

GS/Cnoc an Eas/IK

Town and Country Planning (Scotland) Act 1997

Town and Country Planning (Appeals) (Scotland) Regulations 2008

CLOSING SUBMISSION

for STAG (Local Objector Group)

for a Public Local Inquiry - Proposed Cnoc an Eas Wind Farm

DPEA Reference: PPA-270-2155

THC Reference: 15/02758/FUL

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Background

1. This document is the Closing Submission on behalf of **STAG** (a grouping of locally affected and interested households and businesses in the Drumnadrochit and Glen Urquhart areas). The Closing Submission summarises the evidence on behalf of STAG and briefly comments on the cases and the evidence of the other parties who took part in the oral evidence Sessions of the appeal. It is relevant to note that STAG has objected to this wind farm application since it was first assessed in detail, by the local Group, following the original submission and advertisement of the application. STAG was also an active participant in all stages of the appeal process.
2. This Closing Submission has been prepared on behalf of STAG by Ian Kelly MRTPI who has been the case manager for and planning consultant to STAG since the planning application for the proposed Cnoc an Eas wind farm was first lodged.
3. The Reporter already has all of the earlier stages and current stage written material, he has heard (and will have noted) all of the oral evidence contributions from all parties, and he has undertaken unaccompanied and accompanied site visits. Therefore, the Reporter has full access to all of that extensive material, which he has confirmed will be fully taken into account in his assessment and determination. In turn, that position means that there is no need, in STAG's view, for the lodging of a lengthy Closing Submission. Therefore, the approach taken in this Closing Submission is to remain focussed on the key, overarching issues. Firstly, this involves summarizing the case for STAG and, secondly, this is supplemented by only briefly commenting on the evidence given on behalf of the other parties.
4. At an earlier stage in this appeal STAG had expressed considerable concern at the potential need to fund an increased consultancy/advisory workload as a result (broadly) of the absence of procedural decisions combined with the unilateral lodging of FEI (2). As the concern arose solely as a result of the positions taken by the DPEA it was noted, in email correspondence, that STAG might consider making a claim for an award of expenses against the DPEA. However, having reviewed matters at the conclusion of the appeal stage (and having successfully secured additional funding), the current position of STAG is that the group is fully satisfied with the way that the case has played out and there will be no question of any claim for expenses.

5. The Closing Submission has been circulated to the other relevant parties and STAG accepts that this represents their final word on this case prior to the Reporter making a determination in due course.

The Evidence on behalf of STAG

6. The full extent of the evidence on behalf of STAG consists of the all of the previously submitted objection material (including the supporting papers) at each application stage, the initial appeal stage response, and all of the written and oral evidence for the Examination. STAG also pointed out a small number of key aspects on the accompanied site visit. The Reporter is respectfully requested to demonstrably have full regard to all of that material, all of which forms an integral part of the overall case for STAG.
7. As noted in the related STAG Hearing Statement lodged earlier (for the OWESG Hearing Session) the submitted objections have addressed the full spectrum of the relevant policy issues. However, for the subsequent Hearing Session the Reporter decided that he had sufficient material on the national and local planning policy issues and advised that he wished to concentrate on the compliance of the wind farm proposal - or otherwise - with the now Adopted OWESG (Adopted November 2017). The Hearing Session topic description, as set out in the table in para 7 in the minute of the PEM, did not provide for any evidence to be led or given to challenging the previously set out national and local planning policy position of the parties. Therefore, the case for STAG in terms of national and local planning policy comprised what was set out in the earlier written objection material. It was on that basis that STAG participated in this topic Hearing Session, in the same way as did the other parties. This position is fully reflected in the later paragraphs in this Closing Submission dealing with policy matters.
8. In terms of the L VIA evidence on behalf of STAG the position was summed up in the Inquiry Report prepared, at the 2016 FEI (2) stage, by MSC Ltd (and which Report drew together all of the earlier LVIA work by MSC Ltd). The conclusions from that report are as below:
 - a. The MSC Environmental Statement (ES) Landscape and Visual Impact Assessment (LVIA) Review concluded that the proposed development would

give rise to a greater number and extent of significant landscape and visual effects than is described in the ES.

- b. In particular, visitors to the Corrimony Chambered Cairn would be subject to significant and adverse visual effects.
 - c. The MSC Supplementary Environmental Information (SEI) LVIA Review overall conclusion is the same.
 - d. However, the MSC SEI LVIA Review also finds that the MSC methodology for determining the level of effects is more transparent than is used in the ES and that visual effects on receptors at ES Viewpoints 14 and 15 would be significant.
 - e. *The MSC review of the 'Updated Landscape and Visual Information' finds that the overall conclusion remains the same.*
 - f. *However, the planning stage Druim Ba Windfarm will further contribute to combined cumulative landscape and visual impacts.*
9. The red colour text above donates updated conclusions reached at that time (all as explained and as set out in the MSC Inquiry Report).
10. For the avoidance of doubt, the MSC FEI (2) assessment concluded that there would be significant operational stage visual effects at ES viewpoints 1, 2, 4 (alternative), 5, 7, 9, 10, 11, 12, 13, 14 and 15.
11. In terms of the Development Plan evidence and conclusions, and noting paragraph 7 above in respect of the relevant Hearing Session, the original submitted STAG objection concluded as below:
- a. *Based on the above it is concluded that the proposed wind farm application is contrary to the Development Plan, principally on account of its significant adverse scheme specific and cumulative landscape and visual impacts, and on account of the scheme specific and cumulative adverse impacts on the local community including tourism and safety aspects. This range of significant adverse effects is not offset by the limited economic benefits of the scheme or by the assumed generic environmental benefits of the scheme.*

- b. *Therefore, the overall conclusion of this objection is that the proposal is not in accordance with the Development Plan and that, therefore, the presumption is for the refusal of planning permission for this Cnoc an Eas wind farm proposal.*
- c. *As set out in this objection a range of material considerations have been taken into account. The conclusions on all of these matters are set out above. In summary, it is concluded that there are no material considerations that would change the conclusion that arises from the Development Plan assessment whilst the consideration of SPP2 leads to the conclusion that the proposal is also contrary to National Planning Policy.*

12. Similarly, the subsequent STAG objection response to the February 2016 FEI concluded as below:

- a. *A number of additional comments/points against the proposed development have been set out in this response to the submitted FEI and the Council is requested to have full regard to these additional matters. Based on these additional comments, alongside the original objection by STAG, it is concluded that the FEI does not change the assessment of the application. The proposed Cnoc an Eas wind farm application is contrary to the Development Plan, principally on account of its significant adverse scheme specific and cumulative landscape and visual impacts, and on account of the scheme specific and cumulative adverse impacts on the local community including tourism and safety aspects. This range of significant adverse effects is not offset by the limited economic benefits of the scheme or by the assumed generic environmental benefits of the scheme. Furthermore, as set out in this objection, there is no UK level need case whatsoever for the proposed wind farm.*
- b. *It is, therefore, respectfully submitted that the Council should conclude that planning permission for the proposed Cnoc an Eas wind farm should be refused on the grounds that the proposal is not in accordance with the Development Plan and not in accordance with National Planning Policy.*

13. Finally, the STAG response to the appeal stage FEI – identified as FEI (2) by STAG in its response – concluded as below:
- a. *In very short and simple terms the consideration of the FEI (2) material does not change the STAG objections to this proposed wind farm development. The appeal should be rejected.*
14. This series of responses formed the background context for the written and oral evidence assessment of the compliance of the proposals with the now Adopted OWESG. In terms of OWESG the conclusion reached by STAG was:
- a. *Based on the above, particularly Part 5, it can be concluded that the proposed Cnoc an Eas wind farm is contrary to the terms of the now Adopted OWESG.*
15. Based on the all of the above documentation, and based on the oral evidence contributions, the final Development Plan policy position of STAG was that the appeal should be rejected and planning permission refused. This position was reached on the basis that the wind farm is not in accord with the Development Plan and that the material considerations not changing the presumption of refusal, in law, that follows from that Development Plan conclusion.
16. STAG also participated in the accompanied site visit, largely in support of the community council and local residents. On that site visit the STAG representative was able to assist the local representatives by clearly pointing out on the ground the various key aspects that had been mentioned in evidence (including the differential effects of the two access options).
17. Drawing on the above site visit in addition to the earlier written material, the position of STAG in respect of the conditions can be taken in short. If the appeal is sustained and planning permission granted then the imposed planning conditions must effectively and fully protect the various elements of residential amenity that were discussed in evidence and, in particular, as seen on the accompanied site visit.

The Evidence of the Other Parties

18. The Highland Council refused planning permission for the then planning application for the reasons set out in the decision notice and as addressed in subsequent documentation. The Council supported that position with evidence at the oral

evidence Sessions. STAG welcomed and supported the position taken by the Council and commends that evidence to the Reporter.

19. Historic Environment Scotland (HES) objected to the wind farm application, maintained that objection, and gave evidence at the Inquiry Session on the effects on the Corrimony Cairn and its setting. It is extremely rare for HES to object to a commercial scale wind farm and even rarer for it to appear at a subsequent appeal stage. Therefore, that fact alone indicates that considerable weight should be given to the HES objection and to the HES evidence.
20. Some of that evidence was challenged during cross examination, and it appears that the public inquiry inexperience of their witnesses might have been a factor in their preparation and in the giving of their oral evidence (including the cross examination responses). However, in the view of STAG, there is no doubt that the cultural heritage accompanied site visit (STAG was represented on this) amply demonstrated the key cultural heritage issue. When coming to the monument and looking towards the entrance to the cairn, the proposed wind farm will be directly facing the visitor when looking out from the monument to the wider landscape. To any reasonable observer this would be a material change in the landscape setting.
21. In this context, the approach of trying to minutely dissect the evidence and trying to argue, in detail, over the meaning of words such as “setting” and “integrity” are seen by STAG as simply distractions from the key issues. The objection by HES is crystal clear, it is clearly understood from a site visit, and is commended to the Reporter.
22. Both Scotways and Mountaineering Scotland objected in terms of what might broadly be considered as the significant adverse effects on the recreational experience in the countryside and in the mountains. Their Hearing Session evidence (given separately) led to the discussion of the concept of the attritional loss of landscape quality – a form of cumulative impact that is rarely expressly assessed in ES LVIA documents. This is a particularly serious issue in the Cnoc an Eas case given the impression of the “ring of steel” around Loch Ness.
23. The objection evidence given by these two bodies, including in written and oral evidence submissions, also dovetails well with the earlier tourism related objection submissions and supporting material lodged on behalf of STAG and with the later

stage material submitted by the Aigas Centre. All of that evidence is commended to the Reporter.

24. The Community Council and local resident objectors (the latter represented by Dr. Gold) also addressed a range of material and serious local concerns in both written submissions and in oral evidence. They spoke specifically about a range of local impacts and addressed a number of concerns around the possible conditions that might be applied if permission was granted. STAG has always sought to work with and support these local opinions and views, and commends the evidence to the Reporter.
25. The clear impression formed by STAG was that the oral evidence for the Appellants, including a drive through video of a road where there is only limited visibility of the proposed wind farm, only partly addressed the reasons for refusal and also, to a large extent, simply restated what had been set out in support of the application proposals at the earlier stages.
26. The evidence from the Appellants in the OWESG Hearing Session seemed to be more of an attack on the approach, justification and contents of OWESG rather than addressing the actual assessment of the scheme in terms of OWESG. That approach tended to ignore or at least to underplay the fact that the Guidance had been agreed by Scottish Ministers and was now an Adopted part of the Development Plan. STAG had also, previously, submitted a welcoming but critical response to the draft of the OWESG. Not all of the points raised in criticisms on behalf of STAG were addressed in the final version. However, nonetheless, STAG had to accept that the final, Adopted version of OWESG was what it was and, now, had to be accepted and applied in that final form.
27. There was a clear tendency on the part of the Appellant's Landscape witness to underplay the significance of effects, to underplay the sensitivity of receptors, to not fully assess the full extent of cumulative effects and, thus, to understate the significance of effects. The focus of the residential amenity evidence was on the so called "Lavender test" which again significantly understates the effect on local people of the degree of adverse effect on amenity that they would have to endure if the development were permitted and was implemented. The Reporter recognised the relevance of this issue in his questions on the matter. There is no doubt that people

will experience significant harm at a level of effect that is below that set out in the Lavender test.

28. It might be argued that this is an unfortunate but direct consequence of the wider public benefit that flows from the generation of renewable wind energy. However, it is submitted that wind energy in the form of wind farms cannot be considered as a public good in terms of the general economic principles that apply where adverse effects on amenity arise. Where a public good (say a new motorway or a new high speed rail line) adversely affects residential properties and/or residential amenity then, depending on the extent of effect, the normal position is that compensation would follow with the details of the compensation depending on the extent of that adverse effect. However, with wind farms there is no provision for direct compensation payment, at any level, to affected households. Therefore, in the terms as understood by STAG, the Cnoc an Eas wind farm (or indeed any other wind farm) cannot be considered as a public good when assessing adverse effects. Therefore, the assessment of the adverse residential amenity effects from the proposed wind farm should proceed on that basis that the wind farm is not a public good.
29. During oral hearing session, the Appellant once again made reference to the Memorandum of Understanding (MoU) with Soirbheas. STAG set out its position on this matter in its FEI stage objection. There is no demonstrable community backing for this wind farm proposal and any negotiations by Soirbheas would have been conducted on the basis that it was merely protecting the position of the community should the application be successful. No weight should be given to the MoU in the determination of this appeal.
30. The Appellant also made further reference to its agreement with Wind Towers (Scotland) Ltd. STAG would support the comments made by the Council during the oral session suggesting that the agreement was virtually meaningless due to the existence of significant qualifications applicable to its basic commercial terms. Again, it is the position of STAG that no weight should be given to this “agreement” in the determination of the appeal.
31. In summary, the view of STAG is that the evidence on behalf of the Appellants did not clearly demonstrate that either Historic Scotland or the Highland Council were

incorrect in the view that they took of the application proposals. The Appellants did not make anywhere near a sufficiently strong case for a consent in the view of STAG.

32. Therefore, the submission of STAG is that the case put forward by the Appellants does not lead to any justifiable view that the Council's decision to refuse planning permission should be overturned and/or that the appeal should be sustained.

Conclusions

33. On behalf of STAG it can be concluded that, having regard to all of the earlier material and having regard to the evidence at the Inquiry and Hearing Sessions, the proposed Cnoc an Eas wind farm does not comply with the Development Plan. This is largely on account of significant scheme specific and cumulative significant adverse landscape and visual effects (which effects are fully set out in the material from MSC Ltd) but also on account of the other identified adverse effects. These adverse effects are not offset by the limited benefits of the proposal. The Adopted OWESG is now part of the Development Plan. The proposed wind farm clearly does not accord with that Guidance, particularly in terms of the overall conclusions set out in the OWESG for the Loch Ness area. Taking account of material considerations does not change this clear conclusion.
34. STAG welcomes and endorses the similar position reached by the Highland Council.
35. STAG also supports the position set out by HES in their objection and in their written assessments that are before the Inquiry.
36. Finally, STAG supports the evidence submitted by the other appeal stage objectors, all as set out earlier in this Closing Submission, and considers that there are clear potential adverse effects on tourism and recreational interests. STAG also supports the locally held view that there are significant adverse effects on the overall level of residential amenity, especially for the housing group near the site and site access. It is the considered view of STAG that these aspects support the case for rejection of the appeal proposals.
37. In summary, STAG respectfully submits that the Reporter should agree with the cases presented by the opposing parties against the proposed development, rejects the appeal, and refuses planning permission for the proposed Cnoc an Eas wind farm.

[END]

Submitted 27th March 2017,

on behalf of STAG

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