



ON- SHORE WIND – CONSENT SUCCESS RATE IN SCOTLAND – 50+ MW

Introduction

Consent risk is a key issue for promoters of onshore wind projects in Scotland. Unlike zoning systems operated in many parts of the world, in Scotland (and the rest of the UK), planning permission must be obtained prior to construction.

Scottish Government policy supports onshore wind.

What is the success rate for the 50+MW applications decided by Scottish Ministers (section 36 applications)?

Our key findings

Likelihood of success:

- There is a 64% success rate for section 36 applications over the last five years.
- The success rate falls to 32% if a public inquiry (PLI) is held.
- There are no trends to suggest that projects are “getting better”, or obstacles such as cumulative impact are becoming harder to overcome.

How long:

- The fastest decision was eight months; the slowest was 10 years.
- Newer applications are getting decided more quickly – 2-4 years, ignoring peaks and troughs. That suggests that newer applications are better prepared and issues are better understood.
- Although a public inquiry adds extra time to the process, that does not necessarily impact on the overall timing – some of the quickest decisions involved an inquiry.
- Size does not matter – 100+MW projects have been among the fastest decisions.
- Although the quickest decisions tend to result in consent being granted, the slowest were a mixture between grants and refusals, so the time taken does not necessarily affect the outcome.

Public local inquiry:

- 43% of decided applications went to a public inquiry.
- There has only been one inquiry held where there was no planning authority objection.



Background

For projects over 50MW, consent is obtained from the Scottish Ministers under section 36 of the Electricity Act 1989; smaller projects obtain planning permission from the relevant local authority (council), with a right of appeal to the Scottish Ministers, which is usually decided by a Reporter (planning professional) appointed by the Ministers.

For section 36 applications, a public local inquiry (PLI) is held if the local authority (council) objects to the application; otherwise the decision to hold an inquiry is at the Ministers' discretion.

If an inquiry is held, the inquiry is generally limited to topics requiring cross-examination of witnesses, with the other topics being dealt with by written submissions and round table hearings.

Methodology

Information was obtained from the Scottish Government Energy Consents website for section 36 applications decided between 2012 and 2016. Applications to vary existing consents were excluded, as the nature of these applications is different.

Results and key findings

Number of decisions

- 44 decisions were issued in the last five years, with peaks in 2014 and 2015.

Likelihood of success:

- There is a 64% success rate for section 36 applications over the last five years; there are no equivalent statistics available for wind farm planning permission applications.
- There are no trends to suggest that projects are “getting better”, or that obstacles such as cumulative impact are becoming harder to overcome.
- The holding of a public inquiry is a key factor:
 - 88% of applications succeeded where no public inquiry was held – only three applications were refused without a public inquiry (Glencassley, Sallachy and Sandy Knowe, all refused in 2015).
 - The success rate falls to 32% if a public inquiry is held.
- 43% of decided applications have gone to PLI, but that masks two peaks of 67% (2013) and 71% (2016).
- PLIs are triggered by planning authority objection - only one PLI has been held where there was no planning authority objection (Dunbeath – the inquiry was held, at least in part, because of objections by SNH, SWT and RSPB; following the inquiry, permission was refused) – so avoiding planning authority objection is key.
- 40% of applications received a planning authority objection. Of the decided applications, there is no apparent trend for increasing or decreasing numbers of planning authority objection, by date of submission of the applications.
- Planning authority objections have a reasonably high success rate – between 2012-2015 only three planning authority objections were unsuccessful; it is 2016's three unsuccessful objections (Aikengall IIa, Cloich, Stranoch) which have reduced the overall rate – it will be interesting to see what the success rate in 2017 will be (only two applications have been decided, both resulting in grants of permission).



- There have been seven applications where the planning authority decided to object, contrary to the recommendation received from its officers – four in Highland, three in Scottish Borders. Those objections had a 71% success rate (i.e. consent being refused by the Ministers), with all the Highland Council objections being successful. This highlights the need to marshal arguments to convince councillors, not just officers.

How long:

- The fastest decision was eight months; the slowest was 10 years.
- Newer applications are getting decided more quickly – 2-4 years, ignoring peaks and troughs. That suggests that newer applications are better prepared and issues are better understood, especially aviation radar impact.
- The really slow applications, which took more than five years to decide, were submitted in 2004 and 2005.
- Although a public inquiry adds extra time to the process, that does not necessarily impact on the overall timing – some of the quickest decisions involved a public inquiry.
- After a public inquiry, the Reporter prepares a lengthy report, which is submitted to the Scottish Ministers, with a recommended decision. On average, it takes the Ministers just over five months to issue their decision, from the date of receiving the report. In some instances, they've issued their decision within two months. Their speed does not depend on the outcome – there have been fast and slow grants, and also refusals. Speed has increased in recent years.
- Size does not matter – 100+MW projects have been among the fastest decisions – eg. Bhlairaidh – 108MW – 19 months, Stornoway – 151.2MW – 14 months.
- Although the quickest decisions tend to result in consent being granted, the slowest were a mixture between grants and refusals, so the time taken does not necessarily affect the outcome.
- Applications for extensions, to site turbines adjacent to existing turbines, do not appear to get decided significantly more quickly.

Public inquiries

- There has only been one application (Allt Duine), where the Ministers' decision was contrary to Reporter's recommendation.
- In that case the Reporter had recommended approval, so Reporters favoured seven applications of a total 19 which went to public inquiries (37%).
- That is broadly similar to the success rate between 2011/12 and 2015/16 for planning permission appeals for multiple turbines, which are decided by Reporters, although that success rate has been increasing steadily in recent years, to 45% in 2015-16, with a jump to 68% in 2016-17 [source: <https://beta.gov.scot/publications/wind-turbine-appeal-decisions-statistics/>]



Conclusions

What every wind developer wants to know is:

The likelihood of success?

These statistics show there is a good success rate (64%), but that halves if there is a public inquiry, which is generally triggered by an objection by the planning authority. Developers should therefore prioritise consultations with the planning authority, to avoid an objection/ inquiry.

How long will it take for a decision to be issued?

Decisions have got faster, but can still take 2-4 years.

Will there be a public local inquiry?

43% of applications decided between 2012-6 went to public inquiry.

Key Contacts



Neil Collar
PARTNER
+44 (0)131 656 0125
neil.collar@brodies.com



Karen Hamilton
PARTNER
+44 (0)141 245 6225
karen.hamilton@brodies.com