

STIRLING BEFORE PYLONS

acting with

FRIENDS OF THE OCHILS

as a Relevant Person Group

for the purposes of the

STIRLING AREA SESSION

**of the Public Inquiry into
Scottish & Southern Energy's proposals for the
Beauly to Denny 400 KV Steel Tower Double Circuit
Overhead Electricity Transmission Line**

SUMMARY PRECOGNITION

**Ian Kelly,
Head of Planning, Graham and Sibbald**

Planning Policy and Related Material Considerations

A. Introduction

A1. I am Ian Kelly, BSc (Hons), Dip TP, MRTPI and I am a chartered town planner and Corporate Member of the Royal Town Planning Institute.

A2. I was appointed as Planning Consultant by Stirling Before Pylons (SBP) in November 2006.

A3. My evidence has not revisited or recreated the extensive work by the applicants, the Stirling Council, consultees and local groups, and the Consents Unit.

A4. It is unclear how the partially regulated and uncertain nature of the project has to be accounted for when weighing Policy non compliance with a need case.

A5. I had a general knowledge of the area and I have sought to familiarise myself with the linear application site. I can confirm that my professional opinion is that this application, as lodged, should not be granted consent under Section 37, nor should deemed planning permission be granted. This is an interim conclusion.

B. The Statutory Tests

B1. The terms of the 1989 Electricity Act Section 9(2) requires the holder of a transmission licence:

“to develop and maintain an efficient, co-ordinated and economical system of electricity transmission: and
To facilitate competition in supply and generation of electricity”

Section 38 and Schedule 9 of this 1989 Act require licence holders in Scotland to preserve amenity and fisheries. Paragraph 3 of Schedule 9 of this 1989 Act also requires that Scottish Ministers, in determining Electricity Act applications, should have regard to:

“the desirability of preserving natural beauty, of conserving flora and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeology interest: and
The extent to which the developer has complied with its duty to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites buildings or objects”

These requirements do not give a specific set of criteria or thresholds against which to assess a project, but they do clearly indicate that there is a balance to be struck.

B2. However, because applications for Section 37 consent also carry an application for deemed planning permission then it is also clear that a Section 25 Planning Act test should also be carried out.

C. Consideration of the application by the Stirling Council

C1. The Council’s final position was established at the Full Council who unanimously agreed to object.

C2. The Council’s detailed position was established by the decision of the Planning Panel, on 4th May 2006, to object on the six grounds set out in the minuted decision.

D. The Submitted Statements of Case

D1. The **applicants’** Statement of Case confirms that the focus of evidence will be the detailed EIA work including a detailed planning policy assessment. The position of SBP is that there are particular

local aspects and impacts that were first discussed at the Strategy Session that now do fall to be considered at the Stirling Area Session.

D2. The applicants' Statement of Case addresses routing decisions. The areas of evidence of interest to SBP are landscape and visual impact, ecology and nature conservation, cultural heritage and archaeology, tourism and recreation, construction effects, operational effects and planning policy. The applicants' conclusions on planning policy are set out in paragraph 13.10 of the Statement of Case.

D3. The applicants' document **APL – STG 42** is a very helpful planning document. The document does reveal a tension between claiming that the Development Plan is not directly relevant to the project whilst also claiming compliance with that Development Plan. Generally, in approaching the balancing assessment exercise envisaged in many of the policies that are referred to, this document concludes that either there are no significant adverse impacts or that, where there are adverse impacts, these should be set aside within the overall context of the project.

D4. However, in the use of the words “where possible” in paragraph 2.2.8 it is recognised that there will be unmitigated adverse (environmental) effects from the proposal.

D5. The conclusions of document **APL – STG 42** are set out in Section 5 on page 38. I accept that the Development Plan did not contemplate the current project. However, I take the view that the policies in the Development Plan can be used to come to an initial view on Development Plan compliance.

D6. It remains my view that the error in this document is the failure to properly consider whether an alternative project route or form, including undergrounding, would ensure better policy compliance.

D7. The **Stirling Council** Statement of Case sets out their proposed scope of evidence. In relation to planning policy a number of policies are identified in section 4 of the Statement of Case. The conclusion is set out in Section 6 of the Statement which is that the project is unacceptable in terms of routing and design. In relation to alternative routes the Council's updated position is that it does not propose a route to the west, nor is it Council policy to seek a line to the west.

D8. I have read the Statement of Case lodged on behalf **SNH**. It is noted that SNH intends to present evidence on the Firth of Forth SPA and landscape and visual impacts on identified sections of the proposed line. SNH is to argue that there is no way of adequately mitigating these adverse impacts to an acceptable level and it is to present evidence on the use of an alternative corridor to the west, including identified undergrounding sections.

D9. I have also considered the updated position of SNH as agreed by the SNH Board in June 2007 (lodged as CNPA documents **SNH NP 8a and 8b**).

E. Assessment of the application against the Development Plan

E1. I have considered the local aspects of the Development Plan. As set out in the SBP Statement of Case it is considered that the relevant Development Plan documents and policies are as set out below:

- **The Structure Plan**
 - **The Approved Clackmannanshire and Stirling Structure Plan 2002**
 - Policies SD1, ENV1, ENV2, ENV3, ED4, ENV4, ENV5, ENV6, ENV7, ENV8, ENV10, T1
 - **The Approved First Alteration**
 - Policy ENV14
- **The Local Plan**
 - **The Adopted Stirling Area Local Plan 1999**

- Policies E1, E3, E7, E10, E15, E17, E37, E45, E47, E48, E49, E50, E51, E52, E54, E55, E57, E60, C2 and T1 (the last policy in general terms only)
- **The Finalised First Alteration (with post Inquiry Modifications) 2003**
 - Key Policy LD1
- **Stirling Major Growth Area: Finalised Second Alteration (with post Inquiry Modifications) 2004**
 - Policy POL B29

I accept that it is not a straightforward task to carry out a Development Plan assessment for a large scale project which is not specifically addressed in the actual policies and proposals in the Development Plan.

E6. I conclude that the proposal is contrary to the Development Plan in terms of Structure Plan Policy ENV 2, ENV 4, ENV 6 (criteria 3 and 4), ED 4, T1 and First Alteration Policy ENV 14 (if applied to the current proposals) and in terms of Local Plan Policy E3, Policy E7, Policy E10 (if applied to the current proposals), Policy E15, Policy E16 (but as addressed at Structure Plan level), Policy E45 (unless it can be demonstrated that there is a strong justification for the project), and Policies E48/E49/E50. I accept that this is an interim and partial conclusion at this stage.

E7. A detailed walk over of the section of the proposed development within the Stirling area will confirm that the proposed overhead line will have significant adverse effects in this area.

F. Other Material Considerations

F1. The other material considerations that are of direct relevance to the local objections have been addressed in my evidence and in the evidence of the local witnesses.

F2. SPP6 was only recently available. Therefore, I give consideration to the relevant sections. In addressing the natural and historic environment the SPP makes it clear that supporting renewable energy developments and the need to protect and enhance Scotland's natural and historic environment must be regarded as compatible goals. I conclude that the new SPP takes forward the framework for the consideration of renewable energy projects, but it provides little direct guidance on the assessment of transmission upgrades and therefore it can only provide indirect, if any, support for any particular upgrade project.

F3. **APL – STG 42** addresses other material considerations including the emerging Structure Plan 3rd Alteration. I agree that no significant weight can be given to this Alteration at this stage.

G. Undergrounding

G1. It remains my professional opinion that it is for the applicants to fully assess undergrounding route options and to bring these forward and, if required, to then detail these at an Inquiry. However, the applicants are proposing an entirely overground solution. This means that if the Reporters take the view that the case for such an approach has not been made, then the project should be rejected in respect of the relevant sections of the line.

G2. SBP has consistently stated that the applicants should be examining a possible underground route option within a general route corridor to the west of Stirling.

G3. SNH, with the support of a range of parties, has suggested two alternative undergrounding options. I take the view that these are examples of possible routes/approaches that could fall to be considered.

H. Other Issues

H1. In the case of the evidence on behalf of SBP I regard it as being of paramount importance to take into account the detailed conditions on the ground.

I. Conclusions

11. In relation to the requirements of the 1989 Electricity Act, I would conclude that amenity is not preserved. The developer has addressed the desirability of preserving natural beauty and conserving flora but the extent to which the developer has reasonably mitigated the effects of the scheme is insufficient. Therefore, I would conclude that the requirements of the Act are not met.

12. A range of SBP witnesses have sought to place their concerns before the Reporters.

13. Taking the SBP evidence into account, my conclusion is that the proposal, in respect of the length being considered at this Inquiry Session, is contrary to the Development Plan as detailed in paragraph E6 above. The application should, therefore, be refused deemed planning permission in respect of this section of the line.

14. I do not consider that there are any other material issues that would set aside the presumption of refusal of deemed planning permission that flows from the Development Plan assessment.

15. I would also conclude, based on the case advanced by SNH, that it appears possible to develop a wholly or partly underground solution to the west of Stirling for all or part of the line.