

<b>APPEAL DECISION (LRB)</b>
<b>Appeal Reference</b>
LRB382
<b>Planning Reference</b>
APP/2016/3254
<b>Planning Proposal</b>
Full planning permission for the erection of 1 wind turbine (hub height 55.5 metres) total height 79.6 metres, substation and associated infrastructure
<b>Summary of Decision</b>
<p>The Local Review Body (LRB) agreed with the decision made by the Planning Service to refuse planning permission and therefore the appeal was dismissed.</p> <p>The main determining issue in the review was whether the general policy presumption in favour of renewable energy development was outweighed by potential adverse impacts on safety, amenity and cumulative visual impact.</p> <p>While concerns were raised by the MOD in respect of potential interference to the radar at RAF Buchan, the LRB agreed that it would be acceptable to allow the agents a period of 6 months to negotiate a resolution direct with the MOD</p> <p>However due to the proximity to neighbouring properties, Crimond and the A90, it was unanimously agreed that the proposal would result in an adverse impact both on the landscape and the already built and approved turbines in the area. It was thought that the turbine would appear as an overwhelming and dominant structure in its own right.</p> <p>Members also agreed that the applicant had failed to demonstrate that noise impacts and shadow flicker would not have a significant adverse impact on the amenity of nearby dwellings.</p> <p>While there appeared to be a discrepancy between site plans on the distance the turbine would be from the road, the members accepted that the proposal would affect public safety.</p> <p>As there were a number of inaccuracies with the submitted plans (even though they could submit amended plans or be amended by conditions) it was agreed that this should also be included as a reason for refusal as elements of the application could not be assessed competently.</p>

**Policy Issues**

The proposal is contrary to:-

Policy C2 Renewable Energy  
Policy P1 Layout, siting and design  
Policy E2 Landscape

**Additional Points**

None

**Actions**

No actions required given no breach of planning has taken place.

**Note Decision**

Refuse Detailed Planning Permission

**Other**

None

## **Aberdeenshire Council Local Review Body**

**Reference LRB 382 APP/2016/3254**

### **Review Decision Notice**

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Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: Land at Crimond Camp, Crimond, Fraserburgh
- Application for review by Ms Gillian Campbell c/o Halliday Fraser Munro against the decision by an Appointed Officer.
- Application reference APP/2016/3254 for full planning permission for the erection of 1 wind turbine (hub height 55.5 metres) total height 79.6 metres, substation and associated infrastructure, refused by decision notice dated 29 March 2017.
- Application drawings: Site Location Plan @ 1/2500 scale; Site Layout Plan @ 1/500 scale; Distance to neighbouring properties @ 1/7500 scale and turbine details @ nts (drawing no: E-48/S/55/3K/01).
- An unaccompanied site inspection took place on 17 November 2017.

Date of Decision: 20 December, 2017

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### **Decision**

The Local Review Body (LRB) agrees with the determination reviewed by it and refuses Full Planning Permission in accordance with the Appointed Officer's decision subject to the planning policy references being amended to reflect those contained within the adopted Aberdeenshire Local Development Plan (ALDP) 2017.

#### **1.0 Preliminary**

- 1.1 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The LRB reviewed the determination of the above application for planning permission at its meeting held on 17 November 2017. The LRB was attended by Councillors P K Johnston (Chair), R Cassie, F C P Hood, J Hutchison, J Ingram and A Ross,. As part of the review the LRB carried out an unaccompanied site inspection earlier on the same day, which the LRB had previously agreed to undertake when it deferred consideration of the case at its previous meeting held on 25 August 2017.

- 1.3 Having undertaken the earlier site inspection and viewed the proposed site from a number of different vantage points, and having also now received additional information requested at the their earlier meeting on 25 August 2017 from, a) the Planning Service on other turbines located in the area, b) Environmental Health on matters relating to noise and shadow flicker and c) the agents further response, the LRB agreed there was now sufficient information before it in order to consider the review and that no further information was required.

## **2.0 Proposal**

- 2.1 Full planning permission is sought for the erection of a single 500kW Enercon E48 wind turbine at Crimond Camp, Crimond. The turbine proposed has a blade diameter of 48m with a hub height of 55.6m. The total height to tip of this turbine is 79.6m. The proposal comprises additional associated infrastructure including a substation.
- 2.2 The wind turbine would be located approximately 500 metres south of the current built up edge of the settlement of Crimond, and from the edge of the Settlement Development boundary as identified in the ALDP 2017. The land to which the application relates is currently disused and does not appear to have been in active use since it was left vacant after the Second World War.
- 2.3 The site lies within the Coastal Farmland Landscape Character Area.
- 2.4 A previous planning application (APP/2012/1420) for an 800kw turbine with a total height of 79 metres was withdrawn and a subsequent application (APP/2015/2648) to erect a similar turbine to the current proposal, with a hub height of 55 metres and a total height 79 metres was refused planning permission in March 2016.
- 2.5 The current proposal had been accompanied by supporting Information including a number of reports on matters such as habitats and species; ornithology; soil and hydrology; landscape visualisations; civil aviation and MOD; sound and power.

## **3.0 Reasoning**

- 3.1 The main determining issues in this review was whether the general policy presumption in favour of renewable energy development was outweighed by potential adverse impacts on safety, amenity and cumulative visual impact.
- 3.2 In his presentation to the LRB, the Planning Adviser reminded the members of the fact that on 17 April 2017, the Aberdeenshire Local Development Plan 2012 had been replaced by the adopted Aberdeenshire Local Development Plan 2017. As such the ALDP 2017 now forms the basis for decision-making even though the original

decision notice (dated 29 March 2017) refers to policies from the now superseded 2012 plan.

- 3.3 The LRB therefore agreed that the relevant policies contained in the adopted ALDP 2017 were as follows:

Policy C2 Renewable energy;

Policy P1 Layout, siting and design;

Policy E1 Natural Heritage;

Policy E2 Landscape;

Policy HE1 Protecting historic buildings, sites and monuments;

Policy HE2 Protecting historic and cultural areas;

Policy PR1 Protecting Important Resources

- 3.4 At the outset, the benefit of the earlier site inspection was acknowledged as affording the members of the LRB a greater appreciation of the potential impacts that may arise from the proposed wind turbine and also to consider its overall setting within the landscape and its relationship to existing and consented wind turbine development in the surrounding area. In addition, the LRB were able to assess the relationship of the site and proximity to the nearest residential properties and also the settlement of Crimond.

- 3.5 The LRB gave consideration to each of the reasons for refusal and also the applicant's case and supporting documents as contained in the Notice of Review all of which had been summarised by the Planning Adviser during his presentation. The Planning Adviser had also summarised the responses received from each of the consultees and also highlighted the issues raised in the 17 representations (1 objection and 16 letters of support) that had been received to the application. The Planning Adviser also addressed the additional responses received to the Notice of Review, including 1 further objection, 1 further letter of support and also the agent's further response.

- 3.5 The LRB also took account of the contents of the further responses that had been received from the Planning Service (pages 7-9 of the additional agenda papers), Environmental Health (pages 11-14) and the further detailed response from the agent (pages 16-20) in response to the Notice of Review and the reasons for refusal.

- 3.6 In response to the first reason for refusal which related to an outstanding objection from the Ministry Of Defence (MOD) in respect of potential interference to the radar at RAF Buchan, the LRB agreed that if all other matters could be addressed or suitably conditioned, then the council's

normal approach of dealing with this type of objection would be to allow the agents a period of 6 months to negotiate a resolution direct with the MOD.

- 3.7 However when considering the location, position and height of the proposed turbine and its relationship and proximity to neighbouring properties and the nearby village of Crimond and the A90, and notwithstanding the lack of any apparent local objection to the proposal, the LRB unanimously agreed that the proposal would result in an adverse cumulative impact to the detriment to the character and appearance of the landscape and would appear discordant with other already built and approved turbines. The judgement expressed was that the turbine would appear as an overwhelming and dominant structure in its own right and would therefore be contrary to Policy C2 as set out in the ALDP 2017.
- 3.8 Taking on board all of the relative submissions that were before the LRB, the members also agreed that to date the applicant had not demonstrated that matters relating to potential noise impacts and shadow flicker would not have a significant adverse impact on the amenity of nearby dwellings and therefore the proposal was also currently deemed to be contrary to Policies C2 and P1 of the ALDP 2017.
- 3.9 In terms of the siting of the turbine and its proximity to the public road, it was acknowledged that within the Notice of Review the agent had provided a response and further revised plan to suggest that the turbine would be located 83.7 metres from the road. However the updated site plan (agents document CC7 on page 72) appeared to show that the turbine would be located closer to the road than that shown on the originally refused drawing (page 110). As such the LRB agreed that proposal would adversely affect public safety and would be contrary to Policy C2 of the ALDP.
- 3.10 Finally, whilst acknowledging that matters raised regarding certain other conflicts and inaccuracies with the submitted plans could either be resolved through the submission of amended or revised plans or by conditions on any approval, as the LRB were clearly minded to dismiss the Notice of Review for the other reasons outlined above, it was agreed that this should also be included as a reason for refusal.
- 3.11 In conclusion and in the absence of any over-riding other material considerations, the LRB therefore agreed to uphold the decision of the Appointed Officer (subject to the planning policy references being amended to reflect those contained in the adopted ALDP 2017), thereby refusing Full Planning Permission for the reasons cited below.

#### **4.0 Reasons for Refusal**

- (1) The proposal is contrary to Policy C2 Renewable Energy of the ALDP 2017 as the proposal has failed to demonstrate that it would not significantly impede or compromise the safe and effective use of any defence assets (including radar or air traffic control systems of the Ministry of Defence). An objection has been received from the Ministry of Defence that the turbine will be 16.1km from, detectable by, and will cause unacceptable interference to the AD radar at RAF Buchan.
- (2) The proposal is contrary to Policy C2 Renewable Energy of the ALDP 2017 as the proposal has failed to demonstrate that the proposal would not have a significant adverse impact on the amenity of adjacent dwellings by virtue of the noise impact. The applicant has been unable to demonstrate that the noise impact from the proposed development is capable of meeting appropriately derived noise limits at all significant noise sensitive receptors, including North Mosstown, Moss-side and the settlement development boundary. Furthermore, it is considered that the development is unlikely to comply with background derived noise limits at Moss-side. If approved, the proposal would impact on the settlement development boundary and affect the delivery of proposed developments, including residential development adjacent to the Reisk, creating a cordon sanitaire. The proposal is therefore also considered contrary to Policy P1 Layout, siting and design of the ALDP 2017.
- (3) The proposal is contrary to Policy C2 Renewable Energy as it is considered that the turbine, in conjunction with consented turbine applications, would result in an adverse cumulative impact to the detriment of the character and appearance of the local landscape. It would appear discordant with those turbines which have already been approved. Furthermore, the proximity of the turbine to the settlement of Crimond, as defined in the Local Development, the adjacent tree belt and the A90 are such, that it is considered that the turbine would appear as an overwhelming and dominant structure in its own right. The proposal is therefore also considered contrary to Policy E2 Landscape of the ALDP 2017.
- (4) The proposal is contrary to Policy C2 Renewable Energy as the proposal will not be set back from the public road by a minimum of 79.6 metres, which is considered to adversely affect public safety and also contrary to Scottish Government best practice advice.
- (5) The proposed turbine fails to demonstrate that it would not have an adverse impact on neighbouring properties by way of shadow flicker, contrary to Policy C2 Renewable Energy of the ALDP 2017, Council Planning Advice, and Scottish Government best practice advice.
- (6) Submitted plans and details conflict which unfortunately raises concerns over accuracy: (a) Lack of information on details of the proposed sub-station, which prevents the Planning Authority from considering the visual impact. (b) The site plans appear to be inaccurate, and it is unclear exactly where the turbine is proposed as the foundation base is not

clearly shown. (c) Conflicts between the site plans and the submitted supporting statement, such as the set back from the public road. (d) The visualisations contain some inaccuracies. The submitted application raises concerns over the exact positioning of the proposed wind turbine to be clearly established.

**Geraldine Fraser**  
**Acting Head of Legal and Governance**

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

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

#### **Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.**

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.