

Citizen Participation and Public Petitions Committee
Wednesday 1 May 2024
7th Meeting, 2024 (Session 6)

PE2075: Prioritise local participation in planning decisions

Introduction

Petitioner Stewart Noble on behalf of Helensburgh Community Council

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to prioritise local participation in planning decisions affecting their area by:

- providing a clear and unambiguous definition of the word "local" insofar as it applies to planning legislation
- giving decision-making powers to community councils for planning applications in their local areas
- ensuring that the way in which decisions on planning applications are taken is compatible with the provisions and ethos of the Community Empowerment Act 2015.

Webpage <https://petitions.parliament.scot/petitions/PE2075>

1. This is a new petition that was lodged on 20 December 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 199 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received written submissions from the Scottish Government and the Petitioner, which are included at **Annexe C** of this paper.

Action

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

Clerks to the Committee
April 2024

Annexe A: Summary of petition

PE2075: Prioritise local participation in planning decisions

Petitioner

Stewart Noble on behalf of Helensburgh Community Council

Date Lodged

20 December 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to prioritise local participation in planning decisions affecting their area by:

- providing a clear and unambiguous definition of the word "local" insofar as it applies to planning legislation
- giving decision-making powers to community councils for planning applications in their local areas
- ensuring that the way in which decisions on planning applications are taken is compatible with the provisions and ethos of the Community Empowerment Act 2015.

Previous action

In 2018, we wrote to Argyll & Bute Council requesting a review of its Planning Committee, but no action resulted.

In 2021, we submitted a Community Participation Request to Argyll & Bute Council. This led to a meeting and exchange of emails with the Council's chief executive and an executive director, however, no change resulted.

In 2022 we wrote to and received an email of support from Jackie Baillie MSP.

Background information

Due to Argyll & Bute being a large and sparsely populated area, the Council has 4 Area Committees for localised decision-making, however, the Planning Committee has councillors from all 4 of these areas.

In recent years, 3 controversial Helensburgh planning applications have been decided by the Planning Committee. All 3 were opposed by Helensburgh Community Council and by the majority of Helensburgh and Lomond Area councillors serving on the Planning Committee. Nevertheless, they were passed by a majority of councillors from other areas, none of whom could be considered truly local.

CPPP/S6/24/7/10

In our discussions with the chief executive and executive director of the Council, our proposals were dismissed because of the "quasi-judicial" nature of the planning process.

Helensburgh Community Council feels that our role as a statutory consultee has in practice been a statutory right to be ignored – contrary to the Community Empowerment Act. Hence the need for this petition.

Annexe B: SPICe briefing on petition PE2075



Background

The role of planning authorities and community councils in the development management system, and the relationship between these organisations within that system, are very briefly described below.

The development of land normally requires permission from a planning authority, either the local or national park authority. This power to grant planning permission is conferred by statute upon a planning authority and cannot be delegated or transferred to any other person or body. However, a planning authority can delegate this power to a sub-committee of Councillors or planning officers.

Some developments, for example minor changes to existing properties, are classed as “permitted development” and do not need permission from the planning authority.

All proposed developments fall within one of the three categories of the hierarchy of developments, which can be described as follows:

1. **National developments:** Developments designated as of national significance in [National Planning Framework 4](#).
2. **Major developments:** Nine classes of large-scale development are defined as major developments in The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009
3. **Local Developments:** Any development which is not a national or major development is automatically categorised as a local development.

Decisions on national developments are usually made by Councillors of the relevant planning authority, although proposed developments of such national significance may be “[called-in](#)” by Scottish Ministers for their own decision. Decisions on major developments will normally be made by Councillors while local developments are likely to be decided by planning officers, under a ‘scheme of delegation’ which devolves decision making powers for smaller scale developments from Councillors to planning officers.

Planning authorities are required to determine planning applications in accordance with the development plan (made up of the relevant local development plan and National Planning Framework 4) unless material considerations indicate otherwise. Material considerations can include other national or local policies, site specific factors unique to the development, and letters of objection and support for the proposals, including the views expressed by community councils.

Planning authorities are required to provide community councils with a weekly list of all planning applications for developments within their area. Community councils may then request formal consultation on particular applications. Even if a community council does not make such a request, a planning authority must consult them on proposed developments that are likely to affect the amenity of their area.

The Scottish Government's [Planning Advice Note 3/201: Community Engagement](#) highlights a more proactive approach to development management taken by some community councils, stating that "Many Community Councils take a proactive role in planning matters to ensure that the community they represent is consulted on issues that could have an impact on the area and that their views are communicated to the planning authority."

Government Action

While not directly addressing the issues raised in this petition, since 2016 the Scottish Government has been consulting on, developing and implementing a significant [modernisation of the Scottish planning system](#). One of the key topics pursued through this modernisation is [community engagement](#), including the formal incorporation of community-developed local place plans into the Scottish planning system.

Scottish Parliament Action

To date, the Scottish Parliament has not directly considered the issues raised in this petition. However, the Parliament scrutinised the proposals in the [Planning \(Scotland\) Bill](#) during 2018 and 2019, which provides the legislative change required to support the Scottish Government's modernisation programme. The Parliament has also [scrutinised and approved](#) National Planning Framework 4.

Alan Rehfishch
Senior Researcher
9 January 2024

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C: Written submissions

Scottish Government submission of 31 January 2024

PE2075/A: Prioritise local participation in planning decisions

Thank you for your e-mail of 20 December 2023, on behalf of the Citizen Participation and Public Petitions Committee, seeking the Scottish Government's views on Petition PE2075 which calls on the Scottish Government to prioritise local participation in planning decisions affecting their area by:

- providing a clear and unambiguous definition of the word 'local' insofar as it applies to planning legislation;
- giving decision-making powers to community councils for planning applications in their local areas; and
- ensuring the way in which decisions on planning applications are taken is compatible with the provisions and ethos of the Community Empowerment Act 2015.

The Planning (Scotland) Act 1997, as amended, sets a clear agenda to enhance opportunities for engagement within the planning system, facilitating greater empowerment of communities and putting their voices at the heart of the system.

The planning system currently provides extensive opportunities for community engagement in the planning process. At the earliest stages, this is through engagement in the preparation of the National Planning Framework (NPF) and in the local development plan (LDP) process. Together, the NPF and LDP make up the development plan for an area, and set the framework for development in their area. There is also the opportunity to comment on applications for planning permission for development which may affect them.

It is vital that communities engage with the preparation of local development plans in their area. In 2023 we published '[Local Development Planning Guidance](#)' which includes information on opportunities for engagement. We are preparing, and have consulted on, '[Effective Community Engagement in Local Development Planning Guidance](#)'. The consultation draft considers the levels of engagement that may be applied at different stages of preparing a local development plan to assist planning authorities, communities and those who wish to engage with the planning system.

National Planning Framework 4 (February 2023) is a spatial strategy for Scotland's long-term development. One of its cross-cutting outcomes is for a 'fair and inclusive planning system' where everyone involved in planning acts to ensure a wide range of people are involved in shaping their places.

Recent amendments to the 1997 Act through the Planning (Scotland) Act 2019 seek to increase the opportunities for individuals and community bodies to engage in the planning process, including by preparing local place plans for their own areas. In the preparation of LDP, planning authorities are to take into account any registered local place plan for the plan area.

The petitioner is calling firstly for a clear and unambiguous definition of the word 'local' insofar as it applies to planning legislation. It is unclear what purpose a definition of 'local' would serve or what aspects of planning legislation such a definition would apply to.

Given the context of the petition, it may be the case the applicant is referring to local decision making. It is a long-standing tenet of the planning system that planning applications are considered, in the first instance, at the most local administrative level, i.e. the local planning authority. The Town and Country Planning (Scotland) Act 1997 sets out that this is normally the relevant local authority and the planning authority's area of responsibility is the same as the area for which the local authority has administrative control. The two National Park Authorities also act as planning authorities for certain purposes of the 1997 Act; these responsibilities and associated powers for determining applications are explained in the National Parks' respective Charters.

The second strand of the petition calls for community councils to be given decision making powers for planning applications in their area. The current status of community councils in the planning system is that, where a community council exists, the local planning authority is required to notify them on a weekly basis of any applications received for proposed development in the community council's area. The community council can respond specifying any, or all, of the applications on the list on which it must be consulted by the planning authority. Even where they do not respond, a planning authority is required to consult a community council on applications for development which is likely to affect the amenity in the area of the community council.

The planning system is 'plan-led', meaning decisions on individual planning applications are based on the development plan, mentioned above, and relevant material considerations.

Under planning legislation, applications for planning permission must be determined in accordance with the development plan for the area (comprising the National Planning Framework and Local Development Plan) unless material considerations indicate otherwise. This is the case regardless of who the decision-taker is: whether it be a person appointed to do so on behalf of the planning authority, the planning authority, members of a Local Review Body, a Reporter appointed by the Scottish Ministers or the Scottish Ministers themselves. This would also be the case if community councils were empowered to determine planning applications. More information on material considerations can be found in Annex A of [Planning circular 3/2022: development management procedures - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/planning-circular-3-2022/development-management-procedures-2022/pages/11-to-14.aspx).

Extending powers to determine planning applications to community councils would require comprehensive revisions to the current legislation - the Scottish Government does not currently have any plans to consider such a fundamental change to the planning system.

If such a change were to be taken forward, a wide range of issues would need to be considered in detail and subject to consultation, including:

- The route for parties to seek to appeal or review decisions made by a community council;
- How applications for development would be handled where the application is located only partially within a community council's area of responsibility;
- Where potential impacts extended beyond the boundary of the community council into areas where there was no elected community council;
- The operational capacity and resources of community councils, which is understood to vary significantly between areas;
- How community councils would be supported in this role; and
- How accountability for decisions would be maintained. Currently any person who considers that a planning authority has not acted in accordance with its statutory duties in reaching a decision on any application can seek to challenge the authority's handling of the application through judicial review.

The most recent review of the planning system as a whole was conducted by an independent panel, whose findings were published in a 2016 report '[Empowering planning to deliver great places](#)'. Wide engagement and collaboration following the review led to the [Planning \(Scotland\) Act 2019](#), passed by the Scottish Parliament in June 2019. Our work is continuing to implement the Act.

The report explored inclusion and empowerment as one of its six key themes. The independent panel's findings included: 'Given the limited resources of community councils, we believe frontloaded engagement could usefully be prioritised over the current resource-intensive involvement in development management decisions.'

The report recommended communities be empowered to prepare local place plans and this was included in the Planning (Scotland) Act 2019. Local place plans are community-led plans setting out proposals for the development and use of land, they set out a community's aspirations for its future development. The 2019 Act provides for community bodies to prepare local place plans, and community councils established in accordance with Part 4 of the Local Government (Scotland) Act 1973 are recognised as community bodies.

The third strand of the petition refers to the Community Empowerment (Scotland) Act 2015 and calls on the Scottish Parliament to ensure that the way in which decisions on planning applications are taken is compatible with the provisions and ethos of the Act.

While the Community Empowerment (Scotland) Act 2015 makes reference to community councils being engaged in decisions on the matters covered by the Act, it reinforces the current statutory position of community councils as consultees on matters which affect their area of representation – rather than statutory decision-takers. The Act makes no specific reference to planning matters under the 1997 Act, but we would consider that, as a consequence of giving decision making powers on planning applications, it would be necessary to remove their consultee role. Our view

is that this could in fact reduce opportunity for community participation in the planning system contrary to the spirit, aims and intentions of the 2015 Act.

Planning, Architecture and Renewals Division

Petitioner submission of 15 February 2024

PE2075/B: Prioritise local participation in planning decisions

Helensburgh Community Council reply to the [Scottish Government submission of 31st January](#).

Actual decision-taking versus box-ticking exercises.

The introductory paragraphs of the Scottish Government submission talk about such concepts as ‘engagement’, ‘greater empowerment’, ‘opportunity to comment’, ‘taking local place plans into account’, and ‘participation’ – but none of this means actual decision-taking by Community Councils. There is a danger that too often lip service is paid to these concepts, and they become just part of a box-ticking exercise.

The Importance of Defining "Local".

In terms of mileage and/or travel time, we in Helensburgh are (for example) more local to Edinburgh than we are to much of Argyll & Bute. Does this mean that we in Helensburgh could or should be involved in planning decisions for Edinburgh? Of course not! But why should a councillor from, say, Campbeltown (much further away from us than Edinburgh) be deemed to be “local” when it comes to planning decisions for Helensburgh?

Furthermore, might the outcomes of the 3 controversial planning applications (see below) have been different if only truly "local" people had been decision-makers?

The Scottish Government submission asserts that “it is a long-standing tenet of the planning system that planning applications are considered, in the first instance, at the most local administrative level, i.e. the local planning authority.” The problems that we in Helensburgh have been experiencing would indicate that the time to review and alter this “long-standing tent” has most definitely arrived.

The Three controversial planning applications.

Our petition refers to “three controversial Helensburgh planning applications [which] have been decided by the Planning Committee [of Argyll & Bute Council]. All 3 were opposed by Helensburgh Community Council and by the majority of Helensburgh and Lomond Area councillors serving on the Planning Committee. Nevertheless, they were passed by a majority of councillors from other areas, none of whom could be considered truly local.”

Helensburgh Community Council's opposition to the 3 controversial planning applications was in every case based on our understanding of the local development plan; nevertheless, we were overruled. We did not object to any of these planning applications per se, but the legislation does not allow us to give qualified support – hence our only option was to oppose them. Here are the details:

1. Housing on the former Ardencaple Garden Centre site. Community Council opposition was because the number of houses in the application was well in excess of the number specified in the Local Development Plan.
2. Care home in the former works depot of Hermitage Park. Community Council opposition was on account of its size, and in particular because of (i) its proximity to Grade A listed structures (the War Memorial, etc), (ii) its proximity to sheltered housing, and (iii) the volume of traffic which it might generate.
3. Leisure Centre beside the pier. Community Council opposition was because it was to be built on an area of infilled land beside the sea which was prone to regular flooding. We were concerned about the cost of raising the land sufficiently to prevent flooding, and would have preferred to have seen the leisure centre sited further from the sea.

Decision-taking by Area Committees.

In the case of Argyll & Bute Council, we suggested to senior council officials that the much more local Area Committees would be more appropriate for considering planning applications than a committee drawn from the whole of the Council area. We were however told by them that this would mean “turning back the clock”. But what is wrong with such a move if it means that better decisions are taken?

How Community Councils might be included in planning decisions.

It is not being proposed by Helensburgh Community Council that Community Councils be the ultimate and sole arbiters of planning applications; rather that the option should exist for a number of community councillors with full voting powers to become members of a local authority planning committee for planning applications within their Community Council area.

The statutory right to be ignored.

If Community Councils were to become part of the actual decision-taking process (as suggested above), and if this were to lead to the removal of their role as statutory consultees, our view (in contrast to the view of the Scottish Government in their submission) is that it would not "in fact reduce [the] opportunity for community participation", simply because as matters currently stand Community Council views may too often be ignored.