



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 24

P458/25

OPINION OF LORD LAKE

In Petition of

GALLOWAY WITHOUT PYLONS

Petitioner

for

Judicial Review

Petitioner: Crabb, McPhee; Drummond Miller LLP

First Respondent: Young; Scottish Government Legal Directorate

Interested Party: Armstrong KC, McAndrew; Shepherd and Wedderburn LLP

10 March 2026

[1] SP Transmission plc (“SPT”) wish to install approximately 47km of overhead 132kV power lines from Polqanity to an existing substation at Tongland. This area lies within the Glenkens Valley and Galloway Hills, forming part of the southern reaches of the Southern Uplands. These works required consent of the Scottish Ministers under the Electricity Act 1989, section 37. SPT made five applications for such consent and for associated planning permissions on 28 August 2020. A number of objections to the application were received by the Scottish Ministers. In view of these objections, the ministers decided that the applications should be the subject of an inquiry and appointed two reporters for that purpose. The inquiry took place, and the reporters submitted their report to the Scottish Ministers on 7 February 2024. The report recommended that consents and deemed planning

permissions be refused. Thereafter the Scottish Ministers considered the terms of the report and, on 14 February 2025, issued a decision in terms of which they decided, contrary to the recommendation that had been made to them, to grant the consents sought and associated deemed planning permissions.

[2] It is accepted by the petitioner that it was open to the Scottish Ministers to reject the recommendation made by the reporters following the public inquiry. In this application for judicial review the principal contention is, however, that the ministers' decision letter does not give adequate reasons for doing so and that accordingly the decision should be reduced.

As it is put in the petition:

“the respondents' decision fails to provide proper, adequate and intelligible reasons which enable the informed reader to understand why the respondents departed from the reporters' recommendations, and why the applications were ultimately decided the way they were.”

In addition to the ministers, SPT lodged answers to the petition and a Note of Arguments and made submissions as the hearing.

[3] As the primary challenge turns on the reasons provided for the decision it is useful to consider at the outset what is required. In this regard I was referred to the following authorities by the parties *Tesco Stores v Secretary of State for Environment* [1995] 1 WLR 759, *R (Ling (Bridlington) Ltd) v East Riding of Yorkshire Council* [2006] EWHC 1604 (Admin), *Uprichard v Scottish Ministers* 2013 SC (UKSC) 219, *Allen v Secretary of State for Communities and Local Government* [2016] EWCA Civ 767, *Horada v Secretary of State for Communities and Local Government* [2016] PTSR 1271, *R (CPRE Kent) v Dover DC* [2018] 1 WLR 108, *Gladman Developments Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 127 (Admin) and *West Lothian Council v Scottish Ministers* 2023 SLT 175. There was,

however, little dispute between the parties as to the relevant law. It is possible therefore to state the principles applicable to this application briefly as follows:

- (a) The decision as to what weight to accord to various considerations bearing on a planning decision is entirely for the decision-maker. The court may decide what is or is not a relevant consideration but will intervene only if an irrelevant matter has been taken into account or a relevant one has been left out of account or if the decision is unreasonable in the *Wednesbury* sense.

(Lord Hoffman in *Tesco Stores*, p 764G-H and p 780F-H). Lord Hoffmann emphasises that “matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State”.

- (b) Reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration (*South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953, quoted in *Horada*, paragraph 34, and *CPRE Kent*, paragraph 35).

- (c) What is required by way of reasons for a planning decision depends on the circumstances (*Uprichard*, para [44]).

- (d) Where a decision is taken in accordance with a recommendation in a report, little is required by way of reasons. This is because, in general, in that situation, it will be assumed the reasoning stated in the report is the same as the reasoning for the decision (*Horada*, paragraph 36).
- (e) It is not necessary to give reasons for reasons (*Allen*, paragraph 19, and *Horada*, paragraph 40).

[4] There are differences of opinion in the authorities as to the extent of the duty to state reasons in the situation in which the decision made does not accord with a recommendation made in a report to the decision-maker. It is necessary to have reasons which state why the decision-maker disagrees with the recommendations and these reasons must state the basis for the difference fully and clearly (*Allen*, paragraph 19). However, differing views have been expressed as to whether this requires more by way of reasons (No - *Allen*, paragraph 19; Yes - *R (Ling)*, paragraph 50). In *R (CPRE Kent)* Lord Carnwath stated:

“Decisions where permission is granted in the face of substantial public opposition or against the advice of officers for projects which involve major departmental departures from the development plan or from other policies of recognised importance call for more detailed reasons. This is not just because of their immediate impact but also because they are likely to have a lasting relevance for the application of the policies in question in cases in future.”

[5] I respectfully agree with the view expressed by Lord Carnwath. In a situation in which the decision follows a recommendation contained in a report submitted to the decision-maker, the reasons can be taken from the report. Where the decision departs from recommendation, the final decision is the only place where the reason will be stated. This view was taken in *Horada* and the cases cited there (paragraphs 36 to 40).

[6] Turning to the decision itself, the petitioner's submissions focus in particular on what is said in paragraph 128 to 130 of the Scottish Ministers' decision and it is therefore useful to set these out in full together with some following paragraphs to provide context:

“128. Scottish Ministers have considered the conclusions of the reporters and their recommendation that the applications should be refused. The reporters place significant weight on the security of supply driver for the proposed Development and also place significant weight on the export capacity that would be provided. The reporters find that the proposal is supported by some aspects of Scottish government policy. Reporters note that there is policy conflict which arises as a result of the proposed felling of 42.37 hectares of Ancient and Semi-Natural Woodland Sites, sites identified within the Native Woodland Survey of Scotland and Plantations on Ancient Woodland Sites; and, that significant adverse landscape visual and cumulative effects would arise.

129. Reporters have weighed the benefits and disbenefits of the proposal. While recognising that significant weight must be placed on security of supply and the provision of network capacity for renewable energy, they ultimately advise that the removal of woodland, and the landscape and visual and other significant environmental effects, weigh against granting consent for the proposed Development.

130. Reporters state that it may have strengthened the Company's case if it had explored in more detail, less environmentally harmful alternative routes/designs to feed into the planning balance. Scottish Ministers, however, consider that a robust consideration of reasonable alternatives was carried out by the Company.

131. Scottish Ministers consider that it is not appropriate to reduce the weight to be applied to the need for and benefits of the proposed Development for this reason, and that greater weight must be applied to the need for and benefits of the proposed Development than that of the disbenefits in this case. The public interest lies in the need for the urgent upgrade of strategic electricity transmission infrastructure; NPF4 establishes a need for substantial electricity network reinforcement.

132. It is regrettable that the proposed Development will result in the loss of a significant area of irreplaceable woodland. Scottish Ministers have attached conditions to the consent requiring a woodland planting strategy to address the loss of woodland, but it is accepted that this is an impact that cannot be fully mitigated. Scottish Ministers have given significant consideration to this impact but consider that the proposed Development is both urgent, and necessary. The greater weight is attached to the benefits of the proposal in terms of the replacement of end of life electricity infrastructure and a need for security of supply for local people. The proposed Development will make a significant contribution to national renewable energy targets, reducing emissions and addressing the global climate emergency.

The Scottish Ministers conclude, for the reasons set out above, that the proposed Development is supported by Scottish Government policies.

133. There are significant adverse environmental impacts which will arise. Scottish Ministers consider these to be acceptable in consideration of the need for and benefits of the proposed Development, which are significant considerations that strongly support the decision to grant consent for the applications.”

[7] It is apparent from the decisions both of the reporters and the Scottish Ministers that there were competing considerations and that the decision taken turns on weighing these. It is apparent from these paragraphs that the reason that the Scottish Ministers have come to a different conclusion is that they differ from the reporters in their decision to reduce the weight to be placed on the need for, and benefits of, the proposal. The reader is therefore made aware that the different conclusion results from differing weight being given to one of the two principal factors influencing the decision. In terms of *Tesco*, the determination of the weight is a matter for the decision-makers - the Scottish Ministers. This could be seen as a first-tier statement of reasons. However, stating that there has been a different view taken as to how the balance falls does not tell the reader why or how this has come about. It does nothing to fulfil the purposes of reasons identified in *South Bucks* or the function identified by Lord Carnwath in *R (CPRE Kent)*. I consider that it is necessary to consider whether there is an explanation for the different weight being given. This does not amount to seeking reasons for reasons. If there was no inquiry as to this extra stage, a statement by the decision-maker that they had come to a different conclusion in the basis of weighing up the competing considerations would suffice as it was, on a literal basis, the reason for the decision. It would make it impossible, however, to assess whether there had been error and would provide no guidance to parties interested in application of the policies in relation to a future decision.

[8] The reporters' decision arose from their conclusion that the greatest weight should be given to the adverse effects of the proposal on the natural environments and, in particular, the loss of designated woodland (Scottish Ministers decision, paragraph 128 - 129). It is apparent that in carrying out the balancing exercise, they have reduced the weight attached to the need for the development on the basis that SPT had not explored further less environmentally harmful alternatives to achieving the same end (Scottish Ministers decision, paragraph 130). It is implicit in the view taken of the reporters' decision that they attach less weight to the issue of the need for the development because they consider that the need might be met by an alternative proposal which would cause less harm. The ministers do not agree that the weight attached to that need should be reduced (Scottish Ministers decision, paragraph 131). That is on the basis that they consider that there has been a "robust consideration of the alternatives". The implication is that they do not consider on the material before them that there is an alternative. If there is no other means of meeting the accepted need, it follows that greater weight falls to be attached to the issue of the requirement for the development.

[9] It might readily be argued that the statement that the need for the development was considered to outweigh the adverse effects would be sufficient to meet the requirement for reasons and that going further is seeking reasons for reasons. However, it is necessary to consider what it is that has been decided as it is only when that is determined can it be stated what must be explained in the reasons. The critical decision here concerned the weight to be attached to the need for the development. The decision was that this should not be reduced as the reporters had suggested. It was as a result of the effect of that on the overall balancing exercise that the ministers came to the decision that they did. Merely stating that the balancing exercise favoured granting permission does not truly inform the

reader of the decision making process undertaken. It is therefore useful to consider what else is said in the decision to justify it.

[10] In paragraph 26, the Scottish Ministers state their conclusion that they are satisfied that SPT have complied with their duty to do what they reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside and these other matters. In paragraph 63, the Scottish Ministers record that SPT have complied with their statutory obligations under the EIA regulations to describe the main alternatives and to give reasons for the choice made in the application. In paragraph 64, they state that SPT “have done what they reasonably can to mitigate the effects of the proposed Development, which is the installation of an overhead line”. In this regard, they note:

“A wide range of alternatives were considered prior to submission of the applications and a description of the measures envisaged in order to avoid, reduce and if possible, remedy significant adverse effects was provided.”

[11] In paragraph 112, the Scottish Ministers state that the proposal has sought through design to avoid where possible the requirement to fell areas of ancient woodland and to reduce the loss of natural woodland as evidenced in the EIA report. In relation to the need for development, in the context of assessing the proposal against policy 1 of NPF4, the Scottish Ministers state:

“On balance, Scottish Ministers consider the proposed Development is supported by policy 1 [of NPF4]. The policy does not require proposals to respond equally to both the climate emergency and the nature crisis. While significant weight must be given to the environmental impacts of the removal of woodland, and to the conclusion that those impacts will not be fully mitigated, the resultant emissions and biodiversity impacts would be offset to an extent over time by planting and other measures committed to by the Company and secured by conditions. More significant weight is afforded to the long term environmental benefits associated with an expanded grid, capable of connecting a significant amount of renewable energy over the lifetime of the assets. The contribution that the proposed Development would make to tackling the global climate emergency would in time assist in mitigating the damage to natural habitats and biodiversity caused by climate change itself.”

[12] In paragraph 113, the Scottish Ministers state when weighing the development against the development plan, the greatest weight should be given to the global climate emergency. They recognise the adverse environmental impact arising from the loss of woodland but state:

“the twin climate and nature crises are in Scottish Ministers’ view best served by securing mitigation of the overall impacts on biodiversity and emissions by imposition of conditions to secure native and other woodland replanting and delivery of a green networks scheme, and significantly reducing carbon emissions, by providing considerable additional network capacity for renewable energy.”
(Paragraph 113)

This indicates that the two considerations noted are not entirely inconsistent.

[13] These passages provide the basis for the conclusion that the greatest weight should be attached to the need for the development and why, in the Scottish Ministers’ view, it was not appropriate to reduce the weight accorded to that factor. Although they are not expressly “carried forward” to the part of the decision drawing matters together, it is always a requirement to read the decision as a whole and these earlier passages must be taken into account. The result is that if it is necessary or appropriate to go behind the ministers’ decision to take a view of the weight to be attached to competing considerations, the decision leaves no substantial doubt as to how it was taken.

[14] A subsidiary ground was advanced to the effect that the decision fails to engage with the evidence led by and representations made by the petitioner. It is noted that he was the principal contradictor at the inquiry before the reporters and, as such, these matters have to be considered directly by the Scottish Ministers. He notes that a decision may be challenged where there has been a failure to take into account all relevant and material considerations (*Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345, page 348). He submitted that the test for whether evidence must be considered directly in the decision is whether it

was so obviously material so as to require this (*R (Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council* 2020 PTSR 221, paragraph 32). In response, the Scottish Ministers note that the decision states that it took into account the main deciding factors referred to by the reporters in paragraph 1.33 of the report and that these in turn encapsulated the evidence presented at the inquiry. In their answers, SPT also refer to the report and note that it was not necessary that there be a line by line consideration of the evidence for the petitioner.

[15] The petitioner does not identify any evidence or representations which it is claimed were overlooked. This makes it impossible to consider whether it was so obviously material that it required to be the subject of express consideration. It is relevant to stress, however, that the decision by the ministers differed from that of the reporters as a result of the weighing of the considerations rather than on what facts were found established. In that the reporters' decision was one the petitioner was seeking and the difference between the reporters' decision and the ministers' decision arose in the realm of weighing the various considerations, it is not, in any event, apparent what evidence or submission of the petitioner at the inquiry could be said to have been overlooked.

[16] In conclusion, on the bases set out above, neither of the petitioner's challenges succeeds. I sustain the plea-in-law for the Scottish Ministers and the fourth plea-in-law for SPT and refuse to grant the remedies sought in the petition.