

The Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

6 January 2015

Dear Sir,

COMMENTS ON PLANNING APPEAL REFERENCE PPA-110-2219
SITE ADDRESS south west of East RedHill Rothienorman, Aberdeenshire.
DECISION BY RICHARD DENT, REPORTER APPOINTED BY SCOTTISH
MINISTERS.

I wish to comment on two aspects of the decision by Mr Dent on the above appeal. On page 3 – para 10 of his Report, he states *“Third parties have also raised health concerns, this is not a matter addressed by the appellant although the council (Aberdeenshire Council) whilst recognising the concerns, believes there is no substantive evidence that turbines cause harm to human health. Lacking any evidence of proven health effects, I accept that health cannot be regarded as a reason for refusing planning permission”*.

This statement of Aberdeenshire Council regarding 'evidence' of detriment to health demonstrates a lack of probity unbecoming in a public authority. In way of explanation I draw your attention to planning application APP/2012/1971 – Proposed wind farm at Lodge Hill, Banff, Aberdeenshire.

A resident who lived in the vicinity of this proposal is registered disabled due to a severe neurological condition exacerbated by motion, light and noise disturbance. She objected to the application on these health grounds which the Council appeared to ignore. She then instructed her solicitors, R & R Urquhart, to write to the Planning Department to bring to their attention the seriousness of her disability.

The solicitor, Mr J Whittle, did so with great clarity also pointing out that Material Considerations included Scottish Planning Series circular 4, (Development Management Procedures) which notes that “the range of considerations that might be considered material in planning terms is very wide and can only be determined in the context of each case”, citing examples such as environmental impact of the proposal, design of the proposal.....and legitimate public concern on relevant planning matters” and this current application is one governed by EIA (Scotland Regulations)2011. Schedule 4 of that Act and its corresponding EU directives highlights the need to assess the impacts upon the population as well as in relation to various emissions.

The letter then goes on to quote Rowan Robinson et al in “Scottish Planning Law and Procedure” note at chapter 8 that personal circumstances of the applicant will not be generally be of much relevance in consideration of a planning application. He goes on to

state that this is quite distinct from substantiated, scientifically-proven factors affecting a third party such as his client's medical condition. Rowan Robinson et al notes that fear in itself whether unsubstantiated or not may be a material condition and in this case his client has highlighted her grave and substantiated fears about the impact of the proposal on her health. Mr Whittle then turns to the European Convention of Human Rights, explaining that under section 6 of the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a Convention right, this also applies to the Scottish Government and its functions.

Mr Whittle's submission is that his clients right to a private life under Article 8 would be infringed by this proposed development. He makes reference to the European Court of Human Rights case *Fadeyeva -v- Russia (case 55723-00)* which dealt with a state's liability for damage caused by a private company which resulted in there being a violation of Article 8.

In summation, Mr Whittle states that should Aberdeenshire Council be minded to approve the application his law firm put the Council on notice that his client will have no alternative but to seek to protect her fundamental human rights under Article 8 of the European Convention of Human Rights in a Court of Law.

Aberdeenshire Council then carried out an Equality Impact Assessment which concluded there would indeed be a Negative Impact on the objector by reason of her disability concluding that *“the proposal has the potential to have a negative impact on Mrs X's protected characteristic as the movement and noise of the proposed turbines are liable to trigger her persistent migraines through her light and sound sensitivity due to the scale and proximity of the turbines”*.

Note it took the threat of legal intervention before Aberdeenshire Council carried out its statutory duty of care under Human Rights legislation.

The application was duly refused on six counts, at paragraph 5 of the Refusal Notice *“The proposed development is contrary to the Equalities Act in that the proposed development would significantly impact on an individual's protected characteristic through the noise and movement emitted from the proposed turbines”*

It can properly be assumed from this case that a precedent, legal or otherwise, has been set. My understanding is there is at least two possibly three similar cases in the pipeline of planning applications for turbines where someone with a 'Protected Characteristic' lives in the vicinity.

I also draw your attention to guidance issued from NHS Grampian on the health effects from the operations of wind turbines. This guidance summarises the most up to date knowledge in the area, being long on rhetoric and short on specific medical details which concludes that *“human health could **potentially** be affected by the presence of wind turbines due to sound or vibration, visual effects such as flicker which can trigger epilepsy, physical risks and electromagnetic fields.*

It is assumed that monitoring of electro-magnetic fields given off by wind turbines/high

voltage power lines not a statutory obligation. Air pollution is another factor mentioned in the guidance.

The guidance goes on to state that there are no known medical conditions **caused** by close proximity to wind turbines but does not mention exacerbation of **existing** medical conditions.

As no proper **INDEPENDENT** (of Government/ Big Wind) epidemiological studies have ever been carried out in the UK to establish possible adverse health effects of people living in close proximity to wind turbines, the situation regarding turbines impacting on health is unsatisfactory.

Therefore Mr Dent's assertion that "health cannot be regarded as a reason for refusing planning permission" is clearly misguided. It would be assumed ALL public servants, including staff of the DPEA employed by the Scottish Government should at least be familiar with Human Rights legislation in the context of planning law.

My next "observation" is on page 7 of the Decision Notice under Other material considerations at paragraph 43. The Reporter rightly states he has taken account of third party letters of objection and had assessed them insofar as they were valid planning considerations. He goes on to say that certain matters raised are not issues to be taken into account as part of the planning process, e.g. examples are the efficiency of wind power including Betz Limit which is analogous of the 2nd Law of Thermodynamics.

This formed part of my further submission which demonstrated the risible amount of generation by these machines arrived at by **scientific** methodology.

The original planning application submitted to Aberdeenshire Council claimed that these wind turbines had a rated capacity of 2MW each giving rise to a total of 6MW of generation. Therefore if the efficiency of wind turbines is not a material planning consideration given that these machines are alleged to be saving the planet, securing energy supplies *ad nauseum* then why are Developers permitted to make such inflated and exaggerated claims on planning applications? Are these "claims" material planning considerations? If not, what is the point of erecting wind turbines, if the generation capacity is not "a material planning consideration " please explain the logic of this illogical maxim.

I understood it was a criminal offence to make misleading and false statements on planning applications therefore if the Developers are making assumptions which turn out to be spurious it is surely incumbent upon members of the public to set the record straight using scientific analysis, apparently not in this parallel universe .

Yours faithfully,

Mrs M. Rutherford Hurry.