

## Appeal Decision Notice

T: 01324 696 400

F: 01324 696 444

E: dpea@scotland.gsi.gov.uk



Decision by Michael J P Cunliffe, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2054
- Site address: Land west of Muircleugh Farmhouse, Lauder TD2 6RG
- Appeal by Airvolution Energy Ltd against the decision by Scottish Borders Council
- Application for planning permission dated 3 October 2014 refused by notice dated 30 March 2015
- The development proposed: Wind farm development comprising 7 wind turbines of height 110 metres to blade tip with ancillary equipment, access track and associated works
- Date of site visit by Reporter: 11 November 2015

Date of appeal decision: 8 December 2015

## Decision

I dismiss the appeal and refuse planning permission.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are the landscape and visual effects of the proposed development, including cumulative effects, the impacts on residential amenity and on recreation, and the contribution to renewable electricity generation.

### *The site and the proposed development*

2. The site lies about 3.5 kilometres to the south-west of Lauder and 500 metres south of the B6362 road from Lauder to Stow. Muircleugh Farm is situated on a gently rolling upland plateau with minor watercourses forming narrow valleys. The farm consists mainly of semi-improved grassland used for grazing, with an element of marshy grassland and pockets of woodland cover. The surrounding landscape forms part of Lauder Common, a substantial complex of semi-natural habitat featuring moorland and rough grassland where sheep and cattle grazing are the principal land uses.

3. There are two residential properties on the farm, both owned by the farm business, and occupied by the landowner and his son who have a financial interest in the proposed development. Other residential properties are at Allanshaws 1.2 kilometres to the west, Threepwood 1.6 kilometres to the south, Wooplaw 2.5 kilometres to the south-west, and Lauderhill 2.0 kilometres to the north-east. Two major electricity lines carried by pylons

traverse the farm site from south to north and pass across the Lauder Common moorland and rough grassland. The operational Longpark wind farm (19 turbines, of which 4 are 110 metres overall height and 15 are 100 metres high) lies about 3 kilometres to the southwest. The Southern Upland Way (SUW) passes about 1.5 kilometres to the east. There is one scheduled ancient monument on Lauder Common, just to the north of the B6362 and within 1 kilometre from the nearest proposed turbine, comprising a low circular bank and a small knoll. Thirlestane Castle (Category A listed) and its gardens and designed landscape are located to the east of Lauder, 3.7 kilometres from the nearest proposed turbine.

4. The proposed development would comprise 7 wind turbines, each a maximum height to blade tip of 110 metres with reinforced concrete foundations and hard-standings; upgrading of the existing track towards Muircleugh Farm from the B6362; creation of a new access track across the farm to the turbines, a total of 1.4 kilometres in length, and internal tracks between the turbines; underground cabling to connect the turbines to an electricity substation; a temporary construction compound; and a permanent meteorological mast. The proposed windfarm would have an installed capacity of up to 21 megawatts.

#### *The development plan*

5. The development plan comprises the South East Scotland Strategic Development Plan (SEPlan) approved in June 2013, and the Scottish Borders Consolidated Local Plan adopted in 2011. In SEPlan, Policy 1B sets out development principles. Policy 10 (Sustainable Energy Technologies) seeks to promote sustainable energy sources. Local Development Plans (LDPs) will set a framework for the encouragement of renewable energy proposals that aims to contribute towards achieving national targets for electricity and heat, taking into account relevant economic, social, environmental and transport considerations, to facilitate more decentralised patterns of energy generation and supply and to take account of the potential for developing heat networks.

6. The preamble to Policy 10 (paragraphs 125 and 126) notes that there is a need to derive a higher proportion of energy requirements from renewable sources and that LDPs should promote the use of renewable energy and should encourage development that will contribute towards national renewable energy targets, including meeting 100% of electricity demand equivalent from renewables by 2020. It notes that the potential for low carbon and renewable energy developments encompasses a range of technologies with varied impacts. Consideration of location, landscape, environmental quality and community impacts will be required for onshore developments. It notes that concerns have been expressed about cumulative impacts, and that LDPs should undertake an assessment of the impact of development.

7. The most directly relevant policy in the local plan is Policy D4, Renewable Energy Development. This supports proposals for both large scale and community scale renewable energy developments, including commercial wind farms, where they can be accommodated without unacceptable impacts on the environment. The siting and design of all renewable energy developments should take account of the social, economic and environmental context. Renewable energy developments will be approved provided that:

1. There are no unacceptable adverse impacts on the natural heritage including the water environment, landscape, biodiversity, built environment and archaeological heritage, or that any adverse impacts can be satisfactorily mitigated;

2. There are no unacceptable adverse impacts on recreation and tourism, including access routes, or that any adverse impacts can be satisfactorily mitigated.

If there are judged to be significant adverse impacts that cannot be mitigated, the development will only be approved if the council is satisfied that the contribution to wider economic and environmental benefits outweighs the potential damage to the environment or to tourism and recreation.

8. Policy D4 lists a number of specific criteria for commercial wind farms. These include a preference for Upland type landscapes and for locations where the surrounding landform minimises external visibility; avoidance of interference with prominent skylines; attention to the visual effects on major tourist routes and important landscape viewpoints; effects on ecology and ornithology; interference with aviation; and cumulative impacts.

9. Other local plan policies which have some relevance to the proposal include Policies G1 (Quality Standards for New Development, which requires development to be of high quality and to integrate with its landscape surroundings); NE3 (Local Biodiversity, which seeks to safeguard the integrity of habitats); and NE5 (Development Affecting the Water Environment).

#### *Effects on landscape character*

10. The proposed turbines would be sited within the Lauder Common Landscape Character Area (LCA) which forms part of the Plateau Grassland Landscape Character Type (LCT). They would be on the edge of this LCA where it adjoins the East Gala Undulating Grassland LCA. The site is therefore in a transitional area and the proposal would influence both landscape types. The Lauder Common LCA has an open, large-scale moorland character, whereas the East Gala LCA has a medium scale with a pastoral character, farm buildings and drystone walls, locally prominent medium-sized conifer plantations, and locally intrusive pylon lines which cross the area to the east of the appeal site. To the east, the turbines would also have some effect on the Upland Valley Farmland LCT: Upper Leader LCA.

11. While the 110 metre high turbines could be absorbed by the scale of the open moorland landscape to the north and west of the site, they would be locally dominant and this dominance would extend to the adjacent East Gala LCA. The turbines would appear notably out of scale with the landscape features of the latter. Pylons, plantations and buildings provide scale references in relation to which the turbines would appear over-large. This dominant effect would extend for about 5 kilometres from the site, and can be seen in the visualisations from viewpoints VP 6 (Chester Hill), 20 (Wanton Walls), 21 (West Mains), 23 (North of Fordswell), 24 (B6362, Lauder Common) and 26 (Cairn at Lauder Common Road). The view from Chester Hill (VP6) shows most starkly the discordant scale contrast between the turbines and the features of the East Gala LCA.

12. Scottish Natural Heritage (SNH), while not objecting on national interest grounds,

commented that the proposal would have significant adverse landscape and visual impacts. Lying relatively close to the villages of Lauder and Stow, the area is popular and well visited, in part due to its easy accessibility and in part due to its wide and open views to surrounding landscapes and its sense of remoteness. SNH considers that the proposed turbines would have significant impacts on the landscape character of the Common, by virtue of their location, scale, movement and visual dominance. While the layout of the turbines would in some way relate to the underlying sweep of the landform, and the detracting nature of the existing pylons is recognised, the sheer height of the turbines and their dominant scale relationship to the nearby pylons and woodland belts would be readily appreciated from key areas of the Common.

13. The turbines and their movement would, in SNH's view, intrude significantly within important and open eastward and southward views from the Lauder Common Road (B6362), reducing the sense of scale and openness of the landscape panorama, which is a key feature of the landscape and visual experience. I agree with SNH's assessment. In doing so, I have taken into account the counter-arguments advanced by the appellant. While I note that the landscape surrounding the site is not subject to any special designation, it appears to me that it has attractive qualities that are highly valued by the local communities, and that its character would be seriously compromised by the proposed turbines.

#### *Visual impacts – Lauder Common*

14. Lauder Common itself comprises a smaller area than the Lauder Common LCA within which it is located. The principal access is the B6362 Lauder to Stow road. There are informal parking places along the road where it crosses the Common, and a series of footpaths the most notable of which is the ancient north-south route of Girthgate. While the B6362 is not considered an important tourist route, it is likely to carry some tourist traffic. More significantly, the Common is an important recreational asset for the local communities.

15. The turbines would be highly visible from the Common, as shown in the visualisations from VP 24 and VP 26 at ranges of 1.1 and 0.9 kilometres respectively from the nearest turbines. Views eastwards and southwards from the road and from footpaths encompass a broad panorama of the Central Borders, within which the Eildon Hills are a prominent feature. From VP 24 these hills are at the right-hand side of the view well separated from the turbines, but as one moves eastwards they become more central. From VP 26 they are just to the right of the turbines, and from points further east the turbines would overlap them. The turbines would completely transform the views across the Common and would have a seriously adverse visual effect. They would detract to a major degree from the recreational enjoyment of the Common.

16. The appellant has produced additional wirelines showing how the turbines would appear from Girthgate and other locations north of the Common (VPs A3, A4, A5 and A6). These relate to the route of the annual Lauder Common Riding. The illustrations reinforce my opinion that the views of, and from, the Common would be much diminished in quality. However, the purpose of the Common Riding is to mark boundaries rather than indulge in sightseeing, and I discount the suggestion (raised in objections) that the turbines would represent a threat to the future of the event. Any risk that the moving turbines might

frighten the horses could be controlled by a condition requiring the turbines to be stopped for the duration of the ride.

## *Visual impacts - Southern Upland Way*

17. The SUW is a long-distance walking route that passes through Lauder. It runs south-westwards from the town, skirting the golf course to Chester Hill. It then turns south-southeast towards Fordswell. Visualisations from VP 6 (1.5 kilometres from the nearest turbine) show the dominant effect that the proposed turbines would have on the key viewpoint of Chester Hill, where the outlook to the south-west would be transformed. I acknowledge that electricity pylons and more distant turbines at Longpark are already present in the view, but the appeal development would appear much larger in scale and would become the defining feature of the view.

18. Other views from the SUW are shown from VP 23 (North of Fordswell, 2.3 kilometres from the nearest turbine) and VP 20 (Wanton Walls, north-east of Lauder and 4.9 kilometres from the nearest turbine). These reinforce the impression that the proposed wind farm would be a dominant element in the visual experience for users of the route passing through Lauder. Users of the SUW will already experience wind farms along the route, and not all users will find wind turbines unattractive. However, this development would have a strongly adverse visual impact on the affected sections, and would further erode the quality of the walk for those users seeking escape from industrial landscapes.

### *Other visual effects*

19. There would be some visibility of the turbines from the western parts of Lauder. This is illustrated in the visualisation from VP 5 (Lauder Playing Fields, 2.9 kilometres from the nearest turbine). The development would be partially screened by landform and trees, and the impact on the town would be fairly minor. Other residential properties with views less than 5 kilometres from the wind farm include those at Trabrown (VP 4, 3.4 kilometres), Wanton Walls (VP 20, 4.9 kilometres), Pilmuir, West Mains (VP 21, 4.3 kilometres) and the upper levels of Thirlestane Castle (3.7 kilometres). The degree of visual impact on these ranges from slight to moderate adverse. Three of the closest residential properties to the turbines (Allanshaws 1.2 kilometres to the west, Threepwood 1.6 kilometres to the south, and Wooplaw 2.5 kilometres to the south-west) are within the zone of theoretical visibility, but the available information has not enabled me to assess the likely degree of actual visual impacts on them.

20. The A68 and A697 are major road routes with significant tourist traffic. Both would have some views of the turbines from sections north and east of Lauder. These are illustrated at VPs 1 and 22 for the A68, and VP 27 for the A697, but would be experienced intermittently along sections of both roads. While noticeable, the turbines would not be likely to have a major impact on the users of these routes, and would be experienced in the context of the much closer encounter with the Dun Law wind farms further north on the A68.

## *Cumulative landscape and visual impacts*

21. The main potential for cumulative impacts arises from Longpark wind farm about 3 kilometres south-west of the appeal site. A proposed extension to Longpark is under

consideration by the Scottish Ministers. It would extend the existing wind farm eastwards towards the Muircleugh site. Longpark turbines are visible in a number of the appeal photomontages including VP 6, VP 8, VP 20, VP 23 and VP 26. The additional effect of the Muircleugh proposal in these cases would be to intensify the apparent density of turbines, or to increase their lateral spread, or in some cases both. The existing impact of turbines on the landscape would thereby be increased by an appreciable degree.

22. SNH expresses concern with regard to the impact of the proposal on views from the Eildon and Leaderfoot National Scenic Area (NSA). This is illustrated in the visualisations from VP 12 (12.8 kilometres from the nearest turbine). SNH notes the effects of the proposal in combination with the existing developments of Longpark, Toddleburn and Dun Law 1 and 2. The likely adverse effects of multiple, extensive and visually conjoined wind farm development under this scenario represents, in SNH's view, an important issue for consideration. I agree that there would be a significant addition to the existing cumulative baseline of wind farms as seen from this important viewpoint. The Muircleugh proposal would both increase the proportion of the panorama occupied by turbines, and would bring wind farm development closer to the NSA thereby eroding its scenic qualities.

23. Cumulative impact can also be sequential in nature. Drivers on the A68, A697 and B6362, and walkers on the SUW, will already experience views of existing wind farms as they move along these routes. The addition of Muircleugh would intensify the experience and add to the impression that this part of the Scottish Borders has a significant density of wind energy development.

Cultural heritage

24. There is a scheduled ancient monument at Cathpair 700 metres north-west of the nearest proposed turbine. The Environmental Statement assesses the impact on the setting of the hut circles and field system to be of medium magnitude and moderate significance. Thirlestane Castle (Category 'A' listed) is 3.7 kilometres east of the appeal site. While the turbines would be visible from the upper floors of the castle, they would not be seen from ground level and would not impact on the setting of the castle or its designed landscape. There was no objection from Historic Scotland. I consider the cultural heritage impacts to be acceptable.

*Natural heritage*

25. SNH advises that impacts on habitats important to nesting waders could be reduced through the relocation of turbine 6 and its associated access track, and that impacts on heathland arising from widening of the existing access track from the Lauder Common Road should be minimised through good practice methods for construction. Any proposal that may be forthcoming for relocation of turbine 6 should however be considered carefully in terms of the overall appearance of the proposed wind farm. I note that the appellant considers that the effect on wader habitats would not be significant and in any case would be offset by a much larger habitat management proposal. Turbine 6 cannot, in the appellant's view, be moved without visually unbalancing the composition of the whole wind farm.

26. The appellant proposes to provide a Habitat Enhancement and Management Plan and to convert over 30 hectares of short-grazed pasture to semi-improved marshy grassland habitat, and to manage a further 26 hectares of semi-improved marshy grassland. The effect would be to more than double the wader habitat available within the site, and offset the loss of 0.44 hectare affected by turbine 6 and any displacement effect of waders. I consider that, subject to conditions, the impacts on ecology would be acceptable.

## *Residential amenity*

27. Supplementary Environmental Information submitted by the appellant shows that the noise limits laid down by ETSU-R-97 would be satisfied for all properties, taking account of the cumulative effects of Muircleugh, the existing Longpark turbines and the proposed Longpark extension. The limits are, of course, higher for the financially involved properties at Muircleugh Farm. I note that Allanshaws lies between Muircleugh and Longpark, and while in theory there could be an issue with cumulative noise, in practice this would not arise since the property would never be downwind of both wind farms at the same time.

28. Shadow flicker could arise at the two financially involved properties, but mitigation is proposed which would involve a photocell fitting that would shut the turbine down when flicker could occur. This would be capable of being imposed as a condition.

29. As noted above, I have not carried out a detailed assessment of visual impact on residential properties. However, given their distance from the turbines (at least 1.2 kilometres, except for the financially-involved properties) I do not consider that the impact is likely to detract from amenity to a serious degree.

### *Compliance with the development plan*

30. Local plan Policy D4 supports renewable energy developments where there are no unacceptable adverse impacts on the natural heritage including the landscape, and no unacceptable adverse impacts on recreation and tourism, or that any adverse impacts can be satisfactorily mitigated. I have found that the landscape character of the Lauder Common LCA and of the adjacent East Gala LCA would be seriously compromised by the proposed turbines to a degree I consider unacceptable. I have also found that there would be seriously adverse visual impacts on the important recreational assets of Lauder Common and the Lauder section of the Southern Upland Way which would detract to a major degree from their recreational enjoyment. Again, I consider these impacts to be unacceptable. The negative impacts are not capable of mitigation.

31. In terms of the specific criteria for commercial wind farms in Policy D4, these include a preference for Upland type landscapes and for locations where the surrounding landform minimises external visibility; avoidance of interference with prominent skylines; attention to the visual effects on major tourist routes and important landscape viewpoints; and cumulative impacts. While the turbines would be sited within an Upland type landscape, they would be on the edge and would have significantly adverse effects on the adjacent pastoral landscape. While the landform provides containment to the north and west, the turbines would be exposed to the south and east. They would interfere with prominent skylines and landscape viewpoints from several locations around Lauder, most notably

Chester Hill. There would be cumulative impacts with existing wind farms, in particular Longpark, which would be significant when viewed from the Eildon Hills within the NSA.

32. The proposal is therefore not in accord with Policy D4. Neither does it derive support from Policy G1 in view of its failure to integrate with its landscape surroundings. However, I do not find any conflict with Policies NE3 (Local Biodiversity) or NE5 (Development Affecting the Water Environment), since the adverse impact on habitat is capable of mitigation which could be secured by conditions. SEPlan provides general support for renewable energy development, but requires consideration of location, landscape, environmental quality and community impacts. Overall, I consider that the proposal would not accord with the development plan.

#### *Benefits*

33. The scheme would have a maximum installed capacity of 21 megawatts and would be capable of delivering 51,509 megawatt hours of electricity annually. This would equate to the electricity needs of 12,420 households and would save 22,149 tonnes of carbon dioxide emissions each year. These are significant benefits that would make a small but useful contribution to Scottish Government renewable energy targets. There would also be a short-term economic benefit from construction activity (with local investment of about £1.3 million), and once operational the scheme would provide an ongoing contribution to farm income for Muircleugh Farm and to the Lauder Common Good Fund. These benefits require to be weighed against the scheme's negative impacts.

#### *National policy*

34. The National Planning Framework (NPF3) and Scottish Planning Policy (SPP) support renewable energy developments, while requiring regard to impacts on communities and individual dwellings, and to landscape and visual impacts. SPP sets out a presumption in favour of development that contributes to sustainable development. This involves balancing the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

35. SPP sets out guiding principles which include:

- giving due weight to net economic benefit;
- supporting good design and the qualities of successful places;
- supporting delivery of infrastructure, including energy;
- supporting climate change mitigation and adaptation;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment; and
- avoiding over-development, protecting the amenity of existing development and considering the implications of development for water, air and soil quality.

While the proposal would make a positive contribution to infrastructure and to mitigating climate change, it would not protect the landscape or the wider environment. In my opinion, the negatives outweigh the positives. I do not consider that the proposal would be 'the right development in the right place'.

36. SPP makes it clear that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. For proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained and the SPP and the presumption in favour of development that contributes to sustainable development will be material considerations. The adopted local plan is 4 years old, and while relatively up-to-date it will shortly be replaced by a new local development plan.

#### *Proposed Local Development Plan*

37. The Proposed Scottish Borders Local Development Plan and the report of the examination of representations are currently before the council. The proposed plan contains a policy (ED9) for renewable energy developments, but in the light of representations the reporter who examined this part of the plan has recommended an extensive re-writing of the policy and the preparation of Supplementary Guidance. The position therefore remains undetermined and only limited weight can be given to the proposed plan in this decision. However, it appears to me that the essential principles of Policy D4 of the existing local plan would be continued, and that support for wind energy development would remain subject to the absence of unacceptable impacts, including those on landscape and recreation.

#### *Other material considerations*

38. The proposal was the subject of eight objections including those by Lauderdale Community Council, Melrose Community Council, and jointly by Stow and Fountainhall and Heriot Community Councils. Issues raised included landscape and visual effects including cumulative effects; effects on Lauder Common as a recreational area; and impacts on residential amenity. I have dealt with these matters above.

#### *Conclusion*

39. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I do not consider that the renewable energy benefits of the proposal are sufficient to outweigh the adverse impacts on the landscape, visual receptors and recreation. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Michael J P Cunliffe*

Reporter