

11 February 2013

**Sneddon Law Windfarm 11/0967/PP: Application for 15 turbines,
130m height, 45 MW Capacity, by CWP Ltd.**

Dear Mrs Lees,

We understand from your reply to Dr Connor, on behalf of Local residents, that you do not wish to comment further in respect of your reply to our formal complaints of October 31st 2012, regarding this Application.

However, as this letter will form part of our submission to the Ombudsman to address what we perceive to be unanswered, related deficiencies by East Ayrshire Council, in the interests of transparency, openness and to provide all parties with equitable information, we felt that it would be helpful to summarise our views of the main points and issues relating to facts surrounding the granting of planning permission to Sneddon Law windfarm by East Ayrshire Council (EAC).

This application was approved by four EAC Councillors at a specially convened planning meeting on 26/06/12.

Our observations and ongoing complaints are summarised below.

The first Section outlines those reasons which apparently underpin this Application. The second Section states those reasons that weigh against this Application and also outlines our continued concerns with this Application, the Due Process of granting Planning Permission and the continued handling of Local Residents' Complaints by EAC.

Section 1.

Stated Reasons for Planning Approval: Socioeconomic benefit and Contribution to the Scottish Government's Renewable Energy Policy

1. Socio-economic benefit.

- I. The applicants state an investment of £45 million into this development. It was apparent at the Hearing, that Councillors understood this to mean investment into the Local economy. The ES (Environmental Statement for Sneddon Law Windfarm) does not state that this is an investment of £45 million into the local economy:

Current Industry standard publications indicate current capital prices are approximately £ 2.5 to £4.0 million for each of the 3.0 MW turbines (Siemens; Germany) planned for Sneddon Law.

No consideration has been taken of additional construction costs, property purchase and consultancy fees etc.

In the light of these figures, it can be assumed that Capital costs alone for Sneddon Law windfarm will be approximately £30 – 45 million.

This leaves doubt as to the actual residual financial benefit to be gained by the Local Economy and Community, despite this being stated as a key factor in influencing the planning committee decision

- II. East Ayrshire Council stand to benefit by £ 112, 500/year into their renewable fund, which is directly managed by the Council. EAC also stand to gain from additional rates, over a 30 year period.
As stated at the Planning hearing, this is not a material planning consideration. However, EAC have communicated to residents that this remains a major component of negotiations involving Section 75 Planning Agreements.
- III. EAC has no statutory powers which can impose any enforceable conditions for ensuring that CWP Ltd honour promises of investment or employment into the local economy.
- IV. CWP Ltd have indicated there will be potentially up to 100 -120 non-contiguous jobs during the construction phase, likely to last up to one year in total. They stated at the Planning Hearing that one, possibly two long term jobs may be created (type of job not stated), but again this cannot be enforced by Planning conditions.
CWP Ltd plan to operate the site remotely. They are a Cheshire based Company and the presumption is that this is not likely to be from within East Ayrshire or Scotland. CWP Ltd indicate on their website that only periodic

maintenance will be required – another factor unlikely to substantially benefit local employment.

- V. Conversely, we can find no evidence that EAC has taken any account of the potential adverse impact on local employment as a result of this development:

The proprietor of Cowan's Law Country Sports, [adjacent to this proposed development], currently employs 2 full time and 12 part time staff and is a very long established business bringing visitors to the area.

The viability of this business and the direct employment of 14 local people, is threatened by the Sneddon Law turbines; Clay pigeon shooting is not compatible with the distraction from rotating turbine blades and fishing on the adjacent loch will also be compromised by turbine flicker and noise

- VI. The Planning Hearing Councillors failed to heed advice and the invitation from Council Officials, to review concrete evidence/accountability of predicted socio-economic proposed by CWP Ltd, prior to making their determination. They could not therefore, properly consider this application knowing all the relevant information.

2. The Scottish Government's 'Renewable Energy Policy'.

- I. East Ayrshire Council has cited the Scottish Government's 'Renewable Energy Policy' as reason to approve this Application.

Our investigations have revealed that this is not yet Policy, but remains a 'draft' document which has not been written to Statute.

The Renewable Energy 'Policy' is therefore, in law, a 'plan' only.

(Metcalf v. European Union and United Kingdom ACCC/C/2012/68, Ref: 08/01/13)

Approval of a planning decision on the basis of a draft government plan has doubtful provenance and must be open to challenge.

3. Community Support for Sneddon Law Windfarm:

- I. This proposal has five letters of support. (Two are from individuals who will directly benefit financially from the development; two are from individuals with personal involvement/gain from other local commercial turbine installations.)

There is only one letter of support from an individual who does not stand to directly gain from wind turbines.

- II. There is an undated petition in support, of 62 signatures.
The petition does not indicate where/how signatures were collected. No signatures have been obtained from residents in the nearest communities of Waterside or Moscow, or within 5Km of the nearest turbines.
- III. The adverse comments and lack of support from three adjacent Community Councils following the 'Community consultation' by CWP Ltd. have not been acknowledged by CWP Ltd and not addressed by EAC.

Section 2.

Summary of Objections , Previous Planning History and Substantiated Concerns currently raised with East Ayrshire Council.

1. Objectors:

- I. 81 Letters of Objection, including objections from Scottish Power and three neighbouring Community Councils of Moscow/Waterside, Galston and Stewarton.

2. Planning History and Recommendations:

- I. Two previous windfarm applications by CWP Ltd for windfarms involving or overlapping the same site; the last rejected on Appeal to the Scottish Government by the Reporter, May 2011(PPA-190-2011)
- II. Recommendation to refuse planning permission of this Sneddon Law Development, by the Head of EAC Planning Department.

3. Concerns raised by Objectors:

- I. Excessive cumulative noise concerns raised by both Scottish Power [SP] operating the adjacent Whitelee Windfarm,(the largest onshore windfarm in Europe) and by objectors prior to the Planning Hearing.
- II. Scottish Power informed EAC and CWP Ltd in writing, that they already expect to exceed the maximum allowable noise limits in operating Phase two of Whitelee. They expect to have to constrain operating parameters of existing turbines.
Despite this, independent scrutiny of the Noise Section of the Applicant's ES was not considered necessary by EAC and residents **did not receive** an informed reply or answers to their written concerns before the Hearing.

Concerns raised by Objectors (continued):

- III. Residents were required by EAC to provide substantive evidence of facts or statements, identified as being contrary to information submitted within the Sneddon Law Windfarm ES.

At their own cost, residents therefore commissioned an independent acoustic consultant to evaluate noise data from within the submitted ES, after planning approval had been granted.

The Acoustic Consultant's report demonstrated that essentially, **Sneddon Law windfarm cannot operate within the permitted allowable noise limits and that there are no effective mitigation measures possible.**(This report has been previously submitted to EAC.)

This conclusion is directly contrary to the Acoustic Assessment provided by CWP Ltd

The conclusions of this report were also predicted prior to the Hearing by Scottish Power. Although this information was available to EAC before the Hearing, it was only made available to residents in September 2012, following an FOI request.

Despite this information being available to the Environmental Health (EH) Department, the EH advice informing the final Planning Report, indicated that there were no concerns with regard to noise.

- IV. Peer reviewed medical literature indicates excessive noise alone is likely to cause long term adverse health impact on local residents. Excessive noise, and the effect of light pollution is also recognised by the Communities Section (para 8) of the Addendum to the Ayrshire Structure Plan, but this has not been acknowledged in determination of this Application.

- V. Concerns were raised by SP regarding the effect of this development on the decreased operational efficiency of their existing Whitelee turbines.
(Concerns were not addressed)

- VI. Inaccurate data, basic errors and incomplete information were submitted by CWP Ltd within their ES.

This issue was raised with EAC by Objectors both prior to, and at the Planning Hearing and by Struan Stevenson MEP., following the outline planning approval. Further inaccuracies and omissions have been raised with EAC since the outline approval was granted, but have not yet been addressed.

These inaccuracies have subsequently been confirmed on several counts.

Concerns raised by Objectors (continued):

- VII. Several Statutory consultees e.g. SEPA, SNH, Scottish Forestry have also highlighted the failure of the Applicant to provide adequate data within the ES.
Starling Learning Ltd., providing Ecological Assessment for the Applicant's ES, is a non-accredited organisation and were not commissioned to provide a full habitat survey, contrary to the statement in the ES.
- VIII. There is inadequate detailed assessment submitted within the ES, with no suitable agreed mitigation by CWP Ltd, SEPA or EAC Environmental Health, for the significant short and long term potential for ground (and surface) water contamination.
This is most likely to impact on Muirburn - with four proposed borrow pits and three turbine bases within the catchment area for its ground water extraction (Located within 1.0 Km of turbine base) - and for Alton Lodge and Alton Muirhouse in close proximity (< 250 m) to a proposed new Access road.
- IX. EAC Policy ENV24: 'The Council will presume against any developments which have an adverse effect on the water environment by increasing levels of pollution.'
The contamination of ground water has already been predicted within the ES by the Applicant.

However, EAC has not indicated to residents that it has properly considered these risks, given the statement in the ES by the Applicant.
- X. Protection of drinking water is a statutory requirement of Local Authorities under the Human Rights Act.
- XI. There is no acknowledgement by EAC within the Planning Report of the stated interruption of TV/radio communication signals for 10 unidentified properties (predicted by CWP Ltd in the ES), with no mitigation measure identified in 4 of these properties. No concerns were subsequently identified or raised within the Planning Report by EAC.

CWP state in their introduction to ES Vol 1, that this Sneddon Law site has been chosen because it does not interfere with radio communication signals. This is therefore completely contradictory to the detail provided later within the ES.

Concerns raised by Objectors (continued):

- XII. It is stated within the ES that Muirburn is predicted to be within the marginal predicted flicker zone from the nearest turbine, with no mitigation offered.
- XIII. There has been inadequate assessment of the ES by EAC Roads Department. CWP Ltd clearly plan, within the ES, to use the upper Hareshawmuir road for turbine construction traffic (likely to lead to its closure), despite a definitive statement by the Applicant, confirmed by Councillors at the Hearing, that this public road would not be used for construction traffic.
- XIV. Documentary evidence has also been provided to EAC of actual devaluation of property values resulting from the proximity to existing Whitelee turbines. Within the Planning Report EAC has acknowledged an overwhelming impact of the Sneddon Law Windfarm on residential amenity, which can only cause further property devaluation.

4. Concerns raised with East Ayrshire Council Regarding Due Process:

- I. One of the minimum quorate of four Councillors determining the application, failed to declare a potential Conflict of Interest, having his own current personal interests in Commercial Turbines within East Ayrshire.
- II. The Environmental Concerns raised by Residents and Objectors prior to determination and including those comments resulting from the pre-application public consultation undertaken by CWP for a major development were not addressed by Councillors or Officials of EAC in their Planning determination.

This is contrary to Aarhus Regulations where the outcome of Public Participation MUST be taken into account, considered and recorded as such.

Aarhus Convention: Article 6, para 8. Also referred to within Articles 7 and 8)

The provision within the Convention implies that the failure to take due account of the outcome of public participation is a procedural violation which may invalidate the decision.

Concerns raised with East Ayrshire Council Regarding Due Process (continued):

- III. Participation MUST be taken into account, considered and recorded as such. (Aarhus Convention:Article 6, para 8. Also referred to within Articles 7 and 8) The provision within the Convention implies that the failure to take due account of the outcome of public participation is a procedural violation that may invalidate the decision.
- IV. Local Authorities, as the 'Competent Authority', have a statutory requirement by the Scottish Government to meet their Obligations under the Aarhus Convention (Response of the Scottish Government 07/11/12 S4W-10543 to a question on Aarhus implementation)
- V. This Planning application was designated as a major development; but was not referred for determination by Full Council.
No other East Ayrshire windfarms categorised as a 'major development' have been determined simply by a planning hearing.

The previous application involving this site for 20 turbines was classified as a major development and was contrary to 6 development plan policies:

It was referred to and refused by Full Council:

The current application contravening 8 policies (see below) was NOT referred to Full Council.

Despite repeated written requests from residents and a Planning Consultant, EAC has failed to give any satisfactory explanation or justification for the difference regarding 'due process' in referral of classified major developments for determination by Hearing versus referral to Full Council.

- VI. Sneddon Law Windfarm breaches 8 Planning Policies, with two thirds (10) of turbines outside the designated search area.

Ayrshire Structure Plan –

ECON 6; ECON 7A, ECON 7D & ECON 7G:

ENV 1A & ENV 1E:

SD1(i) SD1(ii) & SD 1(iii)

Contrary to the approved East Ayrshire Local Plan:

Policies CS14(A); CS14(D); CS14(E);CS14(G):

Policies ENV15(i): **ENV15(vi)**

Policies **CS12(ii)**; CS12(iv)

Policies ENV16(i)

Policies **ENV17(iv)**

(Policies in red are those highlighted by the Scottish Reporter in previous reasons for refusal on Appeal at this site. This Applications breaches more planning policies than the previous applications)

Concerns raised with East Ayrshire Council Regarding Due Process (continued):

EAC has not been able to provide examples of any other major developments, contrary so many Planning Policies, which have not been heard by Full Council.

- VII. The local community understands that in Law, there is an option for Council to amend, alter or overturn a Planning Hearing decision, without recourse to Judicial Review, as a Section 75 Agreement had not been formulated and agreed.
- VIII. The Legal advice to Full Council on 20/09/12, in 'signing off' minutes of the Planning Hearing of 29/06/12, was therefore perceived by the Public as incorrect (as heard/witnessed and recorded by 7 members of the Public in attendance). The advice, as stated to Council on that date, was that Judicial Review would be required to overturn the Planning decision, even though a Section 75 Agreement had not been formulated and agreed.

- IX. Minutes of both the Planning Hearing of 29/06/12 and the Full Council meeting of 20/09/12, are scant and do not reflect a true and accurate representation of important discussion at either meeting.
There is subsequent open interpretation of events and important discussion at these meetings by senior officers of EAC, which is therefore contrary to discussion recorded and recalled by Members of the Public.

The Minutes are therefore inadequate for purpose and again contravene recommendations within the Aarhus Convention, with regard to recording decision making involving those Planning Applications with Environmental Impact.

- X. There has been, and remains, incomplete Public availability of Responses from Statutory bodies and Consultees, with some of the responses that are available from statutory bodies (e.g. Scottish Government Forestry) indicating a completely inadequate/inappropriate planning application with respect to the remit of that statutory consultee.
- XI. EAC has a stated policy of restricting to the Public, full environmental information regarding applications with environmental impact, until after the Application has been determined. This makes full, informed pre Hearing assessment of such Applications, by members of the Public, impossible.

Lack of access to Environmental documents has been raised verbally and in writing by several residents throughout the last year (2012).

This is again clearly contrary to Aarhus Regulations (Pillar 1; Access to Information)

Concerns raised with East Ayrshire Council Regarding Due Process (continued):

Key Environmental Documents, such as the statutory response from SEPA (Scottish Environmental Protection Agency) regarding Water pollution, were not made available prior to the Hearing.

The content of the response from SEPA to the Planning Department at EAC, available to us as of 29/01/13, gives residents cause for concern, with definitive, prospective mitigation for the protection of water supplies NOT clearly specified for those ground water supplies suspected to be at highest risk. SEPA have indicated concerns that within the ES, basic information of ground water extraction sites have not been clearly identified or mapped.

The SEPA response to EAC for this application (above) was obtained by a resident contacting SEPA directly.

- XII. No documents indicating adequate amelioration or mitigation of adverse environmental effects have subsequently been made publically available by EAC since the Hearing, despite concerns raised by Members of the Public, Statutory Consultees and Member of the European Parliament for South Scotland.
- XIII. The Applicant, CWP Ltd, has actively blocked /refused to release Original Environmental Information performed by its commissioned external agencies (Acoustic and Ecological Consultants) in support of its Environmental Statement to either local residents or Struan Stevenson MEP.

This is in direct contravention of the Aarhus Convention Article 4.

- XIV. East Ayrshire Council has failed to undertake its legal responsibilities to obtain its own, independent EIA of the proposed windfarm, as required in Article 3 of the EIA directive, as required under EU law, to assess the direct and indirect effects of the development on water, human beings, flora and fauna and material assets.
- XV. East Ayrshire Council has **refused to meet costs** of independent assessment of possible excessive cumulative noise effects.
Residents, as previously noted, were required to fund their own independent assessment of cumulative noise impact, now found to be contrary to the conclusion within the ES and contrary to the conclusions of the EAC Environmental Health Department.
This independent analysis predicts unequivocal cumulative noise levels above maximum permissible levels from this development.

Concerns raised with East Ayrshire Council Regarding Due Process (continued):

- XVI. EAC has failed to follow its own guidance within the Communities Section (para 8) of the Addendum to the Ayrshire Structure Plan, with regard to protecting residents' amenity and Health, against excessive noise and visual disturbance.

Sneddon Law Windfarm 11/0967/PP: Application for 15 turbines, 130m height, 45 MW Capacity, by CWP Ltd.

Summary of Residents Concerns, Issues & Objections

In Our opinion:

1.

The Sneddon Law Windfarm application has been approved on the grounds of unsubstantiated, unenforceable socioeconomic benefit, with reference to the Scottish Government's non-statutory, Renewable Energy Proposals.

These uncertain citations have outweighed all other Planning, Environmental and Health considerations.

2

The wind farm Applicant, CWP Ltd, has predicted major adverse environmental impacts within the submitted ES, which have **NOT** been adequately addressed by EAC prior to submission to Planning Committee for determination.

The substantiated concerns regarding excessive noise and the continuing concerns regarding pollution of ground water supplies are major Environmental Health issues.

Despite concerns raised by Statutory consultees and informed Objectors, no independent evaluation of the ES or independent environmental assessments were considered by EAC. No suitable mitigation measures could therefore be identified prior to decision making.

EAC has failed to meet EU regulations of Environmental Impact Assessment.

3

No other designated major industrial development, contrary to the Development Plan, in contravention of numerous Planning Policies and with such a history of previous planning refusals has failed to be determined by a full East Ayrshire Council in at least the last four years.

Summary (Continued):

4

The Competent Authority, (East Ayrshire Council) and the Applicant, have repeatedly failed to meet the requirements of the Aarhus Convention under availability of

relevant environmental information and meaningful inclusion and documentation of Public participation in the Decision making process.

5

East Ayrshire Council has failed in its duties and responsibilities to protect the Amenity of its existing Residents.

EAC stands to gain financially from this development, whilst sanctioning loss of material assets and amenity of its residents.

EAC has shown disregard in its obligations under its own By-Laws and Policies, The Human Rights act, The United Nations Aarhus Convention and to European Law.

Yours Sincerely,

Mr and Mrs J. Peberdy (Meadowhead)
Mr and Mrs S. Connelly (Muirburn)
Prof. and Dr J M Connor (East Collarie)
Mr and Mrs C. Cuthbertson (Hareshaw Lodge)
Mr and Mrs J Templeton (Airtnoch)
Mr and Mrs J Templeton (Beechknowe)
Mr and Mrs C. Wareham (Langdyke)
Mr and Mrs Colville (Waterside)
Mr and Mrs R Roberts (Waterside)
Mr and Mrs A Gilbert (Alton Lodge)