EXECUTIVE SUMMARY SHEET

PURPOSE OF REPORT

1. Application/consultation 10/0001/S36 under section 36 (s.36) of The Electricity Act 1989 was considered by Southern Local Planning Committee at its meeting of 30 September 2011, and on 8 August 2012, the Scottish Ministers granted deemed planning permission under s.57(2) of the Town and Country Planning (Scotland) Act 1997 for not more than 22 turbines each with a total height to blade tip of up to 122m, and various ancillary elements, detailed below – of the 22 turbines, 18 are located in South Lanarkshire Council’s area, with site access from the A70, 4 turbines and ancillary access tracks located within East Ayrshire. The applicants lodged the current application 10/0001/s36VAR to vary a number of elements of the existing consent, in summary to:

- use a 45m blade length, which will still remain within the consented turbine blade to tip height limit;
- Amendment of the overall capacity of the site from 55 MW to 66MW;
- Amendment of the locations of 2 electrical substations and associated infrastructure, and to provide an additional construction compound;
- To remove the consented construction compound and laydown area located on the Spireslack open cast coal complex;
- Amendment of the access track layouts, chiefly to replace tracks to turbines which were previously consented to run though Spireslack open cast coal complex;
- Realignment of borrow pits 2 and 3 to accommodate the revised track layout, and to include working areas next to all the borrow pits; and
- Overall amendment of the existing s.36 consent and conditions so that the consent and conditions reflect the above changes.
RECOMMENDATION

2 It is recommended that this application for planning permission be approved subject to the condition listed on the attached sheet.

CONTRARY DECISION NOTE

3 Should the Committee agree that the application be refused contrary to the recommendation of the Acting Executive Director of Neighbourhood Services, the application would not require to be referred to the Council as this would not constitute a significant breach of policy.

David McDowall
Acting Head of Planning and Economic Development

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.
EAST AYRSHIRE COUNCIL
PLANNING COMMITTEE: 30 JANUARY 2015

SUPPLEMENTARY REPORT

10/0001/S36VAR: VARIATION OF EXISTING SECTION 36 CONSENT TO CONSTRUCT AND OPERATE THE GALAWHISTLE WIND FARM ELECTRICITY GENERATING STATION AT 7KM EAST OF MUIRKIRK AND 4KM WEST OF DOUGLAS

AT: GALAWHISTLE WIND FARM, C38 GLENBUCK OFF A70, GLENBUCK, EAST AYRSHIRE

BY: GALAWHISTLE WIND FARM LTD (GWFL)

REPORT BY ACTING HEAD OF PLANNING AND ECONOMIC DEVELOPMENT

PURPOSE OF REPORT

1. Application/consultation 10/0001/S36 under section 36 (s.36) of The Electricity Act 1989 was considered by Southern Local Planning Committee at its meeting of 30 September 2011, and on 8 August 2012, the Scottish Ministers granted deemed planning permission under s.57(2) of the Town and Country Planning (Scotland) Act 1997 for not more than 22 turbines each with a total height to blade tip of up to 122m, and various ancillary elements, detailed below – of the 22 turbines, 18 are located in South Lanarkshire Council’s area, with site access from the A70, 4 turbines and ancillary access tracks located within East Ayrshire. The applicants lodged the current application 10/0001/s36VAR to vary a number of elements of the existing consent, in summary to:

- use a 45m blade length, which will still remain within the consented turbine blade to tip height limit;
- Amendment of the overall capacity of the site from 55 MW to 66MW;
- Amendment of the locations of 2 electrical substations and associated infrastructure, and to provide an additional construction compound;
- To remove the consented construction compound and laydown area located on the Spireslack open cast coal complex;
- Amendment of the access track layouts, chiefly to replace tracks to turbines which were previously consented to run though Spireslack open cast coal complex;
- Realignment of borrow pits 2 and 3 to accommodate the revised track layout, and to include working areas next to all the borrow pits; and
- Overall amendment of the existing s.36 consent and conditions so that the consent and conditions reflect the above changes.

BACKGROUND INFORMATION

2. Members did not formally object to the formal consultation from the Scottish Ministers on 10/001/s36, and subsequently, the Scottish Ministers granted deemed planning permission was thereby granted for a maximum of 22 turbines, of no more than 122m in total height; crane hardstandings; one permanent anemometer mast; 20 km of access track;
transformers and electrical cabling; four on-site borrow pits; temporary construction compound and laydown area; and substation and control buildings, all as specified in application 10/0001/S36 and accompanying Environmental Statement. The conditions relating to the consent include various matters such as details of the access tracks; peat management; habitat management; the appointment of an ecological Clerk of Works; woodland planting; traffic management /repairs and improvements to the public road; SUDS; private water supply; archaeology; noise; vibration; electromagnetic interference; as well as decommissioning and restoration; aftercare and the provision of a bond for site restoration.

3. When the substantive application 10/0001/s36 was approved by the Scottish Ministers, the Council had previously requested that the applicant be required to enter into a s.75 agreement with the Council, on a number of matters, with regards to the effects of the scheme within East Ayrshire. Notwithstanding this request, the Scottish Ministers issued the decision for 10/0001/s36 without provision for a s.75 legal agreement. However the applicant has noted a commitment to continue negotiations with the Council to provide such an agreement. Negotiations have therefore been on-going with the Council and South Lanarkshire Council and the applicant in this respect, which would (provisionally) include restorative bond/guarantee; Renewable Energy Fund (REF) payments; Planning Monitoring Officer; Ecological Clerk of Works; and road works agreement into any s.75 agreement – notwithstanding that some of these matters are already able to be controlled by planning conditions attached to the consent. The matters not covered by condition are the REF payment(s) and Planning Monitoring officer.

DETAIL

4. The overall site is planned for 22 turbines, 4 of which were consented at 121.2m and 18 at 110.2m. Four of the 110.2m turbines are to be located within the East Ayrshire Council boundary on part of the site which was the Spireslack opencast complex, and the remainder are within the South Lanarkshire Council area. The four turbines within East Ayrshire are nos. 11, 12, 13 and 15. The original overall generating capacity as consented is 55 MW and the scheme will connect to the National Grid at Coalburn in 2016. The main construction period is planned for mid-2015 – mid-2016, with electricity generation commencing 2017. Pre-construction work, site investigations etc. and geotechnical works commenced January 2014. In addition to the 4 turbines, 2 of the 4 borrow pits, and the construction compound and laydown area will be within the East Ayrshire Council boundary area.

APPLICATION DETAILS

5. As above, the current application is to vary the terms of the consent for 10/0001/S36, by;

- Use of a 45m blade length, which will still remain within the consented turbine blade to tip height limit;
- Amendment of the overall capacity of the site from 55 MW to 66MW;
- Amendment of the locations of 2 electrical substations and associated infrastructure, and to provide an additional construction compound;
- To remove the consented construction compound and laydown area located on the Spireslack Complex Colliery area;
- Amendment of the access track layouts, chiefly to replace tracks to turbines which were previously consented to run though Spireslack;
• Realignment of borrow pits 2 and 3 to accommodate the revised track layout, and to include working areas next to all the borrow pits; and
• Overall amendment of the existing s.36 consent and conditions so that the consent and conditions reflect the above changes.

6. For clarity, the application for variation does not seek to change:
• the s.36 consented red line boundary;
• the consented number of wind turbines;
• the consented locations of wind turbines; or
• the consented maximum blade tip heights of wind turbines.

SITE DESCRIPTION

7. The Galawhistle s.36 application site lies approximately 7km east of Muirkirk in East Ayrshire, 4km west of Douglas and 2.5km northwest of Glespin in South Lanarkshire. The area surrounding the site is characterised by Spireslack opencast coal area immediately to the west, the operational Hagshaw Hill Wind Farm (and its extension) to the east, and forestry to the north. The A70 passes to the south of the site approximately 900m south of the nearest turbine. The total area of the site is approximately 594 hectares and its highest point is 463m above Ordnance Datum. The site is plateau moorland landscape character type.

PROPOSED DEVELOPMENT

8. In detail, the proposed development seeks to vary the following elements; firstly:

 Use of a 45m blade length, which will still remain within the consented turbine blade to tip height limit

At the time of the original planning application in 2010, the two most common utility-sized turbines generally had 40m or 45m blade lengths. Typically, these turbines had rated capacities of 2.0MW - 2.5MW, and 2.0MW - 3.0MW, respectively. There were very few turbines with 45m blades that did not require an 80m tower, which was then outside the acceptable design for Galawhistle. Consequently the s.36 application for Galawhistle was based on the dimensions of the Siemens 2.3 MW turbine with 41.2m blades, but with the rated capacity of the Nordex 2.5MW turbine, with 40m blades. This resulted in maximum heights to blade tip for the two sizes of turbine proposed of 110.2m and 121.2m. Since 2010, both Nordex and Siemens have discontinued the supply of these turbine types above in favour of versions with longer blades.

9. An increased blade length (from 41.2m to 45m) has scope to affect landscape & visual receptors, birds, potential for shadow flicker, and noise. The previous landscape & visual impacts identified some significant effects arising from the Consented Development. Optimised Environments Limited (OPEN) was commissioned to advise whether the proposed change to blade length, and consequent change in hub height (in order to ensure that the consented maximum tip heights were not exceeded) would lead to any changes to the landscape and visual impact. OPEN has confirmed that there is no material change to the significant effects previously identified.
10. The potential for changed collision risk for birds caused by the increased blade length has been investigated by RPS Planning and Development Limited (RPS). Changes to the SNH guidance for collision risk calculations mean the pre-mitigation significance of collision risk for peregrine is altered from minor to not significant. No other changes regarding the significance of collision risk are reported by RPS.

11. For shadow flicker, the 2010 ES concluded that there will be no significant shadow flicker effects arising from the Consented Development. RPS has repeated the shadow flicker assessment using a 45m blade. The assessment confirms that there are no habitable properties that would be affected by shadow flicker from turbines with 45m blades.

12. Further changes proposed, includes the following:

   Amendment of the overall capacity of the site from 55 MW to 66MW:

   The use of a 45m blade length would enable wind turbines of 3MW capacity to be considered for the Proposed Development; such turbines are now readily available on towers less than 80m in height. A consequential requirement is therefore to amend the maximum capacity of the site from 55MW to 66MW. The existing infrastructure will be able to accommodate the proposed increased capacity, and an application to increase the export capacity to 66MW will be made to National Grid. It is understood that the extra capacity will be available. Should the extra capacity not be available the ability to install 66MW of wind turbine capacity (constrained to 55MW) would still be beneficial from an energy yield perspective. The ability to consider 3MW turbines is also beneficial in the procurement process, and allows the potential to contribute further to Scottish Government targets for deployment of renewable energy generation sites.

13. Provision is also made to:

   Amend of the locations of 2 electrical substations and associated infrastructure, and to provide an additional construction compound:

   The underground grid connection for the Consented Development enters the site from the east along the line of a disused railway near Turbine 18. The Consented Development has substation infrastructure located in the west of the site (Figure 1b). The changed location, moving the plant across the site to the east, decreases the length of undergrounding works required, and avoids potential conflicts with wind farm construction activities. Temporary construction compounds associated with each of the two substations, for dedicated use by Scottish Power Transmission (SPT) and GWFL, have been added, and are required to ensure safe and efficient construction of the two substations. An additional area for installation of a static compensation unit (Statcom) has been added. The wind farm connects into the national electricity transmission system which has strict and enforceable operating parameters in terms of voltage frequency and power factor. National Grid sets strict criteria on the operating characteristics and response times for wind turbines. In order to meet the grid requirements with the range of wind turbines currently available for the project, it will be necessary to install a Statcom to achieve grid compliance.

14. Changes to location and layout of the substations do have the scope to affect ecology and ornithological receptors/habitats, and the water environment. Cultural heritage is not considered because the change moves the substation area to land that is less sensitive than the consented location from an archaeological perspective, and adequate controls are in place through s.36 planning conditions to ensure protection of cultural heritage assets.

15. The RPS ecology report identifies an increased loss of approximately 3.7ha to valued ecological receptors across the Proposed Development compared to the Consented
Development. Despite this increase, the assessment confirms that there are no differences in the likely significant effects on ecological receptors for the Proposed Development when compared with the Consented Development. The RPS ornithology report also assesses habitat loss implications for birds (both direct and indirect impacts) as a result of the 3.7ha increase in loss of valued ecological receptors. It concludes these changes have no significant effect. The RPS Hydrology, Hydrogeology and Geology Report finds no difference in significant effects on the environment as a result of the proposed change.

16. Plans are also made:

To remove the consented construction compound and laydown area located on the Spireslack Complex Colliery area;

The decision to site a construction compound and laydown area in Spireslack colliery was made in 2010 in consultation with the former owner of the colliery, Scottish Coal Company Limited (“SCCL”). Removal of the construction compound and laydown area from the colliery avoids potential conflicts with the future restoration of the OCCS. The Galawhistle Wind Farm Ltd (GWFL) construction compound in the amended substation area will now be utilised. The laydown area is no longer a requirement and does not feature in the Proposed Development. There are no technical issues raised by this change.

17. Also included in the proposed changes are:

Amendment of the access track layouts, chiefly to replace tracks to turbines which were previously consented to run through Spireslack;

The decision to site the access tracks to the western array of turbines (Turbines 10-15, and 21) in Spireslack colliery was made in 2010 in consultation with the former owner of the colliery, SCCL. Removal of the access tracks from the colliery avoids potential conflicts with the future restoration of the OCCS. Access to the western array of turbines is proposed from a new location off the disused railway south east of Turbine 19. Other amendments to the consented track layout have been made to optimise gradients and minimise overall track length. The overall track length has been decreased from 18.0km in the Consented Development to 16.8km in the Proposed Development.

18. RPS was commissioned to consider any additional impacts that would result from the changes to the access tracks – as the changes in track layout (including the addition of a water crossing to gain access to the western turbine array) may have the scope to affect ecology and ornithological receptors/habitats, and the water environment. With respect to cultural heritage assets, planning conditions and mitigation measures for the Consented Development will remain in force for the Proposed Development. Baseline conditions have not changed and the s.36 conditions and mitigation measures will ensure that any cultural heritage assets are protected. The RPS ecology report identifies an increased loss of approx. 3.7ha to valued ecological receptors across the Proposed Development compared to the Consented Development. Despite this increase, the report concludes that there are no differences in the likely significant effects on ecological receptors for the Proposed Development when compared with the Consented Development. The RPS ornithology report also assesses habitat loss implications for birds (both direct and indirect impacts) as a result of the increase in loss of valued ecological receptors, and concludes that no significant effects result. The RPS Hydrology, Hydrogeology and Geology Report finds no difference in significant effects on the environment as a result of the proposed change.

19. The changes proposed also include:-
Realignment of borrow pits 2 and 3 to accommodate the revised track layout, and to include working areas next to all the borrow pits;

The Consented Development has four borrow pits. Borrow pits 2 and 3 required a small adjustment to their location as a consequence of proposed track layout amendments. Further design work undertaken has identified that suitable working areas are required adjacent to each borrow pit in order to allow extraction of stone and safe storage and working facilities for the borrow pits.

20. RPS was commissioned to consider any additional impacts that would result from the proposed development. The changes to borrow pit alignment and addition of working areas have the scope to affect ecology and ornithological receptors/habitats, and the water environment. With respect to cultural heritage assets, planning conditions and mitigation measures for the consented development will remain in force for the proposed development. Baseline conditions have not changed and the existing s.36 conditions and mitigation measures will ensure that any cultural heritage assets are protected.

21. The RPS ecology report identifies an increased loss of approximately 3.7ha to valued ecological receptors across the proposed development compared to the consented development. Despite this increase, the report confirms that there are no differences in the likely significant effects on ecological receptors for the proposed development when compared with the consented development. The RPS ornithology report also assesses habitat loss implications for birds (both direct and indirect impacts) as a result of the small increase in loss of valued ecological receptors. The RPS Hydrology, Hydrogeology and Geology Report finds no difference in significant effects on the environment as a result of the proposed change.

22. The final change proposed comprises:

Overall amendment of the existing s.36 consent and conditions so that the consent and conditions reflect the above changes.

This proposal would simply update the current consent by including references to the variation as well as the consented scheme, if approved.

CONSULTATIONS AND ISSUES RAISED

23. Muirkirk Community Council commented that:

- There is overcapacity of windfarms to the east of Muirkirk blighting the natural beauty of the surrounding landscape in this area;
- The application contravenes planning guidance from East Ayrshire Council on windfarms in the Muirkirk Valley;
- The proposal has a direct affect to tourism coming to Ayrshire from the A70, spoiling the natural beauty of the hills the windfarms will sit on;
- The community of Muirkirk does not want windfarms to spoil the natural beauty of the surrounding countryside; and
- The continual creep of windfarms will take over the countryside in the Muirkirk Valley area.

In terms of the above points, the points relate to the assessment of the consented scheme and do not in particular comment on any of the proposed changes sought by the variation.

24. Lugar And Logan Community Council have not responded at the time of writing.
25. East Ayrshire Environmental Health have no comment /objection.

26. East Ayrshire Environmental Health (Contaminated Land) have no objection, due to the general area around the proposed development being associated with historical industrial activities such as mining, quarrying and infrastructure. These former activities present a negligible risk to the proposed wind farm development. There is also unlikely to be any significant soil contamination issues in the proposal.

27. Ayrshire Roads Alliance noted no objection, as the application for a variation of the original consent has no impact on Ayrshire Roads Alliance and all deemed planning permission conditions (3, 14, 16, 17, 18, & 21.) will still apply to this application if approved. It is noted also that the consented vehicular access to the site is still the existing access to Spireslack Opencast Mine.

Traffic management is controlled through an existing condition on the substantive consent (condition 14), and public road improvements are likewise conditioned (Condition 17).

28. Ayrshire Roads Alliance (Flooding) have no objection to the application.

29. East Ayrshire Coal Team have no objection.

30. Scottish Water have not responded at the time of writing.

31. Scottish Environment Protection Agency (SEPA) have not responded at the time of writing.

32. SEPA (Flooding Section) have not responded at the time of writing.

33. Historic Scotland (HS) noted they understand the dimensions of the consented turbines have changed but that the overall turbine heights are within the maximum consented limits. None of the turbines has been moved from the positions of the consented layout, whilst the turbine blades will be slightly longer. HS therefore do not consider that these changes would alter the proposed scheme to such an extent that it would have a significant impact on sites within their remit.

34. West Of Scotland Archaeology Service have not responded at the time of writing.

35. Scottish Natural Heritage have not responded at the time of writing.

36. Ministry Of Defence have no objection, subject to the request that the development should be fitted with aviation safety lighting, and if planning permission is granted MOD to be advised of the following prior to commencement of construction:
   - the date construction starts and ends;
   - the maximum height of construction equipment;
   - the latitude and longitude of every turbine.

Aviation lighting is controlled through an existing condition on the substantive consent (condition 43) and the above information will be added as a suggested condition, should Members decide not to object to this application.

37. Civil Aviation Authority have no further comment.

38. National Air Traffic Services note that as regards the turbine blade size being increased, this does not affect the tip height which is remaining unchanged; likewise no change to
turbine location coordinates are being sought, and based on these changes, NATS anticipates no impact and is satisfied that the mitigation currently deployed for Galawhistle is appropriate. As such NATS has no objection to the proposed S36 consent variation.

39. **BAA Aerodrome Safeguarding** have no objection.

40. **The Scottish Government** were consulted on the 30 October 2014, but have not responded at the time of writing.

**REPRESENTATIONS**

41. Two letters of objection were received: citing the following reasons:

- There is overcapacity of windfarms to the east of Muirkirk blighting the natural beauty of the surrounding landscape in this area;
- The application contravenes planning guidance from East Ayrshire Council on windfarms in the Muirkirk Valley;
- The proposal has a direct affect to tourism coming to Ayrshire from the A70, spoiling the natural beauty of the hills the windfarms will sit on;
- The community of Muirkirk does not want windfarms to spoil the natural beauty of the surrounding countryside;
- The continual creep of windfarms will take over the countryside in the Muirkirk Valley area; and
- There was a significant lack of community engagement with the proposal, and there have been no details about a community benefit find or any other development opportunities.

*In terms of the above points, the points relate to the assessment of the consented scheme and do not in particular comment on any of the proposed changes sought by the variation. This current application to vary the consented s.36 scheme does not detail the community benefits attributed to the original scheme, when the previous application was approved by the Scottish Ministers, the Council had previously requested that the applicant be required to enter into a s.75 agreement with the Council for contributions to the above Renewable Energy Fund, with regards to the turbines that fall within East Ayrshire. Notwithstanding this request, the Scottish Ministers issued the decision for 10/0001/s36 without provision for a s.75 legal agreement. However the applicant has noted a community benefit of £3,000 per MW of installed capacity per year will be paid once the site is operational, split between the two council areas, according to the numbers of turbines in each area.*

**ASSESSMENT AGAINST DEVELOPMENT PLAN**

**Ayrshire Joint Structure Plan 2007 (AJSP)**

42. The original application for the windfarm was approved under 10/0001/s36. The changes this current application seeks to vary, namely in summary;
[i] use of a 45m blade length,
[ii] increase in the overall capacity to 66MW;
[iii] change of the locations of 2 electrical substations and associated infrastructure, and an additional construction compound (and removal of the consented construction compound and laydown area);
(iv) amendment of the access track layouts; and
[v] realignment of borrow pits 2 and 3 (including working areas next to all the borrow pits),

are assessed as follows: -

43. **ECON6: Renewable Energy -** Proposals for the generation and utilisation of renewable energy should be promoted and will conform to the plan both in standalone locations and as integral parts of new and existing developments where it can be demonstrated there will be no significant adverse impact, including adverse cumulative impact or infrastructure constraints, and where the design of the development is sensitive to landscape character, biodiversity and cultural heritage.

*It is considered that the proposal is broadly in accordance with ECON6; however, an assessment of the impacts is made in more detail in relation to ECON7 below.*

44. To guide wind farm development in a manner that maintains landscape and biodiversity value and safeguards the operational needs of Glasgow and Glasgow Prestwick Airports, two areas of search for large scale wind farm development have therefore been identified, these being South Carrick and Whitelee Forest. Policy ECON7 specifically relates to wind farm development and states:

45. **ECON7: Wind Farms**

(A) In the Areas of Search proposals for large and small scale wind farm development will be supported subject to specific proposals satisfactorily addressing all other material considerations.

*The Galawhistle wind farm proposal does not lie within an Area of Search as defined in the approved Ayrshire Joint Structure Plan.*

(B) Areas designated for their national or international natural heritage value, and green belts, will be afforded significant protection from large scale wind farms.

*In respect of criterion (B), subject to appropriate mitigation secured by existing conditions, the application has demonstrated there would be no significant adverse impacts on natural heritage interests. Any legal obligations will still be sought through a s.75 agreement, but this has yet to be concluded – the applicants however whilst they have a consent which has no legal agreement attached, are in favour of such an agreement between both Councils and themselves.*

(C) The integrity of national and international designations should not be compromised.

*Subject to appropriate conditions or legal obligations, secured by the existing consent, it is considered that the changes to the proposed wind farm will not compromise the integrity of any national or international designations.*

(D) Cumulative impact will be assessed in all relevant cases, taking into account existing wind farms, those which have permission and those that are subject of valid but
undetermined applications. The weight to be accorded to undetermined applications will reflect their position in the application process. Where the limit of acceptable cumulative impact has been reached the area will be afforded significant protection.

The technical guidance (Addendum to the Ayrshire Joint Structure Plan Technical Report TR03/2006: Guidance on the local of wind farms with Ayrshire) that has been approved by the three Ayrshire Councils to support this policy, indicates that cumulative impact should be assessed in terms of (i) landscape; (ii) natural heritage; and (iii) aviation interests.

(i) In terms of landscape, the technical guidance identifies a 30km buffer around the large scale areas of search, in which there will be a presumption against further large scale wind farm developments. The information submitted by the applicant indicates that there will be no cumulative impacts on the landscape, landscape designations or views from settlements across the study area. In this instance, the application is only to vary the existing consent and the application has demonstrated there will be minimal impacts in landscape terms in terms of those changes.

(ii) With regard to natural heritage designations, the proposal has demonstrated there will be minimal impacts in landscape terms in terms of those changes.

(iii) In terms of aviation interests, it is noted there are no objections to the proposed development from the aviation consultees.

(E) Outside the Areas of Search: all wind farm proposals will be assessed against the following constraints, any positive or adverse effects on them and how the latter can be overcome or minimised:

[1] Historic environment;

WOSAS have not responded to their consultation in this instance, but originally recommended that an archaeological watching brief be maintained during the construction period, and this will remain as a condition on the substantive consent.

[2] Areas designated for their regional and local natural heritage value;

Subject to appropriate mitigation secured by existing conditions and legal obligations through a s.75 agreement, the application has demonstrated there would be no significant adverse impacts on natural heritage interests.

[3] Tourism and recreational interests;

The relatively minor changes will not have any significant adverse effects on regionally significant tourist resources, with includes the sensitive landscape character areas. The wind farm will also be clearly visible from a number of other key tourist viewpoints, including Cairn Table and the River Ayr Way, however overall the changes proposed will have little overall effect within the larger visible impact of the consented scheme.
Communities;

The main impact on local communities in terms of the consented scheme will be the traffic impacts occurring during the 14 month construction period. The current application makes no changes to these arrangements.

In order to avoid unacceptable noise, shadow flicker and visual impacts on towns/villages and individual dwellings, the structure plan technical guidance states that developments will not generally be supported where they are within 2km of a town or village or within 700 metres (or a distance of 10 x the turbine rotor diameter in this case 850 metres) of an individual dwelling, workplace or community facility unless the developer can demonstrate that the impacts are acceptable.

The nearest individual dwelling to the proposed wind farm is approximately 1km away, whilst the nearest settlement, Muirkirk, is approximately 6km away. Whilst the wind farm will be clearly visible from Muirkirk and indeed other settlements within East Ayrshire, it is considered that the impact will not be unacceptable.

Buffer zones;

Whilst the consented development is within the 30km buffer identified in the structure plan technical guidance, information was originally submitted in order to demonstrate that the application will not have unacceptable impacts. The current application makes no change to this, as the turbine locations are unaltered.

Aviation and defence interests;

As indicated in the Consultations Section above, the aviation consultees have no outstanding objections or comments.

Broadcasting installations.

The original application notes there were no broadcasting installations affected by the proposed development. Ideally, the applicants should, through a s.75 agreement, be required to enter into an agreement to rectify any interference should this occur after construction; however, as noted above, whilst the Council requested to the Scottish Ministers that such a mechanism be put in place, the decision was issued without any legal agreement. Discussions regarding this are on-going with the applicant at present, as the legal agreement is still in draft form, and requires to be the subject of continued negotiations.

Proposals affecting Sensitive Landscape Character Areas shall satisfactorily address any impacts on the particular interest that the designation is intended to protect but the designation shall not unreasonably restrict the overall ability of the plan area to contribute to national targets.

Whilst the proposal is not located in a Sensitive Landscape Character Area, it will be clearly visible from parts of the large Sensitive Landscape Area to the north and south of Muirkirk. The slight overall increase in blade length will have no significant adverse impacts in this regard.
In all cases, applications for wind farms should be assessed in relation to criteria including, as appropriate, grid capacity, impacts on the landscape and historic environment, ecology (including birds), biodiversity and nature conservation, the water environment, communities, aviation, telecommunications, noise and shadow flicker.

A number of the criteria listed in this criterion have already been assessed in relation to point (E) above. The potential impact of the proposal on communities has been assessed in respect of all pertinent planning matters, and the application has demonstrated that there will be no significant adverse impacts overall in terms of the variation sought.

Adopted East Ayrshire Local Plan 2010 (EALP)

46. The need to reduce dependence on fossil fuels and nuclear power for energy production is reflected in the Scottish Renewables Obligation which requires that an ever increasing proportion of electricity be produced from renewable sources. While supportive of renewable energy projects, it is considered imperative that the more sensitive parts of the rural area in terms of landscape quality, nature conservation and heritage interest are adequately protected.

47. ENV15: the Council will not be supportive of development which would cause unacceptable and irreparable damage to important landscape features within rural areas. In this regard, developers will be expected to conserve and enhance (and reinstate or replace where appropriate), those features which contribute to the intrinsic landscape value and quality of the area concerned and which are likely to be adversely affected by the particular development proposed, including:

(i) existing setting of settlements and buildings within the landscape;
(ii) existing woodlands, shelter belts, hedgerows and trees;
(iii) existing burns, rivers, lochs and other water features;
(iv) existing field patterns and means of enclosure including dry stone dykes, hedging and fencing;
(v) existing Public Rights of Way, footpaths and bridleways; and
(vi) existing skylines, landform and contours.

The above considerations have been assessed in relation to impacts on local landscape characteristics and the relatively minor changes overall will not have any significant adverse effects in respect of the above.

48. ENV16: the Council will not be supportive of development which would create unacceptable visual intrusion or irreparable damage to the landscape character of rural areas. In this regard, the Council will ensure, through the development process, that

(i) any authorised development is in keeping with, has minimal visual impact and reflects the nature of the rural area in which it is located, in terms of layout, materials used, design, scale, finish and colour. The design and material finish of any ancillary features will also require to be sympathetic to the character and appearance of the area;

The consented wind farm will have a significant visual impact overall on the rural area, however, in terms of the proposal to increase in blade length to 45m from 41.2m; change of the locations of 2 electrical substations etc.; and move the construction compound; realignment of 2 of the borrow pits; and
amendment of the access track layouts; these minor changes in the overall scheme will have minimal visual impact overall. The slight increase in blade height will be visually negligible, and overall, the reduction in access track is of benefit.

(ii) any authorised development is sensitively sited, landscaped and screened so as to blend into, respect and complement the landscape characteristics of the particular area in which it is located; and

It is considered that the proposed realignment of 2 of the borrow pits, and the change of location to the electrical substations and construction compound etc. pose no greater impacts than the consented scheme. Overall, however, the reduction in access track from 18km to 16.8km is of landscape benefit compared with the consented development, and is the more appropriate in terms of minimising the overall impact of the development on the landscape.

(iii) the landscape setting of a particular area affected by a proposed development is safeguarded from adverse or irreversible change by the use of appropriate planning conditions, management agreements, preparation and promotion of environmental improvement schemes, development and design briefs etc.

The scheme as approved is already subject to appropriately conditions to ensure that there are no long term adverse or irreversible changes to the landscape in which the wind farm would be situated. These would be updated to reflect the proposed changes of the variation.

49. Policy CS12: the Council will positively support and promote the development of sympathetic renewable energy proposals both in standalone locations and as integral parts of new and existing developments where it can be demonstrated that there will be no significant, unacceptable adverse impact, including adverse cumulative impact with other existing renewable energy developments or other renewable energy developments which are consented or under construction:

(i) on any recognised statutory or non statutory sites of nature conservation interest;

The appropriate mitigation secured by conditions and legal obligations through a s.75 agreement remain in place, and the application has demonstrated the suggested changes will have no significant impacts in their own right on natural heritage interests.

(ii) on the amenity of nearby communities or sensitive establishments, including individual or small groups of houses in the countryside that may be adversely affected by reason of noise emission, visual dominance and other nuisance;

It is not considered, in respect of the relatively minor changes proposed within the application, there will be any significant adverse impacts on residential properties through noise and other potential nuisance. With regard to visual dominance in relation to proximity to local communities, the change in turbine blade will have no significant adverse effects overall.

(iii) on any recognised built heritage resources, including Listed Buildings, Conservation Areas, Scheduled Ancient Monuments, archaeological sites and landscapes and Historic Gardens and Designed Landscapes and their individual settings;
The consent would be subject to the existing appropriate conditions. Historic Scotland do not object to the proposed development.

(iv) on the visual amenity of the area and the natural landscape setting for the development, particularly within the Sensitive Landscape Character areas as identified on the local plan rural area map; and

As has been stated in relation to the Structure Plan policies, it is considered that the visual impacts will not be unacceptable for the relatively minor changes proposed to the consented development.

(v) on existing infrastructure.

It is considered that there will be no unacceptable impact caused by the proposed connections to link the proposed development with the national grid and surrounding road network, the application overall being subject to the imposition of the original appropriate planning conditions and/or obligations secured by means of a s.75 agreement, however, this is still in draft form, and requires to be the subject of continued negotiations.

50. CS14: the Council will assess all applications for wind farm developments, including extensions to existing, consented and/or operational wind farms, against the provisions of Policy ECON7 of the approved Ayrshire Joint Structure Plan: Growing a Sustainable Ayrshire and any future supplementary planning guidance to be prepared relating to cumulative impact.

The criteria listed above fully reflect the provisions of Structure Plan policy ECON7. Please refer to detailed comments in relation to ECON7 in paragraph 46 above.

51. CS15: the Council, if mindful to grant planning permission for a commercial wind farm development, requires applicants to contribute to a dedicated Renewable Energy Fund (REF) which will be used to finance sustainable community environmental projects, particularly those designed to help reduce carbon emissions and counteract global warming. For a period of 10 years from the commencement of construction work on the wind farm, all contributions will be directed exclusively to local projects within 10 km of the boundary of the wind farm. Thereafter, 50% of the contributions received will be directed towards local projects with 50% being reserved for use in the wider East Ayrshire area. Contributions will be payable annually and be set at a standard rate of £2500 per megawatt of installed capacity per annum, index linked to 1 January 2008.'

Prior to the application being approved by the Scottish Ministers, the Council requested that the applicant be required to enter into a s.75 agreement with the Council for contributions to the above Renewable Energy Fund, with regards to those turbines that fall within East Ayrshire. As noted above, the decision was subsequently issued by the Scottish Ministers without concluding the related s.75 agreement. Whilst the applicant is therefore not obliged to enter into any such agreement, the company have nevertheless noted their intention to do so, and to contribute to the REF amongst other provisions. The s.75 agreement is currently in draft form, and is in the process of being agreed by the various parties.

52. CS16: where a wind turbine is not in operation producing electricity for a continuous period of six months, the operator will be required to provide evidence to the Council that the apparatus is in the process of being repaired or replaced. Otherwise, the Council will deem
the turbine to be surplus to requirements and require its removal, with the land restored to its original condition within an appropriate period to be agreed with the Council.

In the consented scheme, the Planning Authority indicated to the Scottish Ministers that a condition should be attached to any consent granted for the proposed development to ensure that the developer meets the provisions of Policy CS16, and this was included on the s.36 consent (condition 3).

ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

Consultation Responses

53. None of the responses from the technical consultees suggest refusal of the application. One response from Muirkirk Community Council has noted concerns regarding the wind farm already consented, however that is not within the scope of this current application.

Representations Received

54. Two objections were received which noted concerns regarding the wind farm already consented, however, as above, that is not within the scope of this current application.

Impact on Amenity

55. As noted above in the Development Plan Section, the relatively minor changes will not have any significant adverse impacts on residential properties through noise and other potential nuisance. With regard to visual dominance in relation to proximity to local communities, the change in turbine blade will have no significant adverse effects overall.

Planning History


12/0657/PP Galawhistle Surface Mine (Spireslack Extension), Extraction of 3.5 million tonnes of coal by surface mining methods within the existing Spireslack Surface mining complex; comprehensive restoration of the Galawhistle surface mine operations to forestry, nature conservation and agriculture, Scottish Coal- On hold.

56. 10/0001/S36 Proposed windfarm (55 MW) consisting of 22 turbines, control building, access tracks, anemometer and associated infrastructure, Infinis Ltd, Approved with Conditions, 08/08/2012.

Scottish Historic Environment Policy (SHEP)

57. The proposal has no adverse impacts on the provisions of the SHEP.

Scottish Planning Policy (SPP)

58. The proposal meets with the terms of SPP, in terms of increased output, and will help support the transformational change to a low carbon economy, consistent with national objectives and targets (SPP para 154), which aims to have 100% of electricity demand derived from renewable sources by 2020 (para 154). In terms of the detailed development management considerations noted in SPP on assessing wind farm applications, the following have been assessed:
• net economic impact, including local and community socio-economic benefits;
• the scale of contribution to renewable energy generation targets;
• effect on greenhouse gas emissions;
• cumulative impacts
• impacts on communities/individuals, including visual impact, residential amenity, noise, shadow flicker;
• landscape and visual impacts, including effects on wild land;
• effects on the natural heritage, including birds;
• impacts on carbon rich soils, using the carbon calculator;
• public access, including impact on long distance walking and cycling routes and scenic routes
• impacts on the historic environment;
• impacts on tourism and recreation;
• impacts on aviation and defence interests and seismological recording;
• impacts on telecommunications and broadcasting installations;
• impacts on road traffic; and on adjacent trunk roads;
• effects on hydrology, the water environment and flood risk;
• the need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration;
• opportunities for energy storage; and
• the need for a robust planning obligation to ensure that operators achieve site restoration

and overall, the proposal is not considered to significantly adversely impact on any of the above considerations.


59. The consented development was assessed against the above Supplementary Planning Guidance, and as the changes proposed are minor overall in the scope of the consented scheme, and the site being outwith the areas to be given significant protection, it is considered that the variation poses no significant issues in terms of the Addendum. In support of this, the application does not impact on any international or national designations, and the landscape and visual impacts will be limited. As noted above in the report, effects on aviation interests, natural heritage designations and cumulative impacts are also very limited. The site is partly located in an 'Area of Potential Constraint,' however in terms of:-

• Historic Environment;
• Areas designated for their regional and local natural heritage value;
• Tourism and recreational interests;
• Communities;
• Buffer Zones;
• Aviation and defence interests, and
• Broadcasting installations,

these issues have been assessed above at paragraph 46.

**East Ayrshire Council Supplementary Planning Guidance - East Ayrshire Landscape Wind Capacity Study**
The site is located within the Plateau Moorland Landscape Character Type, and the Galawhistle wind farm as consented is noted within the document. The Plateau Moorlands form an extensive undulating upland plateau of subtly rounded hills, shallow basins and some very gently graded lower slopes but also feature the higher hills in this case, Cairn Table is the closest landmark hill, which has steep slopes and defined ridges and summits. Overall, whilst the area in general has a high-medium sensitivity to the large typology (turbines>70m), in this case the changes sought by the variation to the consented scheme, will not be sited close-by, or will significantly intrude on key views to and from, Cairn Table.

Applicants Supporting Documentation

The applicant has submitted a supporting statement which details the proposed changes to the consented development and gives a justification and commentary on technical matters thereof. This notes the s36 consent for Galawhistle Wind Farm has planning conditions that require certain documents to be submitted to East Ayrshire Council and South Lanarkshire Council. The documents are to be approved by the councils prior to commencement of construction work at the site. These documents are a Construction Method Statement, a Habitat Management Plan, an Environmental Management Plan, an Otter Protection Plan, a Peat Management Statement, a Traffic Management Plan, a Water Quality Monitoring Plan, and a Site Waste Management Plan, all of which describe measures that will ensure protection of the environment and assist in mitigation of environmental effects. No changes are proposed to the planning conditions that require submission and approval of these documents.

FINANCIAL AND LEGAL IMPLICATIONS

There are no financial obligations for the Council in determining this application, however, legal implications arise insofar as any permissions arising from this proposal, will be subject to the same conditions that the consented development 10/0001/s36 is subject to, and that the draft s.75 legal agreement still requires to be finalised with the various parties. As noted, above, the decision on the consented scheme was issued without having been subject to a legal agreement, and the developer is therefore not legally obliged to enter into a legal agreement, but has agreed to do so nonetheless. Discussions so far on this issue have included the inclusion of matters of restorative bond/guarantee; Renewable Energy Fund (REF) payments; Planning Monitoring Officer; Ecological Clerk of Works; and road works agreement— notwithstanding that some of these matters are already able to be controlled by planning conditions attached to the consent. The matters not covered by condition are the REF payment(s) and Planning Monitoring Officer.

63. East Ayrshire Council's view on the consented development 10/0001/s36 was forwarded to the Scottish Ministers on 25th October 2011, beyond the 4 month determination period, and prior to the current arrangements that now exist for such developments, whereby a consultation response will now be provided within 4 months to the Scottish Ministers – notwithstanding however, Councils are a consultee on such applications and the Scottish Ministers are not obliged to take on board their suggestions for planning conditions or legal agreement if they so choose.

COMMUNITY PLAN

The proposed development accords with the Economy themes of the Community Plan as the proposal promotes economic activity which will improve and enhance the local economy.

CONCLUSIONS
65. As indicated in the report above, there are material considerations relevant to this application, but in this instance, it is considered that these support the proposal.

66. It is concluded from the foregoing that the application is acceptable and will not detract visually from the surrounding area or represent any significant visual or landscape impacts from the consented development. It is considered that there will be no significant impacts upon surrounding properties as a result of the proposed development.

RECOMMENDATION

67. It is recommended that the Council does not formally object to the proposed development and that a copy of this report be forwarded to the Scottish Ministers as presenting this Council’s formal response to the consultation on the Section 36 variation application for the Galawhistle Wind Farm development in terms of the Electricity Act 1989.

CONTRARY DECISION NOTE

68. Should the Committee agree to object to the S36 variation application contrary to the recommendation of the Acting Head of Planning and Economic Development, the application would not require to be referred to the Council as this would not constitute a significant breach of policy.

David McDowall
Acting Head of Planning and Economic Development

22 January 2015

FV/DMcD

LIST OF BACKGROUND PAPERS

1. Application Forms/Plans.
2. Statutory Letters/Certificates.
3. Consultation responses.
4. Objection Letters
5. Ayrshire Joint Structure plan 2007
6. Adopted East Ayrshire Local Plan 2010
7. OPEN Technical Report
8. RPS Technical Report
9. RPS Ecology Report
10. RPS Ornithology Report
11. RPS Hydrology, Hydrogeology and Geology Report
12. Consent letter 10/0001/s36

Anyone wishing to inspect the above papers please contact Marion Fergusson, Senior Planning Officer on 01563 576769

Implementation Officer: Craig Iles, Acting Operations Manager
East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 10/0001/S36VAR

APPENDIX 1

LIST OF MATTERS TO BE INCLUDED AS SECTION 36 APPROVAL CONDITIONS, PLANNING CONDITIONS OR LEGAL OBLIGATIONS SECURED BY A SECTION 75 AGREEMENT IN TERMS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

Location

Galawhistle Wind Farm C38 Glenbuck Off A70 Glenbuck East Ayrshire

Nature of Proposal:

Variation of existing Section 36 consent to construct and operate the Galawhistle Wind Farm Electricity Generating Station at 7km east of Muirkirk and 4km west of Douglas

Name and Address of Applicant:

Galawhistle Wind Farm Ltd
Per Jones Lang LaSalle Ltd

Name and Address of Agent

Jones Lang LaSalle Ltd
150 St. Vincent Street
Glasgow
G2 5ND

Officer’s Ref: Marion Fergusson
01563 576769

The above Variation under Section 36 (Electricity) application should be approved subject to the conditions imposed upon application 10/0001/s36.

Conditions of Section 36 Consent

1. Notwithstanding the consent granted herein, the conditions relating to the substantive consent with existing consented development 10/0001/s36 will apply to this permission.

REASON: For the avoidance of doubt, as the substantive conditions i.e. those relating to 10/0001/s36, apply to this development also.

General Planning Provisions
Prior to any work commencing on site the applicant shall provide the following information, in writing and plan form, as required, to the Planning Authority for consultation with Defence Infrastructure Organisation Safeguarding:

a) the date that the construction work will start and end;
b) the maximum height of all construction equipment;
c) the latitude and longitude of every turbine.

No work shall commence on site until the Planning Authority has confirmed in writing that this information has been approved by Defence Infrastructure Organisation Safeguarding.

REASON: In the interests of air safety.

Reason for this Decision

The proposed development in terms of the principle of development and overall, is consistent with the policies of the Development Plan, and there are no other material considerations that would indicate that the application should be refused, therefore East Ayrshire Council does not object to the s36 variation application made to the Scottish Ministers for Galawhistle Wind Farm.