguards for the amenity of neighbouring occupiers as there has been no suggestion that the residential amenity of persons not living at and associated with or dependent on Muirhead Farm would be affected. It has not been contended that there would be significant harm to natural heritage or human heritage interests or specially designated areas or sites. The council is right, however, to point out that concern for amenity is not limited to places designated as of special importance or sensitivity. Criterion 1 is that the *“siting and external appearance of apparatus, including any location or landscaping requirements, have been designed to minimise the impact of such apparatus on amenity, while respecting operational efficiency. A realistic means of achieving the removal of any apparatus when redundant and the restoration of the site is required.”* The council has not pointed to any particular feature of the design which is visually objectionable and could have been less so with a different model of turbine. I accept that the siting is constrained by the need for a relatively open position for turbines to make best use of high average wind speeds, and by the overhead electricity line north of the steading. The removal of the turbines if they became redundant can be made the subject of a condition.

17. Criterion 2 of policy SLP4 is that the *“development can take place without unacceptable significant detrimental effects on the environment and landscape. ...”* As noted above, the detrimental effects of the proposal would be modest. Since both policy SLP4 and government guidance figure in policy ENV8 it is appropriate at this point to turn to SPP 6 for guidance. Paragraph 4 expresses Scottish Ministers’ commitment to “increasing the amount of electricity generated from renewable energy sources” and the “target of 18% of electricity generated in Scotland coming from renewable sources by 2010, rising to 40% by 2020”. Although the SPP contains much guidance also about circumstances in which renewable energy developments may be too damaging to the environment to be acceptable, I find nothing to suggest that the modest harm in this case would come into that category. Accordingly I conclude that policies SLP4 and ENV8 are complied with by the appeal scheme, when ENV8 is considered in the light of the government guidance to which it refers.

18. The finalised local plan is for the time being of lesser status, as a material consideration, than the currently adopted local plans which are part of the statutory development plan. Policy STRAT4 is a very general policy that seeks to enhance the environmental quality of the area or to mitigate any unavoidable harm. It does not raise any substantial matter not covered by the policies in the adopted local plans. Policy ENV15 Renewable Energy Development states that proposals will “generally be supported” provided that they meet the criteria of policy ENV37. This is more elaborate than SLP4 but does not in my view raise any additional matter that would require to be addressed in this case. Criterion C(3) is similar to the first part of criterion 1 in SLP4. Accordingly I conclude that the appeal scheme does sufficiently comply with the development plan to benefit from a presumption in its favour, and that other material considerations do not outweigh that compliance. The particular characteristics of the location have been crucial and planning permission in this case would not affect the Council’s ability to assess less favourable sites less favourably.

19. The council has suggested five conditions, including limitation to a temporary period of five years. This seems to me inappropriate for what would normally be seen as a medium term to long term investment in renewable energy. The second suggested condition, in line with the suggested time limitation, would require removal and reinstatement after five years. More appropriate, in my view, would be a requirement for removal after 20 years if planning permission had not been

renewed, or after 6 months of disuse. A suggested and commonly used condition requiring adherence to approved drawings would be sensible. The council suggests a requirement for a matt grey colouring. This would conflict with the specified matt black for the hub and blades; it seems to me better to leave this matter for discussion between applicants and planning authority in the light of both visual and technical considerations. The council's last suggested condition refers to obsolescence or redundancy, and is covered by my conclusion on the suggested removal after five years.

20. I have taken account of all the other matters raised but find none that outweigh the considerations on which my decision is based.

21. In exercise of the powers delegated to me I therefore **allow** your appeal and grant planning permission for the development proposed in the application CL/06/0849 dated 17 November 2006, subject to the conditions:-

(1) The development hereby permitted shall be begun within five years of the date of this letter. (*Reason: standard time limit under section 58 of the Town and Country Planning (Scotland) Act 1997.*)

(2) The turbines hereby permitted shall be removed and the land restored to its former condition within one month, at the expiry of twenty years from the date of this permission, unless planning permission has been granted for an extension of the period. (*Reason: in the interests of visual amenity and with regard for the conventionally assumed lifespan of such structures.*)

(3) If, before the expiry of the twenty years referred to in condition 2, the turbines become redundant or obsolete and are disused for a period of six months, within one month thereafter they shall be removed and their positions shall be reinstated to their former condition. (*Reason: in the interests of visual amenity.*)

(4) Before the development is begun, there shall be submitted to and approved by the planning authority proposals for the colouring of the turbine hubs and blades, with regard to minimising their visual impact. (*Reason: in the interests of visual amenity.*)

(5) The development shall be carried out solely in accordance with the approved drawings and specifications, including any revisions, in terms of condition 4, to the originally submitted proposals. (*Reason: in order to ensure that environmental impacts are no greater than those on which the proposals were assessed.*)

22. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

23. A copy of this letter has been sent to South Lanarkshire Council.

Yours faithfully

*This is the version issued to parties on 2 August 2007.*

W M H PATTERSON  
Reporter