

Planning Committee

Auditorium, Shetland Museum and Archives, Hay's Dock, Lerwick

Tuesday 4 July 2017 at 2pm

Present:

T Smith	E Macdonald
A Manson	D Sandison
C Smith	D Simpson

Apologies:

M Bell
S Coutts
G Smith

In Attendance (Officers):

I McDiarmid, Executive Manager – Planning
J Holden, Team Leader – Development Management
D Hunter, Planning Officer
P Dinsdale, Team Leader – Environmental Health
I Taylor, Assistant Environmental Health Officer
P Sutherland, Solicitor
L Adamson, Committee Officer

Chair

Mr T Smith, Chair of the Planning Committee, presided.

Circular

The circular calling the meeting was held as read.

Declarations of Interest

None

Local Review under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) to be considered by the Planning Committee sitting as the Local Review Body:

The Chair advised that the two items on the agenda will be considered by the Planning Committee, sitting as the Local Review Body (LRB), and will follow the guidance as provided in the covering reports at Items 1 and 2. The process will take the form of a Hearing, where the Planning Officer who handled the application will be asked to make a presentation on matters to be considered. Persons entitled to make representations on the application will be given the opportunity to address the meeting, followed by the applicant/applicant's agent, and these will be restricted to a time limit of 5 minutes. Members of the LRB can ask questions throughout the process, or preferably at the end of each presentation. When questions are completed, Members will debate the proceedings and then make a decision. He advised that the Hearing Session Rules prescribe that cross-examination will not be permitted unless the LRB consider it required to ensure a thorough examination of issues.

The Chair concluded by advising that the decision of the LRB is full and final. Should the applicant be aggrieved by the decision, the only recourse is to the Court of Session in respect of the handling by the LRB.

07/17 **Local Review Ref: 2016/190/PPF – LR27 – Erection of CF15 wind turbine, hub height 15.434m associated cable trench: Bethany, Aithsness, Fetlar, Shetland, ZE2 9DJ**

The Committee considered a report by the Team Leader – Development Management [RECORD Appendix 1] for a decision following a Local Review.

The Planning Officer, case handler of the application, gave a presentation which illustrated the following:

- Location
- Location Plan
- Site Plan (Parts 1 and 2)
- Dimensions for CF15 turbine
- Views from North East, North and South
- Key Issues

The main points highlighted during the Planning Officer's presentation are set out below:

"Shetland Local Development Plan Policies RE1 and GP2 - Promote renewable energy where appropriately sited and compatible with existing uses.

Report goes through issues assessed including landscape, visual, natural heritage.

Turbines can cause noise - over a certain level environmental health would say it was a statutory noise nuisance and in planning terms a significant effect on residential amenity.

We asked for site specific noise assessment (under regulation 24 of the DMR) at the earliest stage possible – pre-application (also highlighted guidance on turbines).

- 13th January 2016: Pre-application asked for site specific noise impact assessment.
- 4th October: Waiting on Environmental Health but I raised that the turbine is very close and Environmental Health will likely have an issue with it (within 180m needs assessment).
- 5th October: Waiting on Environmental Health response, I raised the requirement again.
- 16th November: Environmental Health Officer highlights requirements.
- 21st November: Environmental Health sends guidance to agent.
- (22nd November: Agent sends Environmental Health information - is not a site specific and no calculations included).
- 28th November: I stated waiting on confirmation from Environmental Health Officer.
- (2nd December: Agent sends drawings and elevation, but no site specific noise impact assessment provided).
- 4th January 2017: Application determined.

Shadow flicker - 11m blades mean shadow flicker within 110m.

Roads issue not resolved - would need to be at least 30m from road.”

In response to questions, the Planning Officer confirmed that the applicant has not provided a specific noise impact assessment, which was raised during the pre-application discussion as a requirement for the application.

Clarity was sought regarding the process, as despite all the changes suggested by the applicant to the siting of the proposed turbine, the original application has been determined. The Planning Officer advised that while there has been discussion on various ways to mitigate the noise, nothing formal had been received. It was noted that during the process the agent to the applicant had asked if there was anything further required, however there had been no indication from the Planning Service in terms of a variation to the application. In that regard, the Planning Officer said that it is up to the agent/applicant how to progress to make sure an application complies with Policy. He added that it is standard practice to ask for a noise assessment, which was not provided to the Planning Service.

The Chair thanked the Planning Officer for the information provided.

As there had been no representation on this application, the Chair invited the applicant/agent to address the meeting.

Mr E Tait, Agent to the applicant, advised that he has been involved with applications for 120 wind turbines in the North of Scotland, and he works with turbines from Unst to Dundee, and therefore he has reasonable knowledge and understanding of turbines. He advised that there had initially been applications for three turbines in Fetlar, however after a time one application was dropped. The pre-application exercises were undertaken on the two remaining turbines to avoid any pitfalls in planning, where SNH, RSPB and the Council raised no objections.

Mr Tait said that alterations had been made to the height of the turbine, the blade length and the position to reach a workable solution. He referred to the reason for refusal, in terms of causing a nuisance and failing to meet various requirements, which he said were now irrelevant as alternative proposals were submitted on 29 November. These however do not appear to have been considered. Environmental Health did agree that the amended proposal did not cause nuisance but Planning did not accept them.

Mr Tait said that the Fetlar Community Council, representing the local community, raised no objections to the proposal at Bethany and that there are three other CF turbines in Fetlar. He said that the proposal is fit for purpose and would not constitute a nuisance.

During this address, Mr Tait said that the applicant, Mr Bellis, has invested in Fetlar, and that this turbine is part of his sustainable long-term plans. Jobs have been created in the island and more jobs could follow in the future. Mr Tait said that small island communities are difficult to sustain and developers should be encouraged to develop further in the future. Mr Tait also advised on Mr Bellis' intention to increase stocking on his various farms and crofts.

In terms of the size of the turbine at 15 metres in height, Mr Tait advised that the applicant has since bought Aithsness so the turbine's size will match to the site, and there are already two 25 metre turbines on the island. Mr Tait advised on the need

for wider consideration of this application, in terms of opportunities for Fetlar, where people are prepared to invest in the islands and therefore this application should be encouraged. Mr Tait concluded by asking the Local Review Body to support the proposal.

The Chair sought clarity on how the amended proposals had been submitted to the Planning Service. Mr Tait advised that he had emailed the maps and the amended position, being the same manner as he has submitted all his other applications. Environmental Health had agreed the position from the neighbouring property. In terms of the amended position, Mr Tait said that those on the site visit yesterday would have seen that the location for the turbine is now in another field at the other side of the road.

The Chair sought clarity from the Planning Officer in terms of a variation to the application under Section 32A of the Town and Country Planning (Scotland) Act 1997, as amended. The Planning Officer explained that a minor change to an application, and to move an application site, would be through a Section 32A Variation. He said however that an application for variation should not be accepted if it is substantially different, where significant changes can be challenged without going through a formal route. The Planning Officer referred to there needing to be reference to particular case law in that regard.

The Chair made reference to the statement in the Report of Handling, "However, the information that was received was not of a level or type that would allow a request (for a variation) to be accepted". During the discussion, the Chair enquired on what further information was required, the method to submit a request, whether it was a formal process and whether the applicant had been made aware of the process to be followed. The Planning Officer advised that a specific request for a Variation of Application under Section 32A would have been sufficient for the Planning Service to process and assess. The Planning Officer acknowledged that the applicant had not specifically been asked for information under this variation of application provision, but he said that it would essentially be for the agent/applicant to make sure the application complies with Policy. The Planning Officer stated however that for this particular application the Planning Service had asked for the noise assessment information seven times during the year, and should it have been found to be appropriate, the application could have been approved.

In response to questions relating to Mr Tait's opening speech, Mr Tait said that he did not claim to be an expert, but he did have reasonable experience working with applications for turbines and with turbines. Mr Tait confirmed he has had no prior involvement with variations of applications, nor has the Section 32A Variation been referred to previously in his dealings with other planning authorities. Mr Tait added that had the variation been referred to during this application, he could have provided the request.

During debate, Mr C Smith said that while he supported small communities in Shetland, it would appear that there has been a lack of communication with this application, and it has taken some 12 months to try to get it sorted. He was disappointed that officers have had to spend time on this application when, had the information been submitted, the application could have been resolved at an earlier stage. Mr C Smith moved that the application be refused.

Mr Sandison advised however that having read the substantial amount of casework he was astonished at the substantial number of times that the applicant enquired

whether any further information was required, and therefore there had been numerous opportunities where clarification could have been given to the applicant. He said that the report had been prepared at a time when it was known the information was incorrect and did not reflect the changes made to the application. Mr Sandison advised also on his concern that the Planning Service had not referred the applicant to the necessary variation request, and said that he was minded to support the applicant.

The Chair sought guidance regarding the remit of the LRB to determine the original application or the amended proposals. The Executive Manager – Planning advised that the LRB has to review the original proposals as was presented. As to whether the Planning Service gave the appropriate level of advice to the applicant, there would be a specific route through the complaints procedure.

In terms of legal advice, the Solicitor said that the LRB at this time should consider the original application and the original plans, which have not been varied. The Planning Authority has the power, under Section 32A to consent to a request to vary an application. There is however no specific way to request such a variation but that it needs to be made clear a variation is being sought. The Solicitor said, that in his opinion, the LRB has the power to consent to such a variation, however the Section is quite specific, in that should there be a substantial change in the description of the development the variation could not be accepted, and a new application would have to be made. In referring to the rules of the LRB, the Solicitor said that the LRB has to be satisfied that the appropriate consultation under the regulations has been undertaken. He said that a greater requirement for consultation might indicate a more substantial variation and thus more likely give rise to the need for a new application. He added that while a LRB may accept a variation, there might be the need for an adjournment for consultation to be carried out. The Solicitor added that he agreed with the view of the Executive Manager - Planning, that the LRB are required to make its decision on planning matters alone and not on the handling of the application.

Mr C Smith said that for clarification, his motion for refusal, relates to the initial application and not to any variations.

Mr Sandison stated that the timeline was important as at various points new information and drawings had been accepted in writing for a new location without reference to due process. In that regard, he questioned how an applicant is to know what they have provided has been accepted or not.

Mr C Smith moved that the Committee refuse the application. In seconding, Ms Macdonald confirmed that she was referring to the original application.

During the discussion, Mr Sandison advised that he found it difficult to support the motion, as the applicant would have to submit a new application. Mr Sandison added that he was minded to propose that the Committee accept the amended proposal as submitted.

The Chair however sought clarity on the terms of Mr Sandison's proposal. Ms Manson advised that the Community Council would not have had an opportunity to comment on the amended location of the turbine, and on the change of size, and that there would still be a requirement in terms of the site specific noise assessment. She said that it was important not to be seen to make any assumptions with this being a remote island and not to deviate to approve an

application with little detail which has not been through the required process. The Solicitor advised that the LRB had to decide first if it consented to the variation of the application. If so, it then had to ascertain whether it had sufficient information before it upon which to determine the application as varied.

The Executive Manager – Planning advised on the requirement for a noise assessment to form part of the determination of applications for wind turbines. Mr Sandison said that he has taken onboard the points raised during the discussion, and rather than over complicate the process further in terms of any amendment, the applicant would have to submit a new application.

There was no further discussion. The Chair therefore advised on the decision of the LRB, that the application to refuse permission has been upheld.

Decision:

The Local Review Body agreed to uphold the decision made to **REFUSE** planning permission for the development.

08/17

Local Review Ref: 2016/191/PPF – LR28 – Erection of a CF15 wind turbine to supply power to Tresta, Fetlar, Shetland. The base will be a 5.5m x 5.5m square 1m deep: 1 Tresta, Fetlar, Shetland, ZE2 9DJ

The Committee considered a report by the Team Leader – Development Management [RECORD Appendix 2] for a decision following a Local Review.

The Planning Officer, who handled the application, gave a presentation which illustrated the following:

- Location
- Location Plan
- Site Plan (Parts 1 and 2)
- Elevations for the CF15 turbine
- Views from South East and South West
- Key Issues

The main points highlighted during the Planning Officer's presentation are set out below:

“Shetland Local Development Plan Policies RE1 and GP2 - Promote renewable energy where appropriately sited and compatible with existing uses.

Report goes through issues assessed including landscape, visual and natural heritage.

Turbines can cause noise, over a certain level Environmental Health would say it was a statutory noise nuisance and in planning terms a significant effect on residential amenity.

Planning has a preventative role, Environmental Health can only come into effect once noise is created.

A site specific noise assessment was required (under regulation 24 of the DMR) at the earliest stage possible – at pre-application also highlighted guidance on turbines

- 13th January 2016: Pre-application - asked for site specific noise impact assessment.
- 4th October: Waiting on Environmental Health, but I raised that the turbine is very close and Environmental Health will likely have a issue with it (within 180m needs assessment)
- 5th October: Waiting on Environmental Health response, I raised the requirement again
- 13th October: Forwarded Environmental Health Officer response requiring Noise Impact Assessment and re-sent the pre-application response that had been provided
- 25th October: Environmental Health raised requirements
- 9th November: Team Leader raised requirements
- 16th November: Environmental Health highlights requirements
- 4th January 2017: Application determined

Objections: Shadow flicker, 11m blades mean shadow flicker within 110m, houses outwith this distance.”

The Planning Officer advised on the objection from the neighbouring property known as Weatherhead and Sunniva on issues of shadow flicker. He clarified that the name of the property changed during the application process. The Planning Officer added that the nearest property would be 157 metres from the proposed turbine, and the campsite would be a distance of 122 metres away.

In response to a question, the Planning Officer advised that the noise impact assessment had been requested, but had not been provided.

The Chair made reference to the previous day’s site visit, and sought clarity on the distance between the proposed turbine and the camp site. The Planning Officer confirmed both the distance of 122 metres, and that there is a field between the proposed turbine site and the camp site. The Planning Officer advised that the assessment has not been provided by the applicant to prove the noise impact and to provide calculated noise levels. He added that for similar applications a distance of 180 metres has been found to be acceptable, while 122 metres has not been proven as being acceptable. The Chair sought clarity on the decision made to refuse the application in terms of the noise impact from the proposed turbine, when no noise levels have been provided. The Planning Officer advised that the noise impact on neighbouring properties and land has to be taken into consideration, and that the requested information has not been provided which would prove that there would not be an issue in terms of impact of noise on nearby uses.

The Chair invited a representative of the objectors to address the meeting.

Mr Averns said that he lives at Feal, Fetlar. Mr Averns advised that he owns, what was the camp site in Fetlar, however he said that the campsite is not in use at the moment. Mr Averns said that he had not been made aware of the application, as only the neighbouring properties got advised, but he had heard of the proposal through word of mouth.

Mr Avern said that when he purchased his house in 2015, he also bought the camp site with the intention to renovate the site and facilities. He had hoped to have the camp-site open for the 2016 season however due to personal circumstances, and the need for the facilities to meet certain health and safety regulations this has not happened. During his address, Mr Avern advised on his objection that if the turbine is built no one will want to come to Fetlar to stay at the camp-site and there would be no point in him spending money to get the site up and running for the benefit of tourism to Shetland and to Fetlar, which is known as the 'Garden of Shetland'.

(There were no questions to Mr Avern).

Mr E Tait, the agent to the applicant, said that a lot of the information relating to this application would be similar to the previous application. Mr Tait said that, once again, amendments to the original application had been submitted, which were accepted by Environmental Health, being a distance of 135 metres between the turbine and the nearest house. The location of the turbine was moved 13 metres, which though not a big variation away from the property and camp-site, there would not be a noise nuisance. In terms of any shadow flicker at Tansyknowes, Mr Tait said that shadow flicker would only apply to properties north of the turbine, and Tansyknowes is on the south side. Mr Tait said that for both applications the size of the turbine and the distance has been reduced, and at each step he has complied with the requirements, however the Planning Service has chosen to ignore the later submissions.

(There were no questions to Mr Tait).

The Chair sought clarity from the Executive Manager – Planning as to his opinion as to whether the changes made during the application process would be considered a substantial variation. The Executive Manager – Planning advised that such a decision would be taken at the Planning Officer level, as a matter of assessment and judgement.

During debate, Mr Sandison said that this would once again be a judgement on the variation of an original application. However he said that for this application, it seems to be an even more finite judgement, with the changes proposed to the turbine size and scale, and that the distance moved has not been substantial. Mr Sandison moved that the application as presented with the revised position be approved. Mr Simpson seconded.

Mr C Smith said that in his opinion this was similar to the previous application in terms of the lack of communication, however it is different in that there has been an objection which has to be considered. He noted the comments from the agent in terms of dialogue on the application with Environmental Health however he questioned the level of contact between Environmental Health and the Planning Service. He said however that it is for the applicant to make sure all the requirements have been adhered to. Mr C Smith moved as an amendment, that the application be refused.

In response to a question, the Planning Officer confirmed that any application for a turbine requires a noise assessment to be undertaken before a decision can be made.

Ms Macdonald seconded Mr C Smith's amendment.

Following summing up, voting took place by a show of hands and the result was as follows:

Amendment (Mr C Smith)	3
Motion (Mr D Sandison)	2

Decision:

The Local Review Body agreed to uphold the decision made to **REFUSE** planning permission for the development.

The meeting concluded at 3.15pm.

.....
Chair