

EAST RENFREWSHIRE COUNCIL10 September 2025Report by Director of EnvironmentA REPORT TO ADDRESS THE REQUIREMENTS OF AN AMENDED
MOTION REFERRING TO PLANNING PERMISSION 2025/0043/TP
FOR A BATTERY ENERGY STORAGE SYSTEM**PURPOSE OF REPORT**

1. The purpose of this report is to address the requirements of the amended Motion approved by Council on 25th June 2025.

RECOMMENDATIONS

2. It is recommended that the Council:
- a) Notes the report prepared by officers in accordance with the amended Motion; and
 - b) Makes a decision as to whether to pursue a revocation Order under Section 65 of the Town and Country Planning (Scotland) Act 1997 (as amended), considering the information contained in this report.

BACKGROUND

3. The Town and Country Planning (Scotland) Act 1997 (as amended), referred to henceforth as 'the Act', contains a provision under S65 to revoke a planning permission. S65 cannot be used in isolation and must be considered in conjunction with Sections 66 and 67, pertaining to the process if there is an objection or no objection to any revocation order made and Section 76 which deals with the matter of compensation, if a planning permission is revoked.

4. The Planning Applications Committee approved application 2025/0043/TP for the construction and operation of a 40MW Battery Energy Storage System and ancillary infrastructure on land at the East side of Glasgow Road, Eaglesham on 15th April 2025. Following a subsequent call to revoke the planning permission, the Motion that is subject of this report was approved at the Council meeting of 25th June 2025.

5. A grant of planning permission is intended to be a permanent decision, with very limited powers to either challenge or revoke such a decision. It is a matter of law that planning permission runs with the land. Therefore, although the Council deals with and refers to the applicant, in law it is the land that has planning permission. If the land were sold, the permission would be transferred to any subsequent owner of the land until it is either implemented, or the permission expires. A planning permission in Scotland is granted for three years unless circumstances dictate otherwise. The planning permission in question has a lifespan of three years before it expires.

6. When a development is proposed that requires the grant of planning permission, the applicant will normally acquire control over the land, through the form of a contract with an option to buy, lease or enter another arrangement, for example a profit share. The right to exercise the option will be subject to conditions, such as planning permission being granted.

As the grant of planning permission runs with the land, it changes the value of the land from 'existing use value' as agricultural land to the 'market value' of the land with planning permission, regardless of ownership. A Chartered Surveyor with expertise in valuing energy assets would be able to assess the value of the permission to the landowner, the applicant for planning permission and any other interested party such as an investor. This would include the value of the land to be sold, or the value of the rental income that would accrue under the lease, and the value of the profits that would accrue through operating the facility over its lifetime. Further information about options and the valuation process can be found within Appendix 1.

7. It would be extremely rare for a planning permission to be granted without conditions. In effect, all planning permissions are 'conditional' and this does not undermine the value of the permission that has been granted. There are six 'tests' to be met for a planning condition to be valid. The condition must be necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects. An appeal can be lodged with the Department of Planning and Environmental Appeals against any condition that does not meet these tests and/or cannot be implemented. The Council's officers take advice from statutory consultees when applying conditions and are skilled in drafting conditions that meet the standard tests. The planning permission cannot be implemented until any pre-commencement conditions have been discharged, but applicants for planning permission have a period of three years to discharge these conditions and start on site, before the permission expires.

8. Section 65 of the Act allows the planning authority to revoke the planning permission if it considers it 'expedient' to do so. In exercising that function, the planning authority must have regard to the Development Plan and other material considerations, in the same manner as required in the determination of any planning application, to accord with Section 25 of the Act. Section 65 cannot be used without recourse to Sections 66 and 67, which set out procedure and Section 76 that deals with compensation.

9. In summary, Section 66 sets out the procedure that will be followed if a Section 65 Order made by East Renfrewshire Council is opposed by the applicant, landowner or anyone else deemed to be affected by the Order. The Order must be confirmed by the Scottish Ministers. There will be a procedure to examine the case, which is likely to involve a public inquiry, heard by a Reporter appointed by the Scottish Ministers. After the inquiry or other process of examination, the Reporter will make a recommendation, and the Scottish Ministers can either confirm the Order or confirm it with modifications. Section 67 sets out the procedure for unopposed cases. The Order must be remitted to the Scottish Ministers who can either direct that the Order be submitted to them for confirmation or clear the matter back to East Renfrewshire Council. If the Scottish Ministers exercised their powers of confirmation, then there may also be a public inquiry before a Reporter, or other examination procedure, before a decision is made.

10. Section 76 deals with the matter of compensation that would be payable if the planning permission were to be modified or revoked. The provisions cover costs and expenditure incurred since the grant of the planning permission as well as loss or damage consisting of depreciation of the value to anyone with an interest in the land.

11. The power afforded by the Act to revoke a planning permission is only intended to be used in limited circumstances. The provision to revoke planning permission also exists in the equivalent Planning Act in England. It is accepted that planning case law, Ministerial Statements and precedent applies across both jurisdictions. There is no recorded view of the Scottish Ministers in relation to the use of powers to revoke Planning Permission, however an English Ministerial Statement from 2006 notes that the intervention of the Secretary of State to revoke a planning permission can only be justified in exceptional circumstances and only if the original decision is judged to be grossly wrong, so that damage is likely to be done to the wider public interest.

12. There is no indication that the decision made by the Planning Applications Committee in accordance with due process and in public was grossly wrong in planning terms. A successful revocation order in this case could therefore undermine the future authority of the Planning Applications Committee, allowing Members to seek to revoke duly made planning decisions in any circumstance where there is sustained public objection to a proposal. Use of Section 65 in such circumstances strays close to introducing a Third Party Right of Appeal, when the Scottish Ministers have rejected introducing such a provision as part of the planning system when the 2006 and 2019 Planning Acts were endorsed by the Scottish Parliament.

13. Members will be aware that the application subject of this motion 2025/0043/TP was the second application on this site for the same use. The first such application 2024/0168/TP was refused by decision notice dated 31st October 2024. That application was taken to appeal by the applicant. The reporter's decision was issued on 8th May 2025, post-dating the decision of the Planning Applications Committee to approve application 2025/0043/TP. The Reporter's findings indicate that the proposed development had the support of Development Plan policy in principle. He concluded that the landscaping scheme proposed with application 2024/0168/TP was insufficient to outweigh the negative visual impacts of the development on the Green Belt. As Members will also be aware, the second application 2025/0043/TP approved by the Planning Applications Committee was accompanied by a more robust and detailed landscaping scheme.

14. Appendix 3 sets out other comparable appeal decisions for Battery Energy Storage Systems in Scotland during 2025, showing that of four other similar cases to the proposal before East Renfrewshire Council, three were allowed and one was dismissed.

REPORT

15. Members agreed an amended Motion at the Council meeting on 25th June. That asked for four points to be detailed:

- The legal and procedural steps required to issue a revocation order.
- An assessment of the applicant's compliance with all imposed planning conditions, including all those still to be discharged before development can proceed.
- Clarification on potential compensation liabilities under the Planning Act, particularly where the applicant does not hold the freehold title to the land in question.
- Consideration of the expediency of such a course of action.

16. These points will be taken in turn.

17. *The legal and procedural steps required to issue a revocation order.* To issue a revocation order the Council will have to assess whether it is expedient to undertake this course of action. To make a decision over whether it is expedient to make an Order to revoke planning permission already granted to application reference 2025/0043/TP, the Council will have to take the following factors into account:

(a) The Council will have to have regard to the Development Plan and other material considerations. This would require a review of the Report of Handling for the application prepared by the case officer, who indicated that the development was in accordance with the Development Plan, as well as other material considerations such as recent appeal decisions for Battery Energy Storage Systems; and

(b) The Council will have to consider the requirement to pay compensation to the applicant, under the terms of Section 76.

18. After having regard to the Development Plan and other material considerations including the requirement to pay compensation, the Council may decide to issue a revocation Order. There are two options at this point, the applicant or any other interested party may elect to oppose the revocation Order or may elect not to oppose it. The process would be as follows:

19. The Council would notify the applicant and other interested parties specified in the Act that the Council had made an Order to revoke planning permission. The notified parties may write to the planning authority to confirm that they do not wish to oppose the Order. At this point, the Council would advertise the revocation for a period of not less than 28 days and send a copy of the advertisement to the Scottish Ministers. The Scottish Ministers have the power to direct that the Order be submitted to them for confirmation. If they were to invoke this power then a similar process would be followed to the 'calling in' of a planning application, where there is likely to be a public inquiry or other form of examination, before the Scottish Ministers make their decision. Alternatively, the Scottish Ministers can clear the revocation Order back to East Renfrewshire Council. Once confirmed or cleared back, the interested parties would return to the Council to consider the question of compensation.

20. If the applicant and interested parties defined in the Act elect to oppose the Order, they have the right to be heard by a person appointed by the Scottish Ministers. The Council would have to participate in the process that follows, to explain why it is considered expedient to revoke the planning permission and with reference to the Development Plan and other material considerations. The process would be likely to involve a public inquiry before a Reporter from the Department of Planning and Environmental Appeals, appointed by the Scottish Ministers, or another form of examination. The Council would have to appoint and pay the costs for its own planning, legal, landscape or other advisors to act in the proceedings as necessary, as Council officers recommended approval and cannot appear to defend the opposite case.

21. At an inquiry, the Council's appointed expert witness or witnesses would be cross examined by the applicant's legal representative. The applicant would also set out its case opposing the revocation order and the Council's legal representative can cross examine the case. At the end of the inquiry the Reporter will prepare a report, where they will take account of the Development Plan and other material considerations. The report will make a recommendation to the Scottish Ministers who may confirm the order without modification or subject to such modifications as the Ministers consider expedient. In the same way as a planning appeal, the only grounds to challenge the decision of the Ministers would be procedural, through the Judicial Review process.

22. If the Reporter recommends that the Order to revoke be confirmed and the Scottish Ministers agree and confirm the Order without modification, the applicant and interested parties do have the opportunity to challenge the revocation in the Court of Session under Section 239. After all processes have been exhausted, if the revocation Order stands, the Council becomes liable for compensation to the landowner, the applicant and any other interested party, such as a funding partner. The same will apply if the revocation Order is confirmed unopposed. The applicant, landowner and any other parties would produce an assessment of the 'Market Value' of the land with planning permission, or the Net Present Value of any lease payments, or loss arising from any other type of commercial relationship that is in place between the parties and the forfeiture of the profit from operating the site for its lifespan of forty years. The Council would appoint its own advisor to form its own assessment of the 'Market Value,' Net Present Value, loss of profit and any other losses that arise under the commercial terms of the contract between the parties. A negotiation would then take place to settle on a sum of compensation that the Council would have to pay to the landowner, the applicant and any other interested parties.

23. *An assessment of the applicant's compliance with all imposed planning conditions, including all those still to be discharged before development can proceed.* The 24 conditions attached to the applications are set out in a table in Appendix 4, with a commentary in the

right-hand column. It is not competent for a planning authority to discharge conditions in advance of a decision being made. The applicant has a period of three years within which to agree the discharge of the conditions with the planning authority. The applicant has not applied to discharge any of the conditions yet. The applicant has not submitted any appeal in relation to the conditions, nor contacted the planning authority to suggest that any of them present them with any difficulty.

24. *Clarification on potential compensation liabilities under the Planning Act, particularly where the applicant does not hold the freehold title to the land in question.* As set out in the Background section above, planning permission runs with the land. It is common practice for an applicant for planning permission to have previously entered into an Option contract with the landowner. This is a legal agreement with binding obligations on both parties, subject to the planning permission being granted and other contractual conditions being fulfilled. The Option contract will formalise the relationship between the landowner and the applicant. This is a commercial matter and would not be taken into account in the planning decision-making process. The applicant's relationship with the landowner is commercially confidential.

25. Members have focused their Motion on their understanding that the applicant does not own the land. This report therefore provides information on the commercial Option arrangements that would pertain, were there to be a commercial arrangement between the applicant and the landowner to purchase the land. Whilst this information is provided as requested, the most likely arrangement is a form of lease with annual payments, rather than outright purchase of the land. Profit share arrangements between the two parties also remain a possibility.

26. In a land purchase scenario, it is likely that there will be an Option contract between the parties, with an obligation for the applicant to purchase the land at the Market Value by a fixed date specified within the contract and known as the Long Stop Date. There is also likely to be a reciprocal obligation on the landowner to sell the land, once the conditions within the Option contract have been discharged.

27. A more likely arrangement is that there will be an Option contract that enables the applicant to exercise a right to lease the land, but the title is retained by the owner. An annual fee would then be paid to the landowner for the use of the land for the period of operation of the facility. Another arrangement could be a profit-sharing arrangement between the landowner and the developer, whereby the landowner retains the ownership of the land and a proportionate share of the revenue is paid to the landowner for the life of the development. There could also be some combination of these, or another commercial arrangement that suits both parties (such as an onward sale contract with an energy supplier/distributor or end funding investor).

28. Obtaining planning permission is a costly and time-consuming process not to be undertaken lightly, therefore it seems exceptionally unlikely that the applicant does not have an undertaking that the landowner will be obliged to allow the applicant access to the land and the ability to complete the development, once they have planning permission. The fact that the applicant does not own the land at this point, or indeed may never own it at all, is not the determining factor in the question of compensation.

29. The determining factor in the question of compensation is the grant of planning permission. The value of the site crystallised at the point that the planning decision letter granting planning permission was issued. In a land purchase scenario the grant of planning permission altered the value of the land from Existing Use Value to Market Value. A Chartered Surveyor can use a range of methods to determine the Market Value, as per RICS guidance note 'Valuation of development property', 2019. The valuer can use any one method, or a blend of methods, in accordance with their professional judgement. The valuer also has the opportunity as part of the valuation process, if they choose to do so, to add an element of

'hope value' to account for the potential changes in technology that may allow the intensification of the use of the site in future and the potential additional profit that could accrue.

30. In a lease scenario, which is the most likely arrangement between the parties, the grant of planning permission has a similarly formal and binding effect, in ensuring that the value of the lease crystallised when the decision letter granting planning permission was issued. A Chartered Surveyor can undertake a valuation of the commercial lease between the parties involved.

31. In each case, whether the land is sold, leased or there is a profit share, the valuer will take account of the expected profit that would be derived from the operation of the development over its full life cycle. Planning permission was granted for the development to operate for forty years.

32. The Act is clear insofar as if the planning permission were to be revoked, there would be a compensation liability. This compensation would be based on the value being forfeited firstly by the applicant, because the planning permission that was granted is taken away, thus reducing the overall value of the development from its value with planning permission for a battery energy storage system to Existing Use Value as agricultural land. The decrease in value of the applicant's interest in the land and the loss of anticipated profit to be derived from the operation of the facility for the forty-year life of the permission would also be taken into account. Similar valuation exercises would then be carried out in relation to impact of the revocation on the interest of the owner and any other relevant parties with an interest in the land.

33. Valuation is a matter of informed judgement reflecting the skills and experience of a Chartered Surveyor. The Council is not party to the commercial terms of the option contract and therefore not able to identify or estimate the full potential loss of value as a consequence of revoking the planning permission. It is the case, however, that the loss in value will reflect the diminution of the value of the land, or the Net Present Value of the loss of lease payments and the profit that can be derived from operating the battery energy storage system for forty years.

34. Commercial agreements between landowners and developers are not in the public domain, so there is no published source of value. To assist the Members in their decision-making, Council officers have undertaken research through senior contacts in the legal and valuation areas to gain an accurate indication of the range of values for land with planning permission for a Battery Energy Storage System. A broad indication of the value of the land, with planning permission, if purchased, would be £100,000 per MW, so for a 40MW facility the likely compensation payable for the loss of the value of the land, with planning permission, would be in the region of £4m. Lease arrangements are the most common method of providing land for battery energy storage systems. Lease payments are in the region of £1500-£2000 per MW per annum. To assist the Members, an assessment has been undertaken of the potential Net Present Value of a lease for a Battery Energy Storage System, using a figure of £1800 per Megawatt (MW) of storage capacity, increasing by 0%, 5% or 10% every five years until year forty.

35. The Net Present Value of a forty-year lease with annual payments of £1800 per Megawatt, would be £1.54 million, at a discount rate of 4%. If, as is more likely, there is an element of inflation built in, this value will rise. If it is assumed that every 5 years, the lease value rises by 5%, the Net Present Value of the lease will be £1.73 million and if the lease value rises by 10% every 5 years, the Net Present Value of the lease will be £2.02 million. Therefore, in this scenario, the land lease compensation that would have to be paid to the applicant would be at least £1.54 million.

36. Both scenarios cover the loss of land value and in both cases, the additional cost of compensating for the profit that would be lost by the operator and/or funding partner over a

period of forty years would also have to be taken into account. The Council would also have to meet the cost of the legal and valuation advice that would be required to negotiate the overall level of compensation payable.

37. If Members wish to proceed with the serving of the revocation Order and either the applicant does not seek to challenge the revocation, or the Scottish Ministers concur with the revocation after a procedure which is likely to be a public inquiry, the applicant would then be asked to share commercial details of the contract in confidence, in order that the Council can verify the full loss of value experienced by affected parties. The Council would instruct a Chartered Surveyor to undertake a valuation of the land with planning permission and other relevant losses experienced by affected parties. It is likely that two surveyors, acting respectively for the landowner and the Council, would come to an agreement that reflected a negotiated position between the two values generated by the two separate valuation exercises being undertaken. If there were no agreement between the parties, there would be a reference to arbitration or determination by an expert, which could also present a further financial risk, as the award could be outwith the spectrum of the value under dispute.

38. *Consideration of the expediency of such a course of action.* Taking into account the forgoing explanation and the planning permission, notwithstanding the conditions, or the ownership of the land, the question of expediency must be considered. Elected Members will be aware that there has been local objection to the proposal. In serving a revocation Order, the Council is exposing itself to: the cost of professional and legal advice as to how to proceed, the cost of presenting its case at the likely public inquiry that would follow; the cost of instructing a valuer to negotiate the compensation that would be payable if the Scottish Ministers were to confirm the order; and the payment of compensation reflecting the loss of the value that crystallised on the grant of planning permission.

39. These costs are not fixed; however, reasonable estimates can be made, based on past experience of appeals, inquiries and Judicial Reviews. Professional and legal advice could cost in the region of £100,000. Representation at a public inquiry could be in the region of £150,000-£250,000 depending on the scope of the inquiry. A fee for a Chartered Surveyor to value the compensation liability and negotiate a settlement could be a further £100,000. A broad indication has been given of the cost of compensating for the loss of land value in the range of £1.5m-£4m. The compensation for the loss of operating profit over forty years would be additional to these costs but cannot be predicted by Council officers.

40. Battery energy storage systems are considered to be an integral part of a renewable energy system, required to maintain stability in the Grid, as power sources, especially wind, ebb and flow. They are generally in accordance with Policy in National Planning Framework 4. Even if this application were successfully revoked, either unopposed, or with the approval of the Scottish Ministers after a public inquiry, and compensation paid to the parties disadvantaged by the revocation, another application could be brought forward for a battery energy storage system on the same site, by the same applicant, and that could be granted planning permission, either by the Council or by the Scottish Ministers through the appeal system. Revocation would not guarantee that there would not be a battery energy storage system on this site in the future. The subsequent application would need to be materially different to the application the subject of this Motion. That could be, for example, an application for a smaller, or larger, facility in the same location. Members should be aware that if they revoke the application and pay compensation, this is not a guarantee of removing battery energy storage from this site.

41. In answering the first four bullet points in the paragraph numbered 4 in the amended Motion, this report has also dealt with the requirement of Paragraph 5, namely that the report includes any relevant legal or financial information for the Council arising from a potential revocation, ensuring fully informed decision-making.

FINANCE AND EFFICIENCY

42. The proposal to revoke planning permission granted to application 2025/0043/TP would incur costs. These would include professional and legal advice at an estimated £100,000. The revocation Order be highly likely to be the subject of an inquiry, which would need to be resourced, at an estimated cost of £150,000 to £250,000. If the Scottish Ministers were to confirm the revocation order, then the Council would have to pay for a Chartered Surveyor to undertake a valuation of the planning permission for the purposes or compensation and then negotiate an agreed compensation position with the applicant and the landowner. This would cover the cost to the Council of negotiating a value, estimated at £100,000. In addition, the Market Value of the land or the Net Present Value of the lease (estimated at between £1.5 and £4m), plus the loss of profit from operating the facility for forty years would be taken into account. Council officers cannot provide an estimate of this loss of operating value, as it would require knowledge of the commercial terms and a complex valuation exercise to be done by a Chartered Surveyor on our behalf.

43. There is also the theoretical risk of incurring costs if the confirmed revocation Order were to be challenged by the applicant through Section 239 procedures in the Court of Session, estimated to be a further £100,000 in legal fees.

44. It is clear that pursuing an Order to revoke the planning permission would incur legal and professional costs, which must be resourced. If the Order were confirmed by the Scottish Ministers, the question of substantial compensation costs would also arise.

CONSULTATION AND PARTNERSHIP WORKING

45. The nature of this report does not allow for consultation or partnership working as it deals with an administrative matter in relation to a planning permission granted by the Planning Applications Committee.

IMPLICATIONS OF THE PROPOSALS

46. The implications of the proposed revocation of the planning permission granted to application 2025/0043/TP are the costs of legal and professional advice and the potential compensation to the applicant and interested parties if the revocation Order is confirmed by the Scottish Ministers, as set out in this report. If the Council did pursue a revocation Order, there would also be potential reputational risks to the Council because of the potential for the use of S65 in these circumstances to undermine the authority of decisions made by its Planning Applications Committee.

CONCLUSIONS

47. This report responds to the requirements of the amended Motion approved by Full Council on 25th June by addressing the four bullet points in the paragraph numbered 4 and the requirements of paragraph 5. It identifies the steps to be taken to issue a revocation Order and the potential financial implications of doing so.

RECOMMENDATIONS

48. It is recommended that the Council:

- a) Notes the report prepared by officers in accordance with the amended Motion; and

- b) Makes a decision as to whether to pursue a revocation Order under Section 65 of the Town and Country Planning (Scotland) Act 1997 (as amended), considering the information contained in this report.

Director of Environment

For further information contact: Michaela Sullivan, Head of Place
michaela.sullivan@eastrenfrewshire.gov.uk

September 2025

Appendix 1 Control of Land and Valuation

1. When a development is proposed that requires the grant of planning permission, the normal course of action is that the developer will enter into an Option contract, which formalises the relationship between the landowner and the applicant and binds both to undertake specific actions, as milestones within the contract are triggered. A standard Option contract will frequently require the applicant to acquire the land for the intended purpose, subject to the grant of planning permission. There are various other forms of Option, including the making of lease payments for the land on the grant of planning permission, or a profit share arrangement between the parties, that requires the operator to make payments to the landowner based on a share of the operating profit of the facility. If land is to be acquired, it is generally the case that the 'Market Value' of the land will be determined by a Chartered Surveyor appointed by mutual agreement between the parties, once planning permission has been granted. Other forms of Option contract such as a lease arrangement or profit sharing arrangement for the life of the development will contain provisions as to how the costs are to be paid and/or profits are to be divided between the landowner, the applicant and any other interested party such as a funder.

2. Where the land is sold the surveyor will determine the price of the land in accordance with the RICS Valuation – Global Standards, together with the UK National Supplement, (commonly known as the Red Book and referred to as a Red Book valuation). The valuer will take account of the Planning Permission in determining the price of the land. The grant of planning permission changes the value of the land from what is known as 'Existing Use Value' i.e. the value as agricultural land, to the 'Market Value' with the benefit of the planning permission that has been granted. The value is of the land with planning permission, regardless of the ownership of the land. A Chartered Surveyor with expertise in the valuation of energy assets would also be able to make an assessment of the Net Present Value of any lease arrangement and an assessment of the depreciation (or sustained loss or damage) of the value of the interest in the land for the applicant, land owner and any other interest (such as end investor/funder). This would be a calculation of the forfeiture of the profits that would accrue from operating the site for its planned lifespan.

Appendix 2 Procedure to be followed under Sections 66 and 67

1. Section 66 sets out the procedure that must be followed where a S65 order is opposed by the applicant, landowner or anyone else with an interest in the land. The Order will not take effect until it has been confirmed by the Scottish Ministers. If East Renfrewshire Council submits an Order to the Scottish Ministers for confirmation of its decision to revoke planning permission, it shall simultaneously serve notice on both the owner of the land (part a) and the applicant (part c, as a person affected by the order). The notice gives any person on whom it is served the right to appear before and be heard by a person appointed by the Scottish Ministers. In practical effect, 'being heard' will be likely to involve a public inquiry that would be heard by a Reporter from the Department of Planning and Environmental Appeals. If these circumstances arise, the Reporter will make a recommendation to the Scottish Ministers who may confirm the Order without modification or subject to such modifications as the Scottish Ministers consider expedient. In the same way as a planning appeal, the only grounds to challenge the decision of the Scottish Ministers would be procedural, through the Judicial Review process.

2. Section 67 sets out the procedure for unopposed cases. In this case, the Council would have to advertise the proposed revocation and serve notice, by the same procedure as for Section 66 above. Following the end of the advertisement procedure, if no person affected has elected to oppose the procedure, the revocation has to be remitted to the Scottish Ministers. The Scottish Ministers may direct that the Order be submitted to them for confirmation. Whilst we consider it likely that the parties to the application - the landowner, the applicant and any other interests, would not wish to see their planning permission revoked and would be expected to oppose any revocation Order that was issued, it remains an option for them to elect not to oppose the revocation order and proceed directly to the calculation of compensation. It also remains open to the Scottish Ministers to issue a direction that the order be submitted for confirmation.

Appendix 3 Comparable Appeal Decisions Made in Scotland in 2025

Date	Appeal Reference	Local authority and Reference	Decision
12 th June 2025	PPA-270-2310	Highland Council 23/03113/FUL 49.9 MW Open farm slopes landscape character type	Appeal allowed
28 th April 2025	PPA-380-2120	South Lanarkshire Council P/23/1033 50 MW Green belt	Appeal allowed
28 th March 2025	PPA-100-2152	Aberdeen City Council 240614/DPP Up to 40 MW Green belt	Appeal allowed
6 th March 2025	PPA-380-2123	South Lanarkshire Council P/24/0307 22.8 MW Green belt	Appeal dismissed for landscape impact and failure to maximise net economic impact

1. In 2025, three broadly comparable appeals for a 49.9 MW site, a 50 MW site and an up to 40 MW site have been allowed and one smaller proposal has been dismissed for the summarised reasons set out above.

Appendix 4 An assessment of the planning conditions applied to the planning permission 2025/0043/TP

1. There are 24 conditions attached to the application as follows, with the condition on the left-hand column and comments in the right-hand column:

<p>1. The development hereby approved must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted.</p> <p>Reason: To comply with Section 58(1) of The Town and Country Planning (Scotland) Act 1997, as amended.</p>	<p>This is a standard condition applied to all planning applications.</p>
<p>2. (A) There shall be no commencement of development unless and until a bond or other form of financial guarantee in terms which secure the cost of performance of all decommissioning, restoration and aftercare obligations referred to in condition 3 is submitted to and approved in writing by the planning authority.</p> <p>(B) The value of the financial guarantee shall be agreed between the developer and the planning authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in condition 3.</p> <p>(C) The financial guarantee shall be maintained in favour of the planning authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in condition 3.</p> <p>(D) The value of the financial guarantee shall be reviewed by agreement between the developer and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.</p> <p>Reason: To ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this planning permission in the event of default by the developer.</p>	<p>This is a pre-commencement condition requiring the applicant to put a suitable guarantee in place, to ensure the site can be decommissioned. Such bonds are expected in relation to renewable energy installations. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>3. (A) The development will disconnect from the grid and cease to import or export electricity no later than the date falling forty years from the date of final commissioning. The total period for decommissioning and restoration of the site in accordance with this condition shall not exceed forty-two years from the date of final commissioning unless otherwise agreed in writing by the Planning Authority.</p> <p>(B) No development shall commence until a decommissioning, restoration and aftercare strategy has been submitted to and approved in writing by the Planning Authority. The strategy shall include measures for the decommissioning of the development, restoration and aftercare of the site and will include, without limitation, proposals for the removal of the above ground elements of the development, confirmation of the status of subterranean elements of the development (retention, removal, or other such proposal), the treatment of ground surfaces, the management and timing of the works and environmental management provisions.</p>	<p>There is a pre-commencement element to this condition, requiring a decommissioning, restoration and aftercare strategy to be submitted and approved and thereafter implemented. Otherwise the condition limits the operation of the facility to 40 years and requires decommissioning to be undertaken. It is anticipated by the planning authority that</p>

<p>(C) No later than 3 years prior to decommissioning of the development or the expiration of the consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved decommissioning strategy, shall be submitted to the Planning Authority for written approval. The detailed decommissioning, restoration and aftercare plan, will provide updated and detailed proposals for the removal of the development, the treatment of ground surfaces, the management and timing of the works and environment management provisions.</p> <p>(D) The development shall be decommissioned, the site restored, and aftercare thereafter undertaken in accordance with the approved detailed decommissioning, restoration and aftercare plan, unless otherwise agreed in writing in advance with the Planning Authority.</p> <p>Reason: To ensure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.</p>	<p>the applicant will be able to comply with this condition.</p>
<p>4. Development shall not commence until details of the finish and colour of all external surfaces of the buildings and structures to be installed/erected on the site; and of all hard surfaces have been submitted to and approved in writing by the planning authority. Thereafter the development shall be implemented in accordance with the approved details. For the avoidance of doubt, the buildings and structures shall be finished in a shade of dark green.</p> <p>Reason: To ensure the development is acceptable in appearance.</p>	<p>This condition is a pre-commencement condition requiring materials to be approved and the development implemented in accordance with the approval. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>5. Development shall not commence until a detailed scheme of hard and soft landscaping works has been submitted to and approved in writing by the Planning Authority. This shall include the proposed planting around the compound area and along the frontage of the site with Glasgow Road. Details of the scheme shall include:</p> <ul style="list-style-type: none"> i) Details of any earth mounding, hard landscaping, seeding and turfing; ii) A scheme of tree and shrub planting, incorporating details of the number, variety and size of trees and shrubs to be planted; iii) Details of the phasing of the landscaping works; iv) Proposed levels; and v) Schedule of maintenance to include the replacement of failed landscaping throughout the lifetime of the development. <p>Thereafter the landscaping works shall be fully implemented as approved.</p> <p>Reason: To ensure the implementation of a satisfactory scheme of landscaping to improve the environment quality of the development.</p>	<p>This is a pre-commencement condition requiring full details of the landscaping to be submitted and approved and thereafter implemented. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>6. Visibility splays of 120 metres by 2.5 metres shall be provided in both directions at the junction of the new access with the existing road prior to the commissioning of the facility; and thereafter maintained free from any obstructions exceeding a height of 1.05m above the adjacent road.</p>	<p>This is a road safety condition requiring visibility splays to ensure safe access and egress from the</p>

<p>Reason: To enable drivers of vehicles leaving the site to have a clear view over a length of road sufficient to allow safe exit</p>	<p>development. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>7. Prior to the commencement of any work on site, details of the proposed access to the site from Glasgow Road, shall be submitted and approved in writing by the Planning Authority. The proposed access shall be formed and surfaced in accordance with the approved details, such that no surface water or loose material shall discharge out onto the public road, prior to the commissioning of the development hereby approved.</p> <p>Reason: In the interest of public road safety.</p>	<p>This is a pre-commencement road safety condition requiring details of the proposed access and implementation of the details approved. It is anticipated by the planning authority that the applicant will be able to comply with this condition..</p>
<p>8. Development shall not commence until details of vehicle wheel cleaning facilities and a road cleaning strategy have been submitted to and approved in writing by the planning authority. Thereafter the approved vehicle wheel cleaning facilities and road cleaning strategy shall be implemented as approved. All construction vehicles exiting the site shall have all tyres and wheels cleaned before entering the road.</p> <p>Reason: To ensure mud and deleterious materials are not transferred to the road.</p>	<p>This is a pre-commencement condition to keep the road clean during construction. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>9. Prior to the commencement of any work on site, details of temporary car-parking and laydown areas to be provided within the site during the construction phase; and a phasing schedule for their provision/removal, shall be submitted and approved in writing by the Planning Authority. The temporary car-parking and laydown areas shall be provided and removed in accordance with the approved details and phasing schedule.</p> <p>Reason: In the interest of public road safety.</p>	<p>This is a pre-commencement condition to ensure vehicles are not parked on the public road during the construction period. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>10. The three car-parking spaces, indicated on approved plan PL-006 Rev P11, shall be formed and delineated prior to the commissioning of the development hereby approved.</p> <p>Reason: In the interest of public road safety.</p>	<p>This is a condition to ensure that on-site car parking is provided before the facility is commissioned. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>11. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.</p>	<p>This is a condition requiring a programme of archaeological investigation to take place on part of the site before development takes place within that part the site. It is anticipated by the planning authority that the applicant will be</p>

<p>Reason: In order to protect any archaeological remains and to allow the Planning Authority to consider this matter in detail.</p>	<p>able to comply with this condition.</p>
<p>12. No works shall commence on site until the applicant has undertaken an assessment and modelling as required to determine the interference levels on the Scotland Gas Network's adjacent pipeline E06, E17 and G03 from steady state and fault conditions of the electrical infrastructure associated with the proposed development, taking into consideration the nearby SGN pipeline and associated equipment. This includes:</p> <ul style="list-style-type: none"> Any steady state AC or DC interference Fault Condition Interference in accordance with the limits in BS EN50122-1:2022 If required, the applicant shall also design appropriate mitigation to ensure that levels of AC and DC interference are within acceptable limits (as described by SGN/PM/ECP/2, BS EN ISO 18086:2020 and BS EN 50162:2004). The results of this modelling (and mitigation, if required) will be submitted for the prior written approval of Scotland Gas Networks and the Planning Authority before any work commences on site. <p>Reason: In order to ensure a mechanism is in place to assess and mitigate the effects of inducing unacceptable levels of electrical alternating currents and voltage upon other utilities in the event they arise.</p>	<p>This is a pre-commencement condition required by statutory undertaker Scottish Gas Networks, to ensure the facility does not have an impact on other utilities in the area. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>13. The Sustainable Urban Drainage Systems (SUDS) for the surface water regime, as set out on approved plan reference 1137-DR-IN-1001 Rev P02 shall be incorporated into the development prior to the commissioning of the development hereby approved.</p> <p>Reason: In the interests of sustainable development.</p>	<p>This condition requires the sustainable urban drainage system on the approved plans to be provided before the development is commissioned. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>14. Development shall not commence until the trees immediately to the north-west and north of the site have been protected by suitable fencing. Fencing shall be erected on at least the fullest extent of the canopy on broadleaf trees and half the height of conifer trees as set out in BS3998/2010 and BS5837/2012. Development shall not commence until details of the location and type of fencing have been submitted to and approved in writing by the planning authority. Thereafter the approved tree protection measures shall be fully implemented on site and remain in position throughout the construction of the development.</p> <p>Reason: To protect the existing trees and shrubs so that they continue to contribute to the environmental quality of the area and soften the impact of the development.</p>	<p>This is a pre-commencement condition requiring protection of the existing trees on site. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>15. The development of the site shall be undertaken in accordance with the Biodiversity Enhancement and Management Plan (the Plan) dated 21 January 2025 and submitted in support of the application. Details of the biodiversity enhancements outlined in the Plan shall</p>	<p>This is a pre-commencement condition requiring details of biodiversity</p>

<p>be submitted and approved in writing prior to the commencement of any work on site. For the avoidance of doubt those details shall be submitted on a plan at a scale of 1:500 and shall show the location and extent of the hedgerow and scrub; and native species rich grassland; and the location of the herptile hibernaculum, all as referred to in the Plan. The biodiversity enhancement measures shall be completed within the first planting season following the commissioning of the development hereby approved.</p> <p>Reason: To ensure the provision of biodiversity enhancement measures.</p>	<p>enhancements to be submitted and approved and thereafter completed within the first planting season after the development has been commissioned. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>16. Prior to the commencement of any work on site, a light spill diagram, showing light levels emitted from the proposed lighting, shall be submitted and approved in writing by the Planning Authority. The lighting fixtures shall be angled to face into the site and the maximum levels of luminosity at neighbouring properties must not exceed 10 lux.</p> <p>Reason: To safeguard the residential amenity of the occupants of the adjacent dwellings.</p>	<p>This is a pre-commencement condition requiring details of the site lighting to be submitted and approved, to protect the amenity of neighbouring properties. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>17. There shall be no construction work or offloading of delivered materials at the development site out with the hours of 0800 to 1900 Monday to Friday and 0800 to 1300 on Saturday with no working on Sunday or local or national public holidays unless minor and temporary amendments have been otherwise agreed in advance in writing by the planning authority. The starting up/warming up and shutting down of any construction machinery out with these hours shall not be audible from the boundary of any noise sensitive property.</p> <p>Reason: To prevent noise nuisance to the surrounding area.</p>	<p>This condition limits site working hours to protect the amenity of neighbouring properties. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>18. Between the hours of 0800 and 2000 the measured noise level emitted from the premises (LAeq (1hour)) shall not exceed the pre-existing background noise level (LA90 (1/2hour)) by more than 4dB (A) when measured in accordance with BS4142:2014+A1:2019 at buildings where people are likely to be affected. Between the hours of 2000 and 0800 the noise emitted from the premises (LAeq (5mins)) shall not exceed the pre-existing background noise level (LA90 (1/2hour)) by more than 4dB(A) when measured in accordance with BS4142:2014+A1:2019 at buildings where people are likely to be affected.</p> <p>Reason: To ensure the occupants of adjacent premises are not subject to excessive noise nuisance.</p>	<p>This condition requires noise emitted by the facility to be below a threshold to protect the amenity of neighbouring properties. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>
<p>19. Any previously unsuspected contamination which becomes evident during the development of the site shall be brought to the attention of the Council as Planning Authority within one week or earlier of it being identified. A more detailed site investigation to determine the extent and nature of the contaminant(s) and a site-specific risk assessment of any associated pollutant linkages, shall then require to be submitted to and approved in writing by the Council as Planning Authority.</p>	<p>This is a condition to ensure contaminated land, if found, is treated appropriately to protect the environment. It is anticipated by the planning authority that the applicant will be</p>

Reason: To protect the environment from the effects of contamination	able to comply with this condition.
<p>20. The development hereby approved shall not commence until the details of the relocation of the bus stop and lighting column as shown in drawing number RHC-23-345-01, including their finished location and design; and the timescale for their relocation, have been submitted and approved in writing by the Planning Authority. Thereafter, the bus stop and lighting column shall be relocated as soon as practicably possible following the formation of the new access and visibility splays, all in accordance with the approved details.</p> <p>Reason: In the interest of public road safety and to ensure minimal disruption to the users of the bus service.</p>	This is a pre-commencement condition requiring the relocation of the bus stop and lighting column at the proposed access point. It is anticipated by the planning authority that the applicant will be able to comply with this condition.
<p>21. The development hereby approved shall not commence until details of the culvert to be formed under the proposed access adjacent to Glasgow Road have been submitted and approved in writing by the Planning Authority. Thereafter the culvert shall be formed in accordance with the approved details.</p> <p>Reason: In the interest of public road safety and to avoid blockage of the watercourse/field drain.</p>	This is a pre-commencement condition requiring details of the required culvert under the access road to be submitted and approved and then constructed in accordance with the submitted details. It is anticipated by the planning authority that the applicant will be able to comply with this condition.
<p>22. Prior to the commencement of any work on site, a construction traffic management plan shall be submitted and approved in writing by the Planning Authority. The construction traffic management plan shall detail the routes to be taken by construction traffic travelling to and from the site. Thereafter, the construction traffic shall travel to and from the site in accordance with the approved construction traffic management plan throughout the duration of the construction phase, unless minor and temporary amendments are agreed in advance with the Planning Authority.</p> <p>Reason: In the interest of public road safety.</p>	This is a pre-commencement condition requiring a construction traffic management plan to be submitted and approved and for the content to be implemented whilst the development is under construction. It is anticipated by the planning authority that the applicant will be able to comply with this condition.
<p>23. Further to the specifications shown on the approved landscaping plan (reference PL-001 (Landscape) Rev6), no planting shall take place within 10 metres of any battery energy storage container. Prior to the commencement of any work on site, a written scheme detailing the maintenance of the unplanted area within the compound, including the removal of any self-seeded vegetation within that area, shall be submitted and approved in writing by the Planning Authority. Thereafter, the maintenance of the unplanted area shall be carried out in accordance with the approved maintenance scheme.</p> <p>Reason: In the interest of public safety</p>	This is a partial pre-commencement condition, requiring a scheme for the maintenance of the unplanted area within the compound and for maintenance to be undertaken in accordance with the approved scheme. This condition also then ensures that no planting takes place within 10 metres of any of the

	battery energy storage containers. It is anticipated by the planning authority that the applicant will be able to comply with this condition.
<p>24. Prior to the commencement of any work on site, written confirmation demonstrating the agreement of Scottish Water, or their successors, to supply the site with water shall be submitted for noting and recording by the Planning Authority.</p> <p>Reason: To ensure a steady supply of water to the site.</p>	<p>This is a standard pre-commencement condition required by statutory undertaker Scottish Water, requiring evidence that the site can be supplied with water. It is anticipated by the planning authority that the applicant will be able to comply with this condition.</p>

BLANK PAGE