

3 September 2020

Ms Karen Lyons
The Highland Council
karen.lyons@highland.gov.uk

Dear Ms Lyons

**NOTICE OF PROPOSED ORDER TO EXEMPT LAND FROM ACCESS RIGHTS, THE
HIGHLAND COUNCIL (LIMEKILN FOREST, REAY, CAITHNESS) ORDER 2020**

I am writing on behalf of Ramblers Scotland to object to the above order on the grounds that the stated reason of “being in the interests of safety and security to allow the construction of a wind turbine development” is not an appropriate use of s 11 of the Land Reform (Scotland) Act 2003. Health and safety requirements relating to the construction of a wind farm are covered by other legislation, to be used in conjunction with the Scottish Outdoor Access Code.

We strongly believe that the purpose outlined in this order is not reflective of the intention of the Scottish Parliament with regard to use of s 11 or in the advice subsequently issued by Scottish Ministers with regard to the implementation of the 2003 Act. Section 27(1) of the 2003 Act requires local authorities to have regard to guidance given by Scottish Ministers. The current [guidance](#) from 2014 makes it clear that Ministers envisaged that local authorities would primarily use a s 11 order in relation to managing access for events, including the charging of an entry fee, or to ensure health and safety was protected during that event. This is not the purpose of this Order. The guidance also explicitly states s 11 should not normally be considered for reasons relating to construction sites.

In addition, we have not previously heard of any developer of wind farms across Scotland attempting to exempt the land from access rights through a s 11 order and are not aware of any exceptional circumstances at the Limekiln Forest site that would justify such an exemption.

[Guidance](#) issued by NatureScot on good practice during wind farm construction, developed in association with the Health & Safety Executive, makes it clear that “*a range of mechanisms can be used to manage access during construction, including informal, proportionate and short-term limitations on access (for the minimum necessary time and area), providing signposted alternative routes and active management of access where work is underway. Both the areas where construction work is taking place and routes which lead into and across the site from public roads should be considered*”.

Any limitation on the exercise of access rights on land where construction work is being carried out should only apply to “*areas where building operations are active, rather than the whole area under the developer’s control, and the Scottish Outdoor Access Code underlines that restrictions should be kept to the minimum area and the minimum duration that is reasonable and practicable. Management arrangements should therefore be flexible enough to take reasonable account of public access requirements and to adapt as the site develops, so that access controls are focused on where the actual risks are present. This ensures that limitations on access are seen to be proportionate and credible by recreational users.*”

If, during the construction of the windfarm, it is felt necessary for health and safety reasons to close part of the core path - or any other part of the site - for a short period of time, this should be done through temporary signage and other appropriate means.

All the above considerations need to be addressed in the preparation of the Access Management Plan. We are surprised that the developer does not appear to have produced such a Plan. We believe that all the issues regarding public access to this windfarm site during both construction and operation can be addressed through this Plan, without recourse to a s 11 Order.

We would be happy to discuss any of these points if that would be useful.

Yours sincerely

Helen Todd
Campaigns & policy manager

Convener: Alison Mitchell
President: Lucy Wallace
Director: Brendan Paddy

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