

DPEA Ref: PPA-140-2080

Land North of Carcant Lodge, Heriot

Wull Muir Wind Farm

Application to erect 8 turbines up to 130m height

by Energiekontor UK Ltd against refusal of
planning permission by Scottish Borders
Council

Response to Statement of Appeal by
Heriot Community Council

April 2020

Wull Muir Planning Appeal

Introduction

1. The application for a wind farm at Wull Muir, Heriot, was considered by the Scottish Borders Council Planning Committee on February 3rd 2020; the decision was made to refuse planning permission. On April 14th 2020 the applicants Energiekontor UK Ltd (**EK**) gave notice of an appeal to the DPEA.
2. The proposed wind farm is for 8 turbines at 130 metres height on a site adjacent to the Carcant wind farm, to the west of the A7 and part of Heriot community. Heriot Community Council (HCC) was a consultee and invited to respond by SBC Planning Department. HCC made an initial submission in July 2019 objecting to the proposal in some detail. That document has been submitted to the appeal under the reference **APP002.018**.
3. In response to criticisms raised by a number of consultees, including HCC, the appellants issued Supplementary Environmental Information (SEI) in September 2019. The SEI proposed moving the turbines marginally away from the edge of the prominent escarpment which forms the natural physical divide between the uplands of the Scottish Borders and the lower rolling farmland of Midlothian. The escarpment runs for many miles in a line roughly south west to north east and is prominent as a clean and uninterrupted ridge from extensive areas to the north of it.
4. HCC responded to the SEI with a further objection in November 2019. That document has been submitted to the appeal under the reference **APP002.019**. HCC pointed out that although the SEI proposed moving the turbines marginally away from the escarpment, this brought the turbines much closer to some properties in Heriot and so considerably worsened their impact. As a general comment this confirms the unsuitability of the overall site for a proposed large wind farm.
5. HCC would point out that an earlier scheme was proposed for the Wull Muir site by a different developer, Banks Renewables. That scheme was then called Hunt Law. The scheme never reached a formal planning application but was abandoned by Banks. The developers received considerable adverse feedback from the community at the time, and it is also reasonable to conclude they too decided the site was unsuitable for a large wind farm.
6. The Officer's Report to Committee drew together all the responses from consultees and reached an overall conclusion. The recommendation for refusal was accepted by the Planning Committee. The Officers Report has been submitted to the appeal under the reference **APP001.012**. It is a comprehensive review of all aspects of the proposal with detailed policy-based reasoning for the conclusions reached.

These were accepted by the Planning Committee and form the grounds for refusal, as set out here:

SBC Reason for Refusal February 3rd 2020

1. *The proposal is contrary to Scottish Borders Council Local Development Plan 2016 Policy ED9, the "Renewable Energy" Supplementary Guidance and the Landscape Capacity and Cumulative Impact Study, in that it would have unacceptable significant adverse impacts on the landscape and aviation that cannot be satisfactorily mitigated and are not outweighed by the wider socio-economic and renewable energy benefits that could otherwise be derived from the development. In particular:*

- *the scale, form and location of the development would represent a significant, detrimental change to the existing landscape character of the area, impacting adversely on the scale, appreciation and character of not only the Landscape Character Area containing the site, but also upland fringe and lowland Landscape Character Areas that lie close to, and interact with the site including a number of Special Landscape Areas;*
- *the scale, form and location of the development is poorly contained within the wider landscape, especially from the north, resulting in significant adverse visual impacts from a variety of sensitive receptors in the area, including settlements, roads, paths and hill summits;*
- *the development would result in unacceptable cumulative landscape and visual impacts, through greater prominence and perceived height and proximity when viewed with surrounding wind farm schemes, creating a windfarm landscape along the Lammermuir/Moorfoot Escarpment by extending such development westwards into an area currently with little development;*
- *the development would have unacceptable impacts on defence and aviation safety as it would potentially disrupt Air Traffic Control Radar operated from Deadwater Fell at RAF Spadeadam.*

7. The final bullet point is no longer relevant as the MOD has withdrawn its objection, upon which this point was based.

8. However, the three other bullet points encapsulate concisely why this application is unacceptable, and why it is therefore contrary to the SBC Local Development Plan. Heriot CC agrees with these points, and although it raised other issues including residential amenity and noise these were considered in reasonable detail in the Officer's Report, without gaining support as formal reasons for refusal. Nevertheless it is still HCC's view that the points raised should be considered in this

appeal. It is accepted however, that the key points determining the appeal will be as set out in the grounds for refusal, and so comments focus on them, as does the Statement of Appeal.

Gilston Hill Wind Farm DPEA Ref PPA-140-2068-1

9. Since the Officers Report was written there has been a further very significant development. On February 6th 2020 the Reporter assigned to considering the Gilston Hill Wind Farm Appeal **DPEA Ref PPA-140-2068-1** issued his decision to *refuse* planning consent, together with detailed reasoning.

10. The Wull Muir appeal documentation lists some 22 wind farm decisions submitted by the applicants which are referred to in the Statement of Appeal by the applicants. Yet the Gilston Hill Appeal is not among them, which is anomalous. In both cases the different applicants used the same legal advisers WJM, and also some expert witnesses, notably David Bell for Planning Policy. There are very strong similarities between the two schemes. **For ease of reference a copy of the Gilston Hill appeal decision is attached to this submission.**

11. Gilston Hill Wind Farm site lies just 7.5 km to the east of the Wull Muir site, and like Wull Muir the proposed site is located on the edge of the escarpment overlooking Midlothian and East Lothian. This application had an intensely controversial and tortuous process. It was refused initially in 2013 as an application for 16 turbines, then partly revived as an application for seven turbines at 128.5 metres in height, refused planning consent by SBC in 2017 which was then overturned on an initial appeal. That decision was in turn set aside by the Court of Session, and the appeal reheard with a different Reporter, when it was refused. There are many similarities between the Gilston Hill and Wull Muir schemes, starting with the number of turbines and their heights.

12. More importantly though are the similarities of Landscape Characteristics for the two sites.

Gilston Hill Landscape Character; Gilston Hill decision notice:

Para 20. *The appeal site lies in the Plateau Grassland (Lauder Common) Landscape Character Area (LCA). This extends along the edge of the uplands on the border with Midlothian and southwards for some distance. It is described as a broad ridge of gently rolling hills between the Moorfoot Hills to the west and the Lammermuir Hills to the east, forming a prominent northern escarpment at Soutra Hill, to the east of the appeal site. It is a large-scale landscape, but lower than the Dissected Plateau Moorland LCAs to the east and west. The capacity study states that its inherent capacity is medium for wind turbines between 35 and 120 metres in height, but low for those over 120 metres. However, because*

of existing developments, it considers that cumulative impact and potential “saturation” of underlying capacity is a major consideration. It suggests that larger scale wind energy developments should be well separated from existing clusters, and should be located away from the visually prominent outer slopes. Taking account of the existing developments, it concludes that this LCA has a low capacity for further wind turbines of all sizes.

Wull Muir Officers Report APP001.012: Landscape Character

In terms of the Borders Landscape Assessment 1998, as updated by SNH in February 2019, the site lies within Landscape Character Type (LCT) 1MP: Dissected Plateau Moorland: Moorfoot Plateau. This is an “Upland Type” landscape close to lower-lying upland fringe and lowland LCTs that predominate to the north, coinciding with the reduction in elevation at the watershed between the Forth and Tweed River catchments. The key characteristics for the “Dissected Plateau Moorland” are listed as:

- *Plateau landform consisting of a series of level-topped hills and ridges*
- *Individual hill masses separated by steep-sided valley features of differing scales*
- *Semi-natural peatland, heather moorland and grassland communities dominant*
- *Very low settlement density*
- *Sense of wildness created by wide horizons and distant, unobstructed views*

The specific characteristics for the “Moorfoot Plateau” are listed as:

- *Very deeply dissected, individual hill masses tend to be quite distinctly defined*
- *Presence of additional “step” in terrain with high plateau summits rising above surrounding plateau moorland to over 650m above sea level*
- *Extensive coniferous plantations in the south and west at Glentress and Leithen Water forests.*

Whilst the landscape character of the site is identified as upland type and normally more suitable for wind farm development due to grandeur of scale, SNH guidance refers to the sensitivity of fringe areas of transition between Landscape Character Areas (LCAs). In this particular case, the Moorfoot Plateau and Lauder Common LCAs experience a sudden transition from upland to upland fringe and lowland LCAs to the north within Midlothian. The affected LCAs include Gladhouse and Auchencorth Moorland, the western part of the North Lammermuir Platform, Rosewell/Carrington Spur and Mayfield/Tranent Ridge. Whilst the overall character of the landscape is large scale, there can also be variations in scale as demonstrated by the viewpoints selected. Clearly, any wind farm development would have to be assessed against not only the actual and prevalent landscape character types but also the variations of landscape scale within the same character types.

13. As these two Landscape Areas sit side by side, filling the somewhat lower level of the escarpment between the Lammermuir and Moorfoot Hills, it is not surprising that they share similar characteristics – especially with reference to the sensitivity of the transition to the much lower landscapes within Midlothian to the north. In the view of HCC this is the crucial issue determining whether the proposed site for the Wull Muir wind farm is suitable for large scale turbines.

Statement of Appeal – LVIA

14. The SoA has two main sections that attempt to set out argument for allowing the appeal, the first dealing with LVIA. This response to the SoA will not attempt to respond to every point made but will concentrate on points HCC considers relevant to the key issues. Broadly speaking the LVIA response concentrates on technical differences between assessments in the EIA and responses to these. What it notably does not do is address the overall conclusions drawn in the Officer's Report.

15. At para 3.19 the SoA states that "*Whilst the proposed development will be seen on the Moorfoots Hill (sic) horizon, it would not be a new feature on the horizon given that there are existing wind farms on this horizon, visible from much of the area from which the proposed development will be visible*" This statement ignores that it has been repeatedly pointed out that the proposed turbines would indeed be a major change to the horizon due to their location close to the escarpment edge, together with their much greater height than the three turbines at Carcant or at Dun Law. The two latter schemes were both carefully sited well away from the escarpment edge, as well as both having much smaller turbines. The Officers Report considers this in detail in the section on Cumulative and Visual Impact, with a concise summary in the concluding paragraph.

16. Para 3.23 and 3.24 make the briefest of technical comments on the position of Midlothian Council and SNH respectively, ignoring both consultees' considerable concerns especially in relation to views from the north due to the unsuitable site location. The Officer's Report sets a concise summary of both responses which should be referred to for a proper picture of their positions.

17. The SoA goes on to further identify areas of disagreement with the EIA

Para 3.26 i. *Statement in capacity study hasn't been addressed or considered when locating the windfarm close to the escarpment (page 2 of the Landscape Officer response 15 July 2019). This is a site selection and planning issue, the design of the wind farm has responded by locating the turbines as far from the scarp as the site boundary allows.*

18. It is clear that the planning authority, as well as other consultees including Heriot CC, consider that the site is unsuitable for large scale turbines, and that they have pointed this out forcefully. Attempting to brush these concerns aside as “a site selection and planning issue” and that the site does not allow any other more suitable locations for the turbines effectively concedes that there is no possible evasion of the clear conclusion of the Landscape Capacity Study that this site has no capacity for large scale turbines.

19. This fatal flaw renders the rest of the SoA LVIA section largely irrelevant. Indeed the above comment is handing this point over to be dealt with in the SoA Section on Planning Policy, where there is further discussion of the LCS.

Cumulative Impacts

20. Some comments should be made about cumulative impacts on LVIA though. Paras 3.42 to 3.44 of the SoA refer.

21. The Gilston Hill Wind Farm decision letter considers cumulative impact, and whilst it is obviously in connection with that wind farm, the close proximity, and similarly type of site makes some obvious points that also apply to Wull Muir.

Gilston Hill Decision Letter

Paragraph 59. Having considered the environmental information submitted with both the original planning application and the appeal, together with my own observations from my visits to the area, I reach the following conclusions:

- a. *The development would have a significant adverse impact on the northern part of the Plateau Grassland (Lauder Common) LCA within Scottish Borders by extending wind farm development down the northern slope of the hills in this area. Whilst acknowledging that the Plateau Grassland landscape character type extends northwards into Midlothian, I consider that the landscape of this particular area is different from the higher flatter areas to the south; and that it does form a “transition “ between those areas and the extensive, lower-lying, flat area of Fala Moor to the north. As such, I consider that it is more sensitive to wind farm development, as suggested in the relevant landscape capacity studies.*

.....

- f. *By extending the range of wind turbines further west along the outer face of the Lammermuir/Moorfoot Hills, the proposed development would have a significant and adverse cumulative landscape impact in addition to the existing group of turbines at Dun Law.*
- g. *Rather than being a coherent enlargement of an existing cluster, the development would represent an encroachment of turbines away from the higher hills and into a part of the hills that is of a “transitional” landscape character, currently not directly affected by wind farms.*

.....

- j. *This adverse impact would arise because the development would extend the view of turbines to the west along the Lammermuirs/Moorfoot hill ranges, and thus begin to erode the degree of visual separation between the Dun Law group and the nearest existing wind farm to the west (Carcant). From many viewpoints it would also appear to spread turbines to the north, extending away from the higher ground towards lower-lying areas. As a result, especially from views from the north-east, the proposed turbines would appear to be visually isolated and not part of a coherent cluster, and would be seen to rise in a prominent manner above the smaller-scale features of the intervening lowland landscapes.*

22. It is clear from these comments that the Gilston Hill Reporter considered that the isolated group of turbines on the edge of the escarpment would “*represent an encroachment of turbines away from the higher hills*” “*would extend the view of turbines to the west along the Lammermuirs/Moorfoot range*” “*and from many viewpoints it would also appear to spread turbines to the north, extending away from the higher ground towards lower lying areas. As a result, especially from views from the north-east, the proposed turbines would appear to be visually isolated and not part of a coherent cluster, and would be seen to rise in a prominent manner above the smaller-scale features of the intervening lowland landscapes.*”

23. Whilst it may be argued that the latter point does not allow for the three turbines at Carcant, these three are sufficiently well placed off the escarpment that they are not visually prominent. Wull Muir is far more visible, the turbines are higher and

unquestionably they will appear as a new, distinct group of turbines unrelated to the main cluster around Dun Law.

24. The Gilston Hill Reporter then concludes:

Para 60. Policy ED9 in the Scottish Borders Local Development Plan states that wind energy proposals will be approved providing that there are no relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated. What constitutes an “unacceptable” significant adverse impact is essentially a matter of judgement. On the basis of my conclusions in the preceding paragraph, I find that this development would have an unacceptable significant adverse impact in terms of its landscape and visual effects, including cumulatively when its effects are added to the present baseline of wind farms in the area at Dun Law. This impact stems from both the inherent nature of the proposal, and the particular circumstances of its location and siting, and cannot satisfactorily be mitigated. Consequently, I conclude that the proposal conflicts with policy ED9.

25. This finding is the determining factor in the Gilston Hill Reporter’s decision and in the view of HCC it gives a very clear guidance to aid the decision maker in the Wull Muir appeal. It gives considerable reinforcement to the Officer’s Report and indicates that its conclusions can be considered to be valid when viewed by an independent professional decisionmaker. It negates the arguments advanced in SoA paras 3.42 to 3.44 and thereby renders invalid the conclusion reached at the end of the appellant’s LVIA section.

Statement of Appeal: Planning Policy

26. The SoA Chapter 5 Policy Assessment sets out in detail current planning policy starting with the LDP and working upwards. This chapter draws together the points the appellants wish to make about the Wull Muir application, and predictably draws the conclusion that the scheme should be granted consent. From para 5.33 onwards it deals with the points raised in the LVIA section, repeating the conclusions drawn. However, as shown in the previous paragraphs of this paper, those conclusions cannot be relied upon, especially taking into account the very recent decision on the Gilston Hill scheme. The subsequent edifice that the Policy Assessment builds working to its conclusion therefore does not withstand critical testing.

27. At para 5.37 of the SoA there is discussion of the extensive views of the turbines from the north, but this issue is largely avoided by asserting that there are already turbines visible from the same places. This avoids the point that the

existing turbines are well set back from the edge of the escarpment, and are of much smaller height. This has long been a specific objective of the local planning authorities – to prevent over dominant turbines high on the escarpment skyline. Arguing as in para 5.39 that we all have to get used to much higher turbines simply emphasises what is being attempted here – especially as the applicants themselves have confirmed to HCC that even turbines at 130m height will probably soon be obsolete, and they are also currently pursuing s.42 applications at other wind farm sites to increase heights well above 130m on commercial grounds.

Landscape Capacity

28. Paras 5.40 and 5.41 assert the scheme is well designed, and then turn to the Landscape Capacity Study for the Scottish Borders. It accepts that the scheme is “*not fully consistent with development guidance for this landscape character area*” but then goes on to attempt to argue that it can be discounted as it is only a “*starting point*” and greater weight should be placed on the specific site assessment. It goes on to state that consent has been granted in other cases where limited or even no capacity is set out in the relevant LCS document.

29. Paras 5.42 to 5.49 discuss specific examples with quotes. The appeal documentation for Gilston Hill wind farm contained the same identical paragraphs and text at paragraphs 3.2.1 to 3.2.7 in the document **Bell Planning Policy Update**. This is attached for ease of reference. The reason for drawing attention to this is that the Reporter in the Gilston Hill appeal considered this suggested approach to Landscape Capacity Studies, and rejected it in these two paragraphs:

The role of landscape capacity studies

132. *The appellant’s Planning Policy Update contains a section on the approach to landscape capacity studies, and cites the comments made by a number of reporters in other appeal decisions. I have considered the guidance contained in the wind energy capacity studies carried out for both the Scottish Borders and Midlothian in paragraphs 20- 22 above. In the former area, LDP policy ED9, in referring to the assessment of the landscape and visual impact of wind farms, states that this should take into account the report on Landscape Capacity and Cumulative Impact (at that stage of July 2013) “as an initial reference point” ; and should demonstrate that it can be satisfactorily accommodated in the landscape, and should properly address the issues raised in the 2013 report. The adopted Supplementary Guidance on Renewable Energy (2018), which carries the same weight as the development plan, states with reference to the landscape impact of*

wind farms, that the council will support proposals if they are capable of being accommodated in the landscape in a manner which respects its main features and character as identified in the Wind Energy Landscape Capacity and Cumulative Impact Study (2016).

133. *I fully recognise that landscape capacity studies are carried out at a strategic level, and that the assessment of the landscape impact of a specific development requires a detailed approach, as I have carried out above. Notwithstanding the identification Plateau Grassland (Lauder Common) LCA as having some capacity for additional wind farm development, the 2016 capacity study contains specific advice that larger scale wind energy development should be located away from sensitive locations, including the visually prominent outer slopes. I have concluded that the proposed Gilston wind farm would be on a visually prominent outer slope of the Scottish Borders section of this LCA, on the northern side of Brotherstone Hill. Despite the appellant's attempt to play down the significance of landscape capacity studies in general, I consider that the advice which I have referred to above can be given some weight in the determination of this appeal; both on its own merits, and by reason of the mention of the landscape capacity study in the development plan.*

30. Heriot CC is well aware that the two paragraphs above refer to the Plateau Grassland LCA – but as set out at the beginning of this document the Moorfoot Plateau LCA shares similar characteristics, notably that *“turbine development should not adversely encroach onto the visually prominent escarpment and skyline facing Edinburgh or the setting to of the Tweed Valley to the south.”* Table 6.1 (ii) Dissected Plateau Moorland: Moorfoot Plateau. Ironside Farrar Landscape Capacity Study November 2016

31. The Officers Report discusses the role of the LCS in some detail, and sets out how the SBC Landscape Officer interpreted it, and the conclusions drawn by the Planning Officer:

“This analysis is further interpreted in Figure 6.1e of the Study which identifies a shaded area to represent the underlying landscape capacity for this LCA. The shaded area is meant to “...show an indicative level of capacity and the extent within and across different landscape character areas. These areas should not be interpreted as a hard boundary and reference should be made to the detailed capacity assessment and locational guidance given in Table 6.1”.

The shaded area, nevertheless, is based upon the advice within Table 6.1 which is seeking to keep turbines away from the northern edge of the escarpment but also north of the Tweed Valley. There is no doubt that the area is well to the south of the application site boundary and also of a scale and position to enable much of the 10km buffer distance from the Carcant group of turbines to be accommodated. As the Landscape Architect has stated in her responses, she does not feel the Capacity Study advice has been followed in locating this windfarm, as the original application layout "...could hardly be located closer to the escarpment than it is". She expresses serious concerns over the lack of compliance with the Study, which is an embedded part of the adopted LDP Policy ED9 and Supplementary Guidance."

32. In HCC's view this is the single most important point on which this application and appeal turns. Is Policy ED9 together with its constituent Renewable Energy Supplementary Guidance containing the Landscape Capacity Study to be accorded the weight it requires to have any meaning, or are wind farm developers to be allowed to brush it aside citing various reasons that do not actually address the issue of Landscape Capacity? There is unquestionably continuing relentless pressure on the Scottish Borders open landscape from wind farm developers in many different places. In the view of HCC (and of course SBC) there must be strategic capacity guidance as to where current and future applications can be accommodated – if not our unique and precious landscape will just become an industrialised countryside and there will no longer be any need for any analysis.

33. We reject totally the conclusion drawn by David Bell in the SoA at para 5.49 that Wull Muir wind farm has the landscape capacity available to allow it consent. We further totally reject the conclusions he draws at Paras 5.50 and 5.51 that therefore the proposal accords with the SBC Development Plan. His is a flawed approach, because it ignores the law. Nothing in the current legislative scheme for the grant or refusal of actual or deemed planning permission excuses nonadherence to the local development plan, unless material considerations indicate otherwise.

34. Having reached that conclusion, it renders further discussion of the subsequent Sections of the SoA largely superfluous as these turn to National Planning Frameworks and Scottish Planning Policy. However, David Bell does attempt a belt and braces approach, no doubt well aware that the applicant's approach to the local plan and the LCS is likely to be rejected. He therefore attempts to develop a Presumption in Favour of Development at Para 5.63 onwards. In the view of HCC this attempt falls at the first hurdle as at the very next paragraph is stated:

SoA Para 5.64. *Paragraph 28 continues and states:*

“the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost”.

35. The points made in preceding paragraphs show clearly that this application is not environmentally sustainable, and therefore is most definitely not the right development in the right place. In the view of HCC, it offends against any presumption in favour of sustainable development (see for example, SPP (June 2014, §50, 57,77 and 83 and the Glossary) Therefore the subsequent paragraphs in the SoA going forward to Para 5.105 should not be considered.

36. HCC is surprised that its views are given so little weight by the various experts engaged by wind farm developers. There is little evidence that the informed and experienced opinions of those who would be asked to host such development count for anything. However, in this case HCC is not just relying on our judgment, but the very clear guidance given by the Gilston Hill Reporter responding to just these arguments advanced in that recent application. As this section of the decision letter reads as a whole it is reproduced here in full.

Gilston Hill Wind Farm: PPA-140-2068-1 Pages 29 & 30

Material considerations

National planning policies

125. **National Planning Framework (NPF)** re-iterates the Scottish Government’s target of generating the equivalent of 100% of gross electricity consumption from renewables, and, thus, provides general support for onshore wind farms.

126. **Scottish Planning Policy 2014 (SPP)** includes a presumption in favour of development that contributes to sustainable development. The current proposal would, through the generation of electricity from a renewable source, contribute to sustainable development. However, paragraph 28 of SPP also points out that *“The aim is to achieve the right development in the right place; it is not to allow development at any cost.”* I have concluded, for the reasons I have detailed above in relation to the landscape and visual impact of this development, that it is not in the right place.

127. Paragraph 32 of SPP states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making; and that, for proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained. The Scottish Borders Local Development Plan was adopted in 2016 and is, therefore, up-to-date. I have concluded that this proposal would not comply with the relevant provisions of that plan. Whilst SPP's presumption in favour of development that contributes to sustainable development is a material consideration in the determination of this appeal, I have also concluded that, in the specific circumstances of this case, the environmental benefits associated with the generation of electricity from this onshore wind farm do not outweigh its adverse environmental impact.

128. Paragraph 161 of SPP requires planning authorities to set out in the development plan a spatial framework identifying those areas that are likely to be most appropriate for onshore wind farms. The council has done this in its Supplementary Guidance on Renewable Energy, which it adopted in 2018. The appeal site is within an area which has potential for wind farms. It is thus within an area defined in Group 3 of Table 1 (Spatial Frameworks) in SPP, where it is stated "wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria." SPP paragraph 169 sets out considerations that should be taken into consideration in development management decisions on energy infrastructure. These are reflected in the detailed considerations contained in LDP policy ED9.

129. There is nothing in SPP that requires detailed consideration of individual wind farm proposals against criteria contained in up-to-date development plans to be set aside in favour of an over-riding presumption that they should be granted permission. In the appellant's recent Planning Policy Update, it is suggested that the language in the 2017 Onshore Wind Policy Statement is demonstrably stronger than that in the current NPF and SPP. It is also stated (paragraph 2.7.5):

"Even if a view is taken that the language is no different, the context within which the NPF/SPP policy statements were given is demonstrably different by way of more stretching targets and no subsidy or certainty on route to market. The increased importance of the contribution that onshore wind is expected to make to targets and meeting future energy needs should be afforded special weight."

130. Notwithstanding that view, the 2017 Scottish Energy Strategy still requires an "appropriate, case by case assessment" of the effects and impacts of proposals for new and larger turbines (see paragraph 117 above). If a

significantly greater weight should be given to the energy benefits of onshore wind farms as against their environmental impacts, this is a matter for the Scottish Government to determine; perhaps through the new National Planning Framework that is to be prepared.

131. *Whilst I do not doubt that the current NPF and SPP provide significant support for renewable energy developments, I consider that each proposal still requires to be assessed on its individual merits, against policies in up-to-date development plans. The essential difference between the appellant and the planning authority in this case is whether the proposed Gilston wind farm would have an unacceptable landscape and visual impact. I have concluded that it would. I do not believe that the current guidance in SPP requires that conclusion to be outweighed by the renewable energy benefits of the proposal.*

37. It follows that the SoA Conclusions Section on National Planning Policy and Guidance clearly draws the wrong conclusion. The development does NOT satisfy the principles set out in SPP; it cannot claim a presumption in its favour and therefore it fails to satisfy the requirements of SPP §169 that must be met before a scheme can be given consent. This important material consideration therefore points away from granting this appeal.

38. Furthermore the Gilston Hill Reporter in the lengthy section above on Material Considerations also dealt with many of the points made in the SoA at paras 5.112 onwards – The Renewable Energy Policy Framework – which forms the last section of Mr David Bell’s Planning Policy Assessment in the Wull Muir SoA. Many of these points were raised in the Gilston Hill Planning Policy Update – although it should also be noted that they have been expanded somewhat to include all the latest developments that Mr Bell thinks might carry some weight. However many of these makeweight points are raised, it is clear that these do not outweigh the environmental considerations that must be satisfied before consent can be given.

Conclusions

39. HCC has consistently argued that the Wull Muir site is not suitable for large scale turbines. Its initial objection in July 2019 covered a number of issues, drawing attention to deficiencies in the original EIA, and considered the overall impact of the proposal. This was clearly adverse, with especially the Landscape and Visual impacts being unacceptable. A number of the montages for the various montages makes this very clear. Other consultees, notably SNH, Midlothian Council and SBC’s Landscape Architect agreed.

40. The revised proposal as set out in the SEI in autumn 2019 merely confirmed how unsuitable the site actually is. Despite moving the turbines as far away as possible within the site from the most obvious conflict, namely the main escarpment edge, the responses from the consultees remained the same. However, as HCC pointed out as strongly as possible in its response to the SEI, this rearrangement actually made matters far worse for Heriot residents. Given the high bar for including the question of residential amenity as grounds for refusing an application, whilst the impact on Heriot has been brushed aside in the SEI, it remains a crucial issue for those who live and work in and around Heriot. HCC requests that the appointed Reporter to hear the Wull Muir appeal reconsiders residential amenity, and the major change that a permitted wind farm would bring to a substantial number of local residents.

41. Leaving that issue, it remains clear that the site fails to satisfy environmental concerns owing to the constraints of the site. The escarpment edge at that point is clear cut, and unlike the Gilston Hill site, does not have an intermediate lower area of protection, as provided by Fala Flow. This ensures that from many areas of Midlothian, extending to Edinburgh and to even the Forth will have extensive visibility of the turbines prominently arrayed on the skyline. There can be no comparison with the far better sited wind farms at the Dun Law cluster or Bow Beat Hill which are set back a considerable distance for this very reason. Furthermore the turbines will make a major impact on the gap between Dun Law and Bow Beat, intruding into an area currently free of any such cluster. It is precisely for these reasons that the Ironside Farrar Landscape Capacity Study is structured to rule out any capacity for large turbines on this site. Granting permission on this site would be a major blow to the entire concept of strategic planning of wind farm schemes to conserve overall landscapes.

Heriot Community Council requests that the Reporter refuses this appeal.

Attached Documents:

- Gilston Hill Wind Farm Decision – PPA-140-2068-1
- Annexe to Heriot Community Council Response – National Policy & Renewable Energy Framework
- Gilston Hill – David Bell Planning Policy Update