

MINUTE

A&B - Public

Planning Committee
Council Chamber, Town Hall, Lerwick
Wednesday 13 February 2019 at 2pm

Present:

C Hughson	E Macdonald
D Sandison	D Simpson
C Smith	G Smith
T Smith	

Apologies:

M Bell	A Manson
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In Attendance (Officers):

N Grant, Director of Development Services
I McDiarmid, Executive Manager – Planning
J Riise, Executive Manager – Governance and Law
J Holden, Team Leader – Development Management
J Barclay Smith, Planning Officer
R MacNeill, Planning Officer
C Summers, Planning Officer
P Sutherland, Solicitor
L Adamson, Committee Officer

Also in Attendance:

J Fraser, SIC
I Scott, SIC
R Thomson, SIC

Chair

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

Circular

The circular calling the meeting was held as read.

Declarations of Interest

None.

1/19 **Minutes**

The Committee confirmed the minutes of the meeting held on 8 October 2018 on the motion of Mr Sandison, seconded by Ms Macdonald.

2/19 **2018/335/ECUCON - To vary the consent by increasing the maximum tip height of the turbines from 145 metres (m) to a maximum of 155 m and increasing the maximum rotor diameter of the turbines by 10 m to a maximum of 120 m. The installed capacity of the proposed generating stated would be greater than 50 MW. (Viking Wind Farm).**

The Committee considered a report by the Planning Officer – Development Management, for a decision by the Committee [Record Appendix 1].

The Chair invited the Planning Officer to introduce the application on behalf of the Planning Service.

The Planning Officer (R MacNeill) gave a presentation which illustrated the following:

- New and varied boundary of the Viking WindFarm Project.
- The Key Issues as highlighted in the report.

The Planning Officer advised on the following, “Scottish Planning Policy (SPP) (2014) supports sustainable economic growth and has a presumption in favour of development that contributes to sustainable development aiming to achieve the right development in the right place supporting the transformational change to a low carbon economy. The main issue therefore to be considered in the determination of the response to make to the consultation to the Energy Consents Unit (ECU) on this application for a proposed variation of the Section 36 Consent is whether the principle of the proposed varied development on this site is acceptable, and if so can the area be developed without any unacceptable adverse impact on the environment and the amenity of the surrounding area. Also whether there is merit in making a balanced judgement between the potential for environmental impact against the economic benefits and providing support for climate change mitigation.

The previous decision of the Scottish Ministers was that the economic benefits provided by the wind farm outweighed the impact on the environment. The Ministers caveat this by adding that the benefits of the proposed Habitat Management Plan would help mitigate the impacts. The Environmental Impact Assessment (EIA) Report has concluded that the revision will not result in any further harm over and above that previously assessed with the 2009 EIA and subsequent 2010 Addendum.

A number of consultation responses and representations have raised concerns and objections to the proposed variation. Conditions which are capable of resolving or mitigating these concerns have been recommended to be applied that would allow the Planning Service to recommend that there are no conflicts with the Shetland Local Development Plan (SLDP) 2014.

The Planning Service has not reconsidered the principle of the development, and recognises that this development proposal, like its predecessor will result in an impact on Shetland in terms of landscape and habitat interests.

There is also an economic benefit that will accrue together with a major advance in terms of contributing to a reduction in CO₂. On balance it is considered that the economic benefits and the environmental benefits of carbon reduction outweigh the impact on the landscape and habitat interests tempered with the knowledge that well designed mitigation measures will go some way to reduce any negative impacts.

What is considered to be important to the delivery of a development which will contribute to the provision of a sustainable energy source and contribute to the aim to reduce carbon impact is a well-managed project. This leads to the conclusion that a thorough and well considered revised Habitat Management Plan (HMP) linked to the other mitigation measures such as a Peat Management Plan, Bird Protection Plan, Otter Survey etc. required by conditions which are appropriate and enforceable to be approved by the Planning Authority should be applied. The revised HMP should take into account all the potential beneficial effects and measures that were proposed for all of the land areas in the original decision and which was instrumental in influencing

the Scottish Ministers decision, to at the very least provide for the equivalent of the counterbalancing of positive effects in the revised smaller “red line” area for the proposed variation.

On balance it is considered that the economic and environmental benefits of carbon reduction outweigh the impact on the landscape and habitat interests tempered with the knowledge that well designed mitigation measures will go some way reduce any negative impacts.

Therefore the Planning Service recommends:

1. that the Shetland Islands Council as Planning Authority ‘Offer no objections’ to the application, subject to modifications and/or the imposition of appropriate conditions or legal obligations as are considered necessary to make the development acceptable, in compliance with Shetland Local Development Plan (2014) policy; and that
2. delegated authority is given to the Executive Manager – Planning and his nominated officer(s) to take part in and act on behalf of the Council in any discussions and negotiations involving the ECU and the applicant that take place with regards to planning conditions as might be presented to the Scottish Ministers for consideration.

The Chair has advised that Members have commented on planning conditions and why there is not a listed provided. The reasons are:

- The Council is a statutory consultee and the ECU is the competent authority to recommend conditions to the Scottish Ministers.
- It is also recognised that the content and requirements of any potential conditions will represent an update on those previously imposed taking account of new practices and all stakeholder inputs.
- The Planning Authority will make comment on the validity and competence of any suggested conditions that other stakeholders have recommended be applied should the ECU determine that a matter requires addressing to make the development acceptable.
- It is recognised that the conditions previously attached will form the basis for discussions with the ECU and the applicant at a meeting which has been pencilled in to take place in March.”

The Chair thanked the Planning Officer for the information provided

The Chair advised on a point of clarity, that the Planning Committee was sitting today as a statutory consultee only, to make a recommendation to the ECU, and not to determine the application, which he advised will be done by the ECU.

The Chair advised that representatives of the applicant were present at the meeting, who may be called upon to answer questions from Members. He also advised on his appreciation for technical questions to be posed to the representatives of Viking Energy and to the Planning Officer.

The Chair then welcomed questions from Members of the Committee.

Reference was made to Section 4.5 of the report, where further explanation was sought on the proposed recommendation relating to an aviation lighting landscape and visual impact mitigation plan. The Planning Officer explained that there was now a requirement, due to the proposal to increase the height of the turbines, for the turbines to be lighted for aviation purposes, and therefore that recommendation has been included for consideration by the ECU. He confirmed that the earlier planning consent for the Wind Farm did not require aviation lighting.

During the discussion, concern was expressed at the confusion on how the report has been written. Firstly, reference was made to the recommendations at Section 1.4, that the Planning Committee is to “offer no objections”, but to then delegate authority to the Executive Manager – Planning to have further discussions and negotiations with the applicant and the ECU in terms of conditions to be set. In commenting on the number of conditions ‘sprinkled’ throughout the report, Mr G Smith sought further detail on the proposed conditions that the Planning Service have in mind in terms of modifications, appropriate conditions or legal obligations it considers necessary for this application to comply with the Shetland Local Development Plans (LDP). He said that until that full list of conditions was made available it was difficult to make a decision as proposed in the report. In responding, the Executive Manager – Planning apologised for the lack of clarity. In that regard, he explained that the application was for a variation of the previous permission. He said that what would normally apply for applications to vary consent would be to issue the planning permission again with all relevant conditions. For this application to increase the height of the turbines by 10 m and the diameter of the rotor blades by 10 m, there is a need to look at all the conditions applied to the previous application in 2012, and to use that existing conditions as a baseline, and to consider whether any conditions need to change. In that regard, he confirmed that the Planning Service can only recommend conditions to the ECU. The Executive Manager – Planning advised on the attempt to highlight in the covering report the changes and further consideration needed on proposals to the ECU to take into account when they set the conditions. He reported on the proposed meeting during March for the developers, Planning Service and ECU to meet to agree a suite of conditions. The Executive Manager – Planning acknowledged that Members may feel that they have not been fully informed on the conditions, however he gave assurance that the highlighted areas would be considered further through engagement with the ECU. In responding to a question, the Executive Manager – Planning explained that this report and the minute from the meeting would be submitted to the ECU, as the Council’s consultation response, to contribute to the final decision to be made by the ECU. He confirmed that it was within the remit of the Planning Committee to highlight conditions it considered important, which would strengthen any aspect of the application.

Comment was made that it would have been helpful to Members for a summary of the proposed conditions to be submitted with the report. This would have focused debate and ensured that no condition had been overlooked.

During the discussion, Mrs Hughson advised as she had not been an elected Member when the initial decision had been made on the Viking Wind Farm application, and therefore she did not feel fully informed to make the decision today, which she said could have huge ramifications to the Westside of Shetland, which is the area she represents. She agreed that it would have been helpful for Members to have had sight of the list of proposed conditions, that would have assisted her understanding, rather than having to go through the report and background documents. The Chair acknowledged that the various conditions spread through the

report posed a difficulty, and he would also have welcomed the full list of conditions that the Planning Service are proposing to recommend to the ECU. In that regard, the Chair proposed that the Committee make a decision today regarding the recommendation in the report at 1.4, with the caveat that the Committee ask the professional advisers to come back to this Committee with those conditions as proposed. This would allow the Planning Committee to debate and agree, or otherwise, with the conditions proposed that will accompany the submission to the ECU.

In responding to a question on timescales, the Executive Manager – Planning advised on the proposal for discussion with the developer and applicant in March, and following which a draft set of conditions could be in place to come back to Committee.

Mr C Smith advised that the initial decision on the Viking Wind Farm development had been taken by the Full Council, rather than the Planning Committee, and he was of the view that all 22 Members should be given the opportunity to put forward their views on this important application, which affects the whole community of Shetland. Mr C Smith also questioned the urgency for the Council's response to be submitted by 15 February, and in that regard he referred to comments from the Executive Manager – Planning that the proposed conditions could then be reported back to the Planning Committee for a decision, following the meeting in March with the developers and the ECU. Mr C Smith proposed that the application be deferred, and to refer the decision to a full meeting of the Council. In that regard, he questioned whether, in consultation with the Convener, the application could be added to the agenda for the Council meeting next week.

The Executive Manager – Governance and Law explained that in 2012, when the initial decision had been made on the Viking Wind farm, a Scheme of Delegation was not in place and therefore the only route for the decision to be made was by the Full Council. Since that time, a new Scheme of Delegation has been approved by the Scottish Ministers. He confirmed that in terms of legality it was therefore within the power and responsibility of the Planning Committee to make decisions such as is presented today. He added however, that when the Council has delegated authority to a particular Committee or Officer it would be within the range of possible decisions of the Committee to refer a matter back to the Full Council.

The Executive Manager – Governance and Law referred to the observation by the Chair, in terms of the opportunity to sit as the Planning Committee to consider the conditions emerging from engagement between officers and the ECU. He commented that had a timescale of 1 – 2 months been available, that route may have satisfied Members. Therefore, in terms of the decision required, he said that as a statutory consultee, the Planning Committee need to decide whether to support a positive recommendation, or an objection, adding that the former proposition could not depend upon fully designed conditions as these needed to be developed in dialogue with the ECU as they are the ultimate decision makers on the list of conditions. Mr C Smith said that he considered that the Planning Committee should have the ability and authority to revert the report to the Full Council, where all 22 Members represent the full Shetland community. He added that this deferral would also allow time for the list of conditions to be presented to all Members at the Full Council.

In responding to a question, the Executive Manager – Governance and Law advised that the Planning Scheme of Delegations provides an effective and efficient means of

decision making, however he confirmed that there were no barriers to the Committee reverting the matter to the Full Council. He referred however to the deadline for the Council's response to the ECU by 15 February, and in that regard confirmed that permission would need to be sought from the ECU to allow the Full Council the necessary time to determine the matter next week.

The Team Leader – Development Management advised that the application for a proposed variation of the Section 36 consent is for minor changes which he said the ECU are satisfied can be made. He advised that the ECU allow representation within a two month period, and had already agreed an extension to the consultation by the Council, but that expires tomorrow.

Mr Sandison said that due to the significance of the matter, he supported Mr C Smith's request for the report to be referred to the Council for the decision to be taken. However he commented that the deadline as confirmed by the Team Leader – Development Management raised a further issue to be considered.

During the discussion, the Chair referred to his earlier suggestion for reporting the conditions back to Planning Committee following the March meeting, however in noting that the deadline for the Council's response was tomorrow, he questioned the benefit of reporting back to Members after the decisions on the recommended conditions had been made.

In responding to a question as to whether the Council could ask the ECU for a further extension, the Team Leader – Development Management advised that the question could be posed to the ECU. He added that the ECU are aware of the contractual situation so he would not expect the ECU to agree a lengthy extension to the deadline.

During the discussion, Mr C Smith advised on his concern at the tight timescale granted to the Planning Committee, to be put in a situation where it is forced to make a decision today. Mr C Smith stated that he would not be content until the matter is referred to the Full Council.

Ms Macdonald commented on the reassurance offered by the Executive Manager – Planning in terms of the suite of conditions that will be developed in dialogue with Planning Officers, the developers and the ECU. Ms Macdonald moved that the Committee approve the recommendation as set out in Section 1.4 of the report. However this did not receive a seconder.

The Executive Manager – Governance and Law cautioned on any proposal to allow the consultation period that has been made available to expire, without a response from the Council. He said that the Planning Committee would not fulfil its role as a statutory consultee as there has been due notice in terms of the report being circulated, time to read the report and to raise any views from constituents. The Executive Manager – Governance and Law proposed a short adjournment to allow dialogue with the ECU to find out whether they would allow an extension for a further week.

During the discussion, Mr G Smith referred to his earlier comments, in terms of a paper to be provided to Members setting out the conditions that will be the subject to discussion with the applicant and the ECU. In that regard, the Chair commented that the new conditions and modifications for recommendation to the ECU should have particular relevance to the increase in both the height and to the rotor diameter

of the turbines, rather than the previous conditions, unless these are completely relevant to this application.

Following further discussion, it was agreed that there would be a short adjournment to ascertain, in the first instance, whether the ECU would agree to an extension.

(The meeting adjourned at 2.55pm).

(The meeting reconvened at 3.20pm).

The Executive Manager – Governance and Law reported that the ECU had agreed to an extension of no later than Friday 22 February, which he said would allow the Committee to remit the matter to the Full Council. He added that the Council could also have the opportunity to consider the recommended conditions. In that regard, the Chair advised that the Planning Officials would draft the conditions for Members to consider at the Full Council meeting next week, as an appendix to the report. The Executive Manager – Governance and Law confirmed that the report being considered would be added as an addendum to the Council meeting next week, pending agreement from the Convener.

Mr C Smith moved that the Committee refer the report to the Full Council meeting on 20 February, or failing that, to another special meeting of the Council within the extension period to 22 February, with the list of new and modified conditions appended to the report. Mr Sandison seconded.

The Chair advised on the opportunity for Members to give officials some direction in terms of particular concerns with the report. In that regard, he advised that he had referenced the proposed conditions as included within the report and background documents, which he suggested could be given to the Planning Officers to include with their submission.

In receiving the consent of his seconder, Mr C Smith agreed to include in his motion that the draft conditions and modifications be developed in dialogue between the Chair and Planning Officials, and the list appended to the report to Council next week.

Decision

The Committee RESOLVED to refer the report to the Full council meeting on 20 February, or failing that, to another special meeting of the Council within the extension period to 22 February 2019. The list of new and modified conditions, developed in dialogue between the Chair and Planning Officers, would be appended to the report.

3/19 **2018/297/PPF - Change of use of land and development of a new external display area comprising new timber-framed boat shelters (enclosed on 3 sides), new concrete slab paving, gravel/chipped display areas and associated surface water drainage, Scalloway Museum, Castle Street, Scalloway**

The Committee considered a report by the Planning Officer – Development Management [Record Appendix 2].

The Planning Officer (C Summers) gave a presentation which illustrated the following:

- Aerial View of Site
- Location Plan
- Site Plan
- Proposed Elevations
- Plan showing scheduled area around Scalloway Museum
- Photos of the proposed site and existing boat shed
- SLDP Policy HE4 - Archaeology
- Key Issues

During her presentation, the Planning Officer advised on the following, "Historic Environment Scotland (HES) were consulted on the application due to the proximity to the Scalloway Castle and the scheduled area. HES have objected to the application because of a lack of information submitted with the application. The proposed development would involve ground disturbance for foundations, drainage, and other infrastructure. Any ground disturbance has the potential to disturb or destroy archaeological remains. An evaluation of the archaeological potential of the area has not been submitted to support the planning application.

Shetland Local Development Plan (SLDP) Policy HE4 states that 'Scheduled monuments, designated wrecks and other identified nationally important archaeological resources should be preserved in situ, and within an appropriate setting. Developments that have an adverse effect on scheduled monuments and designated wrecks or the integrity of their settings should not be permitted unless there are exceptional circumstances.' The policy then goes on to say 'All other significant archaeological resources should be preserved in situ wherever feasible. Where preservation in situ is not possible the planning authority should ensure that developers undertake appropriate archaeological excavation, recording, analysis, publication and archiving in advance of and/ or during development.'

It is difficult at this stage to determine whether or not the proposed development would have an adverse effect on the site with regards to archaeological remains relating to the castle without appropriate archaeological excavation being undertaken. The agent has advised that there is an issue in terms of obtaining permission for a funding application for the proposal, with the likelihood being that it will take several months for archaeological field evaluation to be carried out and reported upon, but they have nevertheless confirmed that the applicant is intending to proceed with the evaluation and required Scheduled Monument Consent Application for this work.

It is considered possible for conditions to be attached to an approval to cover the carrying out of a full archaeological evaluation prior to the commencement of development (to include testing for archaeological remains within the footprint of the proposed development as would take place under a required scheduled monument consent (SMC) from HES) and the submission to and approval by the planning authority (following consultation with HES), and also before any development takes place, of proposals for: preservation of archaeological remains in situ where the evaluations confirm a strength of case for preservation; and for archaeological excavation, recording, analysis, publication and archiving where development under the terms of the permission is still then proposed to be carried out in accordance with its terms outside of those areas where in situ preservation is to take place.

The Shetland Regional Archaeologist commented that a watching brief will be required to be carried out for all ground breaking works, including construction of the soakaway and any proposed temporary buildings for example portacabin bases. They request a condition to be added to the consent to ensure that this is carried out.

The site is located within the Scalloway Conservation Area and development within this area should preserve or enhance its character. As the proposed boat sheds will match the existing boat shed and the proposed materials used will be appropriate for the proposed development and will not have a negative effect on the Conservation Area, this is in compliance with SLDP Policy HE3.

As the proposed development involves a relatively small extension to the existing museum that would include sympathetically designed shelters and other landscaping, HES do not consider that the proposed development would have a significant adverse impact on the setting or character of the Castle and have no objection to it in principle.

Policy CF1 encourages proposals for the provision of community facilities, services and infrastructure that respect Shetland's culture and natural and historic environment. The boat sheds would be an extension to the existing facilities provided by the museum and would allow the museum to display more artefacts that are currently in storage. SLDP Policy ED2 supports proposals for business developments that promote employment opportunities, community benefits, rural diversification and tourism related ventures and contribute to the viability of existing settlements. The proposed development complies with the principles laid out in SLDP Policies CF1 and ED2.

The recommendation is to grant the application, subject to conditions."

Mr Sandison thanked the Planning Officer for the detailed information provided and on the specific issue of the conditions. In responding to questions, the Planning Officer confirmed that an archaeological survey had been undertaken as part of the previous planning application in 2013, for additional toilets and external display area at the museum. She advised that archaeological evaluation works was a standard requirement for proposed developments which fall within a scheduled area, and in this instance the proposed development is part of the scheduled site for the Scalloway Castle.

During the discussion, the Committee discussed the works involved in a full archaeological survey and commented on the significant costs on the applicant for the survey to be undertaken. The Planning Officer advised that the applicant was fully aware of the requirement for an archaeological survey to be undertaken, and the associated costs, as part of the works proposed at the museum.

Mr Sandison moved that the Committee approve the recommendation at Section 1.1 in the report. Mr C Smith seconded. There was no one otherwise minded.

Decision

The Committee RESOLVED to grant approval of the application, subject to conditions, and to notify Scottish Ministers in accordance with requirements.

The meeting concluded at 3.45pm.

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Chair