

APPLICATION FOR PLANNING PERMISSION 14/00044/DPP, FOR THE ERECTION OF 9 WIND TURBINES (UP TO 102M TIP HEIGHT) AND ASSOCIATED TRANSFORMERS; ERECTION OF SWITCHGEAR BUILDING; ERECTION OF ANEMOMETER; FORMATION OF ACCESS TRACKS; AND ASSOCIATED WORKS ON LAND AT MOUNT LOTHIAN MOSS, PENICUIK

Report by Head of Communities and Economy

1 PURPOSE OF THE REPORT

- 1.1 At its meeting on 25 February 2014, the Committee was notified of the intention to hold a pre-determination hearing and undertake a visit to the application site at Mount Lothian, Penicuik. Subsequently, at its meeting on 27 May 2014, the Committee agreed that the pre-determination hearing be held on 26 September 2014 at Penicuik Town Hall, followed by a site visit. However, the Committee was advised on 26 August 2014 that the applicant had submitted an appeal against non-determination of the application and that, although the application would be determined by a Reporter, the application would be reported to the October 2014 Committee to confirm a position for the Council to take at appeal.
- 1.2 The purpose of this report is to seek: Committee approval for a recommendation to the Reporter that the appeal should be dismissed; and the Committee's endorsement of (a) the draft wind energy policy framework being brought forward as part of the forthcoming Midlothian Local Development Plan Proposed Plan, and (b) the consultative draft *Supplementary Guidance on Wind Energy Development in Midlothian*. The emerging policy framework and Supplementary Guidance will be a material consideration in relation to planning applications/appeals.

2 BACKGROUND

- 2.1 On 28 January 2014, Wind Prospect Developments Limited submitted an application for a wind farm development of 9 wind turbines (up to 102m tip height) and associated plant and access roads, at Mount Lothian Moss, Penicuik (a location plan is provided as part of Appendix 1). The application was accompanied by an Environmental Statement. Prior to this, on 17 May 2013, the same applicant had opted to withdraw a previous application (13/00063/DPP) for the same development in order to address objections received from Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).

- 2.2 The current application has been subject to the statutory notification and consultation process and 771 representations have been received, including responses from Howgate and Moorfoot Community Councils, Transport Scotland, Edinburgh Airport Limited, the Ministry of Defence, National Air Traffic Services, Historic Scotland, SNH, the Scottish Wildlife Trust, the Forestry Commission for Scotland, East Lothian Council Archaeological Service, the Royal Society for the Protection of Birds, Scottish Water, SEPA, National Grid, Scottish Gas Networks and Scottish Borders Council.
- 2.3 Section 38A of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006) sets out the relevant provisions under which a planning authority is required, or may choose, to hold a pre-determination hearing. The pre-determination hearing, duly arranged for 26 September 2014, was also to constitute a meeting of the Planning Committee.
- 2.4 The planning application was scheduled to subsequently be reported to the Committee on 7 October 2014 for determination.

3 APPEAL AGAINST NON-DETERMINATION

- 3.1 On 27 August 2014, the Council was notified by the Directorate for Planning and Environmental Appeals (DPEA) that the applicant had appealed against non-determination of the application as it had not been determined within four months of submission. The four-month period had expired in May 2014; previous attempts to establish a date for a pre-determination hearing prior to the summer period were unsuccessful which incurred a delay until the early autumn.
- 3.2 No date has yet been set for the appeal but the appellant has asked for the format to include a public inquiry on landscape impact and hearing(s) on other relevant matters. It may be worth noting that the planning authority or any other party to the appeal can make a claim for an award of expenses on the grounds that there has been unreasonable behaviour by another party.
- 3.3 Upon receipt of the notification, the Council was required to give notice of the appeal to each interested party in respect of the application and this has been done. Representations previously made to the Council are now available to Scottish Ministers and the appellant.
- 3.4 The Reporter has sought the planning authority's response to the appeal including those matters that it considers should be taken into account in determining the appeal and the procedure by which the authority thinks these should be examined. Copies of all documents which form part of the evidence base had to be submitted to the DPEA by 17 September. The report on the authority's handling of the application was also required by this date, together with the conditions which the authority considers should be imposed in the event that planning permission is granted.

4 REPORT OF HANDLING

- 4.1 Appendix 1 to this report comprises the report of handling for the Committee's consideration, the purpose of which is to establish a position for the Council to take at appeal. Although the appeal means that the decision on the planning application now lies with the Reporter, the report recommends that the application be refused and that the Reporter be requested and recommended to come to the same conclusion, and therefore dismiss the appeal.

5 PLANNING POLICY POSITION

- 5.1 Section 7 of the report of handling sets out the current development plan policies that are relevant to this planning application, that is, the policy framework provided by the Strategic Development Plan for South East Scotland (SESplan) and the Midlothian Local Plan 2008. It also outlines the national planning policy position as provided by the revised Scottish Planning Policy published in June 2014.
- 5.2 The Midlothian Local Development Plan (MLDP) Proposed Plan which is currently in preparation will replace the Midlothian Local Plan in due course. It is being prepared not only to meet the SESplan requirements but also to reflect the revised national policy position insofar as this does not conflict with the requirements for the MLDP to be consistent with SESplan.
- 5.3 It is hoped to bring the MLDP Proposed Plan to Cabinet and Council for approval in November/December 2014, with a view to the Plan being published for formal representations early in 2015. Council has already considered the development strategy for the Proposed Plan at its meeting on 24 June 2014. The planning policy framework of the Proposed Plan is now being finalised on the basis of the Third National Planning Framework and the revised Scottish Planning Policy as published in June this year and reported to Cabinet on 26 August. This latter report explained the changes to national policy on wind energy.
- 5.4 The MLDP Proposed Plan policies relevant to this planning application (policies NRG1 and NRG2) have now been prepared on the basis of both the SESplan policy framework and the revised Scottish Planning Policy. Policy NRG2 is based upon a spatial framework for wind farms as required in Scottish Planning Policy and follows the approach set out in the latter. Appendix 2 to this report comprises the proposed MLDP policies NRG1 and NRG2 with supporting text, the spatial framework (which applies to developments of one or more turbines with a height to blade tip of 30 metres or more) and additional guidance on the potential or otherwise to accommodate wind turbines below 30 metres in height. Committee support for this section of the forthcoming MLDP Proposed Plan is sought ahead of the approval of the forthcoming Proposed Plan in order to ensure that the latest policy context is available to the Reporter when determining this appeal.

- 5.5 Further, policy NRG2 *Wind Energy* makes reference to the *Supplementary Guidance on Wind Energy Development in Midlothian* which has been prepared, as a consultation draft, to accompany the Proposed Plan. Once adopted, this will provide statutory guidance on the operation and application of the spatial framework, including mapped areas of significant protection and locations with possible landscape capacity for wind energy; the application of policies NRG1 and NRG2 to the development and assessment of proposals; the siting of wind turbines in Midlothian; and guidance and information on the cumulative effect of wind energy development in Midlothian. In response to the publication of Scottish Planning Policy and to inform the MLDP spatial framework for wind energy, the Council commissioned landscape capacity analysis to identify those locations where (and at what scale) the Midlothian landscape might successfully accommodate wind energy development. The resulting *Midlothian Landscape Wind Energy Capacity Study (2014)* forms part of the Supplementary Guidance which will be a material consideration in the assessment of all wind energy proposals.
- 5.6 Appendix 3 to this report includes the consultation draft of the *Supplementary Guidance on Wind Energy Development in Midlothian* for the Committee's consideration, with the *Midlothian Landscape Wind Energy Capacity Study* (which forms part of the Supplementary Guidance, as indicated above) available in the Members' Library. The Supplementary Guidance, together with the policy framework set out in Appendix 2, has been provided to the DPEA in draft format ahead of Committee consideration in order to meet the tight deadlines for the appeal timetable.
- 5.7 The Committee should note that the draft policy framework will be subject to Strategic Environmental Assessment and Habitats Regulations Appraisal as part of the MLDP Proposed Plan; the draft Supplementary Guidance also requires to be screened for these purposes.
- 5.8 Once the Proposed Plan is approved, it will be published and subject to a period for formal representations; the draft Supplementary Guidance will be subject to consultation alongside the Proposed Plan.

6 RECOMMENDATIONS

- 6.1 It is recommended that the Committee:
- (i) approves the report of handling relating to the Mount Lothian Moss wind farm application as presented in Appendix 1, including the recommendation to the Reporter that the application be refused and the appeal dismissed;
 - (ii) endorses the proposed Midlothian Local Development Plan (MLDP) policies NRG1 and NRG2 with supporting text, including the spatial framework for wind energy and additional guidance, all as set out in Appendix 2 to this report, to be incorporated in early course into the MLDP Proposed Plan;

- (iii) endorses the draft *Supplementary Guidance on Wind Energy in Midlothian*, as set out in Appendix 3 to this report, for consultation purposes; and
- (iv) notes that the proposed policy framework and draft Supplementary Guidance will be a material consideration in relation to planning applications and appeals.

Ian Johnson
Head of Communities and Economy

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Application No.: 14/00044/DPP (Available online)
Applicant: Wind Prospect Developments Limited
Agent: Wind Prospect Developments Limited
Validation Date: 28 January 2014
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Background Papers:
Report to Cabinet on 26 August 2014: National Planning Framework 3 and Scottish Planning Policy