

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Markle Mains Farm, East Linton, East Lothian

Application for Review by AW & A Middlemass against decision by an appointed officer of East Lothian Council.

Application Ref: 11/00234/P

Application Drawings: DWG001, DWG002, DWG003, DWG004 and 1006225

Date of Review Decision Notice – 15th October 2013

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 26th September 2013. The Review Body was constituted by Councillor Jim Goodfellow McMillan (Chair), Councillor Donald Grant, Councillor John McNeil and Councillor Tim Day. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on 23rd September 2013.

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 application site is at Markle Mains Farm in a countryside location around 1.5 miles to the west of East Linton. The application is for a single 100kW wind turbine of three-bladed horizontal axis design, 36.7m to the hub, with a blade diameter of 20.9m, giving a total height to blade tip of 47.1m. The proposal is for the turbine to be sited to the south of the farm complex. The application was originally registered with the Planning Authority on 20th April 2011 and was refused under by an Appointed Officer under delegated powers on 7th September 2012. The notice of review is dated 6th December 2012. The matter has been delayed for several months as a result of a dispute over whether new material should be admitted at the review stage. An earlier meeting of the LRB determined that the new material should be admitted and the full material was provided to Members to enable them to consider this in reaching their decision.

The reasons for refusal were set out in full in the Decision Notice and are, in summary, that, due to the harmful impact that the proposed turbine would have on the landscape, the application is contrary to planning policy and guidance and that the applicant had failed to demonstrate that the noise generated by the proposed turbine would not be harmful to the amenity of nearby

residential properties, again contrary to planning policy and guidance. The Applicant 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
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 7 th September 2012
5	Comments from the Appointed Officer on the Notice of Review
6	Copies of Policies 1B and 10 of the approved SESplan, which replaced Policies ENV3 and ENV6 of the Edinburgh and the Lothians Structure Plan 2015 respectively
7	Copy of Policies DC1, NRG3, ENV3 and T2 of the adopted East Lothian Local Plan 2008
8	Copy of the East Lothian Supplementary Landscape Capacity Study for Smaller Wind Turbines (December 2011)
9	Copy of East Lothian Council's Planning Guidance for Lowland Wind Turbines (June 2013) which replaced the Council's Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian (December 2010)
10	Copy of Consultation Responses and related correspondence
11	Copy of Public Objections and Representations
12	Copy of correspondence between Case Officer and Applicant's Agent
13	Schedule of Proposed Conditions
14	Notice of Review dated 6 th December 2012 and supporting review statement, including Noise Survey, Photomontages and ZVT diagrams
15	Copy of Further Representations from Case Officer on new material submitted with Notice of Review
16	Copy of Further Representations from Objectors and Consultees on new material submitted with Notice of Review
17	Copy Response from Applicant's Agent on Further Representations

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 reminding them that planning legislation requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise. He advised Members of the change to the development plan since the delegated decision was taken on this application, namely that the Strategic Development Plan for South East Scotland (SESplan) has now been approved and has replaced the Edinburgh and the Lothians Structure Plan. He indicated that there are no SESplan policies of direct relevance to this proposal, although Policy 1B states that Local Development Plans will conserve and enhance the natural and built environment and will contribute to the response to climate change and Policy 10 states that Local Development Plans will set a framework for the encouragement of renewable energy proposals, taking account of relevant environmental and other considerations.

He advised that, in terms of the Adopted East Lothian Local Plan 2008, the broad policy context for development in the countryside is provided Policy DC1. Essentially, this seeks to restrict development in the countryside to protect its character, while allowing some limited forms of appropriate development. He confirmed that it is generally accepted that wind turbines have an operational requirement for a countryside location and that the policy contains a number of criteria to be satisfied, including visual and landscape impact and impacts on other nearby uses.

He outlined Local Plan policy on renewable energy development, which 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 and advised that the key policy in this regard is Policy NRG3, which requires proposals to be assessed in terms of landscape character, visual impact, noise, shadow flicker, water environment, potential alternative sites and cumulative impacts. He noted that Local Plan Policy NRG4 is also relevant and seeks to ensure suitable restoration of the site when electricity generation has ceased.

He outlined a number of other development plan policies that may be relevant to this application, namely Local Plan Policy ENV3, which provides protection to listed buildings and their settings; Local Plan Policy DP13, which requires biodiversity to be taken into account in development proposals; and Local Plan Policy T2, which requires new development to have no significant adverse consequences for road safety.

He advised members that there are a number of other documents relevant to consideration of this application, including Scottish Planning Policy, the Government's onshore wind turbines guidance, the Council's wind turbine planning guidance document and its supplementary landscape capacity study of 2011. He summarised the key provisions, namely that 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; the Council's planning guidance document on lowland wind turbines – revised and republished in June 2013 – provides detailed guidance on relevant planning policies and their implications, expanding on the provisions of the development plan. The revised document incorporates the findings of the 2011 supplementary capacity study, which study identifies the site as being within the 'Agricultural Plain – sub area 2: North' landscape character area, where it advises there is no capacity to accommodate turbines of over 42m in height.

He reminded the ELLRB that the Appointed Officer refused the application for two reasons, which are set out in full in the report of handling, along with the Appointed Officer's assessment of the application and the reasoning for his decision. In summary, the Appointed Officer considered that the proposals would have a harmful impact on the landscape and he therefore considered the proposals contrary to the relevant development plan policies and planning guidance. He did not consider the benefits of the turbine as a renewable source of energy would outweigh this impact. He also considered the applicant had failed to demonstrate that noise from the turbine would not harm the amenity of nearby residential properties. He confirmed to Members that the case officer considered the proposals were acceptable in other respects, including in terms of shadow flicker, road safety, biodiversity and impacts on the historic environment.

He advised that the applicant's agent provided a statement with the Notice of Review as well as a number of photomontages and a new noise assessment report. In summary, the agent argues in some detail that the proposals would not have a harmful impact on the landscape or views. He contends that the 2011 landscape capacity study has some limitations and that the difference in landscape impact between what would be accepted in principle under the study (a 42m turbine) and what is proposed (at 47.1m) is argued to be minimal. In terms of noise impacts, the agent advises that the nearest residential properties are owned by the applicant and the closest residential property that is in separate ownership is 900m from the site. The noise assessment survey contends that noise levels at 500m distance are below the required threshold.

The Planning Adviser noted that the Appointed Officer had submitted a statement in response to the applicant's Review Documents, which responds in some detail to the arguments made in respect of landscape issues and comments on the new photomontages. He also advised that, in terms of noise, the new noise assessment survey has been considered by the Council's Environmental Protection Manager, who has advised that acceptable levels of residential amenity could be secured by use of planning condition.

He noted that there had been no objections to the application from the Council's Head of Transportation or Biodiversity Officer or from the Civil Aviation Authority, Ministry of Defence or Historic Scotland. Whilst the Council's Environmental Protection Manager had originally requested a noise assessment, this position had been superseded by submission of the Review Documents and the subsequent comments received on this subject.

He advised that Dunpender Community Council had submitted a letter outlining a number of objections received from the community, originally described as an objection, but had subsequently indicated it did not wish to formally object. However, following the Notice of Review, it has submitted a further letter indicating that it does not support the proposal as it has endorsed the Council's latest lowland wind turbine planning guidance.

He noted that 145 objections were received to the original application, 29 letters of support, and 2 representations neither supporting nor objecting to the application. He confirmed that Members have had the opportunity of reading these and the points raised are also summarised in the Appointed Officer's report. In response to the Notice of Review, further representations have been received from 16 parties and he again advised that these are in the Review Documents available to Members. Finally he noted that Members will also have seen the response from the applicant's agent responding to these further representations.

The Planning Adviser summarised the main questions for the ELLRB to consider in reviewing the case, namely, whether the proposal complies 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.

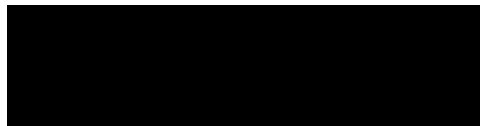
The Chair asked the members to consider whether they had sufficient information to enable them to proceed to make a decision in respect of this matter. All members considered that they did have sufficient information. Accordingly, the decision of the ELLRB was that they would proceed to reach a decision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

- 4.2 Councillor Day noted that the Council's guidance on landscape capacity for turbines is clear yet this proposal is not in accordance with the advice contained in that guidance. He noted that this site is within an area that has some opportunities for Typology C turbines, up to 42 metres in height but no opportunity to accommodate Typology B Turbines between 42 and 65 metres in height. He had observed nothing on the site visit that convinced him to make an exception in this case and was persuaded by the views of the Council's Policy and Projects Manager on this point. He was now satisfied that the noise issue could be controlled by imposition of a condition. However, in light of the detrimental landscape impact, he was minded to refuse planning permission on the first ground set out in the original Decision Notice. Councillor Grant confirmed that he agreed with Councillor Day; the proposal does not accord with the terms of the planning guidance on this issue and he was not persuaded that a difference in height of more than 5 metres would have a negligible or even minor difference in terms of landscape impact. He noted that noise impact could be addressed through imposition of a condition but could not support this application on the grounds of landscape impact. Councillor McNeil considered that the site visit had been useful in confirming that this was an unsuitable site for a turbine of this height. He considered that the open aspect of the site was such that the terms of the guidance should be applied in terms and that the application should be refused on the basis of landscape impact.
- 4.3 Councillor Goodfellow summarised the views of the ELLRB, namely that a turbine of this height in this location would be contrary to the Council's guidance on the siting of turbines and that there was nothing in the application or observed by the Members on the site visit that persuaded them to depart from the terms of the guidance in this case. Whilst the Members were now

satisfied that the noise impact could be controlled though imposition of a condition, they were of the view that the application should be refused due to detrimental landscape impact.

- 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 first reason set out in the original Decision Letter of 7th September 2012, as amended to substitute reference to SESplan Policies 1B and 10 for reference to the Edinburgh and the Lothians Structure Plan 2015 Policy ENV6.

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.

