

Appeal Decision Notice

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Decision by M J Culshaw, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-250-2079
- Site address: Woodbank Farm, Windygates, Fife KY8 5RU
- Appeal by Allan Clark against the failure of Fife Council to give notice of their decision within the prescribed period
- Application for planning permission 10/04275/EIA dated 12 November 2010
- The development proposed: erection of 84m high wind turbine and associated infrastructure
- Date of site visit by Reporter: 29 September 2011

Date of appeal decision: 28 November 2011

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. The determining issues in this appeal are the effect of the proposed development on the residential amenity of neighbouring occupiers through noise, its effect on digital signals and TV reception and its impact on the surrounding landscape.

Background

2. The application was received by the planning authority in November 2010, but had not been determined by 22 May 2011 when the applicant asked for a review under section 43A of the Town and Country Planning Act 1997 of the failure of the council's appointed officer to determine it within the prescribed period and its consequent deemed refusal. On 2nd July the applicant was advised by the Fife Council Democratic Services and Standards and Governance that since the next meeting of the Local Review Body was not until 22 August it would not be possible for the review to be conducted within the two month period specified in the regulations. Consequently at the end of the two month period under section 43A (17) the application was deemed to be refused by the planning authority and this appeal was made.

3. The appeal site is close to the site of a proposal for a more major wind farm at Earlseat Farm, which lies immediately to the west of the appellant's farm, both areas of land



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being north of the A915 Standing Stane Road, Kirkcaldy. The council considered it essential to take account of the cumulative impact of the appeal proposal with the Earlseat proposal and the length of time taken to deal with the larger proposal resulted in the council's failure to determine this proposal at first instance. This was followed by the administrative delay in responding to a request for review. Fife Council's Planning Committee has now considered the Earlseat application and at its meeting on 20 September 2011 it was decided to grant planning permission subject to a suite of conditions and subject to a legal agreement relating to the provision of a financial bond capable of addressing the restoration of the site and the long term control of Earlseat Farmhouse which sits close to the turbines.

4. The Earlseat proposal is for a predominantly linear array of turbines, approximately 120m high to blade tip, to the north of the A915 and running east/west. Importantly for this appeal one of the conditions (No 3) requires one of the nine turbines to be removed from the development and another to be relocated, the final details of which must be the subject of a further submission by the applicant. While that submission has not yet been made the intention of the council as expressed in its Committee report is that the last turbine in the Earlseat group should be moved to a position closer to the centre of the group and the eighth turbine should be dropped. As result the distance between the Woodbank turbine and the easternmost turbine in the Earlseat group would increase.

The proposal

5. The proposal the subject of this appeal comprises a single 800kw three-bladed wind turbine with an overall height to blade tip of about 84m. A new 4m wide track would be laid to allow construction access and subsequent servicing of the turbine. The submitted plan shows the track crossing the field from east to west from a point immediately to the north of the farm complex. It was pointed out to me at the site inspection that it might be possible to improve and utilise an existing track adjacent to the woodland on the south side of the appeal site, but this possibility is not raised in the application. An environmental statement accompanied the application and I have taken its contents into account.

6. The council's response to the appeal identified 11 issues which required to be assessed against the development plan, and I deal with each of these below. Its objections were limited to those which I have identified as the main issues in this appeal.

The principle of development

7. After measuring the proposal against national and local policy, the council concluded that the principle of a wind energy related development at this location was broadly acceptable in principle. Paragraph 182 of Scottish Planning Policy says that the commitment to increase the amount of electricity generated from renewable sources is a vital part of the response to climate change. It goes on in paragraph 184 to say that planning authorities should support the development of a diverse range of renewable energy technologies, guide development to appropriate locations and provide clarity on the issues that will be taken into account when specific proposals are assessed. Paragraph 187 lists a number of considerations which will be relevant in deciding applications for wind farms, and many of these are appropriate for a single turbine such as this, and are included

in the council's list of issues. In addition the government has produced a number of Specific Advice Sheets in relation to renewable energy, and the sheet on onshore wind turbines contains a similar list. The development plan, which comprises the approved Fife Structure Plan and the adopted Levenmouth Area Local Plan, would not presume against a development of this nature which of necessity requires a countryside location and would not occupy land designated for its landscape qualities or land of high agricultural value. The ASH study carried out by Fife Council with SNH placed this site within a Broad Area of Search for wind turbines. The council's Supplementary Planning Guidance on Wind Energy locates this site within an area where medium small extent developments or medium single turbines could be accommodated. No additional issues of principle are raised by the emerging Mid Fife Local Plan. I therefore agree with the council's assessment of the broad acceptability of a wind energy development at this location. It is thus necessary to examine the detailed impacts of the proposal.

8. The environmental statement included a review of the **ecological impact** of the proposed turbine. Scottish Natural Heritage after considering the contents of the statement agreed that the development was unlikely to have a significant effect on any bird species breeding within the site and was unlikely to have a significant impact on bat species, otter or badger. Following the submission of a habitats survey they agreed that the development was unlikely to have a significant impact on any habitats of conservation interest. They initially required further information on the effect on the qualifying interests of the Firth of Forth and Loch Leven SPAs, on wintering birds and barn owls. However in each case the additional information provided by the appellant led to SNH being satisfied and their objections being withdrawn. I am satisfied that the proposal would thus not conflict with policies R1 and ENV 2-4 of the structure plan, or with policies COU9 to COU12 of the adopted local plan which aim to protect these interests. The council in its appeal statement indicates that an appropriate assessment under the Birds Directive or Habitats Directive has not been carried out and that in the appeal this was the responsibility of the Scottish Ministers. However since there is no allegation that the proposal would have a significant effect on any protected habitat or species interests and since I am in any event not granting permission I have not pursued this further.

9. Potential impacts on the settings of **Scheduled Ancient Monuments, Historic Gardens and Designed Landscapes, Listed Buildings and Conservation Areas** within a 25km radius of the site were considered in the environmental statement. It was concluded that there are no protected features within the site and that a low magnitude of impact would be experienced only by Balgonie Castle and Maiden Castle, both of which are SAMs, with a medium significance of impact. Historic Scotland has not objected to this application and in my view and in the light of my site inspection the proposal would not infringe policy ENV5 of the structure plan or any of the suite of relevant policies of the local plan. It follows that the proposal would not be an insensitive or inappropriate form of development and would not conflict with the SPG in terms of its impact on cultural heritage or archaeology.

10. The environmental statement identified no potential harm to **hydrological and hydrogeological** interests. SEPA raised no objection to the application but commented the need for control over any necessary de-watering of the site during construction. The appeal site lies within an area of former coal mining. The main source of geological risk

from this proposal is through the possible land instability which might result from former workings and potential public safety issues. The Coal Authority objected to the lack of information on these matters in the environmental statement but subsequently withdrew its objection in an email of 18 March 2011, apparently on the basis of an undertaking by the applicant detailing their proposed approach to addressing the concerns. The council's statement makes no reference to this email but refers to the potential for disturbance of contamination arising from historical surface and deep coal mining by the construction process. However I note that their Environmental Services consultation produced no comments on this matter.

11. Any concern about **road safety** impacts of the proposal would predominantly relate to the construction period. Turbine parts would be brought to the site by way of Methil dock, from where there is a known route for abnormal loads. The council have recommended a number of conditions to deal with construction impacts, and I agree that the proposal could be rendered satisfactory in this respect by conditions relating to provision of a traffic management plan, parking and turning areas and wheel washing. In this way it would comply with the local plan, particularly policy T5, and no harmful impact to road safety would result.

12. The council has indicated that although rights of way pass through the adjacent site they do not extend into the appeal site. There would therefore be no direct impact of the proposal on current **rights of way** or **outdoor recreation** activities and local plan policy CLR10 which protects these interests would not be contravened.

13. Although the council's statement criticises the lack of consideration in the environmental statement of the effects of the proposal on **local economy and tourism** interests it concludes that it is not considered to be a significant determining issue. I note that the environmental statement refers to the contribution of such proposals to the rural economy where it concludes that no adverse impacts are predicted on local recreation or tourism, but does not appear to be based on any research on potential disbenefits. Although Scottish Planning Policy indicates that this is a matter which should be taken into account in considering wind turbine proposals, the development plan contains no criteria for its consideration. Nevertheless I agree with the council that the effects of a single turbine on the local economy are in my judgement unlikely to be significantly adverse if at all. For reasons I deal with below the cumulative impact of this proposal with that at Earlseat cannot be determined. However I have no evidence to conclude that it would have harmful effects on the local economy.

14. In order to assess the effects of the proposal on **Aviation Safety and Defence Interests** consultations were carried out with the Civil Aviation Authority, National Air Traffic Service, British Airports Authority and the Ministry of Defence by the planning authority. No objections were received from any of these organisations subject to comments on colour, lighting and mapping of any permitted turbine.

15. The main potential impacts of wind turbines on **residential amenity** arise through noise and shadow flicker. In terms of the latter, the council accepted the conclusion of the environmental statement that no properties would be affected and the proposal would thus comply with national and development plan guidance on such matters. In respect of noise,

the council's Environmental Services commented in consultation reply that no site specific noise assessment was contained within the reports submitted by the applicant. The council in their appeal statement maintained this position and quoted from the advice in Planning Advice Note 1/2011 that criteria derived from ETSU-R-97, a 1996 report of a UK government Working Group on Noise from Wind Turbines, should be used to assess the noise impact from a wind farm. As the appellant pointed out such an assessment is in fact dealt with at pages 78 to 81 of the environmental statement. The assessment assumed that the turbine would be an Enercon E48 800kw, which at its loudest setting at a wind speed of 10m/s at a height of 10m would be 102.5 dB(A). As recommended by the manufacturer a 1dB safety factor was added. Using an ISO 9613:2 model adjusted to conform to the $L_{A90, 10min}$ measure required by the ETSU guidelines the environmental statement identified the properties likely to be affected and predicted that the highest noise level ($L_{A90, 10min}$) experienced at the nearest properties, Wellsgreen Farm Cottages, would be 32.5dB(A), other properties experiencing noise levels ranging from 26.2 to 31.9dB(A). The ETSU guidelines recommend a simplified approach for single turbines which limits noise to 35 dB(A) at wind speeds of 10m/s at 10m height and this would not be exceeded. I consider that on this basis the project would be unlikely to have any significant noise impact on nearby residential properties, but that in any event this could be controlled through the imposition of conditions on a planning permission.

16. Turning to the impact on **radio and digital reception and TV signals** Policy R1 of the structure plan indicates that effects of development on telecommunications should be taken into account in dealing with applications for wind farms. The council's SPG at paragraph 8.14 indicates that developers should meet the cost of mitigation measures to deal with disruption to television signals. The potential for disruption and the developer's responsibility to deal with any that might be caused is recognised in the environmental statement and it concludes that no issues require immediate mitigation or action. I note that the council's suggested conditions deal not only with television signals but also with other digital signals or radar and I agree that planning conditions would have been an appropriate means of dealing with any issue which might emerge following construction.

17. I deal finally with the question of **landscape and visual impact**. Although this application is for a single turbine it is generally accepted, and is national policy, that any examination of a proposal must take into account existing wind farms and those which have permission or which have been applied for but not determined. The environmental statement accompanying the application took into account all projects in all three categories within 25 and 60 km radii.

18. The wireframes and photomontages which formed part of the environmental statement and contributed to the assessment of landscape and visual impact took account of a number of other developments at Little Raith, Clentrie, Standingfauld Farm, Green Knowes, Methil Docks and Clatto Farm and Devon Wood. However the most significant in terms of cumulative impact, indeed the only development with which a cumulative impact would in my view be of any material significance is the Earlseat proposal which at that time was not determined. A number of wirelines and photomontages show the Woodbank proposal in combination with the turbines at that time proposed for Earlseat. The environmental statement concluded that the projects would largely be seen together and few areas exist where Woodbank would be seen independently and the overall level of

cumulative impact due to Woodbank would be low. It is clear to me that although this is a proposal for a smaller turbine than Earlseat and thus with a different individual impact, these two proposals are sufficiently close together, and would be seen together in sufficient public views that their inter-relationship is an important consideration in this appeal.

19. The wirelines and visual assessments which formed part of the environmental statement showed the proposed turbine both standing alone and in combination with the array of turbines at Earlseat which was proposed at that time. The council have concluded that the Woodbank turbine standing alone in the landscape would not raise any significant visual impact issues and I agree. However in the light of the council's resolution it would also be unsafe for me to assume that the Earlseat proposal will not proceed and that this turbine would in fact stand alone. Although the appellants point out correctly that there is no guarantee of a mutually satisfactory outcome to the discussions which are presumably now taking place over the implementation of Condition 3 and the finalisation of the necessary legal agreement, it is clearly the council's intention to grant permission subject to these matters being sorted out and I must assume that it is also the intention of the applicant in that case to comply with condition 3 and to reach the necessary agreement over bonds.

20. It is therefore an unfortunate consequence of the manner in which these two applications have been dealt with that the council's resolution in relation to the Earlseat proposal, and in particular Condition 3 requiring the reconfiguration of the array in a manner which has not yet been clearly defined, means that the cumulative impact of the two proposals is no longer accurately conveyed by the environmental statement which accompanied this application.

21. In a number of significant views it would appear likely the effect of condition 3 would be a greater separation distance between the proposed Woodbank turbine and the nearest part of the Earlseat group of turbines but the size of that distance has yet to be decided. It cannot be known, for example, whether this single turbine would group comfortably together with the Earlseat proposal in the landscape, would be separated by such a distance as to appear incongruous or would stand alone. Consequently I am unable to determine whether the cumulative impact of the two proposals would be satisfactory in landscape and visual terms. In the absence of firm information I do not have a satisfactory basis on which I can judge the environmental impact of this proposal and the conclusion of the environmental statement that the project would have a low level of impact from a landscape and visual perspective cannot be relied on. Moreover because of the uncertainty resulting from the council's resolution the appellants are not in a position to provide me with additional environmental information which would enable me to reach a judgement. They have not attempted to provide additional information of this type in response to my questions following the site visit, and I appreciate the reasons for this. I can understand their frustration at a situation which is not of their making, but I cannot ignore the potential impact of this proposal in combination with the Earlseat proposal, nor can I at present properly assess it.

22. The appellant has expressed the view that there still remains the opportunity for some design cohesion between the two schemes. I am unable to say at present whether or

not that is the case, but I must determine the appeal on the information before me, and any further discussions such as are suggested must take place with Fife Council.

23. I have concluded that while in many respects this proposal which would provide a means of farm diversification would comply with development policy or could be made satisfactory by the provision of certain additional information, the environmental statement does not contain information which accurately describes its cumulative visual and landscape impact with the adjacent Earlseat proposal, and in the present situation information is not available which could remedy that inadequacy. Circular 3/2011 says that the main aim of the EIA Directive is to ensure that the authority granting consent (the 'competent authority') for a particular project makes its decision in full knowledge of any likely significant effects on the environment. Since that cannot be achieved on the information before me I must dismiss this appeal.

M J Culshaw
Reporter