

Akbar S (Smerah)

From: Colin Hamilton <Colin.Hamilton@gillespiemacandrew.co.uk>
Sent: 06 January 2020 16:54
To: Akbar S (Smerah)
Subject: PPA-140-2068-1 [GM-LIVE.FID2505352]
Attachments: HCC Response to Additional Information(7268569.2).pdf

Good Afternoon,

Gilston Hill
PPA-140-2068-1

Please find letter attached on behalf of my clients Heriot Community Council.

Kind regards
Colin

Colin Hamilton
Partner
for and on behalf of Gillespie Macandrew LLP

GILLESPIE MACANDREW

5 Atholl Crescent
Edinburgh EH3 8EJ

Tel: 0131 221 6939
Fax: 0131 271 8595
Mob: 07717 227415
Web: www.gillespiemacandrew.co.uk

[LinkedIn](#) | [Twitter](#) | [Facebook](#)

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Mr Michael Shiel, Reporter
DPEA

By email: smerah.akbar@scot.gov.uk

Our Ref: CH3/H.13458.00002

Your Ref: PPA-140-2068-1

Reply To: Edinburgh

Date: 06 January 2020

DT: 0131 221 6939

DF: 0131 271 8595

E: Colin.Hamilton@gillespiemacandrew.co.uk

Dear Sir

Heriot Community Council ("our clients")
Gilston Wind Farm Limited ("appellant")
Gilston Hill Wind Farm
DPEA Reference PPA-140-2068-1

We refer to the additional information provided by the appellant under the EIA regulations. Our clients wish to make the following additional points, in supplement of their previous submissions.

Primary Position

1. Our clients' primary position remains that the proposed development is significantly contrary to the development plan and material considerations do not outweigh that. Reference is made to the decision dated 23 December 2019 of Elspeth Cook, Reporter in relation to the Barrel Law 2 appeal (Ref. PPA-140-2072) and *inter alia* the failure of the appellant in that case to address the guidance or expectations of the Capacity Study in the Supplementary Guidance Renewable Energy 2018. While it is accepted that this appeal must be dealt with on its own merits, it is submitted that the treatment of that proposal against the Supplementary Guidance should be the subject of careful consideration in the context of the current appeal.

Edinburgh: 5 Atholl Crescent, Edinburgh, EH3 8EJ
Perth: Broxden House, Lamberkine Drive, Broxden, Perth, PH1 1RA
Glasgow: 163 West George Street, Glasgow, G2 2JJ
Residential: 76-80 Morningside Road, Edinburgh, EH10 4BY

| T 0131 225 1677 | DX ED113 Edinburgh
| T 01738 231 000 | DX PE12 Perth
| T 0141 473 5555 | DX GW250 Glasgow
| T 0131 447 4747 | DX ED237 Edinburgh

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Registered Office: 5 Atholl Crescent, Edinburgh, EH3 8EJ

Amplitude Modulation

2. Our clients accept in relation to amplitude modulation (AM), as in other areas, the appellant's experts (TNEI) has followed current guidance. The questions remain, however: what does following that guidance tell us and, just as importantly, what does it *not* tell us?
3. The appellant suggests a condition for AM if necessary. Our clients suggest an AM condition is necessary, because the appellants (having followed the relevant guidance) do not know whether or not AM will be an issue at the site.
4. In addition to the reasons previously expressed, our clients note that while the appellant's experts (TNEI) disagree with many points within the MAS document they have accepted that AM can be a problem: "*It is widely recognised that the presence of tonal noise and / or AM can result in increased annoyance when compared to noise of a similar level where the characteristics are not present.*" (para.4.2 of TNEI "response to noise queries" document ref 13604-001 R0).
5. Our clients note that while agreeing AM can be a problem in general, TNEI do not accept that AM will be a problem at this specific site. TNEI note "*At time of writing there is no agreed methodology which can be used to predict the likelihood, duration or degree of AM which could occur as a result of the operation of a proposed development. Whilst methods exist to measure and quantify the degree of AM present at operational sites, at time of writing there is also insufficient information is available to determine a robust dose response relationship which can be used to set an acceptable threshold.*" [underline added] ("response to noise queries" para.4.3).
6. Taken together it is submitted that on a fair reading of the response:
 - a. The appellant's experts accept in general AM *can be* a problem,
 - b. The appellant's experts cannot, in accordance with currently accepted methodologies, predict the likelihood of AM occurring at the proposed development, and

- c. The appellant's experts could measure AM from the site if operational, therefore
 - d. The appellant's experts impliedly accept that there *could* be a problem with at the proposed site which they cannot predict but could measure and respond to.
7. In the absence of a robust prediction that AM is unlikely at this site it is submitted a precautionary approach should be adopted, and a condition imposed that will require action in the event of AM related complaints.
8. While the wording of the condition is a matter for the Reporter it is suggested that the appellant's proposed condition is insufficient as:
- a. It does not require the employment by the operator at its expense of an independent consultant approved by the planning authority.
 - b. It requires the planning authority first to form a view on whether AM is present before the operator submits a scheme for further investigation.
 - c. It should separate approvals of schemes for investigation and, if necessary, control.
 - d. It should specify that it is for the planning authority to consider whether the scheme's proposals for mitigation/control are sufficient to reduce the number of breaches during operational conditions to an acceptable level.
9. Bearing in mind the principles above the our clients would request the applicant be asked to provide a more robust condition for comment by our clients, other interested parties and the planning authority.

Noise conditions

10. The proposed noise condition provides outdated background sound levels i.e. they do not match the lower derived values presented in the additional information (annex 8). The noise limits imposed by condition should be revised to reflect the lower filtered background sound levels.

11. Our clients would request the applicant be asked to provide a corrected condition for comment by our clients, other interested parties and the planning authority.

Cumulative noise impact

12. It is noted that the cumulative noise impacts appear to remain based on predictions rather than measured levels, with consideration of tonality/other noise characteristics not readily apparent.

Change in Rochdale envelope

13. It is noted that p.4 of the operational noise assessment (ONA) states the previous candidate turbine is to be discontinued, and the ONA proceeds on the basis of a different candidate with a 108m rotor diameter; which at p.9, para.1.2.2 it is recorded was chosen by the appellant as representative. The previous candidate is recorded as having a 90m diameter at p.4 of the ONA.
14. In the environmental statement vol.2 chapter 6, landscape and visual, para.6.2 it is noted the assessment was based on a 93m rotor diameter.
15. The new candidate appears to be outwith the previously assessed envelope. It is submitted the appellant should update the relevant chapters of the environmental statement, or provide statement from the competent experts that updating is not required. While a matter for the applicant to evidence, our clients consider this is likely to include chapters 6 (LVIA), 7 (ornithology) and 14 (aviation/telecommunications).

Our clients request that the additional points above be taken into account. However, on the information presently to hand our clients consider the Reporter ought to refuse permission for the proposed development, as not being in accordance with the development plan and there being no material considerations otherwise.

Yours faithfully

Colin Hamilton
Partner
for and on behalf of Gillespie Macandrew LLP