

## REVIEW DECISION NOTICE

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Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Over Hailes Farm, Haddington, EH41 3SB

Application for Review by Miss Sarah Robertson, on behalf of The Green Company, against decision by an appointed officer of East Lothian Council.

Application Ref: 11/00469

Application Drawings: DWG001, EWP50\_36M\_F\_001, DWG002, DWG003, DWG004, DWG005, TCG/WIND/001, DWG006, DWG007, DWG008, DWG009, DWG010, DWG011, DWG012, DWG013, DWG014, DWG015, DWG016 and DWG017.

Date of Review Decision Notice – 19<sup>th</sup> September 2012

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### Decision

The ELLRB upholds the decision to refuse planning permission for the reasons given below and dismisses the review.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

### **1 Introduction**

1.1 The above application for planning permission was considered by the ELLRB, at a meeting held on 30<sup>th</sup> August 2012. The Review Body was constituted by Councillor Norman Hampshire (Chair), Councillor Jim Gillies and Councillor Tim Day. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on 29<sup>th</sup> August 2012.

1.2 The following persons were also present at the meeting of the ELLRB:-

Phil McLean, Planning Adviser (in attendance on Site Visit)  
Morag Ferguson, Legal Adviser  
Fiona Stewart, Clerk.

### **2 Proposal**

2.1 The proposal is for the erection of two wind turbines on agricultural land in a countryside location around 750 metres to the northwest of the buildings of Over

Hailes Farm, near Haddington. The application was registered by East Lothian Council's planning service on 22<sup>nd</sup> July 2011 and was refused planning consent by virtue of a Decision Notice dated 13<sup>th</sup> April 2012. The reasons for refusal were set out in full in that Decision Notice and are, in summary, that, due to the harmful impact the proposed turbines would have on the landscape, they are contrary to policies DC1 and NRG3 of the adopted East Lothian Local Plan 2008 and associated planning guidance. The Applicant has applied to the ELLRB to review the decision to refuse planning consent.

### **3 Preliminaries**

3.1 The ELLRB members were provided with copies of the following:-

1	The drawings specified above
2	The application for planning permission with supporting statement
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 13 <sup>th</sup> April 2012
5	Copies of Policies ENV3, ENV6 and ENV1C of the Approved Edinburgh and the Lothians Structure Plan 2015
6	Copies of Policies DC1, DP13, NRG3, ENV3, ENV7 and T2 of the Adopted East Lothian Local Plan 2008
7	Copies of Consultation Responses from ELC's Senior Environmental and Consumer Services Manager, Transportation Services, Policy and Projects (Landscape) Section, Archaeology Officer and Biodiversity Officer, from Historic Scotland (3), Transport Scotland, MOD, NATS and CAA
8	Copy of 2 sets of Visual Supporting Information provided by the Applicant
9	Notice of Review dated 1 <sup>st</sup> June 2012 and supporting appeal statement
10	Letter re EIA screening request from ELC's Policy and Projects Section, dated 14 <sup>th</sup> December 2010
11	Copy Objections and Further Representations
12	Schedule of Proposed Conditions

### **4 Findings and Conclusions**

4.1 The ELLRB confirmed that the application for a review of the original decision permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it.

The Members asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members advising that the site is at Over Hailes Farm, in a countryside location around 1.5 miles to the west of East Linton. The application is for two 50kW wind turbines on a north-south axis, both three-bladed horizontal axis turbines that would be 36.4m to hub, with a blade diameter of 19.2m, giving a total height to blade tip of 46m. The turbines are proposed between 200 and

300m to the north of the A199. The development would also require the construction of a new access track, as well as a small control cabinet.

He confirmed that the policy context for development in the countryside is provided by Structure Plan policy ENV3 and Local Plan policy DC1. Essentially these policies seek to restrict development in the countryside to protect its character, while allowing some limited forms of appropriate development. He reminded Members that it is generally accepted that wind turbines have an operational requirement for a countryside location but that the policy contains a number of criteria to be satisfied, including relating to visual and landscape impact.

He advised that the development plan policy on renewable energy development seeks to weigh the benefits of renewable energy generation against the impact on the local environment and features of interest, and to protect valued landscape features. The key policies are Structure Plan policy ENV6 and Local Plan policy NRG3; the latter requires proposals to be assessed in terms of landscape character, visual impact, noise, shadow flicker, water environment, potential alternative sites, and cumulative impacts. Local Plan policy NRG4 is also relevant and seeks to ensure suitable restoration once electricity generation has ceased.

He outlined a number of other development plan policies that are also relevant to this application, in particular:

- Structure Plan policies ENV1C and ENV1D and Local Plan policies ENV3 and ENV7 provide protection to listed buildings, scheduled monuments, and other archaeological sites and their settings.
- The Local Plan requires biodiversity to be taken into account in development proposals, specifically policy DP13.
- Policy T2 of the Local Plan requires new development not to have significant adverse consequences for road safety.

He summarised a number of other documents that are relevant to this application, including Scottish Planning Policy, the Scottish Historic Environment Policy, the Government's onshore wind turbines guidance, the Council's wind turbine planning guidance document, and the 2005 landscape capacity study as well as the 2011 supplementary landscape capacity study, namely:

- Scottish Planning Policy advises planning authorities to support wind farm development in locations where environmental and cumulative impacts can be satisfactorily addressed, and the Government's online advice note on onshore wind turbines contains further advice on a wide range of matters such as landscape impact, biodiversity, and impacts on communities. Scottish Planning Policy also states that the historic environment should be safeguarded through planning decisions.
- The Scottish Historic Environment Policy provides further guidance on the historic environment.
- The Council's 2010 planning guidance document on lowland wind turbines provides detailed guidance on relevant planning policies and their implications, expanding on the provisions of the development plan.

- The Council's 2005 landscape capacity study identifies a range of typologies of turbines; the proposed development would fall into typology 2, which are groups of 2-5 wind turbines 42-65m in height. The site is within the Agricultural Plan landscape character area, within which the study finds that there is moderate capacity to accommodate limited development of typology 2, at the lower height band, i.e. 42m, only in more open farmed areas of in association with existing industry, largely in the west and central part of the plain. It recommends development is sited so as to avoid intrusion on key landscape features such as the Garleton Hills.
- The Council's 2011 supplementary capacity study identifies the site as being within the 'Agricultural Plain – sub area 1: East' landscape character area. The document considers single turbines between 42 and 65 metres high (calling these typology B) as opposed to groups of turbines. It advises that there is no capacity to accommodate this scale of turbine in this landscape.

He confirmed that the appointed officer refused the application for a single reason, namely, that the proposal would have a harmful impact on the landscape and would therefore be contrary to the relevant development plan policies and planning guidance. The officer considered the proposals were acceptable in terms of shadow flicker, noise, residential amenity, road safety, biodiversity, and impacts on listed buildings and archaeological sites, including scheduled monuments.

He confirmed that the applicant's agent has provided a statement to the review which, in summary, argues that the proposals would be economically beneficial to the landowner and are acceptable in terms of visual and landscape impact. It is therefore argued that the application complies with relevant development plan policy and other material considerations. The application includes a number of supporting documents including landscape and visual information.

He advised that there have been a total of 95 public representations received on the application, a number of which were in the form of a standard letter. Some of these were submitted as further representations after the notice of review was received. Issues raised include: visual and landscape impacts, size and scale, noise, inconsistency with the Council's landscape capacity study, cumulative impacts with other developments, lack of consideration of alternative locations, and impacts on the historic environment, specifically the setting of Hailes Castle and Traprain Law.

He advised that there were no objections from the Civil Aviation Authority, National Air Traffic Services, Ministry of Defence, Biodiversity Officer and the Council's Environmental Protection Manager and that the Council's Head of Transportation and Transport Scotland raised no objections subject to a number of conditions. The Council's Archaeology Officer advised that the site is close to a number of known archaeological sites and recommended a programme of archaeological works prior to any development. Historic Scotland advised that the proposals would have some impacts on the setting of Hailes Castle, a scheduled monument; however it does not consider that these impacts would be sufficiently adverse that they would raise issues of national importance and therefore it does not object to the application.

The Council's landscape officer considered that inadequate information had been submitted with the application to allow proper assessment, however he considered that the proposals would not be well integrated into the landscape and would not be of an appropriate scale for their location.

Several further representations have been submitted to the ELLRB following the notice of review. Matters raised include landscape and visual impact, particularly in relation to dwellings at Monksmuir Park, support for the officer's report, comments on the review statement, and Environmental Impact Assessment procedures. Transport Scotland restated its original comments. The applicant's agent has provided comments on these further representations, which are also in the review papers.

The Planning Adviser then summarised the main questions for the ELLRB to consider in reviewing the case, namely:

- Whether the proposals comply with development plan policy in respect of development in the countryside, renewable energy, landscape, historic environment, biodiversity, and road safety; and
- Whether there are any other material considerations that should be taken into account, such as national policy, and whether any of these outweigh the provisions of the development plan in this case.

Finally, he reminded Members that they have the option of seeking further information if necessary before making a decision, either through further written submissions, a hearing session, a further site visit, or a combination of these procedures.

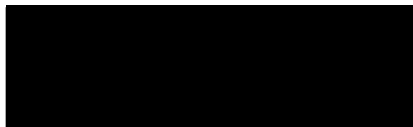
The Chair asked the members to firstly consider whether they had sufficient information to enable them to proceed to make a decision in respect of this matter. All members considered that they did have sufficient information. Accordingly, the decision of the ELLRB was that they would proceed to reach a decision at this meeting.

- 4.2 Councillor Hampshire confirmed that the site visit had been very important as the location of these proposed turbines is the key factor in determining this application. He considered that, although each application had to be considered on its own merits, the planning guidance was of vital importance in determining applications for wind turbines. In this case, the application was clearly contrary to the guidance and, in his view, no justification was provided for any departure from the guidance. Accordingly, he was minded to uphold the original decision to refuse this application.
- 4.3 Councillor Day confirmed that, having reviewed the application carefully and undertaking the site visit, he was minded to uphold the decision to refuse the application. His opinion was that East Lothian benefits from an iconic and beautiful landscape which is important to those who live here and attracts visitors to the county. Whilst accepting the need to develop renewable energy, and the importance the Scottish Government places upon this through its policy and guidance, he is of the view that this must be balanced against the protection

of the landscape, amenity and communities. Given the height, form and scale of the proposed turbines in this case, he did not believe that they would be successfully integrated into the surrounding landscape, and therefore would be contrary to Policy DC 1 of the adopted East Lothian Local Plan. In addition, given the proposed location, form and scale of the proposed development, he believe they would also have a detrimental impact on the existing landscape and harm the distinctive public views most notably from the nearby historic monument , Hailes Castle, and the A1, one of East Lothian's main tourist routes. Therefore he considered that the application is also contrary to Policy NRG3 of the adopted East Lothian Local Plan. Finally, he referred to East Lothian Council's own guidance on windturbines contained in the Supplementary Landscape Capacity Study for Smaller Wind Turbines 2011 and advised that this application site falls within Sub Area 1 East which the study states does not have capacity to accommodate Typography B turbines. Therefore, his conclusion was that this application would have a harmful impact to the surrounding landscape and he could not support it.

Councillor Gillies concurred with the views of his colleagues and confirmed that he was also minded to uphold the original decision to refuse for the reasons set out in the original Decision Notice.

- 4.4 Accordingly, the ELLRB unanimously agreed that the Review should be dismissed and the original decision to refuse this application should be upheld, for the reasons set out in the original Decision Letter of 13<sup>th</sup> April 2012. The Review Application was accordingly dismissed.



**Morag Ferguson**  
**Legal Adviser to ELLRB**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)**

**Notice Under Regulation 21 of the Town and 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 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.

