



## **Short Life Ministerial Working Group for Onshore Consents Joint position paper by Heads of Planning Scotland and COSLA**

### **Introduction**

The Scottish Government's 2020 Renewable Route Map for Scotland, updated on 30<sup>th</sup> October 2012, sets out the intention of establishing a working group to examine ways of improving and streamlining the processing of applications. At the group's first meeting the Minister acknowledged the quality of the planning system in helping to achieve targets set out in the Route Map. Consequently HoPS and COSLA now see benefits of preparing a joint paper on the relevant issues from a local government perspective.

The key issues facing local government in relation to onshore energy consents are outlined below.

### **Resources**

The Scottish Government's announcement in December 2012 confirming specific funding of some £600,000 to assist in the processing of renewable planning applications is welcome. The impact of this one-off contribution is however short term and a more sustainable long term solution is required to ensure adequate resourcing of the planning system. In particular local authorities require to be properly reimbursed for their role in dealing with s36 applications, including their assessment, the drafting of decision and agreements, monitoring and enforcement.

### **Planning permission and s36 consents**

There requires being a wide discussion between stakeholders on the merits and disadvantages of raising the threshold of on-shore wind farm proposals above the present 50MW limit which currently fall under s36 of the Electricity Act 1989. This would result in more proposals being 'major applications' for planning authorities rather than Energy Consents applications and fee structures would require to reflect this.

Appeals on the non-determination and refusal of 'major applications' retain a route to consideration by Scottish Ministers for decision-making.

Major applications are subject to a 4 month target, must be accompanied by the 12 week pre-application consultation procedure and are determined by local planning authorities.

The work carried out by planning authorities in the processing of an s36 application results in a complete assessment of the proposal being undertaken as if it were an application for planning permission. Fees paid to councils ought to reflect this.

Planning authorities currently carry out an extensive amount of technical planning work on s36 consultations. There is no statutory requirement for pre-application community consultation with s36 applications, nor is there a statutory trigger that could determine a non-determination appeal.

## **Environmental Impact Assessment**

On-shore renewable energy developments of more than three turbines or turbines greater in height than 15m are 'schedule 2' developments and require to be screened for EIA.

Revised guidance from Scottish Government on the limits for screening for an EIA for schedule 2 developments, taking into account any potential cumulative impact, could set out the circumstances when EIA is less likely to be required, notwithstanding the requirement for necessary information to determine the application. This would, on occasion, dispense with the need for EIA in certain cases for individual turbines and consequently afford planning authorities greater certainty in excluding many lesser schemes from the need for EIA.

Additionally, environmental statements have increasingly become large; that for a typical windfarm can run to some 4 volumes. This is often not the case with other EIA development. Often the core volume contains unnecessary duplication and complex technical assessment appears in the main body rather than as an appendix.

Best practice guidance in the compilation of onshore wind environmental statements, focussing on an issues approach would be helpful. Non-technical statements should be standalone documents and not be incorporated into the main volume. A simplified and standardised approach to some assessments would be welcomed such as the 'Landscape and Visual Impact Analysis' section which can incorporate wildly different scales of magnitude of change, sensitivity and effect.

Visualisations themselves could be simplified and be more accurate by applying standards such as those now used by the Highland Council; the purpose of which would be to clearly demonstrate the effects stated within the assessment, both for visual effects and effects on landscape. This visualisation methodology is scientifically robust as required by the Environmental Impact Assessment Regulations and is more accessible to decision makers and importantly, from a planning point of view, the public. Such consistently applied standards will be of benefit to all partners. We are aware of other work being done, for example by SNH which creates an inconsistent approach and the potential for confusion. It is not expensive to produce, is accurate and leads to good quality visualisations.

Carbon balance calculations should be submitted with all applications to justify claims of net benefit. It is to be expected that any revision to the EIA Regulations that will be required to respond to the coming changes to the EC Directive will require this and other matters to be fully considered.

Socio-economic issues need to incorporate a more robust survey and analysis rather than resting on the existing published studies by industry and Government and should set out the benefits to be gained from construction versus the losses to tourism if a proposal were to proceed.

### **Town and Country Planning (General Permitted Development) (Scotland) Order 1992.**

The Scottish Government has recently undertaking a review of the non-householder elements of the GPDO. There is, potentially, scope to introduce a new class of permitted development to allow for certain minor development on on-shore wind sites to be exempt from planning control.

Subject to detailed discussions and a cautious approach, these permitted development rights could address matters such as the construction of ancillary buildings, plant and machinery, cabling, ducting or other similar apparatus; the replacement of certain tracks, the limited micro-siting of turbines and tracks after a planning permission or deemed planning permission

has been issued, and the replacement of turbines not materially affecting the external appearance of the site.

In addition, greater tolerances for the micro-siting of tracks and turbines could be given subject to the prior notification and approval from the local planning authority.

Subject to a full consultation with stakeholders such provisions could allow, with specific safeguards, minor and non-controversial changes to an approved scheme to be exempt from planning control, giving developers a speedier ability to implement necessary works and to reduce local authority staff time.

### **Standard Conditions.**

Model conditions could be agreed that would act as the basis for the regulation of on-shore wind farms. Such arrangements already exist for other development as an addendum to circular 4/1998 'The Use of Conditions in Planning Permissions - Model Conditions'.

Funding for this work could be released from part of the retained sum of £20,000 announced in late 2012 and planning authorities, via HoPS, are willing to submit examples and play a key role for the collation of conditions for standardisation across the country. Subject to further resources this could also apply to consideration of the potential for development of model policies.

Such a range of standard conditions including construction; noise; micro-siting tolerances; track reinstatement and downgrading; surface water catchment; peat and soil storage; woodland management; landscaping; and turbine colour could be included in a specific addendum for on-shore wind development and be used in the case of s36 consents and planning permissions.

The application of standard conditions, tailored to suit individual circumstances, allows greater certainty for developers, aids a consistency of approach across Scotland, and reduces the time for processing planning applications.

In conjunction with greater permitted development rights, the drafting of such standard conditions could allow some flexibility in minor non-controversial changes to operational development.

### **Templates for legal agreements.**

Generic wording for key elements of legal agreements will assist the drafting of these documents rather than separate approaches being taken to individual legal agreements, and in turn speed up the issuing of a planning permission once a 'minded to grant' resolution has been adopted.

In particular a standardisation of a methodology for restoration bonds could be developed in association with the industry and to avoid duplication of effort.

Moreover, matters such as decommissioning; a formula for the quantifying and delivery of restoration bonds; a compliance assessor during the construction period; off-site mitigation; television reception issues; a construction code of practice; lorry routing; access; and a common approach to community funds and their disbursement will all need tailoring to individual sites, but best practice advice based upon a model template will avoid unnecessary duplication and utilise resources more efficiently.

Similarly, funding for this work could be released from the retained sum which is to be used for more effective approaches to the consenting scheme. Planning authorities, via HoPS, would be willing to forward best practice examples of this approach for onward collation by Scottish Government.

### **Validation of applications.**

An agreed code of practice between local planning authorities and industry could set out the extent of information to be submitted with a planning application for on-shore wind development. This will avoid delays once an application has been submitted, giving certainty to the industry of the basic requirements to validate and determine an application. It would avoid unnecessary or excessive information being provided and avoid administrative and advertising delays whilst additional information is prepared and therefore subject to further statutory advertising.

Despite going beyond the requirements of regulation 9 of the Development Management Regulations & Circular 4/2009, nonetheless a specification for a fully prepared package of information will ensure a speedier passage of an application through the planning process.

### **Shared services and expert advice.**

Certain technical aspects of on-shore wind development require specialist input of skills on occasion not directly available in-house to planning authorities. Matters such as noise; television reception; peat; shadow flicker; vibration; and health all require technical responses. Recognised and consistent expert advice, to be called on by local authorities from lead experts, would reduce the need for external paid advice and speed up the decision making process, and enable individual local authority officers to draw from experience and advice from colleagues in other local authorities.

### **Responding to local community concerns**

It must be recognised by both the Scottish Government and on-shore wind developers that certain wind-farm proposals will inevitably give rise to public concern. The Scottish Government must recognise that local opinion on a planning application or section 36 application is a very important material consideration. Communities have a democratic right to express their views. Councils will rightly be attentive to such matters. The importance of the local democratic decision making process must be assured.

Consideration ought to be given to providing community councils with access to technical assistance in the assimilation of a complex environmental statement potentially through Planning Aid for Scotland. This, rather than the reliance on lay-persons without technical knowledge, disadvantages community councils from making effective representation; assistance cannot flow from a local authority as regulator of a proposal.

As consented schemes are completed on less sensitive sites it is clear that there will be an increasing scale of public concern being voiced as familiar and more sensitive local landscapes may be altered by emerging development pressures. Whilst protection is afforded to the higher categories of landscape in national terms, local landscape designations and non-designated countryside has less protection from the planning system as set out in Scottish Planning Policy (SPP). This is a concern locally.

Smaller clusters of turbines and single turbines can on occasion have a disproportionate landscape and visual impact in relation to the benefits that accrue. The cumulative effects of

additional windfarms will change an otherwise unaltered local landscape into a 'windfarm' landscape.

The views of those opposing such developments contribute to the assessment of an on-shore wind proposal by professional planners who then make the determination on the proposal and cannot be discounted simply in the national interest.

### **Local development plans and spatial frameworks**

The development plan process is designed to engage stakeholders and involve community interests. It is the vehicle within which a debate on the location of future renewable investment should be held.

Across Scotland as part of the development planning process planning authorities have identified areas where on-shore wind development is preferred. This is a complex task for councils. The identification of preferred areas is informed by extensive discussion and involvement with a range of stakeholders to ensure that all interests are fully incorporated into the spatial framework for the area.

Such preferred areas contribute substantially towards achieving the Government's targets. The generation capacity currently identified within preferred areas is significant and can meet much of the onshore 2020 targets.

Yet industry and landownership patterns may cause alternative sites to come forward and depending on the timing of submissions, preclude better sites to be promoted.

The presence of a site outside a preferred area may cause a site in a preferred area to be unacceptable because of cumulative impact.

For a matter of urgent consideration an assessment ought to be made of the potential for locally designated preferred areas to contribute to the government's revised targets. This work could be financed from the Government's recently announced funding package.

By channelling developer interests to preferred areas, conflict with local communities and wider environmental interests will be reduced. It should be a requirement of an applicant of a site outwith a preferred area to justify such site selection in a non-preferred area.

Councils are concerned that proposals continue to come forward despite frequent policy presumptions against development, as set out in the development plan and supplementary planning guidance. An amendment to SPP with a presumption against sites outwith identified preferred areas would be helpful here.

### **Concentration versus dispersal, and aviation**

On-shore windfarms, once constructed, inevitably result in landscape and visual change. As such, that landscape change which has been tested through the planning process is established.

Nevertheless, in limited circumstances and subject to a detailed landscape capacity assessment, additional turbines may be able to be constructed as extensions to existing sites in a way that will have a lesser overall landscape and visual impact than further smaller but geographically extensive developments may have overall. A pattern of concentrated on-shore wind development in a less dispersed manner would seek to achieve the Scottish

Government's target but minimise widespread landscape change. Such developments will be consistent with agreed development plan frameworks.

Closely related to the concentration or dispersal approach in landscape terms is the relationship between onshore wind and the safeguarding of air space. Airspace is an important economic resource and it is important that it is not degraded by the proliferation of windfarms. Airports are part of our national infrastructure, recognised through NPF2, maintaining the airspace capacity around them is important.

As with landscape matters, the planning system should be able to give confidence that the aviation asset can be safeguarded whilst also allowing the national renewable targets to be met

This is another argument for the concentration approach and clearly safeguarding landscapes and airspace has to be input into any spatial strategy developed through SDP's or LDP's. For example Ayrshire planning authorities have recognised the airspace issue for 10+ years and work very closely with air traffic colleagues in addressing concerns. This has been successful in reducing the impact on Ayrshire airspace and highlighted critical areas which are close to approach runways. Prestwick Airport are currently working closely with radar providers to develop solutions to the minimising the impact that windfarms can have on the radar signal. It is hoped this technology will be operational by the end of 2013 and allow them to remove their current objections to a number of schemes.

The recent proliferation of small scale windfarms and single turbines has raised another issue in the last year or so both in landscape terms and in respect of aviation safeguarding. Many of these can be terrain shielded, however it has to be recognised that their signal can be as significant as larger windfarms. Development managers therefore need to work very closely with local airports and air traffic control staff and respect any objection raised. The general advice is that given the uncertainties around radar modelling, that a precautionary approach is necessary where any impact is possible. Prestwick airport is also closely monitoring the impact of small scale windfarms may have on instrument landing systems.

**A debate on this approach between industry, communities and regulators would be beneficial and there may be an opportunity to carry out an assessment of the contribution that could be played by a policy of concentration rather than dispersal.**

Heads of Planning Scotland

Convention of Scottish Local Authorities

March 2013