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Statement on Stronelairst wind farm legal ruling

On Friday 22 July, the Inner House of the Court of Session upheld an appeal by Scottish Ministers and Scottish & Southern Energy (SSE) against the judicial review ruling late last year that halted the Stronelairst wind farm in the Monadhliath Mountains near Inverness.

The decision contradicts the earlier ruling by the late Lord Jones, who in December 2015 'reduced' the decision by Scottish Ministers to consent the scheme. He ruled that members of the public had been denied the opportunity to comment on the revised planning application and that Scottish Ministers failed to give adequate reasons for their decision when SNH was opposed in principle to *any* wind farm on the Stronelairst site because it could not be mitigated. Crucially, he stated that the Trust was taking the action for the public good.

The Trust is naturally disappointed that his ruling has been overturned by an appeal court. We did not take this legal action lightly. If it goes ahead, this development would be the largest ever in the Scottish Highlands, with 67 turbines (substantially taller than the highest structures in any Scottish city) spread over an area of 35 square kilometres, comparable to the size of Inverness. It would involve the excavation of 22 million cubic feet of stone – equivalent to a Berlin wall stretching from the Pentland Firth to the English Channel – from an area consisting mainly of peatland, a massive carbon store and Scotland's miniature version of the rainforest.

The decision to approve the scheme flew in the face of expert advice from the government's own advisory body SNH, which stated that the development would destroy the character of one of Scotland's key areas of wild land. The application was also opposed by the Cairngorms National Park Authority, the Mountaineering Council of Scotland and three out of four local councillors, while written objections from the public outnumbered letters of support by 15 to one.

Yet there was no opportunity for thorough public scrutiny of the proposal. Because there was no objection from the relevant Highland Council planning committee, there was no requirement for a Public Local Inquiry. We believe that decision was based on flawed advice from planning officials.

It was against that background, and after taking detailed legal advice from lawyers and planning experts, that we initiated a judicial review. We did so in the full knowledge that the odds were stacked against us; the vast majority of judicial review applications are rejected. We were also aware that this was a complex case whose outcome would be based on subjective interpretation by individual judges of the legality of the planning process.

Notwithstanding this decision, we believe that by taking out this judicial review we have shown the determination of the Trust to defend and protect wild land. This was why the Trust was founded over 30 years ago. Since we initiated the legal action in August 2014, the Scottish Government has refused a number of major wind farm applications in and around Wild Land Areas, including Allt Duine, Glencassley, Sallachy, Limekiln, Carn Gorm and Talladh a Bheithe in Rannoch, while Highland Council has also objected to several such developments.

We believe that the high profile legal case over Stronelaig and the public support it has generated may have influenced some or all of these decisions. Combined with changes to the UK onshore wind subsidy regime – which mean that capital-intensive projects such as Stronelaig are no longer as lucrative for energy companies and landowners – these precedents mean we are in a more favourable position today than we were when we first embarked on this course of action.

There are other unquantifiable benefits of the action we have taken, such as heightened public awareness of the damaging impact of inappropriate industrial-scale development in our wildest landscapes. The Stronelaig judicial review brought together a wide coalition of conservation, environmental and outdoor organisations representing tens of thousands of members from all walks of life. We believe the action has strengthened the John Muir Trust's reputation as a campaigning charity prepared to stand up strongly for what it believes in.

Fighting this battle has consumed a significant amount of time and money. We are profoundly grateful for the generosity of all those who have donated to the Stronelaig appeal to date, and to those who have pledged further support. We could not have come this far without the backing of our members and supporters.

After considering all the options, including initiating an appeal to the UK Supreme Court, we have come to the conclusion that we have reached the end of the road with our legal action.

At each stage in the process, the courts refused applications from the Trust for Protected Expenses Orders, which would limit our financial liability. There is a good chance that we will need to appeal for more funds once the court has awarded costs. We believe that the planning regime in Scotland remains weighted in favour of developers with huge financial resources at their disposal, and we are now working with others to campaign for a level playing field, calling for an Equal Rights of Appeal, that would allow charities and communities the same rights as developers and landowners.

At the same time, we intend to intensify our efforts to persuade politicians and the public that Scotland can meet its climate change targets without damaging our internationally renowned wild land or its fragile ecosystems.

Stronelaig aside, we have made substantial progress over the past two years, but we cannot take anything for granted. There are still threats to Scotland's wild land which deserve to be resisted. The words of John Muir engraved on the wall of the Scottish Parliament remain valid to this day: "The battle for conservation goes on endlessly. It is part of the universal battle between right and wrong."