

## **PE1534/O**

Sustainable Shetland Letter of 19 January 2015

### **Community Group, Sustainable Shetland's experience of the planning process for the Viking Windfarm demonstrating the need for Equal Rights of Appeal.**

An Equal Right of Appeal could have allowed the local community to have what they should have been allocated – a proper public Inquiry into the detail of both the process and the quality of the planning decision for an application that is contrary to the local development Plan, involved a conflict of interest (where the decision maker, Shetland Islands Council was also the co-developer) and was objected to by statutory consultees. The community had no option but to go to judicial review which has involved excess costs.

#### **Summary of the main issues**

- 103 turbines 145metres high (the Viking development) have been given planning approval in Shetland by the Scottish Government
- Shetland Islands Council, through the mechanism of the Shetland Charitable Trust, are co-developers with Scottish and Southern Energy
- Shetland Islands Council (SIC) planning officers recommended that SIC object to the windfarm as it was contrary to the Local Development Plan (LDP).
- Councillors (although some had declared a conflict of interest and withdrawn from the debate or refused to vote), voted in December 2010 against the planners' recommendation and the LDP not to object.
- This allowed the Scottish Government to make a decision without calling Public Local Inquiry (PLI).
- Scottish Natural Heritage maintained a strong objection because of the potential impact on birds.
- Although the Scottish Government was expected to call a PLI due to the major issues and SNH's strong objection, in April 2012 the SG approved the development without further public engagement beyond the initial call for written objections.
- Sustainable Shetland took out a Judicial Review against the Scottish Government.
- Sustainable Shetland won in the Outer Court
- Scottish Government appealed to the Inner Court and got the decision reversed
- Sustainable Shetland have appealed to the Supreme Court
- Legal action has been the only course open to the local group
- More than £130,000 has been raised to cover legal costs relating to the Judicial Review into the Scottish Ministers decision to grant consent to the VE development.

**Case study written by Frank Hay, Vice-Chairman, Sustainable Shetland, March 2013**

Adapted here with update paragraph written in Dec 2014.

The Viking Windfarm on Shetland has been controversial ever since it was first mooted. It is somewhat unusual in that it has been driven forward by the local council under the guise of a community windfarm but is actually strongly opposed by a substantial number of islanders. This windfarm was given planning consent by the Scottish Government in April 2012 but this consent is currently under Judicial Review in an action raised by Sustainable Shetland.

**Sustainable Shetland is a group with 800+ members who oppose the windfarm.**

**The decision to approve the windfarm without a Public Local Inquiry into all the issues surrounding it is being called into question.**

The story really starts in the 1970s when a unique deal was brokered with the oil industry over the building of the Sullom Voe oil terminal. This deal has proved to be lucrative for islanders and the money which the oil industry has put into the Shetland economy has led to a range of excellent facilities and a high standard of living for many. A fund set up to administer the oil monies, the Shetland Charitable Trust, still has in the region of £200 million in reserve.

The income from oil has now slowed down as oil reserves have become depleted. A group of Shetland Islands Councillors saw involvement in renewable energy as a possible new income source. At an early stage they entered into a partnership agreement with Scottish and Southern Energy and a group of locals who were already involved in a small 5 turbine windfarm, connected to the local 'grid', called Burradale. This led to the formation of the Viking Energy Partnership (VEP).

Having embraced the wind industry the council now had to convince the Shetland public that this was a good idea. Some carefully stage-managed public meetings were held but it was clear that there was significant opposition. The protest group Sustainable Shetland was set up in 2008 and quickly gathered support. The group is entirely funded through the generosity of its members and supporters.

To counter opposition to their plans Viking Energy (the Shetland partners in VEP) engaged a PR company and facilitated the setting up of a Windfarm Supporters Group. Thus a divided community quickly became apparent with many letters to the press and social media both pro- and anti-windfarm. The supporters include many who stand to benefit financially if the windfarm comes, together with some who see it as part of the renewable green dream. Understandably, strongest opposition is centred in villages in close proximity to the proposed windfarm site.

**The involvement of Shetland Islands Council (SIC) as developers led to accusations of conflicts of interest when planning decisions had to be made.**

In an attempt to avoid this, the council's share was transferred to Shetland Charitable Trust, whose trustees were the 22 councillors and 2 others. **Since the council and the charitable trust were virtually the same group of people, conflicts of interest accusations continued.** On the insistence of the Office of the Scottish Charity Regulator (OSCR) the makeup of the charitable trust has now, belatedly, been changed so that there is a minority of councillors as trustees.

**Before the change, councillors acting as trustees had already approved committing more than £10 million to the project from the charitable trust.**

Since there wasn't a referendum to gauge public opinion, it is not possible to state exactly how many people are for or against. What we can say is that the Energy Consents Unit received 2772 individual objections and only 1109 letters in support. A Sustainable Shetland petition to the council against the development gathered 3474 signatures and public consultation meetings in Brae, Aith, Dunrossness and Lerwick found on average that 75% of attendees opposed the project.

**Nonetheless councillors (some having declared a conflict of interest and withdrawn from the debate or refused to vote), voted in December 2010, against the recommendation of its planning officers that the windfarm was contrary to the Local Development Plan, to approve the windfarm, in favour of the assumed economic benefits it would bring to Shetland.**

The key to large scale renewable developments on Shetland is obtaining an interconnector to mainland Scotland. To be economically viable it has to be about 600 MW capacity and this would need to be used to its maximum potential. The cost of such an interconnector will be high, currently possibly as high as £1 billion since the Western Isles one is now quoted at £700+million. 600 MW is of course far more than Shetland needs for its own use so earning income from exporting surplus energy is the main objective. With wave and tidal renewables very much in their infancy, wind power has an advantage.

When Viking Energy produced its first plans 192 turbines were envisaged to use up the capacity on the possible interconnector. Due to pressure from various agencies the number of turbines has been reduced to 103 in the consented version of the plans, still a very large windfarm, especially in the Shetland context. The reduction in turbine numbers has led to other developers rushing to lodge plans for smaller windfarms in other parts of Shetland to use up spare capacity on the interconnector. **Meanwhile the council still has no policy on windfarms of over 20MW capacity, a requirement under Scottish planning policy, which has apparently been ignored at both local and national government level.**

This scale of development on a relatively small island group sits uneasily with Shetland's reputation as a tourist destination with unspoiled land and seascapes. Shetland came 3rd equal in a National Geographic Traveller magazine rating of islands to visit worldwide (2007). The magazine commends Shetlanders for their "extremely high integrity in all aspects of heritage and ecology despite North Sea oil development. The windfarm supporters have been quick to dismiss possible negative effects on tourism.

Each of the proposed turbines is 145m high to blade tip and much of the construction site is deep peat. The wisdom of building windfarms on deep peat has been called into question nationally. Most of the hills in the area are about 250-300 metres high and many turbines are proposed to be constructed on tops of ridges.

**In the opinion of many (including SNH and Shetland Island Council planning officers) this would mean a windfarm out of proportion to the landscape.**

**Also around 70 turbines would be within 2 km of homes, contrary to the (all too often ignored) Scottish Government recommendation.**

Beyond numbers and statistics, there are very real concerns about the impact the project may have on the health, mental wellbeing and daily lives of those who live near – or even in - the windfarm site. Although the community was assured by Viking Energy that a Health Impact Assessment would be carried out, this was abandoned, and is only now being considered, not by the developer itself, but by Shetland Charitable Trust.

**The possible effects on wildlife and the environment in the area, especially bird life, has been the subject of close scrutiny. SEPA, SNH, John Muir Trust and RSPB were all high profile objectors** to the plans. Negotiations were conducted with SEPA and SNH in an attempt to address the objections. SEPA subsequently withdrew its objection subject to conditions. SNH and the others maintained their objections. Other objectors included the Mountaineering Council of Scotland, Shetland Amenity Trust and Shetland Bird Club.

There is an ongoing appeal for funds towards the costs of the Judicial Review. A Protected Costs Order was granted to the group by the court.

The final outcome of legal action will be awaited with great interest locally in a community divided by a so-called community windfarm plan that is causing grave concerns for a large section of the community.

Frank Hay is a recently retired Maths teacher who has spent most of his life in Shetland. He has lived in Aith, Weisdale and Nesting, and now lives in Voe - all of which would be severely impacted by Viking Energy. He has been on the Sustainable Shetland committee since it was formed and is now the vice-chairman. <http://www.sustainableshetland.org/>

## **2014 Update**

**In October 2013, the Decision from Lady Clark of Calton in the Court of Session in Edinburgh was that the Scottish Ministers' decision to grant consent to the proposed Viking wind farm had been set aside** - holding that the decision to grant consent under section 36 of the Electricity Act 1989 was incompetent because Viking Energy Partnership did not have a licence to generate electricity and that Ministers had failed to have proper regard to the European Birds Directive.

Scottish Ministers appealed Lady Clarke of Calton's decision to overturn consent, and the case was heard by three Judges in the Inner Court of Session.

**This Scottish Government Court of Session appeal against Sustainable Shetland was successful.**

**Consequently Sustainable Shetland members are taking an appeal to the Supreme Court in London.**

**To date more than £130,000 has been raised from Sustainable Shetland's members and supporters** to cover legal costs relating to the Judicial Review into the Scottish Ministers decision to grant consent to the VE development.

Surely, there is a fairer and more just way for the public to have a role in the scrutiny of major planning decisions?