

Citizen Participation and Public Petitions Committee

2nd Meeting, 2022 (Session 6), Wednesday, 2
February 2022

PE1864: Increase the ability of communities
to influence planning decisions for onshore
windfarms

Note by the Clerk

Petitioners	Aileen Jackson on behalf of Scotland Against Spin
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to increase the ability of communities to influence planning decisions for onshore windfarms by— <ul style="list-style-type: none">• adopting English planning legislation for the determination of onshore wind farm developments;• empowering local authorities to ensure local communities are given sufficient professional help to engage in the planning process; and• appointing an independent advocate to ensure that local participants are not bullied and intimidated during public inquiries.
Webpage	https://petitions.parliament.scot/petitions/PE1864

Introduction

1. This is a continued petition that was last considered by the Committee at its meeting on [1 September 2021](#).
2. At that meeting, the Committee agreed to write to the Heads of Planning Scotland, the Royal Town Planning Institute, Scottish Renewables, Planning Democracy and Planning Aid for Scotland.
3. Responses have been received from Scottish Renewables, Planning Aid Scotland, the Royal Town Planning Institute, Audra MacPhee and the petitioners.

Scottish Renewables submission

4. The response from Scottish Renewables (SR) states that it would not support the adoption of planning legislation from another jurisdiction of the UK that had not been subject to the scrutiny and consent of the Scottish Parliament.
5. On the issue of empowering local authorities to ensure communities have sufficient professional help to engage in the planning process, SR noted that it has raised concerns with the Scottish Government about the existing capacity constraints within Local Authorities, specifically in relation to planning departments and highlighting the implications of this for the increased volume of renewables consents that will be required to achieve net-zero.
6. Scottish Renewables state they have encouraged the Scottish Government to consider how additional capacity could be created within the planning system, whilst not being able to comment on how resources are deployed by Local Authorities.
7. In relation to the suggestion of appointing an independent advocate, SR indicate that matters of concern would be for the reporter conducting the relevant inquiry. The submission points out that there 'is often a spectrum of views within a community regarding renewable energy projects'. SR would wish to see detailed proposals for how such a spectrum of views would be represented, criteria for deciding which bodies are representative and how opposing views would be represented before commenting on this aim.

Planning Aid Scotland

8. Planning Aid Scotland's (PAS) response states that as an impartial organisation, it does not comment on policy approaches to renewable energy. However, it does suggest that the Committee seek views from an English Local Authority on the application of English planning legislation.
9. The approach to requiring inquiries for certain onshore windfarm appeals is highlighted as unique to Scotland, compared with the rest of the UK. PAS suggest seeking views from DPEA (which deals with Planning and Environmental Appeals at the Scottish Government), such as –
 - Is an inquiry the best approach to examining matters such as visual impact where parties will often already have fixed positions?
 - Might a hearing or written submissions be more effective?
 - Could mediation be introduced as part of the process?
10. The submission also suggests investigating whether existing legislation and procedure could be amended to ensure earlier notification of section 36 applications in communities.

11. PAS highlight their free and impartial advice service which deals with enquiries. It is also a referral agency to the Faculty of Advocates Free Legal Services Unit, allowing users of the advice service to request pro bono legal support. PAS note that it has also delivered training sessions for community groups in areas experiencing a high volume of windfarm applications.
12. To provide community support, PAS suggests there is scope for further investigation of a formal scheme for communities participating in inquiries. PAS state that such a scheme should be open to participants participating in any inquiry and not limited to those opposing onshore windfarm applications. It is suggested that the Faculty of Advocates; the Law Society of Scotland; the DPEA and local authorities might have an interest in helping to provide this support.
13. It is suggested that any potential support scheme should be designed to help inquiry participants to understand what to expect and how to manage cross examination.
14. PAS also recognises that appearing at an inquiry 'can be an intimidating experience' and highlights cross examination in particular.
15. However, PAS state it does not currently consider that introducing a further layer of personnel in the form of an independent advocate should need to be added to the inquiry process. The submission notes that there is a DPEA complaints process as a resource for investigation of procedural matters.

RTPI Scotland Submission

16. RTPI Scotland states that it would welcome the exploration of opportunities and challenges of allowing Planning Authorities (PAs) to determine more applications for onshore wind. RTPI believes that the forthcoming draft National Planning Framework 4 (NPF4) will have to radically address climate change and prioritise emissions reductions. The NPF4 position statement sets out intentions to plan for net-zero emissions through supporting renewable energy developments, including through supporting the re-powering and extension of existing wind farms.
17. There is a particular challenge balancing the need to protect Scotland's landscape quality and peatlands, deliver wider community benefits and deploy sufficient electricity generation capacity to meet net-zero targets. With existing consented schemes having been completed on less sensitive sites, it is likely that there will be further public concern as new developments are proposed on more sensitive local landscapes. The transition to a low carbon economy provides both a social and a technological challenge for planners.
18. The submission continues by stating the process of identifying sites for onshore wind should begin with constructive engagement at the earliest possible stage. RTPI strongly supports the recent drive towards a more plan-led system, with development plans forming the basis of planning decision-making to enable the right developments in the right locations. The submission states that enhanced participation of communities in the plan-making process will be critical to

increasing local determination, encouraging collective problem-solving and enabling communities to clearly signal appropriate local sites for renewable energy projects to developers.

19. RTPI Scotland believes that meaningful consultation should consider the impact of decisions by conveying the constraints and opportunities. RTPI Scotland would like to highlight the crucial role that Strategic Environmental Assessments (SEAs) play in underpinning a plan-led approach to renewables - as a systematic method for considering the likely environmental effects of renewables and by facilitating openness and transparency of decision-making.
20. The submission explains that through the SEA process, statutory consultees and the public can submit comments, reflected in the scoping and assessment reports alongside any changes that have been made in response to these comments. A recent review of SEA recommended developing policy and guidance on community engagement which includes using engagement activities with the public and other stakeholders to highlight environmental information and ensure that the public see the connection between the draft plan and the environmental report. RTPI Scotland believes that SEAs need to be presented in such a way that it can be readily understood with non-technical summaries of particular importance and technical, lengthy tables avoided or placed in appendices.
21. In relation to Local Place Plans (LPPs), the RTPI Scotland submission explains that LPPs can help community planning and land-use planning achieve better outcomes for communities. In addition, the submission explains that, At the application stage a two-way dialogue between developers and communities should place emphasis on the conflicting demands that planning authorities have to reconcile which the aim of developing solutions that are viable, rational and legitimate.
22. Through early engagement with prospective applicants and communities, the planning authority and statutory consultees have an opportunity to discuss important issues in advance of the submission of a formal application. They can improve the quality of planning applications, mitigate potential negative impacts, address misunderstandings and where practicable, address community issues.
23. RTPI Scotland highlights recently issued guidance on the promotion and use of mediation in planning and changes to the PAC process to include two public events. It also notes that ongoing community engagement beyond the pre-application and planning application stages was recognised as an important factor in a review of good practice for windfarm applications.
24. In conclusion, RTPI Scotland believes that if more applications were to be decided by PAs it could be argued that a more planned approach to onshore wind would be achieved, but also potentially greater involvement of communities throughout the consenting process. Alternatively, the threshold of applications of over 50MW, which are currently dealt with by Scottish Government Energy Consents Unit, could be reviewed.

Petitioner submissions

25. The petitioner's submission of 3 December 2021 makes a number of points in response to the submission from Scottish Renewables.
26. On the issue raised of Local Authority capacity constraints, the petitioner expresses her view that Scottish Renewables appears to believe that additional resource 'should be spent granting windfarm applications to the detriment of their council tax-payers and tax-payers who fund the Council.' The petitioner goes on to state that the duty of Local Authorities is to its citizens.
27. The petitioner suggests that recent decisions made on behalf of Scottish Ministers give the impression 'that unless third parties have professionally qualified experts to represent them, their evidence will be given less weight.'
28. When responding to SR's view on the proposed appointment of an independent advocate, it is noted that many staff within the industry are not members of professional bodies. Meaning they are not bound by professional codes of conduct, as suggested by SR.
29. In response to questions about representing opposing views, the petitioner states that the views of residents within 2 miles of a windfarm development site with no financial or familial involvement should take precedence.
30. In response to the PAS submission, the petitioner states that no amount of public notification for any size of windfarm applications will make any difference if there is unequal consideration of third-party evidence. SAS (Scotland Against Spin - the petitioners) feel that the present system is heavily weighted in favour of windfarm developers. SAS holds to the view that local planning authorities should be the decision maker for all onshore wind farm developments.
31. The submission explains that in SAS' view, there is no evidence that there has been significant help from PAS with regard to windfarm applications. Supporting communities on wind farm developments is a specialist planning activity requiring a substantial amount of time and expertise of which in SAS' opinion, the 'generalist' planners, do not have. In addition, SAS are not aware of any referrals to the Faculty of Advocates Free Legal Services Unit which successfully resulted in pro bono legal support for third party objectors taking part in wind farm Inquiries.
32. SAS refers to a recent DPEA publication that s.36 windfarm primary applications and appeals comprise the majority of planning public inquiries. SAS therefore feels surprised that PAS has not been more prominent in providing community groups with support for this type of inquiry.
33. SAS raise a number of other namely that PAS's comments come from a professional viewpoint whereas SAS members have, as lay people, been through the experience. In their experience, members of the public may not have the services of an advocate and are completely exposed to the developer's well-resourced legal team.

34. Scotland Against Spin understands that reporters are not formally trained to intervene appropriately and should not conduct public inquiries until such training can be evidenced and believes a formal mechanism whereby members of the public can complain about the conduct of the developer's agents would be welcomed.
35. In their submission of 3 December 2021, the petitioner states that it is 'encouraging that RTPi welcomes the exploration of opportunities and challenges to allow Planning Authorities (PAs) to determine more applications for onshore wind which will result in greater involvement of communities throughout the consenting process'.
36. The petitioner responds to references made by RTPi to a poll showing 70% support for onshore windfarms. They point to their previous submission of 3 August 2021, which provides an analysis of what they describe as 'a deeply flawed' poll.

Action

37. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting -

[PE1864/YYYY: Audra MacPhee submission of 29 September 2021](#)

[PE1864/ZZZZ: Scottish Renewables submission of 4 October 2021](#)

[PE1864/AAAAA: Planning Aid Scotland submission dated 6 October 2021](#)

[PE1864/BBBBB: Royal Town Planning Institute submission of 6 October 2021](#)

[PE1864/CCCCC - Scotland Against Spin submission of 3 December 2021](#)

[PE1864/DDDDD: Scotland Against Spin submission of 3 December 2021](#)

[PE1864/EEEEEE: Scotland Against Spin submission of 3 December 2021](#)

All written submissions received on the petition can be viewed on the petition on the [petition webpage](#).