

# s36 Consent variation

Our family returned to Scotland in order to help make it 'greener and fairer' by our efforts and hard work restoring a neglected and exhausted hill farm using biodynamic and organic methods. Because of the problems inherent in electricity storage, the intermittency of wind generated power and the limits of Betz Law, we invested in solar tubes and photovoltaic, which work well at altitude and create little footprint or nuisance.

1. In 2003 SSE began scoping the landmark ridge in the outstanding historic and scenic Glenkens, Galloway, finally submitting their s36 proposal for a 69MW 23 x 365' high turbine wind farm along the top of the 1300' ridge known as Blackcraig. In 2007 it was rejected by the full D&G Council. Between 2008 and 2010 it was at PLI, which was sisted mainly because of grid and radar negotiations and granted permission with suspensive conditions on 22 March 2011, the last day in office of the outgoing minority government before the Holyrood elections.

2. Enquiries by local residents[i], worried that the assignment of Blackcraig as an SPV and subsequent sale of its shareholding might impact adversely on their concerns about suspensive conditions regarding private water supplies, aviation etc., were addressed to the Scottish Government and the Energy Consents Deployment Unit (ECDU) about the framing and execution of s36 consent suspensive and other conditions and deemed planning permission conditions. In mid 2015 these enquiries resulted in it becoming clear, as the S.G. document itself declares, that: "*Conditions attached to section 36 or 37 consent are enforced by the Scottish Ministers. There is at present no statutory framework for the enforcement of conditions and so any enforcement action would rely upon **interdict, specific implement** or other **judicial remedy** to secure compliance or stop operations.*" [ii]

3. *Such a situation begs the question as to how Blackcraig s36 Consent Condition 8-(2), which relates to the need for the development to be **undertaken in its entirety with no partial implementation** or any other such suspensive condition might be enforced, given that many wind farm developments have become SPVs. In answer to a question regarding such enforcement, the following response was received from ECDU: 'Scottish Government are fully compliant with the current regulatory framework under which consents for section 36 and section 37 are granted.*

The financial circumstances of the company, who has been granted or assigned consent, is not a material consideration.' [ personal email communication 24.08.15]

It is also, however, now also clear that the Scottish Government introduced clear and precise procedures for the variation of s36 Consents through Scottish Statutory Instruments 2013 No. 304[iii] and the Guidance Note to support the process for Applying for Variation of Section 36 Consents of the Electricity Act for Generating Stations in Scotland, September 2015[iv]. It is also abundantly clear from the documents lodged on the [www.dumgal/eplanning](http://www.dumgal/eplanning) website for 05/N/2/0005, the Blackcraig Wind Farm, that an application was made by SSE, an experienced world leader in wind farm developments, contrary to the regulations that had already been in place for two years, to vary the s36 Consent and Deemed Planning Permission. SSE's application was made on 05.12.2014. This application to vary the s36 consent by exchanging the locations of a substation and a welfare control building some 4km to the other side of the ridge was granted by the local planning

office on 19.12.2014, even though the relocation of the substation moved it to within 2 km of six residences and the already granted Blackcraig substation adjacent to the A702 to facilitate the grid connection to the (still) unconsented adjacent Margree development, which has been in planning since 2006 but would share a grid connection over some 25 miles to Meikle Hill in Ayrshire. Residents and interested parties were denied any notice or consultation by this breach of the existing Regulations or any opportunity to voice concerns regarding any impacts on their health, well-being or environment, in particular, issues concerning cumulative noise from the two substations, plus the proposed substation some 2km distant at Margree, together with the proposed substation for the Loch Urr development currently with Scottish Ministers some 2/3 km distant and the proposed substation to serve the reappplied Loch Hill wind farm again some 2km distant.

In addition, landowners FCS insist on undergrounding of the cable from the relocated substation to the consented first substation by the A702 which in itself must have some environmental impacts that need to be addressed, particularly with regard to water. Residents have made representations over many years regarding the abstraction of private water supplies from one of the Lochs, the complexities of the water catchment given that the Blackcraig ridge is a threeway water shed, coupled with substantial peat deposits on the rapidly diminishing upland heath. In effect EIA regulations have been ignored.

Will the Scottish Government use the powers it acquired under Scottish Statutory Instruments 2013 No 304 to reverse the decision made by the local planning authority deemed 'non material variation' described above? 'A Guidance Note to support the process' dated 2015 makes it clear :

The guidance is about varying consents which have been granted under section 36 of the Electricity Act for the construction or extension and operation....'etc There is reference in section 6 to 'all of the details'. The variation deemed non material in the above case history is clearly 'material' detail and should have been subject to the process outlined in the legislation and the guidance note. This matter should be addressed forthwith, any other similar cases reassessed and due procedure enforced.

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[i] Copies can be made available of enquiries and replies, if any.

[ii] Internal Review of Scottish Government Energy and Consents and Deployment Unit Consenting Processes under the Electricity Act 1989  
<http://www.gov.scot/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Whatsnew/ReviewofConsentingProcessSummaryReport>

[iii] [www.legislation.gov.uk/ssi/2013/304/made/data.htm](http://www.legislation.gov.uk/ssi/2013/304/made/data.htm)

[iv] A Guidance Note to support the process for Applying for Variation of section 36 consents of the Electricity Act for Generating Stations in Scotland, ECDU September 2015

