

Citizen Participation and Public Petitions Committee

11th Meeting, 2022 (Session 6), Wednesday
15 June 2022

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

Note by the Clerk

Lodged on	24 March 2021
Petitioner	Aileen Jackson on behalf of Scotland Against Spin
Petition summary	<p>Calling on the Scottish Parliament to urge the Scottish Government to increase the ability of communities to influence planning decisions for onshore windfarms by—</p> <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. The Committee last considered this petition at its meeting on [2 February 2022](#). At that meeting, the Committee agreed to invite the relevant Cabinet Secretary to provide evidence to the Committee. The Committee also agreed to write to the Local Government Association.

2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received two responses from the Petitioner, and a new response from Karin Coltart. These are set out in **Annexe C**.
4. The Local Government Association have, to date, not provided a response.
5. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
6. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
7. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).
8. The Committee has decided to hear evidence from the Minister for Public Finance, Planning and Community Wealth on this petition and on PE1885. A private SPICe questions paper has been supplied to Members for this evidence session (Paper 12 in your papers pack).

Action

The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

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

Petitioner

Aileen Jackson on behalf of Scotland Against Spin

Date lodged

24 March 2021

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—

- 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.

Previous action

We have written to Jamie Greene MSP, Brian Whittle MSP and Willie Rennie MSP. We have also written to Kevin Stewart MSP in his role as Minister for Local Government, Housing and Planning.

Scotland Against Spin has been a member of the Directorate for Planning and Environmental Appeals (DPEA) Stakeholders' Forum since 2013. It has been raising issues to which this Petition relates since 2019.

Background information

In 2020 the UK Government announced its intention to allow onshore wind farms to compete for subsidies in the next round of Contract for Difference (CfD) auctions which would allocate market support for projects coming forward towards the middle of the decade. This news was followed by a rapid rise in the submission of onshore wind farm planning applications, particularly in Scotland where National Planning Policy is very supportive of development compared to the rest of the UK.

Onshore wind development is considered, by some, to be particularly lucrative for developers, owing to lower development costs. Some areas of rural Scotland are, we believe, at saturation point with large scale industrial wind power station proposals and developments which have been built or are currently going through the planning process.

In Scotland, wind energy schemes with generating capacity of 50MW or less are determined by Local Planning Authorities (LPA). Local Community Councils are statutory consultees for such planning applications. A refusal of planning permission regularly leads to an appeal by the developer. That appeal, delegated to the Directorate for Planning and Environmental Appeals (DPEA) by Scottish Ministers is often very costly to the LPA, particularly if a Reporter decides that an appeal should be determined by means of a Hearing or Public Inquiry.

Larger wind farms exceeding 50MW are determined at the outset by Scottish Ministers under the Electricity Act 1989, section 36 (s.36) rather than by the LPA. However, the LPA remains a statutory consultee for each s.36 planning application submitted to the Scottish Government's Energy Consents & Deployment Unit. Should an LPA formally object to a s.36 application, a Public Inquiry is automatically triggered. This results in significant expense to the LPA, in order for them to defend their objections. In the majority of cases, the objections of these LPAs and the Community Councils are overruled by the Scottish Ministers, acting on Reporters' recommendations.

In contrast, wind energy schemes in England are determined by the LPA, irrespective of size. LPAs are directed to only grant planning permission if:

- the development site is in an area identified as suitable for wind energy development in a local or neighbourhood plan; and
- following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been satisfactorily addressed and therefore the proposal has community backing.

Whether a proposal has the backing of the affected local community is “a planning judgement for the local planning authority.”

If an LPA rejects a planning application, then a developer has a right to appeal to the Secretary of State via the Planning Inspectorate.

This difference in legislation makes it significantly more difficult to obtain planning permission in England, and has led to an influx of developers seeking sites in Scotland, because they believe that the Scottish Government will overrule local decision making and grant consent for planning applications for onshore windfarms.

This has resulted in Scottish rural communities facing multiple applications simultaneously or consecutively. They are left simply overwhelmed and unable to manage, either in terms of the manpower required to scrutinise large technical documents and/or to fundraise in order to employ professional help. In turn, this leaves them particularly disadvantaged in a Public Inquiry situation where they face teams of professionals and the applicant’s consultants, who are well able to present windfarm applications in their most favourable light, and at the same time seek to marginalise the evidence from public witnesses.

Live streaming and archived video footage of Inquiries visible on the DPEA website, has resulted in prospective public and lay participants witnessing what they perceive to be personal and vicious attacks on local objectors by experienced lawyers employing aggressive cross examination techniques. Whilst such techniques might be suitable in a criminal court setting, in those circumstances, the witness would have the protection of counsel or intervention by a judge if there was irrelevant and intimidating questioning. No such protection is provided for a public witness at a planning Public Inquiry; it is seen as a ‘no holds barred’ arena for the appellant’s legal team. Many bona-fide people, giving of their best in the local interest feel they cannot cope with the psychological or financial strain of becoming involved in such a combative and unequal process. It seems to us that the appellant’s legal team frequently seeks to discredit a public witness on a personal basis and, as a consequence, their opinions and evidence before the Inquiry are diminished and ignored. Some Community Councils and members of the public will simply withdraw their representation.

We believe that this is a one-sided process which acts as a barrier to effective public engagement in the planning process; the opposite result to that which the Scottish Government is seeking to achieve.

We believe that the adoption of planning legislation such as that in England where there is strict adherence to local development plans which have previously been the subject of public consultation, would direct developers to suitable sites where there is less likelihood of objection from local planning authorities and communities. Any community which had not had its concerns fully addressed could be confident that proposals would be justifiably refused and an appeal would be unlikely. This would encourage developers to have longer, more meaningful consultation with local communities before finalised plans are submitted. At present, the required community engagement exercise in Scotland seems to be largely a one-way consultation which we believe is regarded by many developers as simply a ‘tick box’ exercise. All parties would benefit as only plans likely to succeed and gain consent would progress to being formally submitted to LPAs.

We call on the Scottish Government to bring planning legislation for the determination of wind farm developments in line with that of England. We also call on the Scottish Government to find a way to restore “equality of arms” in the planning process by equipping LPA’s to give positive assistance in the form of professional help to local communities, and to appoint someone to act as an independent advocate or adviser in public inquiries to ensure that local participants are not bullied and intimidated, and that their voices are heard.

Annexe B

Extract from Official Report of last consideration of PE1864 on 2nd February 2022

The Convener: PE1864, on increasing the ability of communities to influence planning decisions for onshore wind farms, was lodged by Aileen Jackson on behalf of Scotland Against Spin. The petition calls on the Scottish Parliament to urge the Scottish Government to increase the ability of communities to influence planning decisions for onshore wind farms by adopting English planning legislation for the determination of onshore wind farm developments, empowering local authorities to ensure that 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.

The petition was last considered by us on 1 September 2021. The committee agreed to write to a range of stakeholders. I am pleased to say that responses have now been received from Scottish Renewables, Planning Aid Scotland, the Royal Town Planning Institute and the petitioners. We also received a late submission from Finlay Carson MSP in support of the petition.

The submissions that we received were very detailed and comprehensive. I thank those who have taken the time to research the information, forward it to us and to submit their views on the petition. All of the submissions have been shared with members in the papers that they received in advance of the meeting, and for people following our proceedings, the submissions are all publicly available on the petition's website.

Common themes across the submissions include: the role of local planning authorities as decision makers; ensuring that communities have access to professional help in navigating the planning process; ensuring that communities have early notification of section 36 applications; capacity issues for local authorities in meeting future net zero targets; potential learning from elsewhere in the UK, for example, local authorities applying English planning law; the use of inquiries and how communities can best contribute to them; and mechanisms to enable any issues with a developer's conduct to be formally raised. Do members have any comments or suggestions for action?

David Torrance: The submissions are very detailed, but there are still a lot of questions that need to be answered. Could we invite the Cabinet Secretary for Net Zero, Energy and Transport to provide evidence to the committee?

Alexander Stewart: I agree that the information that we received from the organisations and individuals is very comprehensive. Once again, if the cabinet

secretary comes to the committee it would give us the opportunity to put some of those questions to him and allow him to respond to the evidence.

Ruth Maguire: The issues that are being raised feel more like planning issues. Although the petition is specifically about wind farms, which relate to energy, the issues raised feel like they are more about planning than the environment. I would be interested to hear others' reflections on that.

Paul Sweeney: Further to that, given that the new national planning framework is currently being developed, it might be an opportune moment to try to be clear about feeding those issues into the process. I cannot remember off the top of my head which minister is leading that effort, but it would perhaps be worthwhile engaging with them in light of the evidence being raised.

The Convener: There is a willingness for us to take evidence, but we want to be sure we are taking evidence from the right source. Are members happy to delegate to me the decision as to who that would be?

There is another group I am quite interested to hear from. There are repeated references to the powers that local authorities in England have in relation to wind farms. I wonder whether we could touch base with a representative organisation of local authorities in England to understand a little bit better the actual application of that process. I would like to know whether in practice that has worked in the way that is being suggested and whether there are any concerns or anxieties among English local authorities about the responsibility that has been devolved to them.

Are members content to proceed on that basis?

Members indicated agreement.

Annexe C

Karin Coltart submission of 26 February 2022

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

I support the petition for the following reasons.

Adopting English planning legislation for the determination of onshore wind farm developments

In my experience, wind farm developers are making planning applications that do not comply with local development plans and Scottish Ministers are approving them. If Scotland adopted a system similar to that used in England, this would not be allowed.

As Scottish Ministers decide on wind farm applications which are greater than 50MW, it appears to me that developers are side-stepping local councils all together by applying for large scale wind farms, in the knowledge that Scottish Ministers are more likely to say 'yes' than local planning authorities.

Wind farm developers appear to have bottomless pockets and the ability to hire legions of experts who will support the developer's point of view. Local councils, on the other hand, are severely constrained by budgets.

Currently wind farm developers only appear to pay lip service to consultation with local communities. If local people do not know about a development, they will not engage in a consultation about it.

Suggestions: (a) from scoping onwards developers must send information about a proposed wind farm to every resident's home address who will have sight or sound of their wind farm. (b) The information should include a summary of the scheme and a long notice period for any public meetings. (c) All public meetings should run on multiple days and times, including weekends. (d) Developers should have an accessible place on their website to show all comments made at meetings or thereafter. This way any individual can see that their

remarks are recorded. (e) Developers must inform residents in good time of every subsequent phase of the process.

Empowering local authorities to ensure local communities are given sufficient professional help to engage in the planning process

Developers produce a vast amount of information in a planning application, some of which is written in language that is incomprehensible to the layperson. Many members of the local community have neither the time to read, nor the expertise to understand, these documents. For example, a recent application had 2,320 pages of original, additional, and supplementary information.

Suggestion: make it standard practice for any altered text/new information in additional documents to be in a different colour and/or size and/or font from the original version. In this way, a reader could easily identify a few added words or paragraphs without the need to re-read the whole document.

Rural broadband can be slow or non-existent and given the volume of documents that developers produce for an application these can be impossible for broadband to cope with, particularly when there are numerous maps and photographs involved.

Suggestions: (a) insist that wind farm developers provide every local resident who requests it, at no cost, all the planning application documentation on a USB stick. (b) insist that developers provide free, printed copies of all the maps, photographs, figures, and visualisations (in colour and at the recommended size).

Currently any community or individual who wishes to oppose a wind farm development faces an impenetrable planning system. It is unlikely that local residents have engaged with the planning process in the past and therefore have no idea how it works. This creates an extremely un-level playing field.

In a public inquiry, developers can afford to hire teams of expensive lawyers and innumerable experts who know the system and who can baffle local residents with technical questions.

Communities are faced with the task of finding legal representation and appropriate experts and then fund-raising £10,000s to pay them

for their professional services. The alternative is to self-represent which will leave local people floundering in the complexities of the system and being side-lined as third-party objectors.

Conclusion: provide local communities with enough bespoke professional help throughout the process, from scoping to public inquiries and appeals, to put them in the same ballpark as developers.

Appointing an independent advocate to ensure that local participants are not bullied and intimidated during public inquiries

One thing that Covid has brought is the wholesale movement of public inquiries to the digital sphere. It has been instructive to watch videos of lawyers representing developers, who in my opinion, belittle, bully and intimidate local residents who have appeared as witnesses. It is also interesting to see the difference in inquiries where community objectors have had the services of a lawyer to protect them. Surely, the purpose of an inquiry is to gather information and views from both sides of the argument. Engaging in the planning process should be open to everyone, not just the brave-hearted individuals who hope that they can stand up to developers and their legal teams.

Conclusion: provide an independent advocate to local participants on every occasion. The proceedings would be more civil, more useful and would encourage more people to engage with it.

Petitioner submission of 22 April 2022

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

Last year Scotland Against Spin explored concerns around the misinterpretation and misrepresentation of polls conducted on behalf of RenewableUK, and the Department for Business, Energy & Industrial Strategy (BEIS), purporting to show overwhelming support for more onshore wind turbines in the UK and Scotland.

It examined a May 2021 YouGov poll which claimed 70 per cent support for onshore windfarms, but the questions did not define either how many

turbines comprise a windfarm or even how high the turbines would be. At the time of the poll there were roughly 10,961 onshore wind turbines in the UK with 8,366 or 76 per cent of them in Scotland. Yet of the 1,700 respondents to the poll, only 7 per cent (119) were from Scotland. That is 0.002 per cent of the Scottish population. Of those 119, only 38 (32 per cent) replied that they lived within five miles of a windfarm. That is 0.0007 per cent of the Scottish population. In contrast, there were 192 respondents from London. Why ask Londoners their opinion of living within five miles of an onshore turbine when there is none anywhere near?

Another May 2021 public attitudes poll conducted by BEIS (Wave 37) showed 70% support for on shore wind. But more than three quarters of UK respondents were from urban areas with less than 10% of respondents from Scotland. In response to enquiries, made on behalf of Scotland Against Spin, about Scottish respondents, BEIS said:

“Due to the limited numbers involved, it would be difficult to draw much from the conclusions of such analysis, and would likely not be representative of the true figures.”

Another poll commissioned by RenewableUK was carried out by Survation in October 2021. The results have since been picked up by *The Insider* (a commercial publication), and repeated in the *Express*.

Dr Rachel Connor, on behalf of SAS, tried to look into the background of the statistics in the Survation poll to examine the evidence which underpinned that newer poll. Survation confirmed that their respondents are paid but did not provide information about how their panel was selected.

This is obviously critical – respondents might all be employees of windfarm companies and their contractors.

On Saturday April 9, *The Times* published the results of another YouGov poll it had commissioned, announcing that three quarters of the British public *would back a local windfarm* and support expansion of on shore windfarms. Again, less than 10% of respondents were from the whole of Scotland, compared to almost 12% just from London. [This is the ‘full’ poll as sent to Dr Connor on request by YouGov.](#)

The chairman of Scotland Against Spin, Graham Lang, wrote to the *Times* and other newspapers which published the results of this widely quoted online poll conducted using paid respondents.

The key points he raised were:

- The public, in general, do not have much confidence in polls as they understand that meaningful unbiased results are dependent on how respondents are selected for the survey and what questions are asked.
- A small number of selected and paid panellists with a vested interest in the results will produce skewed and unreliable answers. But such polls, often paid for by industry, wanting to evidence their desired “public opinion” are used to shape Government policy.
- Information on how paid respondents are selected by polling companies is not made available.
- There is no information as to where these respondents live in relation to any wind farm. Are respondents recruited from urban areas benefiting from electricity generated out of sight?
- It is easy to say you support wind farms in your neighbourhood if you know there is virtually no chance of you ever having one.

It is not widely known that survey firms select their respondents from a panel and even use outside respondents from other companies. Those respondents are paid. The selection criteria are not published. There is simply weighting applied to factors such as age, gender, socioeconomic status and UK regions, although, in our opinion, even that is odd, with Wales being lumped in with the Midlands for the YouGov poll.

YouGov says that it makes sure that those without internet are also polled, to be representative, but, in our view, it is difficult to see how that happens in an online survey. Lack of good internet is a real problem for rural communities throughout the UK, but particularly in Scotland. It is many of these communities who are actually hosting and feel the effects of these windfarms on their environment, particularly those within 3km of industrial windfarms with turbines higher than 100 metres. These people are not ‘NIMBYs’. These are the people whose opinion should be

sought to determine whether there really is support for further expansion of onshore wind.

In our view, it is time that polls really represent the opinion of the people of Scotland and not just those receiving benefit from the Renewable or Survey/Poll industry.

Petitioner submission of 4 June 2022

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

Adopting English planning legislation for the determination of onshore wind farm developments

We would like to draw the Committee's attention to the UK Government Energy Strategy which was published last month in response to rising energy costs in the UK.

No change was made to planning laws for onshore wind farm development in England other than "consulting on developing partnerships with a limited number of supportive communities towards onshore wind farms in return for lower energy bills".

This means that Communities south of the border will continue to be reassured that any proposed development will only be successful if it is in an area identified as suitable in a local development plan **AND** the planning impact identified by the local community has been satisfactorily addressed and there is community support.

This system offers protection for both people and the environment. The Planning Authority may object to a proposed development due to non-compliance with the local development plan while at the same time the community could be supportive due to the financial rewards on offer (incidentally community benefit is not a material planning consideration but it does influence public opinion and generates support). In such a case, quite rightly, permission is refused as it does not satisfy both requirements.

Equally if the Planning Authority has no objection but members of the community raise concerns for which no adequate mitigation is possible, then permission will also be denied.

This “double protection” directs development to “the right places” and also inspires greater confidence in the planning process; something which is sadly lacking in Scotland in relation to wind farm development at the present time.

Whilst this is all good news for local communities in England who will continue to have a greater influence on the future of development in their local area, (something which the Scottish Government states they also wish to deliver), it means that Scottish communities will continue to be overwhelmed with planning applications for onshore wind farms unless we are granted the same ability to influence planning decisions as our neighbours in England.

Empowering local authorities to ensure local communities are given sufficient professional help to engage in the planning process

As previously mentioned in the Petition Summary and in many of the accompanying written submissions, local residents and community councils are facing multiple applications simultaneously or consecutively. They are left simply overwhelmed and unable to manage, either in terms of the manpower required to scrutinise large technical documents and/or to fundraise in order to employ professional help. In turn, this leaves them particularly disadvantaged in a Public Inquiry situation.

To emphasis our point we have attached maps, relating to [Sue Hall's petition submission](#) of 8 June 2021, showing the extent of wind farm development both operational and in the planning process in the Southern Uplands of Dumfries and Galloway - <https://scotlandagainstspin.org/wp-content/uploads/2022/06/map.png>; and also a map of development in the new Cumnock area of East Ayrshire relating to [Jerry Mulder's petition submission](#) of 4 June 2021 - <https://scotlandagainstspin.org/wp-content/uploads/2021/09/Updated-NC-map-768x512.jpg>

In our view, it is unacceptable and unrealistic to expect members of the public, many of whom are still working full time, have young families or are attempting to enjoy retirement, to give up all of their valuable spare time for many years, sometimes decades, to respond to wind farm applications, to the point of exhaustion, in order to defend their environment, health and wellbeing.

Appointing an independent advocate to ensure that local participants are not bullied and intimidated during public inquiries

We were pleasantly surprised when the Reporter at the Mochrum Fell Wind Farm Hearing last month, asked participants to “Be kind, courteous and polite to each other”. A well-received comment in recognition of what we felt was aggressive questioning of community representatives which has previously taken place at some oral proceedings. Participants at this particular hearing were able to afford the services of an advocate but most are not so fortunate.

We believe it is imperative that an independent advocate is appointed for all participants taking part in oral proceedings to ensure that they are not bullied and intimidated and that their voices are heard, otherwise it becomes a one-sided process which acts as a barrier to effective public engagement in the planning process; the opposite result to that which the Scottish Government is seeking to achieve. We have made simple suggestions as to how this request could be taken forward and financed at no extra cost to the public purse in [Petitioner’s Submission of 11 June 2021](#)

Aileen Jackson
Petitioner
On behalf of Scotland Against Spin