

ECU Ref: 00002111

SBC Ref: 23/00013/S36

Proposed Wind Farm
at
Scawd Law
near
Walkerburn, Scottish Borders

Application to Scottish Ministers for consent under the
Electricity Act, 1989, s.36 to erect a wind farm of
eight wind powered turbines up to 180m in height

Comments By Heriot Community Council on Additional Information
Submitted in February 2025

Maintaining the Objection by Heriot Community Council
Submitted in February 2023

April 2025

Introduction

The developers of the proposed Scawd Law Wind Farm, Fred Olsen Renewables Ltd (FORL) have recently submitted Additional Information to the Energy Consents Unit (ECU) to attempt to counter various adverse comments from a number of consultees.

The majority of the adverse comments related to the recent re-introduction of Golden Eagles to Southern Scotland, being carried out by the South of Scotland Golden Eagle Project (SSGEP). Initially it was confirmed that a single pair of Eagles had formed an eyrie in the Moorfoots, within the boundaries of the site of the proposed wind farm. It is now clear that as many as four further pairs of Eagles are also establishing their ranges within the area.

Heriot Community Council Position

Heriot Community Council (HCC) was consulted on the initial application to ECU and submitted an objection in February 2023. Unlike the consultee mentioned above, HCC's objection was based on LVIA grounds. HCC has no expertise on Golden Eagles and therefore does not presume to introduce evidence on this aspect. However, we fully recognise the importance of the SSGEP, support it totally, and are considerably concerned by the likely impact of the proposed project on the lives of these iconic birds.

We are aware that the SSGEP maintains its concerns about the scheme and does not consider that the AI in any way mitigates these. HCC therefore supports their position and is aware that the SSGEP will be making a formal response of its own in due course. We believe that this response will give HCC additional grounds to maintain and extend its objection to the Scawd Law proposal. We are already aware of the response by the SBC Ecology Officer to the consultation, making a forthright objection. Other consultees such as the RSPB will also be making responses in due course.

Points from the Additional Information

The applicants have submitted the AI on a precautionary basis. They are maintaining the current application at eight turbines, and so that is the basis on which this application should be considered. Therefore, there is no reason for Heriot CC to change its February 2023 objection. The applicants are suggesting that if further evidence emerges on ornithology grounds which suggests that the scheme should be modified, then they wish the AI (showing six turbines) to be taken into account and used as a substitute application.

Para 1.1.3 of the Introduction in the AI reads *“This Additional Information Report provides an assessment of an alternative layout with reduced turbine numbers and increased Battery Energy Storage System (BESS) to address concerns by statutory consultees in relation to potential impacts on Golden Eagles (the Proposed Amended Development).”*

The LVIA Impacts Remain as Assessed in EIAR

It is apparent from reading the AI that the LVIA Impacts are not going to be alleviated or mitigated by the revised scheme. Without going into great detail, this can be easily discovered by looking at Section 6.9 Landscape & Visual Impact Assessment, which contains the Summary of the LVIA.

The crucial text, firstly at para 6.9.3, states;

“It is also important to note that these alterations between the Proposed Development and the Proposed Amended Development are only apparent when comparing visualisations for each, and that this assessment of the Proposed Amended Development identifies that either layout will have a similar relationship, such that changes made to the Proposed Amended Development have minimal changes to the landscape and visual effects.”

and secondly at para 6.9.8

“Whilst the changes to the Proposed Amended Development have improved the overall layout by removing turbines from the highest part of the ridgeline, reducing the horizontal spread along the ridgeline, and reducing turbines within the cluster through the potential removal of Turbines 7 and 8, landscape and

*visual effects have **not altered noticeably**, and the alterations do not translate into a change in significant effects identified.”*

Para 6.9.8 is requoted verbatim in the conclusion of the overall AI in **Section 10 SUMMARY at Para 10.1.10.**

Heriot Community Council Objection on LVIA Grounds

Heriot CC urges decision makers at this point to read the entirety of its Objection dated February 2023. LVIA issues are dealt with at length – including some of the worst affected Viewpoints.

At para 10 of the HCC Objection, we set out the situation with other nearby wind farm applications that also directly affect Heriot and are also part of the cumulative assessment required for Scawd Law. We update this information now, in the same order as in HCC Objection, para 10;

Greystone Knowe. 14 turbines up to 180m in height. Approximately 5kms north of Scawd Law. This proposal was recommended for refusal by SBC Planning Committee. The consequential PLI concluded very recently. The MOD maintains its Objection on grounds of impact on the Eskdalemuir Array, and Heriot CC, Raeshaw Estate and SBC set out their reasons for refusal, which centred on LVIA impacts on the surrounding areas – stressing in particular that they considered that the impacts could not be described as “*localised*.”

Wull Muir. Just to the NW of Heriot, so approximately 9kms north of Scawd Law. 8 turbines up to 150m in height. Refused consent twice, by SBC Planning Committee and once on appeal. Heriot CC Objected on LVIA and RVAA grounds. However, it was recommended for Approval on the second Appeal *without* any inquiry being held. This decision is now subject to a Judicial Review at the Court of Session.

Torfichen. 19 turbines up to 180m in height. Site is just northwest of the Wull Muir site, so approximately 10kms north of Scawd Law. Full application submitted to ECU in November 2023. Detailed comments and requests for further information were made by Midlothian Council and other consultees. Heriot CC and Moorfoot CC submitted a detailed objection, mainly on LVIA

grounds, but also including RVAA. Additional Information has just been submitted by the developers RES, without modifying the layout, number and height of turbines in any way.

NEW APPLICATION. Longmuir Renewable Energy Park. Site 4.5km north of Stow, and 1km east of Fountainhall, so approximately 7kms NE of Scawd Law. Scoping process being undertaken for proposed 10 turbines up to 200m in height, large solar arrays and BESS. Note that the formerly proposed Rowantree Wind Farm, refused consent in 2012 after an inquiry, was on the same site.

Proposed High Voltage pylon line from a new large substation at Threepwood, SW of Lauder to NW England. This huge new pylon line is currently proposed to run roughly SW from the substation and across the Tweed Valley west of Clovenfords and within 1km of the site for Scawd Law. This is a new factor in the assessment of cumulative impacts, but it clearly needs to be included as the combined effect of turbines and pylons will dominate the surrounding landscape and immediately draw the eye.

Regrettably it is clear that since initial responses were made to the original EIA in 2023 the cumulative position in this area has become even more complex and potentially oppressive.

Responses by Statutory Consultees on LVIA

We note the comments **NatureScot** made in their response dated February 2024 about views from the east (west in the text in error) towards Scawd Law in Appendix 3 LVIA Effects.

In elevated views from the west (should be east) for example Viewpoint 2, Lauder Common and Scroof Hill (VP 3) where the assessment judges a major adverse visual effect, the proposal is prominently located with the entire proposal visible on the skyline. The wider pattern of wind development would be appreciated from these more elevated views but with the proposed Development being the most prominent in terms of the existing development, though the proposed Greystone Knowe Wind Farm would be equally if not more prominently located in the view from Lauder Common, and would be more complex in form given the greater number of turbines proposed.

The assessment finds that of the 23 representative viewpoints assessed there were predicted to be significant daytime effects on 15 viewpoints, with four of these effects found to be major and adverse effects. We agree with this assessment.

We consider these comments fully justify the similar conclusions we drew at paras 21 onwards in the HCC Objection of February 2023. In particular we demonstrated the relevance of Viewpoint 2 for Heriot residents at para 23 – reproduced here for its importance to Heriot.

However, the crucial point is that the montage does show that even at just over 11km distance, the Scawd Law turbines will be fully visible on the western skyline and would dominate that view. Once again, this emphasises that in choosing to site the turbines on the highest ground possible, the developers are ensuring that this proposal would have the worst possible impact on local areas where there would be visibility. We would also point out that only just over 10km distant from the turbines is the Crookston area of Heriot, and many other high ground areas within the community, so the turbines would appear slightly closer than shown in Viewpoint 2. The angle between the turbines would be narrower, so they would be grouped more closely together, but they would still be fully visible towering over the magnificent southwestern view from all these areas, which currently is of empty rolling moorland, brilliant in summer, receding to that ridge with the turbines on it, which is the final horizon. This will also be true of Nettleingflat further north. Although slightly over 11km distance Viewpoint 2 again demonstrates the potential view, although the montages do not show the Greystone Knowe turbines which would be much nearer.

Night Time Impacts on LVIA

At para 27 of the HCC Objection we drew attention to the night-time effects as shown from Viewpoint 2 – which will be the effects seen from the relevant areas of Heriot – across what we would emphasise is now an empty and dark landscape. Again, we find that **NatureScot** concur with our concerns at Para 3.3 of Appendix 3.

3.3 Night Time Effects

As the assessment highlights, the development is located within a LCT – Dissected Plateau Moorland, the Moorfoots Plateau Unit that falls within the darkest

categories of night-time lighting. Light pollution is limited to around the periphery of the unit associated with nearby settlements and roads located to the east and the Tweed Valley to the south. This area, therefore, has a high susceptibility to the introduction of lighting.

Each wind turbine would be fitted with a steady red light at the nacelle. The assessment finds that the 'worst' effects of the lighting would likely be appreciated in higher elevations relatively close to views where higher intensity lighting would be seen, these viewpoints are, - VP 17 (SUW, Minch Moor) and VP 23 (Blake Muir). The assessment considers that effects to be lessened from lower elevation views where angle and distance that the lights would be seen at, for example at VP 16 (SUW/B709 near Kirkhouse) and VP 2 (Lauder Common), while we broadly agree with this, as the landscape or baseline that the proposal would be viewed in and from are substantially dark we consider that this could still lead to a significant effect in some conditions.

NPF 4 Reference to “Localised Effects” being Acceptable

Heriot CC has recently participated in two PLIs after SBC Planning Committee refused consent and also recommended that Scottish Ministers should refuse planning consent. These are Wull Muir PPA-140-2104 (now subject to Judicial Review of the Reporter’s Decision) and Greystone Knowe WIN-140-9. In both cases the applicants made extensive efforts to demonstrate that the LVIA impacts were “*localised*” mirroring the language of Policy 11 e).ii (see below). Their arguments relied on impacts being confined to within approximately 5kms of the two schemes.

NPF 4, Policy 14 c) instructs that development proposals that are poorly designed, detrimental to the amenity of the surrounding area, or inconsistent with the six qualities of successful places will not be supported. The National Spatial Strategy, found on page 7 of NPF 4 is crystal clear; rather than bestowing a general wide discretion, it directs decision makers that they must *ensure* the “*right development in the right place.*” That is a high standard, not a loosely framed licence to consent anything that is brought forward. The need for a sensible and intellectually rigorous application of the Planning Balance still applies. The proper application of Policies 11 and 14 means that where significant adverse landscape and visual impacts inevitably occur, refusal should follow. In this case, the extremely

adverse effects on birds, as set out below, also point towards refusal. Good site selection is the key, and brings its own reward, and everything else should fall into place, provided planning, and siting, overall height, obviousness and impact on people – and wildlife -- are all taken into consideration, and given their proper place in the journey towards a decision.

Since NPF4 came into force wind farm applicants have forcefully used its high-level stance towards renewable energy as demonstrating broad approval for their schemes, whatever the obvious adverse impacts might be. And in particular where there are extensive LVIA impacts, Policy 11 e) ii is relied on. It is reproduced here although most decision makers will be fully familiar with it.

NPF4. Policy 11 Energy

e) In addition, project design and mitigation will demonstrate how the following impacts are addressed:

i. impacts on communities and individual dwellings, including, residential amenity, visual impact, noise and shadow flicker;

*ii. significant landscape and visual impacts, recognising that such impacts are to be expected for some forms of renewable energy. **Where impacts are localised and/or appropriate design mitigation has been applied, they will generally be considered to be acceptable.***

Scawd Law LVIA Impacts are Not Localised

We wish to establish clearly that such arguments cannot be used to justify the LVIA impacts from the Scawd Law proposal. The applicants accept that at Viewpoint 19 there is “significant visual impact”. This Viewpoint is located at the iconic Three Brethren Cairns, which is a major viewpoint and rest point on the Southern Upland Way. It is 11.1km distant from the proposed turbines, but shows the turbines are clearly visible strung along the high ridges of the Moorfoots. To add to this the Three Brethren are in a Special Landscape Area – and the Southern Upland Way (SUW) has a National Designation.

There are three other Viewpoints along the SUW. Viewpoint 23 Blake Muir at 11.4km distance, Viewpoint 16 Kirkhouse at 7.8km distance, and Minch Moor at 7.8km distance. Because Scawd Law would be visible along such a long stretch of the SUW, there is a sequential impact assessment, shown in Figure 6.10g, which stretches along tens of kilometres of the SUW. There can be no possible

argument that the LVIA impacts are “localised” when all this evidence is considered.

Whilst Heriot is the other side of the Moorfoots from the SUW, we consider that this demonstration of widespread LVIA impacts fully justifies our stance. The Scawd Law turbines are potentially placed on the highest ridges of the Moorfoots which are widely visible right across the Scottish Borders in most directions. In our view, this is the complete opposite of “localised”. We conclude that the terms of Policy 11, namely that project design and mitigation will demonstrate how the LVIA impacts of Scawd Law have been addressed, has simply not been followed, as the location of the scheme, together with the heights of the turbines, renders this an impossible task.

Road Access

Heriot Community Council’s Objection in February 2023 at paras 31 onwards discussed at length the proposed road access along the B7007 and B709. We concluded at para 40 that the suggested upgrading of this road would irrevocably change its character, and destroy its historical features. It is highly unsuitable for the improvements proposed, and in this particular and unusual situation should be additional grounds for refusing consent.

NPF4 Policy 11e)

ix. biodiversity including impacts on birds;

It is also clear that the Scawd Law in no way meets the strictures of NPF4 (as above) in demonstrating that “project design and mitigation” has removed risks to the golden eagles now established in the Moorfoot Hills. The very act of carrying out the construction of the site and turbines shows this. As the SSGEP state in their objection:

Disturbance

Golden Eagles are known to be very sensitive to disturbance. The process of building the track, turbines and battery storage will take place across two territories causing considerable disturbance to both pairs.

That area of the Moorfoot hills is currently, quiet and undisturbed by recreational

activity. The access track will encourage recreational activity (walkers/mountain bikers) which will cause disturbance to eagles. None of this is something which embedded mitigation will alleviate.

The SSGEP Objection sets the scene thus;

The population of golden eagles in southern Scotland is in a rapid growth phase with new territories being created. As new territories establish range boundaries change and territories shrink as eagles compete for space.

The Moorfoot hills has seen more golden eagle activity than anywhere else in southern Scotland since the satellite tag monitoring began in 2018 and now has the highest concentration of golden eagles in the south of Scotland which shows just how important this area is for the species. (emphasis added)

The SSGEP Report also draws attention to the extremely important issue of an assessment of cumulative impacts on the growing golden eagle population, which is required by NatureScot guidance, but which has not been provided.

Cumulative impact of wind farm developments

Given the real level of collision risk assessed above a cumulative assessment for golden eagles is required in accordance with NatureScot guidance (SNH 2018b). This has not currently been provided by the developer.

This assessment should cover the broad predicted range of golden eagles in the south of Scotland to encompass all of this isolated population. This cumulative assessment should include all wind farms, either operational, under construction, consented or under consideration by the relevant consenting authority at the time of writing.

For these reasons and others, the SSGEP has objected to the application for Scawd Law wind farm, and urged that it be refused planning permission.

It is Heriot CC's view that the choice of the Moorfoot Hills for the site of the project renders it impossible to fall within the confines of the National Planning Framework on various grounds, which include those set out by Heriot CC

(principally on LVIA grounds), but are now made far more urgent by the rigorous conclusions of the SSGEP Objection. We would expect other statutory bodies such as NatureScot and the RSPB to concur.

Conclusions

Heriot Community Council considers that the proposed wind farm:

- Is not in an appropriate location.
- Has significant adverse landscape and visual impacts.
- Has significant adverse cumulative landscape and visual impacts.
- Will have an unacceptable series of risks to natural heritage interests
- Has unacceptable proposed road access
- Is likely to have a negative adverse net economic impact.

Therefore, the proposal is not in accordance with the applicable policies for consideration of a new large scale, large size wind farm. The specific disbenefits of this scheme are legion, and are well understood by the South of Scotland Golden Eagle Project, Heriot CC and our neighbouring Community Councils, and local residents.

This proposal clearly fails the acceptability tests set out in both NPF 4 and the current SBC LDP.

This decisive conclusion on Planning Grounds requires a refusal of planning permission for the proposal.