

# Citizen Participation and Public Petitions Committee

9th Meeting, 2023 (Session 6), Wednesday  
31 May 2023

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

**Lodged on** 24 March 2021

**Petitioner** 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—

- 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 [18 January 2023](#). At that meeting, the Committee agreed to write to the Scottish Government setting out recommendations based on the evidence it had gathered. A copy of the Convener's letter to the then Minister for Public Finance, Planning and Community Wealth is available [here](#).
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 new responses from the Minister for Local Government Empowerment and Planning and the Petitioner, which are set out in **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 832 signatures have been received on this petition.

## 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 18 January 2023

**The Convener:** The first continued petition is PE1864, lodged by Aileen Jackson on behalf of Scotland Against Spin, which 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.

We last considered the petition on 29 June last year, when we agreed to explore a number of the issues by writing to the Minister for Public Finance, Planning and Community Wealth, UK Government ministers, Planning Aid Scotland and the Scottish Government’s planning and environmental appeals division—DPEA. We have now received responses from all of those bodies.

The DPEA sets out the training and advice provided to reporters when conducting public inquiries. It notes:

“Reporters are advised to be alert to any overstepping of the mark and to intervene if they perceive that cross-examination is becoming overbearing”.

Planning Aid Scotland says that all its staff and volunteers are required to be chartered planners. Although it has not recently provided training relating to public inquiries, it says that it will continue to monitor the type of advice requests that it receives and use the information to inform the training that is provided to its staff and volunteers. PAS would welcome the Scottish Government undertaking research into how support could be provided for communities that participate in public inquiries.

Following the evidence session with the minister, the committee received clarification that the Scottish Government has powers to alter the 50MW threshold for renewable energy developments but has not explored the benefits or disadvantages of doing so.

Although the Secretary of State for Scotland and the UK Minister for Energy and Climate declined to comment on the specifics of the petition, they indicated the UK Government’s willingness to engage constructively with the Scottish Government on planning matters.

We have also received two new submissions from Aileen Jackson, the petitioner, commenting on the responses received. She welcomes the minister’s clarification on

the Scottish Government's power to alter the 50MW threshold—I think that Mr Ewing raised that matter in examination. Aileen considers that that potentially opens the possibility for more decisions on proposed wind farm developments to be taken at a local authority level. She also highlights the UK Government proposals for changes in national planning policy on onshore wind farm developments in England. That is coupled with the United Kingdom Government's willingness to work with the Scottish Government on these matters.

We have had a lot of constructive feedback from the various bodies to which we wrote. On the basis of that feedback, do colleagues want to suggest ways in which we might take things forward?

**David Torrance (Kirkcaldy) (SNP):** The committee could write to the Scottish Government to set out the committee's recommendations on the basis of the evidence that has been gathered so far. That might include recommending that the Scottish Government undertakes work to explore the benefits and disadvantages of altering the 50MW threshold for consideration of renewable energy developments; undertaking research into how support could be provided for communities that wish to participate in public inquiries into planning decisions, including onshore wind farm developments; exploring the scope for planning authorities to determine more applications for onshore wind farm development; and exploring opportunities to ensure that the demonstration of local support is a key material consideration for planning authorities when determining applications for onshore wind farm developments.

**The Convener:** I am content with that. In asking the Government to undertake an exploration of the benefits and disadvantages, I might also draw to its attention, or provide it with, the response that we received from the UK Government saying that it would be very happy to engage on the whole matter.

**Fergus Ewing (Inverness and Nairn) (SNP):** On the issue of engagement with the UK Government, particularly in the light of the fact that the whole development of wind power, onshore and offshore, will be dependent to some extent on grid upgrade and interconnector capacity expansion—particularly with regard to the interconnectors that cross borders—we could recommend that the case for co-operation between the Scottish and UK Governments is not strong but a sine qua non of the delivery of the respective renewable energy aims and ambitions of both Governments. A standing committee might be the way to deal with that, given the nature, complexity and breadth of the issues involved.

Secondly, in relation to the work that Mr Torrance suggests be done, could we ask that, in its response, the Scottish Government states what implications alterations would have on cost and time—the cost of dealing with applications, which might be considerable were the petitioners' asks to be granted, especially if independent



advocates were to be appointed, and the length of time that might be added to applications?

I say that because, as a former energy minister, I remember opening one wind farm that had taken about 13 years to go through the planning process and about 13 months to build, and I am not sure whether anyone really gains from a delay of that magnitude. I have that in mind, but that is anecdotal and I do not have a clear picture. However, I would like to see the facts on those two issues from the Scottish Government and, perhaps, from others—the planners and the local government side, if that is appropriate.

**The Convener:** I think that we can accommodate all that. Are we content to proceed on that basis?

**Members** *indicated agreement.*

## Annexe C

### Minister for Local Government Empowerment and Planning submission of 17 April 2023

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

Thank you for your letter of 17 March highlighting evidence gathered during the Committee's consideration of the above petition, and setting out the Committee's recommendations. Whilst your letter was addressed to Tom Arthur MSP in his previous capacity as Minister for Public Finance, Planning and Community Wealth, I am responding as responsibility for the planning system now sits within my portfolio. I set out below the Scottish Government's response to each recommendation in turn.

- **Recommendation - *the Scottish Government should now undertake work to explore the benefits and disadvantages of altering [the 50MW] threshold***
- **Recommendation – *the Committee also recommends that Scottish Government explore the scope for planning authorities to determine more applications for onshore windfarm developments***

Our recently published Onshore Wind Policy Statement sets out our ambition to deploy 20GW of onshore wind by 2030. As you will be aware, currently any application to construct or operate an onshore wind farm with a capacity of 50 megawatts (MW) or over requires the consent of Scottish Ministers under section 36 of the UK Electricity Act 1989. Applications below 50MW are made to the relevant Planning Authority. The Committee's two recommendations above are directly related and the Scottish Government accepts both and commits to undertake work to explore the benefits and disadvantages of altering the threshold, and explore the scope for planning authorities to determine more applications for onshore wind farm developments.

- **Recommendation – *the Committee further recommends that the Scottish Government explore opportunities to ensure that demonstration of local support is a key material consideration in the decision-making process.***

The Town and Country Planning (Scotland) Act 1997, as amended (the 'Planning Act') requires that all planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. This structured approach to decision-making is a crucial element of our plan-led planning system, ensuring decisions are being made based on competent assessment of relevant, established planning principles. Following the adoption and publication of National Planning Framework 4 (NPF4) earlier this year, NPF4 forms part of the statutory development plan alongside the relevant Local Development Plan (LDP). To be a 'material' consideration in planning decisions, a matter must be relevant to planning and relate to the impacts of the particular development proposed. Potential impacts on communities, nature and other receptors remain important considerations in the decision-making process, and local opinion and evidence therefore feature strongly in planning assessments.

The Planning (Scotland) Act 2019 ('the 2019 Act') introduced a range of provisions designed to enhance the engagement of communities throughout the Scottish planning system, including new provisions for community bodies to prepare Local Place Plans, setting out local people's aspirations for their places in a way that feeds into the preparation of local development plans. Local Place Plans are an important tool in strengthening the voice of communities in the planning of their areas and form part of the Government's wider work on planning reform and implementation of the 2019 Act, including steps to reduce conflict, improve community engagement and improve public trust in planning matters. The reforms have also included recent changes to strengthen pre-application consultation with communities on major development proposals, as a well established feature of the planning system in Scotland. Through this overall package of measures we continue to ensure that local communities can have a meaningful say before decisions are made about their areas.

[Support available to individuals and communities participating in public inquiries](#)

Turning to the support available to individuals and communities participating in public inquiries, the Scottish Government's Planning and Environmental Appeals Division (DPEA) will continue to discuss with its Stakeholder Group ways to ensure communities can fully participate in planning inquiries and other aspects of DPEA's work. This Group includes representatives from PAS, Scotland against Spin, the Association for the Protection of Rural Scotland, Sustainable Communities Scotland and Planning Democracy. Previous discussions have resulted in the introduction of webcasting and live streaming of public inquiries, the webcasting library and comprehensive published guidance for parties involved. The Stakeholder Group is next due to meet on 23 May and this item will be placed on the agenda.

I hope the Committee finds this response helpful.

Yours sincerely,

**JOE FITZPATRICK**

## Petitioner submission of 26 April 2023

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

Scotland Against Spin's reaction to the Scottish Government's response to recommendations made by the Citizen Participation and Public Petition's Committee.

**Recommendation 1** - *the Scottish Government should now undertake work to explore the benefits and disadvantages of altering [the 50MW] threshold. The Committee also recommends that Scottish Government explore the scope for planning authorities to determine more applications for onshore windfarm developments.*

We thank the new Minister for Local Government Empowerment and Planning for his submission of 17 April 2023. SAS welcomes the commitment of the Scottish Government to undertake work to explore the many benefits to communities and government of altering the 50MW

threshold and to explore the scope for planning authorities to determine more applications for onshore wind farm developments.

[RTPI's submission of 6 Oct 2021](#), “would welcome the exploration of opportunities and challenges to allow Planning Authorities to determine more applications for onshore wind”, with potential for “greater involvement of communities throughout the consenting process.”

**Recommendation 2** – *the Committee further recommends that the Scottish Government explore opportunities to ensure that demonstration of local support is a key material consideration in the decision-making process.*

Communities in England are reassured that a proposed development will only succeed if it is in an area identified as suitable in a local plan and the planning impacts identified by the local community have been addressed and there is local support. Scottish communities have no such comfort. They should have, which is what the Committee has recommended.

The response from the Scottish Government avoids the issue of strengthening the hands of local people, preferring instead to hide behind NPF4 which gives scant consideration to public opinion unless it supports government policy. Local place plans are nothing more than a wish list for local communities which will only come to fruition if they comply with NPF4. This is obvious from the Scottish Government’s response. “[...] we continue to ensure that local communities can have a meaningful say **before decisions are made about their areas.**”

There is no definition of what “meaningful” comprises or its significance in the planning process. Community consultations in Scotland are all too often a tick box exercise without meaning.

Who makes the decisions? Our petition requests that communities are allowed to have a greater say in development in their local area, not less.

In response to concerns raised at Holyrood over plans for Highly Protected Marine Areas, the new [First Minister responded](#) by saying:

“A very basic principle that we have always operated by, and I continue to reaffirm and confirm today, is that we are not going to impose these policies on communities that don't want them, so we will work constructively with them.”

It seems that the views of coastal communities may be important but not the views of rural communities. This is inconsistent and unfair.

Both the UK Minister of State for Energy, Clean Growth and Climate Change and Secretary of State for Scotland have made it clear in their correspondence dated 5 and 8 August 2022, regarding this Petition, that “the UK Government is willing to engage with and have constructive conversations with the Scottish Government on planning matters” but it appears that the Scottish Government has no interest in doing so. The reasons are unknown. This part of the Scottish Government’s response is acutely disappointing.

**Recommendation 3** – *suggests further research into how support could be provided for communities wishing to participate in public inquiries into planning decisions, particularly those related to onshore windfarm.*

We have outlined how this could be achieved in the [Petitioner’s submission of 11 June 2021](#).

Four cost effective solutions are proposed.

- Advertise for, and constitute a Panel of contributory lawyers. Appointments would be for a maximum of two years.
- Make required public consultation meaningful, following provision of accurate and detailed information, with required/recorded public comment as required by the Scottish Government’s commitment to the Aarhus Convention.
- Impose independent scrutiny, by a legally qualified person, of the content and manner of the public consultation exercise in each case, producing an independent report as part of the Environmental Report.
- Where requested, provide informed advocacy/legal assistance to community groups to help prepare for and participate in public inquiries or hearings.

These suggestions could be easily financed through an increase of planning application fees for major developments which are still much cheaper in Scotland than those in England.

RTPI’s submission of the 6 October 2021 agrees that planning fees should be increased.

[Planning Aid Scotland’s submission of 6 October 2021](#) states that “they recognise the challenges that community groups and members of the

public experience in preparing for and participating in inquiries, especially in areas with multiple and/or repeat applications.”

Their [submission of 9 August 2022](#) also confirms that they “would welcome the Scottish Government undertaking research into how support could be provided for communities participating in public inquiries (on windfarms and any other topic).”

Support is particularly important for people with hidden disabilities such as autism and dyslexia or those without adequate IT literacy or broadband provision. All such groups can experience communication difficulties but wish to take part. The Scottish Government is committed to equality in all areas; their vision being that individuals are respected, accepted, and valued by their communities and have confidence in public services to treat them fairly. Planning inquiries should not be exempt.

An independent advocate appointed to protect and guide any member of the public who wants to give evidence at inquiries would generate greater participation in the planning process, which is what the Government is seeking to achieve.

Without professional help for communities there is no level playing field. Those who can afford to pay for professional services will always have a better chance of having their voices heard while those who cannot pay will give up trying. This is simply not democracy.

Aileen Jackson  
On behalf of Scotland Against Spin