



SCOTTISH EXECUTIVE

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Your ref: OSE/2516
Our ref: P/PPA/300/166

6 October 2005

Dear Sir

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND SCHEDULE 4
PLANNING APPEAL BY [Redacted] CONSTRUCTION OF A WIND TURBINE AT BALNAMOON, CROSSROADS, KEITH

1. I refer to your client's appeal, which I have been appointed to determine, against the Moray Council's failure to determine an application for planning permission for the above development. I have considered the written submissions and I made an accompanied inspection of the appeal site and the surrounding area on 9 September 2005. For the reasons given in this letter, I have decided to allow the appeal.

2. The **appeal site** is located on the lands of Balnamoon Farm, some 6km north-east of the town of Keith. The farm is part of a very open farming landscape in the gently-graded Grange Valley. The valley is traversed by the Keith to Cullen road, B9018, and by a 275kV electricity line on pylons. The appeal site is some 750m to the north-west of the road. Its altitude is about 25m higher than that of the nearest section of the road. It is within a field which at the time of my inspection was under oats. The buildings nearest to the site are the house and steading of Balnamoon Farm. They are at a distance of about 500m. Balnamoon Cottage, 610m to the east of the site, and Starhill, 620m to the south-west, are the closest properties on adjoining land. There are about six other properties within 1km of the site.

3. About 1km north of the appeal site, from which it is seen across steadily rising ground, is the edge of Aultmore Forest, a coniferous plantation covering several hills. At its widest the plantation extends some 8km west to east and 5km south to north. There is a proposal to construct a wind farm at Aultmore. This wind farm would have about 30 turbines. The nearest turbines would be about 3km from the appeal site.



4. The **application for planning permission** proposes construction of a Vestas V52 850kW wind turbine, which would be operated only in its lowest noise mode. The *Technical Description and Environmental Information* submitted with your client's planning application states that the actual wind turbine model might alter nearer the time of construction. The statement accompanying the appeal does not repeat this qualification, and I shall proceed on the basis that permission is sought for erection of a Vestas V52 installation.
5. The mast supporting the turbine would be 44m in height, the turbine would be driven by rotors of 52m diameter and the overall height would be 70m. External finishes would be matt light grey. Foundations would be below ground level in an area of hardstanding 35m by 45m. The access track would be 4m wide, increasing to 7m at corners. For most of its length it would be on the line of the existing farm track serving the farm. New construction would be needed for 350m on the approach to the turbine site.
6. Electricity would be conducted along an underground cable from the turbine to a switchgear house at the farm steading. The switchgear house would be of a size similar to a single garage. From the switchgear house a further length of underground cable would lead beneath the pylon line to an existing 11kV electricity line, which would receive the generated electricity.
7. Your client has established a development company that would be responsible for all stages of the project. The operational lifetime of the project would be 20 to 25 years after which the turbine and hardstanding would be removed and the foundations soil-covered.
8. On-site wind measurement has not been made. A temporary mast may be erected for one year to quantify annual mean wind speed, turbulence intensity and air flow roughness and to confirm that separation of wind flow does not occur. Any such mast would be the subject of a separate application for planning permission. National wind data indicates that Balnamoon has an annual mean wind speed of 7.7ms at a height of 45m above ground level. This compares to 9.3ms at Aultmore. With a mean wind speed of 7.7ms, a Vestas V52 wind turbine will produce in a year about 2,900MWh, equivalent to that consumed by around 500 households. Electricity produced by the proposal would be traded to meet the requirements of the Renewables Order (Scotland) 2002. The proposal is an alternative to large-scale wind farms.
9. The project would provide diversification necessary for the continuing viability of the farm. The site is 2km from Aultmore Forest, the nearest area of search defined in Council policy. It can only be on Balnamoon Farm if it is to be a means of farm diversification. Its location is one of very few within Moray where neighbours are at least some 600m distant. Planning Advice Note 73: *Rural Diversification* (PAN 73) says that diversification *helps to broaden the economic activity of rural areas.....creating a more balanced and stable economy* (paragraph 11). Farm diversification *enables farmers and their families to continue the farming activity while providing jobs and income for others in the community* (paragraph 12). *There are many activities that make a valuable contribution to the rural economy.....such aswind turbines.....* (paragraph 13). The objectives of National Planning Policy Guideline 6: *Renewable Energy Developments* (NPPG 6) and of Planning Advice Note 45: *Renewable Energy Technologies* (PAN 45) would be achieved.
10. Prior to submission of the planning application, numerous consultations were undertaken. The project would be financed by the appellant and if desired would incorporate a co-operative renewable energy investment club controlled by an external organisation to allow members of the community to invest in the project, which would thus provide an income stream for the local community.

11. Potential environmental impacts have been assessed in studies by independent consultants.
12. *Visual impact upon the landscape.* Grange Valley is a working landscape with simple uncluttered views and high sensitivity to change. A line of pylons is a discordant feature. The proposed turbine would be relatively small-scale compared to large wind farm developments. It would not dominate nor overwhelm the character of the landscape but would be appropriate to the simple uncluttered landform and land use pattern. The zone of visual influence would be most concentrated within 5km of the site, especially to the east and south.
13. The area is an attractive landscape with good quality views. The proposed turbine would be sited off higher ground, would take up a tiny proportion of the landscape type and would not significantly affect landscape character. The highest visual impact would be on a 1.5km stretch of the B9018 and from the Crannoch Ridge on the opposite side of the valley.
14. *Ecological impact.* Breeding bird and mammal surveys have been carried out and land use has been assessed. The overall ecological impact would be no more than minor.
15. *Geological impact.* The turbine would be founded on phyllite limestone, a partially-hardened metamorphic limestone similar to slate.
16. *Noise.* The impact of noise at neighbouring properties is not expected to be significant. At a wind speed of 8ms, the warranted noise level from a Vestas V52 is 100 dB(A). At the nearest neighbouring properties this would reduce to 35 dB(A) and be indistinguishable from background noise. The predicted noise levels around the proposed turbine represent worst-case downwind conditions and assume no attenuation from any ground effects or shielding. Most of the time noise levels would be lower.
17. *Shadow flicker.* In relation to shadow flicker, PAN 45 recommends that a turbine be no nearer to neighbouring property than ten times the rotor diameter. In the present case this distance would be 520m. All neighbouring properties are 600m or more from the proposed turbine.
18. *Communications interference.* Should interference with television reception occur, those affected would be offered a digital or satellite television service.
19. *Leisure activities.* Impact upon leisure activities is not predicted. There is no visual impact on any designated landscape or garden in the area. The project would not be visible from distilleries or the Whisky Trail. Net negative impact on tourism arising from wind energy development in the UK has not been identified.
20. In response to local concern about property values, recent surveys concluded that house values are not substantially affected by the proximity of wind turbines, with any negative impact recovered within two years. Other local concerns have been identified and addressed in the documents that support the proposal.
21. Your client's appeal is against the Council's failure to determine the application for planning permission. There does not appear to be any reason why the proposal should not proceed.
22. While the application was under consideration by the Council, it received 44 **representations**. One person was in support of the proposal, expressing the view that the turbine would be unobtrusive in an already cluttered landscape and would be a locally-driven agricultural

diversification. The other representations were against the proposal. Following submission of the appeal, six of these representations have been reinforced by further letters to the Scottish Executive. The main grounds of objection are summarised below.

- The Moray Council policy regarding wind energy development applies to wind farms. It does not embrace single-turbine developments. Before a proposal such as the present one is approved, a policy should be formulated in consultation with the public.
- The proposal is contrary to the Council's wind energy development policy. The location is not within a preferred search area, such as moorland, forested land or hill top. Apart from the appellant's house, there are eight or nine dwellings within 1km of the proposed turbine. There are no "exceptional circumstances" to justify departure from the 1km separation criterion.
- The appearance of the proposal would be overwhelmingly detrimental to an area of natural beauty with an open landscape. It would be intolerable and an eyesore. It would be detrimental to the outlook from nearby houses.
- Noise would be a constant source of disturbance in what is a tranquil area. One nearby house has the windows of two principal rooms on the line where noise is predicted to be 36dB. This prediction does not allow for the increase in noise caused when wind direction (the prevailing direction) is from the turbine to the house.
- The range of bird species frequenting the locality is greater than noted in the application and the proposal would cause loss of birdlife.
- There would be interference with television reception.
- There would be an adverse effect on tourism. Tourism is dependent on unspoilt scenery, peace, tranquillity and wide open spaces.
- The proposal would not create any local employment.
- Excavating for and placement of foundations for the proposed mast would adversely affect local water supplies.
- The proposed turbine would not be an efficient generator. It would be in the lee of Starhill Ridge in relation to the prevailing wind. There has been no survey of the wind at Balnamoon.
- Notwithstanding suggestions to the contrary in the planning application, the proposal is not a community project.
- The value of property in the locality would be reduced. One recently-completed property sale is subject to a condition whereby the purchaser is to have returned to him part of the payment price if the proposed development goes ahead.
- The proposal to construct a wind farm at Aultmore must be taken into account. If this proceeds, it would not be correct to refer to the present proposal as an alternative to wind

farms. The local community has not opposed the Aultmore scheme. The scheme should be seen as the local area's contribution to renewable energy generation.

- If the present proposal were permitted it would set a precedent for single or small groups of turbines dotted all over the countryside.

23. The Council obtained the following observations on the proposal.

24. **Strathisla Community Council** supports the local objectors. The proposal is contrary to the Council's *Wind Energy Policy Guidance*. The neighbouring small community is unsuitable as a location for the proposal. The proposal would be a precedent for similar proposals sprouting across the local area.

25. **Scottish Natural Heritage** (SNH) has no objection. It states that the site has the potential to accommodate a single turbine but only if it is built and operated in accordance with strict environmental safeguards. The development area and access are unlikely to be used as sites for breeding birds. The proposed turbine would not have a significant impact on non-breeding bird populations, either resident or migrant. The proposal would not have a significant effect on the local landscape if it is in keeping with the recommendations of SNH.

26. The **Royal Society for the Protection of Birds** (RSPB) has little ornithological data for the site and surrounding area. It has no adverse comment.

27. The **Scottish Environment Protection Agency** (SEPA) has no objection. Proposed replacement of the culvert beneath the access track should avoid pollution of the burn. Temporary toilets in use during construction should be drained off-site by tanker.

28. The Council's **Transportation Manager** has no objection, subject to compliance with certain conditions.

29. **Ofcom** has no objection in relation to UHF scanning telemetry communications. Domestic television reception could be affected at homes close to the proposal. The Council is advised to enter into an agreement with the developer to meet the cost of investigating and rectifying any problem that may occur.

30. **National Air Traffic Services** advises that the proposal does not conflict with safeguarding criteria. There is no safeguarding objection.

31. **Defence Estates** has no concern in relation to military aircraft.

32. The **development plan** for the appeal site locality consists of the approved Moray Structure Plan and the adopted Moray Local Plan. It includes the following:-

Policy L/ED10: *Renewable Energy Proposals*

Proposals for renewable energy will be considered favourably where they meet the following criteria:-

- (i) *they are compatible with policies to safeguard and enhance the built and natural environment.....High design and siting standards will be sought in all new developments.*

- (ii) *they do not lead to the permanent loss of or permanent damage to prime agricultural land.*
- (iii) *they are compatible with tourism/recreational facilities.*
- (iv) *they do not interfere with aircraft activity.*
- (v) *they do not result in an unacceptable impact in terms of visual intrusion, noise, electromagnetic disturbance, pollution, traffic generation or damage to the local ecology.*
- (vi) *they do not result in an unacceptable cumulative impact.*

.....

Policy L/ED12: *Developments on Agricultural Land*

.....the Council will support the principle of farm diversification and generally look favourably on business proposals which provide additional income/employment on farms.....

Policy S/ENV1: *Approach to the Environment*

The approach to Environmental Policy is to conserve and enhance Moray's environmental assets, and require that new development is sensitive to siting, location, and design considerations.....

Policy S/IMP1: *Development Siting, Layout and Design*

New development will require to be sensitively sited, designed and serviced. It should meet the following criteria

- (i) *its scale, density and character is appropriate to the surrounding area*
- (ii) *it can be successfully integrated into the surrounding landscape*
-
- (vii) *it does not adversely affect nature, urban or historic conservation resources*
-
- (ix) *pollution is avoided, including pollution of ground water.*

Policy L/IMP2: *Development in Rural Areas*

The Council will seek to ensure that all proposals for development in the rural area.....are compatible in terms of character, amenity and design, integrate sensitively into the environment.....[and].....pay special regard to matters such as traffic and landscape impact, accessibility, loss of productive or biodiverse land, siting, scale, colour and energy conservation.....

33. A document entitled **Wind Energy Policy Guidance** (WEPG) was published by the Council in fulfilment of a commitment in the structure plan. It is aimed primarily at large-scale wind farm developments but states that much of it will also be used to assess proposals for one or two turbines. It identifies preferred search areas for wind farm development, one of which is within Aultmore Forest. The remaining part of Moray is not considered suitable for wind farm development. Balnamoon is within this latter area. Factors that point to unsuitability include:

- areas of great landscape value;
- natural heritage;
- wind speed less than 7.5ms; and
- within 1km of communities or any residential property.

Paragraph 2.10 states: *subject to exceptional circumstances, no wind generator (as part of a wind farm development) shall be erected in a position which is closer than 1km from any existing dwelling.*

34. **National guidance** includes NPPG 6, PAN 45 and PAN 73. These have been mentioned above. NPPG 6 makes clear that encouraging more electricity generation from renewable sources is national policy (paragraph 1). The planning system is to make positive provision for renewable energy developments. At the same time areas designated as having special natural heritage or historic environment interest should be protected from inappropriate development and effects on local communities should be minimised (paragraph 16). *.....renewable energy developments should be accommodated throughout Scotland where the technology can operate efficiently and environmental impacts can be addressed satisfactorily* (paragraph 19). *Planning authorities should not reject a proposal simply because the level of output is small* (paragraph 24). *Renewable energy developments will also have a contribution to make in support of the Scottish Executive's policy to encourage rural development* (paragraph 26). *In many areas of Scotland, tourism and recreation support local economies and to varying degrees such activities depend on the quality of the environment, in particular the landscape.....Sensitive siting can successfully minimise adverse impacts, particularly visual impacts, but it is unrealistic to expect such developments to have no effect at all* (paragraph 31). *It is important that detailed proposals, including access arrangements, address residential amenity and ensure that, by careful location and sensitive design and in the standards of operations, amenity is not subject to significant adverse effects* (paragraph 32).

35. PAN 45 states that shadow flicker should not be a problem if the distance between the turbine and nearby dwellings is more than 10 rotor diameters (paragraph 64). Pages 22 and 23 of PAN 45 refer to recommended good practice on controlling noise from wind turbines. This includes the following:-

- *A fixed limit of 43dB(A) is recommended for night-time.....*
- *.....lower fixed limits can be increased to 45dB(A).....where the occupier of the property has some financial interest in the wind farm.*
- *In low noise environments the day-time level of the $L_{A90,10min}$ of the wind farm noise should be limited to an absolute level within the range of 35-40dB(A). The actual value chosen within this range should depend upon: the number of dwellings in the neighbourhood of the wind farm; the effect of noise limits on the number of kWh generated; and the duration of the level of exposure.*
- *For single turbines.....a simplified noise condition may be suitable. If the noise is limited to an $L_{A90,10min}$ of 35dB(A) up to wind speeds of 10m/s at 10m height, then this condition alone would offer sufficient protection of amenity.....*

36. PAN 45 also includes the following: *Given the Scottish Ministers' commitment to addressing the important issue of climate change and the contribution expected from renewable energy developments, particularly wind farms, it is important for society at large to accept them as a feature of many areas of Scotland for the foreseeable future* (paragraph 71). It will normally be unrealistic to seek to conceal turbines. *Developers should seek to ensure that through good siting and design, landscape and visual impacts are limited and appropriate to the location* (paragraph 78).

37. PAN 45 advises that decommissioning and site clearance should be covered by conditions of consent or by a legal agreement. *Planning authorities should satisfy themselves that funding for decommissioning will be available when required* (paragraph 92).

38. **The Council's view** is that your client's proposal should be approved, subject to conditions. The main grounds for this view may be summarised as follows.

- The proposal would be an acceptable departure from the WEPG because it consists only of a single turbine and is proposed primarily to safeguard the long-term economic future of Balnamoon Farm.
- The proposal accords with PAN 73 as it would be secondary to but supportive of the farm operation.
- The turbine would be relatively small in terms of its height in comparison with others approved in Moray.
- The proposal would not have a detrimental impact on the landscape, natural heritage or amenity of residents within the vicinity.
- The proposal is acceptable in terms of policy L/ED10.
- Seven residential properties are within 1km of the proposed turbine but there would be only a minor detrimental visual impact on them and on the wider landscape. This is because:
 - Balnamoon Farm and its surroundings are a working landscape;
 - there are numerous large agricultural buildings, large grain storage buildings and a line of electricity pylons;
 - the proposal is a single turbine on a sloping site, similar in height to the pylons;
 - mature topography to the north-west and the ongoing hedge planting scheme will provide adequate enclosure.
- There would be no detrimental cumulative impact in association with wind farms under construction at Cairn Uish and Paul's Hill.
- NPPG 6 recognises the link between quality of landscape and tourism but also states that this does not mean that renewable energy development is incompatible with tourism.
- The proposal would have no significant effect on tourism and recreational facilities in the area.
- Regarding noise and flicker, the proposal would not have an unacceptable impact on existing properties in the area.
- The proposal would not have an adverse impact on the ecology and wildlife of the site.
- The proposal complies with policy L/ED10 and national guidance in relation to aviation interests and electro-magnetic interference. The developer can be required to remedy any interference with television reception.
- The proposal complies with transportation policies.

39. The Council recommends that approval of your client's proposal be subject to fourteen conditions, plus conditions specified by SNH.

CONCLUSIONS

40. Section 25 of the Act requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan consists of the approved Moray Structure Plan and the adopted Moray Local Plan. I consider, based on my inspection of the appeal site and the written submissions, that the issues to be determined are whether the proposal is consistent with the relevant provisions of the development plan and whether an exception to these provisions is justified by other material considerations. Other material considerations in the present case are:

- the Council's Wind Energy Policy Guidance (WEPG);
- adverse effect on tourism;
- inefficient operation due to wind conditions;
- loss of property value;
- precedent; and
- national planning guidance.

41. In the development plan, policy L/ED10: *Renewable Energy Proposals* is directly relevant and is the crucial policy against which the proposed turbine should be assessed. The six criteria contained in the policy are considered below.

42. Regarding criterion (i), no policy has been drawn to my attention to indicate that the locality of the proposal is part of or near to an area of great landscape value, a designed landscape, a site of interest to natural science or some other area where an especially careful control over development is required. The proposal must therefore be assessed against the general requirement for high design and siting standards. I find that the proposed turbine, with its solid, slightly tapering mast, its matt finish of neutral colour and its functional simplicity, has an acceptable standard of design. The issue of location is considered below in relation to criterion (v).

43. Regarding criterion (ii), submissions do not indicate that the appeal site is prime agricultural land.

44. In relation to criterion (iii), submissions do not identify any individual tourism or recreational facility that would be adversely affected by the proposal and I am not aware of any such facility. I thus find that there would be no incompatibility with such facilities. The separate issue of effect on local tourism in a more general sense is one of the concerns of the objectors, and is considered later.

45. Criterion (iv) refers to aircraft activity. Evidence indicates that there would be no interference with this, and I find that the proposal satisfies this criterion.

46. Criterion (v) refers to six kinds of impact:-

Visual intrusion. The height of the proposed turbine means that it would be highly visible within the Grange Valley. Submissions have compared the turbine with the existing line of pylons. From information submitted and from observations during the inspection, I find that the overall height of the turbine would be somewhat more than twice the height of the pylons. It would be very prominent. Additional attention would be drawn to it by the movement of the rotor. It would be by far the most noticeable feature of the valley. There would thus be visual intrusion. In considering the acceptability of this intrusion I note that the proposal would be some distance back from the B9018, it would be less than half way up the gently rising valley side, and it would be set in an agricultural scene that is neat and agreeable but not identified as being of particular landscape value. Taking into account the character of the setting and the quality of the turbine design, I find that the visual intrusion in relation to the surrounding landscape would be acceptable. A particular concern of the objectors is that the proposal would be detrimental to the outlook from nearby houses. The proposal would impact on views from the windows and grounds of a number of the nearest houses, but I find that the turbine would be at a distance sufficient to ensure that it did not dominate such views to an extent that would make it unacceptable.

Noise. The residential property nearest to the proposed turbine is your client's house at Balnamoon. The worst-case scenario in the noise assessment indicates that the house would be subject to a noise level of about 37dB(A). I find that a noise level of this order is acceptable in terms of advice in PAN 45. The same scenario predicts a noise level of 36dB(A) at the nearest neighbouring house, Balnamoon Cottage. This level is well below the recommended night-time level of 43dB(A) to which reference is made in PAN 45 and is close to the 35dB(A) level which is seen as the lowest level of noise appropriate to a low-noise environment or to a single turbine proposal. PAN 45 indicates that account should be taken of the number of dwellings in the neighbourhood and the duration of the level of exposure. In the present case, there is only one affected dwelling and the

predicted 36dB(A) level is a worst-case scenario, with lower noise levels for most of the time. From all of the foregoing, I find that noise from the proposed turbine would not create an unacceptable impact.

Electro-magnetic disturbance. The only unresolved concern regarding this aspect is disturbance to television reception. I find that such disturbance might arise and if it did it would be unacceptable. Your client has indicated a willingness to take steps to deal with any such disturbance. This could be ensured by imposition of a condition on any permission. In these circumstances, I find that the impact of the proposal on communications is acceptable.

Pollution. The only pollution of significance to which reference has been made is the objectors' concern about an adverse effect on local water supplies as a result of excavation for and placement of foundations. SEPA does not share this concern. I find that it has not been demonstrated that damaging or polluting material is likely to be introduced to ground water as a result of the proposed development. I conclude that there would be no unacceptable impact in terms of pollution.

Traffic generation. The most significant traffic generation would be that associated with construction of the proposed installation, when extremely large components and a mobile crane would be brought to the site. This would be during a relatively short period of time. The Council's Transportation Manager has raised no objection. I find that impact in relation to traffic generation would be acceptable.

Damage to the local ecology. The turbine would be within a cultivated field. Works to provide access and to lay cabling would be within an area where farming is the dominant activity. SNH and RSPB have not raised objection. I find that impact on local ecology would be acceptable.

47. Regarding criterion (vi), cumulative impact would occur if the impact of your client's proposal were to be increased because of a relationship with other similar development. Three other such developments have been mentioned in submissions. Those at Cairn Uish and Paul's Hill have been approved. They are 30km or more to the west of Balnamoon. At this distance, I find that there is no cumulative impact of any significance. The third is a wind farm development at Aultmore. The *Technical Description and Environmental Information* accompanying your client's planning application states that it is understood that the Aultmore wind farm has not yet received permission. I have noted no other information regarding the status of this proposal. In your client's submissions, an impression of its appearance is given in three photomontages and its zone of visual influence (ZVI) is compared to the ZVI of the proposed Balnamoon installation. The Aultmore proposal is said to consist of 30 turbines, each much larger than the Vestas V52 and each located on ground at a higher elevation. The ZVI of the Balnamoon installation would be almost wholly contained within the more extensive ZVI of Aultmore.

48. Turbine developments at Balnamoon and Aultmore would be seen simultaneously from a number of viewpoints. This would reinforce the visual impact of your client's proposal in that it would to some extent give an impression of being an outlying part of the Aultmore development and would tend toward creation of a wind farm landscape rather than a landscape with wind farms. As the Aultmore proposal is apparently not yet approved it may not proceed in the manner shown in submissions. It is within the Council's preferred search area for wind farm development and thus for present purposes I take it that a wind farm development of some sort could well take place at Aultmore at some time within the lifespan of your client's proposal. From all the foregoing, I find that there would be a cumulative impact if there were a wind farm development at Aultmore, but that the extent of such impact would not necessarily be so great as to be unacceptable.

49. From the above, I conclude that your client's proposal accords with the development plan.

50. The first of the other material considerations is the WEPG. This is addressed primarily to wind farm developments. One of the concerns expressed in the representations is that the Council has no policy applicable to single-turbine developments. I find that the WEPG, which does have relevance to smaller projects, and local plan policy L/ED10 do provide an adequate basis for consideration of your client's proposal.

51. The WEPG shows Balnamoon as being within a part of Moray that is not considered suitable for wind farm development. I find that this does not rule out the possibility of development of a single turbine as opposed to a wind farm. In the WEPG assessment of whether areas are suitable for wind farm development, four factors are of particular relevance to the present case. The first two are landscape value and natural heritage. As already indicated, I find that the proposed development would not have an unacceptable effect on any area identified as having special landscape or natural heritage value. The third factor is wind speed. Submissions indicate that wind speed at the appeal site is above the minimum level of 7.5ms. The final factor is distance from residential property. The WEPG indicates that wind farms should be at least 1km from residential property. The basis for setting this distance is not made clear in the WEPG. As this distance is primarily for wind farms, I find that it would be appropriate to consider whether some reduced distance might be acceptable where the proposal is for a single turbine. Matters to be taken into account are those covered by the comprehensive criteria in policy L/ED10. The reasoning that leads me to find the proposal acceptable in terms of the policy also leads me to conclude that in this particular case a separation distance less than 1km is acceptable.

52. The second other material consideration is the adverse effect on tourism (as opposed to particular tourist facilities) that might arise if the development were to proceed. Your client states that the turbine would not be visible from distilleries or the Whisky Trail and that there would be no impact on any designated landscape or garden. I find that it has not been demonstrated that there would be any significant effect on tourism in the general area. In this connection, I note that NPPG 6 (paragraph 31) advises that it would be unrealistic to expect no effect at all on tourism, but adverse impacts should be minimised by sensitive siting. I conclude that any effect on tourism is not likely to be significant and does not justify refusal of planning permission.

53. Turning to wind conditions, there is an objection to the effect that the proposed turbine would not operate efficiently, Balnamoon being in the lee of Starhill Ridge. Your client's submissions confirm that the appeal site is sheltered to some extent in that it has an estimated annual wind speed of 7.7ms, compared to 9.3ms at Aultmore. PAN 45 (paragraph 39) states that power available increases with the cube of the wind speed. On this basis, I calculate that the proposed turbine would produce 76% more power if it were sited at Aultmore rather than at Balnamoon. This is significant in that use of windier sites means that fewer turbines are needed to produce a given amount of power. Against this disadvantage, I note the following. The proposal would operate as a form of diversification, something that this is supported by advice in PAN 73. A proposal should not be rejected simply because the level of output is small (NPPG 6, paragraph 24). The estimated wind speed at Balnamoon is above the minimum quoted in the Council's WEPG. My conclusion is that wind conditions at Balnamoon do not justify refusal of planning permission.

54. The fourth other material consideration is loss of property value that would be entailed if the proposal were to proceed. Such loss of value is not normally considered to be a determining issue in planning decisions. If a proposal is acceptable in planning terms, it should be approved, even if it reduces the value of neighbouring or other property. The circumstances of the present proposal are

unusual in that objectors' submissions include an unequivocal demonstration that the value of at least one property would be adversely affected if your client's proposal were to proceed. I have given consideration to this, but find nothing to justify an exception to the normal approach, namely that loss of value is not a determining issue.

55. The fifth material consideration is precedent. There is a concern that approval of the present application would result in the countryside becoming dotted with single or small groups of turbines. Each planning application must be dealt with on its own merits, but the question of precedent may nevertheless be a material consideration if approval of one application might make it difficult to resist approval of other similar applications, all of which when taken together might have some adverse effect. I have noted from your client's *Technical Description and Environmental Information* (page 14, figure 2.2) that, apart from the appeal site and some adjoining ground, no other land in this part of Moray is more than 600m from neighbouring dwellings. In addition, the topography of the district is varied. For these reasons, I am not convinced that there is a significant number of other sites, if indeed there are any, that are similar to that at Balnamoon. I conclude from this that approval of the present application would not act as an irresistible precedent for numerous other similar proposals.

56. National planning guidance is one of the most important considerations, and, as will have been noted, it has a bearing on a number of the material considerations. NPPG 6 makes clear that it is national policy to encourage electricity generation from renewable sources. Effects on amenity have to be considered and minimised, and this should help achieve the acceptance mentioned in paragraph 71 of PAN 45. National guidance reinforces the findings and conclusions that I have set out above.

57. My overall conclusion is that your client's proposal accords with the development plan and that other material considerations do not justify withholding of permission. This conclusion requires me to consider what conditions should be imposed on permission for the development. The Council suggests 14 conditions. I shall consider each of these in the same order as that in which they were put forward in the Council's *Supporting Statement*:-

- (i) *Five-year period for commencement of development*: this is appropriate.
- (ii) *Adherence to the terms of the permission*: this condition is not necessary. Permission is only granted for the development as described in the application and subject to the conditions imposed.
- (iii) *Site restoration after 25 years*: this is appropriate as the expected lifetime of the project is 25 years. A restoration and after-care scheme should be prepared and approved before development commences so that the scheme is in place for whenever implementation of it is required.
- (iv) *Undergrounding of all cables*: this is appropriate.
- (v) *Rectification of television interference*: this is appropriate. Time limits are needed to ensure rectification within a timescale agreed by the planning authority.
- (vi) *Route for delivery vehicles*: this is not a matter that is enforceable through a planning condition. This matter may be dealt with by an information note.
- (vii) *Approval of turbine details*: I take it that this condition is suggested because, at the time that the planning application was submitted, your client indicated that the actual model of turbine might alter nearer the time of construction. The statement accompanying the appeal does not repeat this qualification, and I have proceeded on the basis that permission is sought for a Vestas V52 as detailed in the application. In these circumstances, there is no need to require submission of turbine details. The suggested condition goes on to require submission and

- approval of a warranty regarding tonality, information that does not appear to be included in the application. This aspect of the condition is appropriate.
- (viii) *Record of wind speed and direction*: this suggested condition does not specify the location or height above ground level at which measurements are to be made. More importantly, it does not appear to serve any planning purpose because it is noise rather than wind characteristics that may affect the amenity of nearby residents. For this reason I do not consider this suggested condition necessary.
 - (ix) *Limit noise level*: the phrase “noise sensitive premises” needs to be defined. The suggested noise level limit accords with advice in PAN 45.
 - (x) *Response to noise complaints*: technical details about noise measurement do not need to be incorporated into the condition. Measurements should be made by an independent, suitably-qualified person. A time limit for compliance is needed. Reference to a “penalty” is omitted because the expectation must be that any infringement of noise limits will be rectified.
 - (xi) *Correlation with wind speed*: as with (viii), it is noise rather than wind speed that may affect amenity. This condition does not appear to serve any planning purpose.
 - (xii) *Approval of turbine details*: for reasons given in (vii) above, a condition requiring submission of turbine details is not necessary.
 - (xiii) *Premature cessation of electricity generation*: it is appropriate to have a condition, or conditions, requiring turbine removal and site restoration if generation ceases.
 - (xiv) *Unsuspected ground contamination*: this condition is appropriate.

I have prepared conditions that reflect the above observations and that take into account a small number of other issues that arise from the submissions. PAN 45, at paragraph 92, states that planning authorities should satisfy themselves that funding for decommissioning will be available when required. As the Council has raised no concern about the availability of such funding I am proposing no requirement in this regard.

58. I have taken account of all the other matters raised but find none that outweigh those on which my decision is based.

59. In exercise of the powers delegated to me I therefore allow your client’s appeal and grant planning permission for the construction of a wind turbine at Balnamoon, Crossroads, Keith, as described in the planning application dated 20 September 2004, Council reference 04/02472/FUL. This permission is subject to the fourteen conditions contained in the appendix to this letter.

60. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant’s interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

61. A copy of this letter has been sent to the Moray Council. Those who made representations have also been informed of the decision.

Yours faithfully

This was the version issued to parties on 6 October 2005.

[Redacted]

Reporter

APPENDIX

CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date of this permission.
2. Before development is begun, the following shall be submitted to and be approved in writing by the planning authority:
 - (a) the sound power levels of the turbine;
 - (b) a warranty from the supplier or manufacturer of the turbine specifying the absence of tonality of the turbine along with a copy of the standard and assessment method on which the warranty is based;
 - (c) a construction method statement with regard to the proposed replacement of the culvert which is crossed by the access to the site;
 - (d) the colours of the roof tiles and external wall surfaces of the switchgear building;
 - (e) details of alterations to the junction of the access track and the public highway; and
 - (f) a scheme for the restoration and after-care of the site.
3. Before development is begun the junction of the access track and the public highway shall be altered in accordance with details approved in terms of condition 3(e).
4. All toilet facilities required during construction of the development shall be located within the farmyard and all foul drainage from these facilities shall be removed from the farm by tanker.
5. If during implementation of the development hereby approved significant ground contamination is found all work shall cease until such time as the nature and extent of the contamination has been ascertained and a remediation method statement has been approved by the planning authority.
6. All electricity and other service cables shall be placed underground.
7. The developer shall notify the planning authority of the date on which electricity from the development is first supplied to the national grid. This notification shall be made within one month of the said date.
8. Where interference to domestic television reception is caused as a result of the development hereby approved the developer shall take steps to make good the reception, either by eliminating the cause of the interference or by providing an alternative means by which television signals may be received. Within two weeks of being notified by the planning authority of the existence of such interference (or within such longer period as the planning authority may allow) the developer shall submit to the authority for its approval proposals to make good the reception, including a programme showing the time within which the proposals will be completed. The proposals shall be carried out in accordance with the terms on which they are approved by the authority.
9. Noise arising from the wind turbine shall not exceed an $LA_{90,10min}$ of 35dB(A) at any noise sensitive premises. This condition shall apply at wind speeds not exceeding 10 metres per second as measured at a height of 10m above ground level at the wind turbine. For the purpose of this

condition “noise sensitive premises” means any dwelling whether occupied or vacant which exists at the date of this permission but excluding the appellant’s dwelling at Balnamoon Farm.

10. If the planning authority receives a complaint regarding noise emissions from the turbine it may request the developer to arrange for measurement of such emissions. In these circumstances the developer shall at his own expense engage the services of an independent and suitably-qualified person to carry out the measurement. The measurement shall be made in accordance with a specification provided by the authority. The results of the measurement shall be submitted to the authority within one month of the date on which the request for measurement is made or within such longer period as the authority may agree.

11. If the results of any noise emissions measurement made in accordance with condition 10 show that the limit prescribed in condition 9 or the sound power levels approved in terms of condition 3(a) or the tonality characteristics approved in terms of condition 3(b) have been exceeded or breached the developer shall, within one month of being so instructed by the planning authority, take steps to ensure that the turbine operates only in accordance with the said limit, level and tonality characteristics.

12. The developer shall, if so requested by the planning authority, provide particulars of electricity supplied to the national grid, including dates and times when such supply took place. Such particulars shall be provided within one month of the date on which the request is made.

13. If particulars obtained in accordance with condition 12 show that the turbine has supplied no electricity to the national grid during the previous six months the planning authority may require that the turbine and ancillary equipment be dismantled to ground level and be removed from the site and that the land be restored in accordance with the restoration and after-care scheme approved in terms of condition 3(f). The works required by this condition shall be completed within twelve months from the date on which the planning authority intimates in writing to the developer that the works are to be carried out.

14. This permission is for the period of twenty-five years from the date on which electricity from the development is first supplied to the national grid. Within twelve months from the end of the twenty-five year period, the wind turbine and ancillary equipment shall be dismantled to ground level and removed from the site and the land shall be restored in accordance with the restoration and after-care scheme approved in terms of condition 3(f).

Reasons for the conditions

1. To accord with section 58 of the Town and Country Planning (Scotland) Act 1997.
2. The particulars required were not submitted with the application.
3. To ensure that safe and convenient access to the site from the public highway is available for all traffic associated with the development.
4. To ensure that all foul drainage is disposed of in a proper manner.
5. To ensure that any unsuspected ground contamination is dealt with in a manner that minimises adverse effect on the surroundings.

6. To ensure that there is no unacceptable increase in the amount of overhead wires in the locality.
- 7 & 14. To ensure that the turbine is removed and the site reinstated at the end of the lifetime of the development.
8. To ensure that any interference with the reception of television signals is remedied promptly.
- 9, 10 & 11. To ensure that noise from the turbine is restricted to an acceptable level and tonal character.
- 12 & 13. If no electricity is supplied to the national grid for a period of six months it will be assumed that generation has ceased. Restoration of the site should then proceed to minimise the period during which there are any adverse effects on the appearance of the locality.

Additional information

Prior to commencement of development, the developer should discuss with the highway authority the route that is to be taken by heavy vehicles and abnormal loads associated with the development. Contact may be made with [Redacted], TMC Roads Consultancy (telephone 01343 562542) regarding bridge assessments for the loadings.

The appeal site has been identified by the planning authority as being in the vicinity of the following potential sources of contamination:

- dam, 104m to the north-west (1905 Ordnance Survey map); and
- gravel pit, 98m to the west (1905 and 1959 OS maps).

The authority does not have information to confirm whether or not the ground has been contaminated. It recommends further investigation. Advice is available from the Environmental Health Section, telephone 01343 563345.