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Our ref. W.03262.00001/MJM
Your ref.
Date: 13 September 2023

FIRST CLASS POST

Dear Madam

Moorshield Wind Farm Ltd
Proposed Moorshield Wind Farm, planning application (“the application”)

We act for Moorshield Wind Farm Ltd in respect of the above application which is a resubmission of the application reference 2020/0217/TP.

Background

The application for a wind farm on this site, reference 2020/0217/TP was refused on the 13th October 2022. There are two reasons for refusal given in the decision notice and in this submission we will address only the aviation safety reason which is as follows:-

“2. The proposal is contrary to Policy D22 of the adopted East Renfrewshire Local Development Plan (LDP2) as the applicant has not adequately demonstrated: (i) that the proposal will not cause a significant adverse impact on the safety and efficiency of Glasgow Prestwick Airport’s air traffic service; or (ii) that a mitigation agreement has been entered into, and a feasibility assessment confirms, that the agreed technical solution has the capability of mitigating the development in respect of Glasgow Prestwick Airport’s air traffic service.”

Our purpose in making this submission as part of the supporting papers for the application is to provide an update of the position as set out in our letter to you of the 10th January 2022 in respect of planning application Reference 2020/0217/TP. That letter in its entirety, together with this submission and the two decisions referred to in it are material to the application and are attached herewith.

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EDINBURGH

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There have been by two recent decisions issued by Scottish Ministers which provide clarity in respect of the imposition of suspensive conditions to address air safety impacts which we would like to bring to your notice and which we address in this submission.

The position of our client is that the reason for objection relating to aviation safety to planning application (2020/0217/TP) can be addressed by the imposition of an appropriate suspensive condition (s) and that this position is supported by the two recent decision discussed below.

Recent Decisions

There are two decisions issued by the Scottish Ministers in August 2023 which are directly relevant to the imposition of suspensive conditions to address matters of air safety in respect of the application.

- **Sanquhar II – Decision issued by the Scottish Ministers dated the 31st August 2023**

Aviation safety issues relating to radar and specifically the proposed Development's effects on aviation radar and systems, and the adequacy of proposed mitigation were a main determining issue identified by Scottish Ministers for this application under s36 of the Electricity Act 1989;

The measures required were identified to be the optimisation and testing of the existing Glasgow Prestwick Airport ("GPA") Terma primary surveillance radar, and the updating of charts and procedures used in Instrument Flight Procedures. The Scottish Ministers found that suitably worded planning conditions would seek to address these mitigation measures, with the costs being met by the Company.

The Scottish Ministers further agree with the Reporter's conclusions in respect of the costs associated with specific mitigation measures identified to address the evident impacts of the proposed Development, acknowledging that the sums of these costs should be demonstrably incurred by GPA, and that there is no basis for ongoing compensatory payments to be made.

It was found that the objections of GPA relating to Instrument Flight Procedures (IFPs) could be addressed by a suitably worded condition which was imposed in the interests of aviation safety and to ensure the Airport Operator is reimbursed for the actual costs it incurs in updating the instrument flight procedures as a result of that development.

In respect of radar mitigation, a condition was imposed to ensure the Airport Operator is reimbursed for the actual costs it incurs in optimising its primary surveillance radar as a result of the development and to ensure that the impacts of the development on the Airport Operator's radar and other installed Communications, Navigation, Surveillance (CNS) systems are acceptable in the interests of aviation safety. It was not found that a radar mitigation scheme or a financial pre agreement was required to be entered into prior to consent being issued to address the concerns raised by GPA.

The decision of the Scottish Ministers was to grant consent having considered the findings of the Reporters in respect of the objection of GPA in Sanquhar II. The findings made by the Scottish Ministers in respect of the objection by GPA are directly relevant to this application. The advice that our client has received is that the Terma solution which is already in place is highly likely to be capable of mitigating the impact of the proposed development as was found to be the case for Sanquhar II (unnumbered paragraph top of page 16 of the Decision Letter).

- **Clauchrie – decision issued by the Scottish Ministers dated the 31st of August 2023**

This s.36 Electricity Act 1989 application was not granted consent for reasons relating to the detrimental visual impacts of the proposed Development on The Merrick, a very important visual receptor in South-West Scotland, which were found to go beyond being experienced locally and which cannot be mitigated.

Consideration was required to be given to the aviation safety in the light of the sustained objection by GPA and the case put by GPA for the need of radar mitigation. The Scottish Ministers agreed with the Reporter that the proposed Development could have an adverse operational impact on the Airport's air traffic service and a Radar Mitigation Scheme would be required which they found could be secured by an appropriately worded suspensive condition. It was not found that a radar mitigation scheme or a financial pre agreement was required to be entered into prior to consent being issued to address the objection raised by GPA. The Scottish Ministers further agreed with the Reporter's conclusions in respect of the costs associated with specific mitigation measures identified to address the evident impacts of the proposed Development, acknowledging that the sums of these costs should be demonstrably incurred by GPA, and that there is no basis for ongoing compensatory payments to be made.

These decisions are attached and the relevant sections are to be found at pages 14 to 16 of the Sanquhar II decision and pages 14 and 15 of the Clauchrie decision. The conditions imposed in respect of the Sanquhar II decision are to be found at Annex 1, conditions 6 and 7.

Legal and policy position

The legal and policy position is relied upon as set out in the letter of the 10th of January 2022 and it is respectfully submitted that the Sanquhar II and Clauchrie decisions are consistent with it and confirm that this position is correct.

Conclusion

It is to be expected that GPA will require air safety impacts which may be identified for this application to be addressed whether or not they are the same as those which arose in respect of the application 2020/0217/TP. [In this case it remains our clients' position that there is no impact requiring mitigation. However if the view is taken that there is such an impact requiring mitigation then our clients do not take issue with the need for a radar mitigation or instrument flight procedure scheme(s) secured by way of a condition. The appropriateness of such a condition does not turn on the question of whether a commercial agreement has been entered in to by our respective clients as confirmed by the Sanquhar II and Clauchrie decisions.

It is submitted that the air safety impacts which GPA are expected to raise in respect of the application can be properly addressed by a suspensive condition. It is confirmed by the Sanquhar II and Clauchrie decisions, following the Corlic Hill decision referred to in the letter of the 10th of January 2022, that it is appropriate to impose suspensive conditions to address the provision of radar mitigation or instrument flight procedure schemes. Our clients were happy to accept the conditions being proposed by Glasgow Airport and NATS in respect of 2020/0217/TP and would be prepared to accept a suitably worded condition to address impacts that may be identified. It is respectfully proposed that a suitably worded condition(s) can be prepared for approval of East Renfrewshire Council and GPA following consideration of the application and the issue of the response to it from GPA, Glasgow Airport and NATS.

It is therefore respectfully submitted that the reason for refusal of the planning application 2020/0217/TP relating to aviation safety is capable of being fully addressed by the imposition of an appropriately worded suspensive condition(s) and it is the case that such a reason for refusal could therefore not be justified in respect of this application.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nicola Martin', with a long horizontal line extending to the right from the end of the signature.

Nicola Martin
For Wright, Johnston & Mackenzie LLP

Email: njm@wjm.co.uk