

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 18 NOVEMBER 2003

**00/0842/FL: CONSTRUCTION AND OPERATION OF A WINDFARM AND
ASSOCIATED INFRASTRUCTURE COMPRISING A TOTAL OF 18 WIND
TURBINES (THREE WIND TURBINES WITHIN EAST AYRSHIRE)
AT STONY HILL, NEAR MUIRKIRK**

APPLICATION BY MR R VON PEZOLD

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full permission is sought for the development of a wind farm consisting of 18 turbines, 3 of which would be located within the East Ayrshire part of the larger development site. The proposed turbines would have a hub height of 57 metres and a rotor diameter of 55 metres, giving a ground to tip height of some 85 metres. The proposal will also involve the erection of two monitoring masts with a construction height of 57 metres, one of which will also be located within the East Ayrshire part of the development site. A small control building will also be erected as part of the development, however this will be located within the South Lanarkshire part of the development site.

1.2 Access to the site will be taken from the B740 road near Crawfordjohn in South Lanarkshire, along a C class road and upgraded forest access tracks. In order to facilitate the construction of the wind farm and the upgraded access roads and turbine access track, a series of borrow pits will be excavated in order to extract stone material. One borrow pit is proposed within the East Ayrshire part of the development site.

1.3 The estimated output from the proposed wind farm is given as 27 Megawatts. Few details have been provided at this stage in terms of the proposed connection to the National Grid, although an indicative route has been indicated within the application plans.

2. RECOMMENDATION

2.1 It is recommended that the Committee adopts the view that the application should be refused on the grounds listed in the attached sheet and that this view be forwarded to the Scottish Ministers in relation to the proposed Public Local Inquiry relative to the applicant's appeal against South Lanarkshire Council's refusal of the proposed development.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report, the proposed development is not considered to be in accordance with the Development Plans. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As indicated in Section 6 above, there are material considerations relevant to this application, but in this regard, these considerations are also not supportive of the proposed development.

3.2 With the lack of further information from the applicant to address significant issues raised by statutory and non-statutory consultees, it is considered that the applicant has not rigorously demonstrated that there will be no significant adverse impacts resulting from the proposed development in relation to the Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area and their qualifying interests, and also the impact on the visual and landscape character of the area in which the development is to be located.

3.3 Overall, it is considered that with this lack of rigorous environmental assessment, the Council does not have sufficient information from the applicant to enable a full and proper assessment of the proposed development.

Alan Neish
Head of Planning and Building Control

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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Report by the Director of Development Services

1. PURPOSE OF REPORT AND BACKGROUND

1.1 The purpose of this report is to present for consideration a full planning application, which is to be considered by the Development Services Committee under the scheme of delegation because a view will require to be taken on the proposed development to be forwarded to the Scottish Ministers.

1.2 The application under consideration relates to a proposed wind farm development that lies partly within East Ayrshire and partly within South Lanarkshire. Two separate planning applications and associated Environmental Statements were submitted to each of the Planning Authorities involved for consideration and determination.

1.3 Both applications have failed to progress due to the failure of the applicant to address a number of significant issues. Insofar as the application submitted to this Authority is concerned, the application has not progressed to determination, as information to address these issues has to date not been provided by the applicant.

1.4 However, in January of this year, South Lanarkshire Council refused the application for the part of the development within its administrative area, due to the proposal conflicting with policy, lack of information and air safety considerations.

1.5 The applicant has now appealed that decision to the Scottish Ministers and as a result, a Public Local Inquiry will now take place in February 2004. As a consequence of this appeal, the Scottish Ministers have issued a Direction, under Section 46 (1) of the Town and Country Planning (Scotland) Act 1997, requiring this Council to refer the East Ayrshire planning application to them for determination.

1.6 The reasons for making this Direction relate to the fact that the Scottish Ministers already have before them for determination the appeal against the refusal of planning permission by South Lanarkshire Council for the construction of a wind farm development on land at Penbreck and Carmacoup Forest, near Glespin. The Scottish Ministers consider it desirable that the

proposal relating to the East Ayrshire planning application should be determined with the appeal. The Direction has also been given having regard to the potential environmental implications of the development proposal and its possible effects on a Defence Estate Tactical Training Area.

1.7 Notwithstanding the terms of the Direction served on this Council to 'call-in' this application, the Council as Planning Authority is required to take a view on the proposed development. This view will then form the Council's written submissions in respect of the proposed Public Local Inquiry.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 7 kilometres south east of the village of Muirkirk in open countryside. The site lies immediately adjacent to the common administrative boundaries of East Ayrshire, South Lanarkshire and Dumfries and Galloway. The site is located on the western edge of the Penbreck and Carmacoup Forest that straddles the administrative boundaries of East Ayrshire and South Lanarkshire.

2.2 The application site forms part of a larger development site that straddles East Ayrshire and South Lanarkshire with 75% of the development site lying within South Lanarkshire and 25% (166 hectares) within East Ayrshire.

2.3 Although the application site within East Ayrshire extends to approximately 166 hectares, the developable area is significantly less than this. Part of the proposed Muirkirk and North Lowther Uplands Special Protection Area (pSPA) and the Muirkirk Uplands Site of Special Scientific Interest lie within the application site. The Muirkirk Uplands Provisional Wildlife Site also lies within the application site.

2.4 **Proposed Development:** Full permission is sought for the development of a wind farm consisting of 18 turbines, 3 of which would be located within the East Ayrshire part of the larger development site. The proposed turbines would have a hub height of 57 metres and a rotor diameter of 55 metres, giving a ground to tip height of some 85 metres. The proposal will also involve the erection of two monitoring masts with a construction height of 57 metres, one of which will also be located within the East Ayrshire part of the development site. A small control building will also be erected as part of the development, however this will be located within the South Lanarkshire part of the development site.

2.5 Access to the site will be taken from the B740 road near Crawfordjohn in South Lanarkshire, along a C class road and upgraded forest access tracks. In order to facilitate the construction of the wind farm and the upgraded access roads and turbine access track, a series of borrow pits will be excavated in order to extract stone material. One borrow pit is proposed within the East Ayrshire part of the development site.

2.6 The estimated output from the proposed wind farm is given as 27 Megawatts. Few details have been provided at this stage in terms of the proposed connection to the National Grid, although an indicative route has been indicated within the application plans.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Roads and Transportation Division has no objections to the proposed development.

Noted.

3.2 Muirkirk Community Council has not responded to the consultation letter.

Noted.

3.3 The Coal Authority, Scottish Power (Power Systems) and Scottish Water have no adverse comments to make on the proposed development.

Noted.

3.4 East Ayrshire Economic Development Division states that the application does not provide any information on the employment aspects of the proposed development but suggests that it is fair to assume that the jobs impact would be minimal. However from a broader economic regeneration point of view, the significance of the project will be in the development of an alternative renewable form of energy which will accord with the policy aspiration at all levels.

Noted.

3.5 National Air Traffic Services (NATS) initially intimated its objection to the proposed development due to the adverse impact it would have on the Primary Radar System located at Lowther Hill and the subsequent impact it would have on the safe control of aircraft in the airspace in the vicinity of the wind farm. NATS so far has expended significant resource in determining a workable way forward that would satisfy all parties. In this particular instance the Air Traffic Control operators have stated the position of the 18 wind turbines (3 within East Ayrshire) making up the Penbreck Wind Farm should not compromise air safety if appropriate engineering modifications are made to the Lowther Hill Primary Radar to minimise the presence of false radar returns. This work should be sufficient to mitigate the impact on air traffic operations in the vicinity of the proposed wind farm development. In the event that such engineering modifications prove unsuccessful, it may be necessary to change the air traffic control procedures for that particular area of operation.

Engineering mitigation costs, although significantly less than operational mitigation costs are still likely to cause real and not insubstantial cost to be incurred by NATS. As a consequence NATS will not be able to proceed unless it is agreed in advance that the developers reimburse all costs incurred by NATS in implementing these mitigation methods. NATS would expect the Council and the developers to enter into a Section 75 Agreement, a condition of which should be a contract between NATS and the developers.

In conclusion NATS is prepared to withdraw its objection to this development proposal on the understanding that the developers reimburse to NATS all costs incurred in modifying its systems. Please note that the situation with Penbreck represents a unique set of circumstances that make this method of progress viable. It should not be considered in any way as a general acceptance of the development of wind farms in close proximity to NATS ATC systems.

The comments of NATS are noted. The reimbursement of all costs incurred by NATS in modifying its ATC systems could be incorporated as an obligation in a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997. It is understood that the developer has had meetings with NATS to identify measures to satisfy the safety concerns of NATS.

3.6 Defence Estates initially objected to the use of sites for wind turbines at Penbreck as the proposed location is situated within one of three tactical training areas in the United Kingdom. Inside tactical training areas fast jet training is conducted down to a height of 100 ft. and therefore Defence Estates object to the proposed 300ft. wind turbines. However, as part of the current appeal against the decision of South Lanarkshire Council to refuse permission for the wind farm, a letter has now been received from the Scottish Executive indicating that Defence estates has now withdrawn its objection.

Noted.

3.7 Glasgow Prestwick International Airport initially objected to the proposed development but has indicated it no longer holds any objections to the proposed development.

Noted.

3.8 The Civil Aviation Authority has no observations to make on the proposed development but is aware that the MOD has lodged an objection on the grounds that the proposed development lies within a Low Flying Tactical Training Area.

Noted.

3.9 The West of Scotland Archaeology Service (WOSAS) states that the Environmental Statement contains an archaeological report on the results of a very limited desk based assessment (DBA). While this is not really an

adequate assessment of the archaeology of the application area it does contain a set of recommendations from Firat Archaeological Services, the prior survey part of which really should have been carried out as part of the ES. Given the historical limitations of the recorded sites contained in the National Monuments Record for Scotland, field survey is the only way of getting a realistic view of any upland area's archaeological content. I am also aware that the DBA did not cover the proposed access or grid connections.

These limitations aside, the main part of the application area is at very high altitude and much of the land has probably always been beyond a comfortable zone for permanent human settlement. This still leaves the landscape with potential to produce further important pre-historic funerary /ritual sites, boundary markers/ features of all periods and other common upland types of sites such as shielings of any period or stock management features. These possibilities should be checked in advance of any final decision on the detailed locations of proposed ground disturbance so that any remains found can be avoided by turbines, roads, borrow pits etc. and be preserved in situ as per government guidance. If this cannot be achieved then preservation by record (i.e. full excavation) would be required prior to construction.

These issues would be best dealt with under a negative suspensive condition attached to any consent the Council is minded to grant. This would be implemented by WOSAS as a staged process beginning with a DBA on grid connections and access followed by a field survey. In addition this will involve obtaining a view of a professional landscape architect on the effect of the proposals on the setting of the Bronze Age cairns on Cairn Table and on the nationally important industrial landscape near Muirkirk. Mitigation measures would then be looked at which could involve marking out sites and areas to be avoided, carrying out small scale excavations ahead of the proposed construction and larger excavations if avoidance is not possible for technical/ operational reasons.

WOSAS recommends the attachment of two conditions which are based on PAN 42 but which are worded to reflect current circumstances and WOSAS experience elsewhere. These conditions would ensure that the archaeology on the site is identified to a satisfactory degree and that the relevant mitigation measures are proposed and carried out to a satisfactory standard.

The comments of WOSAS were forwarded to the applicant and as a result, further information regarding archaeological issues was submitted for consideration. WOSAS has responded indicating that the report provided should be accepted as redressing the inadequacies of the Environmental Assessment. WOSAS has advised that conditions are necessary to cover watching briefs, avoidance of all sites of interest and mitigation works on the proposed access road and borrow pits. The two conditions recommended can be attached to any consent granted for the proposed development to meet the requirements of WOSAS.

3.10 Historic Scotland states that the submission of further archaeological information takes forward its earlier concerns expressed about the quality of the archaeological assessment undertaken for the original environmental impact assessment. As the detailed issues raised are for non-scheduled archaeological sites, it is appropriate that detailed comment should come from the West of Scotland Archaeology Service.

Noted. WOSAS has been consulted as indicated in Section 3.8 above.

3.11 South Lanarkshire Council indicated in its consultation response that it had not yet reached a decision on its application but has provided a copy of its Strategic Observations setting out the main strategic issues associated with the proposed development.

Since the receipt of this consultation response, South Lanarkshire Council has refused planning permission for the part of the wind farm development lying within its administrative boundary. The grounds for refusal relate to the development being contrary to policy as the applicant has failed to provide sufficient information to assess the environmental impact of the proposed development and due to the adverse impact on tactical flying and air traffic control.

3.12 The Forestry Commission has no objections or observations to make on the proposed development.

Noted.

3.13 The Health and Safety Executive does not have any comment to make on the proposed development.

Noted.

3.14 The Scottish Environment Protection Agency has no objection in principle to the proposed development. SEPA's main concern would be during the construction phase and asks that the guidance provided in its leaflets PPG5 and PPG6 be followed to reduce the risk of water pollution. SEPA notes that the material to be used to improve the road network will be won locally and this should not materially affect SEPA interests.

The appropriate guidance notes on pollution prevention have been forwarded to the applicant.

3.15 The Scottish Executive Rural Affairs Division indicates that it has no adverse comments to make on the proposed development as it would have very limited agricultural effect.

Noted.

3.16 The Scottish Executive Environment Group has no comments to offer on the Environmental Statement.

Noted.

3.17 The Ayrshire Joint Structure Plan and Transportation Committee indicates that Section 4.5 of the Environmental Statement and 4.4 of the Executive Summary fail to recognise the policy framework set out within the Ayrshire Joint Structure Plan. These sections should be redrafted to reflect the approval of the AJSP by the Scottish Ministers on 24 January 2000 and incorporate reference to the appropriate policies. Specifically this would include reference to policies E10 and E11, the supporting technical documentation such as the Ayrshire Landscape Character Assessment and any other relevant policies within the plan. An assessment against this policy framework would allow consideration of appropriate mitigation measures to be considered within the Environmental Statement. This additional information should be provided in order that full comment can be made on the application.

The applicant was requested to provide the additional information required by the AJSPTC. To date this information has not been provided by the applicant.

3.18 The Scottish Wildlife Trust agrees in principle with the proposed Penbreck Wind Farm at Stony Hill. However the Trust objects to the location of wind turbines Nos.1, 2,3,7,8,10 and 11. Location of these turbines within the currently forested area would negate the impact of the proposed development on the valuable open upland and grassland and blanket mire as categorised within the Environmental Statement. The Trust further suggests that to equate with renewable and sustainable energy that the proposed power line to the wind farm on Stony Hill be laid underground.

Noted. Turbines 1, 2 and 3 lie within the East Ayrshire part of the proposed wind farm development.

3.19 The Royal Society for the Protection of Birds objects to the proposed development on the grounds that:

- (i) the applicant has failed to show that the development will not result in an adverse impact on the integrity of the proposed Muirkirk and North Lowther Uplands Special Protection Area (pSPA).
- (ii) The RSPB considers there is a significant risk of an adverse impact on peregrine, hen harrier and golden plover, all of which are qualifying species for this site. The risk also applies to the (proposed) Muirkirk Uplands Site of Special Scientific Interest (pSSSI).
- (iii) RSPB considers that the Environmental Impact Assessment (EIA) is insufficiently rigorous in its analysis of potential impacts, that it contains incorrect conclusions based on inappropriate comparisons and that important areas of impact assessment are omitted. In addition given that the proposal will affect a pSPA, the provisions of

the Conservation (Natural Habitats, &c) Regulations 1994 apply. The EIA fails to take these requirements into account.

In light of this, RSPB does not believe that it is currently possible to make a sound determination of the project's impacts and therefore urges the Council to refuse planning permission. If the developer is able to relocate turbines away from Stony Hill (Turbines 1, 2, 3 and 7) and the Heads of Dunedin (Turbines 14, 15 and 16) to eliminate the risks of adverse impacts on the integrity of the pSPA, RSPB would be willing to review its position.

The comments of the RSPB have been forwarded to the applicant who has been requested to address the deficiencies of the Environmental Statement in respect of the impacts on the qualifying interests of the proposed Muirkirk and North Lowther Uplands Special Protection Area (pSPA) and the Muirkirk Uplands Site of Special Scientific Interest which has now been formally designated since the submission of the application. Despite a number of requests, to date this information has not been submitted for consideration.

3.20 Scottish Natural Heritage states that there are two principal matters of concern regarding the natural heritage impacts of the proposed development:

- (i) the impact of the proposal on the interest of the Muirkirk and North Lowther Uplands potential Special Protection Area (pSPA); and
- (ii) the impact on the landscape character and visual amenity of the site's environs.

SNH objects to the proposed development on the basis of likely significant effects on a site of European importance, and on the basis of lack of information concerning impacts on landscape character and visual amenity. Although the application falls within two local authority areas, it is the view of SNH that the proposed development must be assessed as a whole. In any case, the issues, in terms of both the pSPA and landscape and visual impact, are common to both areas.

Noted.

SNH indicates that the proposed development lies partially within the boundary of the Muirkirk and North Lowther Uplands potential Special Protection Area (Pspa) identified for its outstanding populations of upland breeding birds. The site's partial overlap with the boundary of the pSPA means that the provisions of the Scottish Office Circular 6/1995 apply. The circular sets out the obligations of the EC Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (the Habitats Directive) which applies a common protection to all European sites., that:

'the Regulations require that, where an authority concludes that a development proposal unconnected with the nature conservation

management of a Natura 2000 site is likely to have a significant effect on that site, it must undertake an appropriate assessment of the implications for the conservation interests for which the area has been designated.'

In considering development proposals or other uses of land affecting them, potential SPAs should be treated in the same way as classified European sites. Under Regulation 48, this means that East Ayrshire and South Lanarkshire Councils, as competent authorities have a duty to:

- determine whether the proposal is directly connected with or necessary to site management for conservation; and if not
- determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans and projects; and if so then
- make an appropriate assessment of the implications (of the proposals) for the site in view of that site's conservation objectives.

The competent authority can agree to the proposal after having ascertained that it will not adversely affect the integrity of the pSPA. If this is not the case, and there are no alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest.

The advice of SNH to the Council in this case is that the proposal is not connected with or necessary for the conservation management of the site. Furthermore, SNH considers that the applicant has failed to demonstrate that the development will not have a significant detrimental impact on the integrity of the pSPA. SNH considers that the applicant has undertaken an assessment of the impacts sufficient to indicate that the development may have a significant adverse effect on the integrity of the site and objects to the proposal on this basis. SNH considers that this assessment means that the proposal is contrary to Government guidance as set out in NPPG's 6 and 14. Furthermore it would not seem to conform to the Ayrshire Joint Structure Plan or the relevant local plans.

It is notable that SNH considers that the Environmental Statement in fact provides sufficient assessment to indicate that the development may have a significant adverse impact on the integrity of the pSPA. The comments of SNH were forwarded to the applicant who was requested to respond to the issues raised in an attempt to address the deficiencies of the Environmental Statement in respect of the impacts on the qualifying interests of the proposed Muirkirk and North Lowther Uplands Special Protection Area (pSPA) and the Muirkirk Uplands Site of Special Scientific Interest. Despite a number of requests, to date appropriate information to resolve the concerns has not been submitted for consideration.

It is considered that this lack of appropriate assessment of the potential environmental impacts relating to the proposed

development means that the Council, as competent authority, cannot determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans and projects. In this case the advice of SNH is such that the information provided in the ES indicates that the proposed development may have a significant adverse impact on the integrity of the pSPA. In such circumstances, planning permission must not be granted unless the competent authority is satisfied that there are no alternative solutions, and if not, planning permission must not be granted unless the proposed development has to be carried out for imperative reasons of overriding public interest.

SNH further considers that the ES contains inadequate information on the basis of which to assess the likely impacts on landscape character and visual amenity. SNH recommends the applicant submits further assessment to address the inadequacies prior to the application being determined.

Again, the applicant has failed to respond to requests for the submission of appropriate information to address the concerns raised by SNH.

4. REPRESENTATIONS

4.1 Apart from the objections received from Scottish Natural Heritage, The Royal Society for the Protection of Birds, Defence Estates and The Scottish Wildlife Trust as consultees, no other third party representations have been received in respect of the proposed development.

Noted.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (1999) and the Adopted East Ayrshire Local Plan 2003

East Ayrshire Local Plan

5.2 The proposed development requires to be assessed against a number of policies contained within the adopted local plan as follows:

(i) Policy CS8 states that the Council will be supportive of renewable Energy developments within the local plan area. Renewable Energy Projects will, however, only be permitted:

- in existing or proposed Special Protection Areas or Special Areas of Conservation in the most exceptional circumstances where it can be demonstrated conclusively that the development will not adversely affect habitats or species being safeguarded or where there is an overriding national interest in allowing the development to take place and no reasonable alternative is available.
- in existing or proposed sites of special scientific interest and Environmentally Sensitive Areas where it can be clearly demonstrated that any underlying objective and overall integrity of the designated area will remain largely unaffected or where any adverse effects on the environmental qualities for which the site has been designated are outweighed significantly by the national benefits that could be accrued from the development.

Part of the application site lies within the now designated Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area. However, it is considered that the applicant has failed to demonstrate conclusively that the qualifying interests of the pSPA and integrity of the SSSI will not be adversely affected by the proposed development. This view is reinforced by the advice received from SNH. Consequently, the proposed development is considered to be contrary to Policy CS8.

(ii) Policy CS9 states that the Council will require all applications for renewable energy developments which fall within the scope of the Environmental Assessment Regulations to be accompanied by an environmental assessment. All wind farm, wind turbine and other renewable energy developments will be rigorously assessed against stated criteria, the more pertinent of which are as follows:

- the extent to which the development may adversely affect any sites of nature conservation interest and, in particular, the natural habitat, territory and breeding areas of upland birds;
- the visual impact of the proposal and its setting within the immediate and wider natural landscape;
- the cumulative impact of the proposal with other existing or authorised renewable energy developments within the vicinity of the development site; and
- the environmental impact of the connections linking the development site with the national grid and the provision of adequate access arrangements from the surrounding road network.

The Environmental Statement submitted by the applicant is considered to be deficient in a number of key areas, including the

assessment of its impact on the Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area and the qualifying interests. Furthermore deficiencies with regard to the assessment of the visual impact of the proposed development and its cumulative effect on the wider landscape in association with other existing wind farm developments have also been identified. Despite requests of the applicant to address these deficiencies, no further information has been provided on these issues.

(iii) Policy ENV10 states that the protection and enhancement of areas of nature conservation interest within the Local Plan area will be achieved as follows:

- there will be an overriding presumption against development which could adversely affect sites designated or proposed for designation as Special Protection Areas and Special Areas of Conservation. Development will only be permitted where an assessment of the proposal indicates that it will not adversely affect the integrity of the site, that there are no alternative solutions and that there are reasons of overriding public interest, including those of a social or economic nature.
- There will be a presumption against development which could adversely affect sites of Special Scientific Interest and National Nature Reserves. Development would only be permitted where the overall integrity of the site would not be compromised or where any significant adverse effects of the development are clearly outweighed by social or economic benefits of national importance.

Part of the application site lies within the now designated Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area. However, it is considered that the applicant has failed to demonstrate conclusively that the qualifying interests of the pSPA and integrity of the SSSI will not be adversely affected by the proposed development. This view is reinforced by the advice received from SNH. Consequently, the proposed development is considered to be contrary to Policy ENV10.

(iv) Policy ENV11 states that within the Sensitive Landscape Character Areas identified on the Local Plan maps, the Council will give priority and prime consideration to the protection and enhancement of the landscape in the consideration of rural development proposals. The Council will not be supportive of development which could create unacceptable visual intrusion or irreparable damage within these areas and will be supportive of development proposals only where these positively enhance or protect the natural landscape, wildlife and cultural heritage of the area or promote the social and economic well-being of communities.

The applicant has failed to provide appropriate environmental information to allow a rigorous assessment of the potential visual impact of the proposed development both individually and cumulatively with other developments. It is considered that the proposed development is contrary to Policy ENV11.

Ayrshire Joint Structure Plan

5.3 Policy E10 of the approved Structure Plan states that proposals for renewable energy development shall conform to the structure plan where it can be demonstrated that:

- there are likely to be no significant adverse environmental impacts or infrastructure constraints; and
- the design of the development is sensitive to the landscape character and appropriate to the local circumstances.

Policy E11 further states that proposals for wind turbine and wind farm development, including their construction, siting, access and transmission links to the grid shall conform to the structure plan where it can be demonstrated there is no significant adverse effect on, amongst other things:

- landscape character and visual amenity; and
- natural environment.

Part of the application site lies within the now designated Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area. However, it is considered that the applicant has failed to demonstrate conclusively that the qualifying interests of the pSPA and integrity of the SSSI will not be adversely affected by the proposed development. This view is reinforced by the advice received from SNH. The applicant has also failed to provide appropriate environmental information to allow a rigorous assessment of the potential visual impact of the proposed development both individually and cumulatively with other developments. Consequently, the proposed development is considered to be contrary to Policies E10 and E11 and therefore does not conform to the approved Ayrshire Joint Structure Plan.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are National Planning Policy Guidelines, Scottish Office Circular 6/1996 (Habitats and Birds Directive), the consultation responses, the representations received and relevant planning history.

National Planning Policy Guidelines

6.2 NPPG6: Renewable Energy Developments states in Paragraph 22:

In relation to international natural heritage designations (Ramsar sites, Special Protection Areas [SPAs] and Special Areas of Conservation [SACs], renewable energy projects, which would have an adverse effect on the conservation interests for which the site has been designated, should only be permitted where there is no alternative solution and there are imperative reasons of over-riding public interest, including those of a social or economic nature. Where a priority habitat or species (as defined in Article 1 of the Habitats Directive) would be affected, prior consultation with the European Commission is required unless the development is necessary for public health or safety reasons; and

In relation to national designations (National Scenic Areas, Sites of Special Scientific Interest [SSSI], National Nature Reserves, National Parks and Natural Heritage Areas), renewable energy projects should only be permitted where it can be demonstrated that the objectives of designation and the overall integrity of the area will not be compromised or any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social and economic benefits of national importance. Similar considerations should also apply in approved green belts.

Part of the application site lies within the now designated Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area. However, it is considered that the applicant has failed to demonstrate conclusively that the qualifying interests of the pSPA and integrity of the SSSI will not be adversely affected by the proposed development. This view is reinforced by the advice received from SNH. Consequently, the proposed development is considered to be contrary to guidelines within NPPG6.

6.3 NPPG14: Natural Heritage states in Paragraphs 24 and 25:

Natural heritage designations of national importance include all National Scenic Areas, Sites of Special Scientific Interest and National Nature Reserves. They will also include the proposed Loch Lomond and the Trossachs National Park and any other National Parks established by the Scottish Parliament. It is Government policy to safeguard designated sites of national importance and ensure that their important natural heritage features are conserved and, where appropriate, enhanced by positive management.

The presence of a national natural heritage designation is an important material planning consideration. This does not mean that development is precluded by the presence of such a designation. Proposals require to be assessed for their effects on the interests which the designation is designed to

protect. Development which would affect a designated area of national importance should only be permitted where:

- *the objectives of designation and the overall integrity of the area will not be compromised; or*
- *any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social or economic benefits of national importance*

Comments as per Section 6.2 above.

6.4 Scottish Office Circular 6/1996 (Habitats and Birds Directive) under Annex D (The Conservation (Natural Habitats & c) Regulations 1994) states

'the Regulations require that, where an authority concludes that a development proposal unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site, it must undertake an appropriate assessment of the implications for the conservation interests for which the area has been designated.'

In considering development proposals or other uses of land affecting them, potential SPAs should be treated in the same way as classified European sites. Under Regulation 48, this means that East Ayrshire Council as a competent authority has a duty to:

- determine whether the proposal is directly connected with or necessary to site management for conservation; and if not
- determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans and projects; and if so then
- make an appropriate assessment of the implications (of the proposals) for the site in view of that site's conservation objectives.

The competent authority can agree to the proposal after having ascertained that it will not adversely affect the integrity of the pSPA. If this is not the case, and there are no alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest.

The advice of SNH to the Council in this case is that the proposal is not connected with or necessary for the conservation management of the site. Furthermore, SNH considers that the applicant has failed to demonstrate that the development will not have a significant detrimental impact on the integrity of the pSPA. SNH considers that the applicant has undertaken an assessment of the impacts sufficient to indicate that the development may have a significant adverse effect on the integrity of the site and objects to the proposal on this basis. In terms of the Regulations, planning permission must not be granted unless the proposed development has to be carried out for imperative reasons of overriding public interest, including those of a social or economic

nature. No imperative reasons have been given that would warrant the granting of permission in this instance.

Consultation Responses

6.5 The consultation responses, and in particular those of conservation and environment bodies, would indicate that planning permission should not be granted.

Planning History

6.6 A planning application (Ref. No. 98/0180/FL) for the erection of a 10 metres high anemometry mast within the current application site was approved on 26 May 1998.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council associated with the determination of this application. Legal implications would arise from the requirement for a Section 75 Agreement to address issues regarding engineering upgrades of the primary radar installation should permission be granted.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report, the proposed development is not considered to be in accordance with the Development Plan. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As indicated in Section 6 of the report, there are material considerations relevant to this application, but in this regard, these considerations are also not supportive of the proposed development.

8.2 With the lack of further information from the applicant to address significant issues raised by statutory and non-statutory consultees, it is considered that the applicant has not rigorously demonstrated that there will be no significant adverse impacts resulting from the proposed development in relation to the Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area and their qualifying interests. The applicant has also failed to demonstrate that there will be no adverse impact on the visual and landscape character of the area in which the development is to be located.

8.3 Overall, it is considered that with this lack of rigorous environmental assessment, the Council does not have sufficient information from the applicant to enable a full and proper assessment of the proposed development.

9. RECOMMENDATION

9.1 It is recommended that the Committee adopts the view that the application should be refused on the grounds listed in the attached sheet and that this view be forwarded to the Scottish Ministers in relation to the proposed Public Local Inquiry relative to the applicant's appeal against South Lanarkshire Council's refusal of the proposed development.

Stephen Chorley
Director of Development Services
11 November 2003
HM/HM/JR
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory notices and certificates.
3. Consultation responses.
4. Adopted East Ayrshire Local Plan (2003).
5. Approved Ayrshire Joint Structure Plan (1999).
6. NPPG6: Renewable Energy Development
7. NPPG14: Natural Heritage
8. Scottish Office Circular 6/1995 (Habitats and Birds Directive)

Any person wishing to inspect the background papers listed above should contact Mr Hugh Melvin on 01563 555481.

Implementation Officer: Alan Neish

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 00/0842/FL

Location	Stony Hill, (Penbreck and Carmacoup Forest) MUIRKIRK
Nature of Proposal:	Proposed construction and operation of a wind farm and associated infrastructure comprising a total of 18 turbines (3 within East Ayrshire)
Name and Address of Applicant:	Mr. R. von Pezold
Name and Address of Agent	C/o Messrs. Stuart, Balfour and Sutherland 2 Castlehill CAMPBLETOWN PA28 6AW

DPO's Ref: [Hugh Melvin]
PPO's Ref; []

The above FULL application should be REFUSED on the following grounds:

1. The Council considers that the applicant has failed to demonstrate conclusively that the qualifying interests of the designated Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area will not be adversely affected by the proposed development. The applicant has also failed to provide appropriate environmental information to allow a rigorous assessment of the potential visual impact of the proposed development both individually and cumulatively with other developments. Consequently, the proposed development is considered to be contrary to Policies E10 and E11 and therefore does not conform to the approved Ayrshire Joint Structure Plan.
2. The Council considers that the applicant has failed to demonstrate conclusively that the qualifying interests of the designated Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area will not be adversely affected by the proposed development. The applicant has also failed to provide appropriate environmental information to allow a rigorous assessment of the potential visual impact of the proposed development both individually and cumulatively with other developments. Consequently, the proposed development is considered to be contrary to Policies CS8 and ENV10 of the adopted East Ayrshire Local Plan.
3. The Council considers that the applicant has failed to demonstrate conclusively that the qualifying interests of the designated Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area will not be adversely affected by the proposed development. The applicant has also failed to provide appropriate environmental information to allow a rigorous assessment of the potential visual impact of the proposed development both individually and cumulatively with other developments. Consequently, the proposed development is considered to be contrary to the principles within National Planning Policy Guideline 6 (Renewable Energy Developments) and National Planning Policy Guideline 14 (Natural Heritage).

4. The applicant has failed to demonstrate conclusively that the qualifying interests of the designated Muirkirk Uplands Site of Special Scientific Interest and the Muirkirk and North Lowther Uplands potential Special Protection Area will not be adversely affected by the proposed development. As a consequence and in terms of The Conservation (Natural Habitats & c) Regulations 1994, planning permission must not be granted unless the proposed development has to be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. No imperative reasons have been given that would warrant the granting of permission in this instance.

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