

Citizen Participation and Public Petitions Committee  
Wednesday 13 November 2024  
17th Meeting, 2024 (Session 6)

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

### Introduction

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

**Webpage** <https://petitions.parliament.scot/petitions/PE1864>

1. [The Committee last considered this petition at its meeting on 21 February 2024.](#) At that meeting, the Committee agreed to write to the Scottish Government.
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 written submissions 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 gave its initial position on this petition on 1 June 2021.](#)
7. Every petition collects signatures while it remains under consideration. At the time of writing, 2,214 signatures have been received on this petition.
8. Members may wish to note the [UK Government published a policy statement on onshore wind in July 2024](#), which set out its intention to revise planning

policy to place onshore wind on the same footing as other energy development in the National Planning Policy Framework.

9. Members may also wish to note that [the UK Government is currently seeking views on proposals for reforming the consenting processes in Scotland under the Electricity Act 1989](#). The consultation sets out a package of proposals for reform which span the consenting journey, and will remain open for responses until 29 November 2024.

## **Action**

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

**Clerks to the Committee  
November 2024**

## **Annexe A: Summary of petition**

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

#### **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 21 February 2024**

**The Convener:** Our next 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 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 as far back as 31 May 2023, when we agreed to write to the Minister for Local Government Empowerment and Planning to seek clarification on what the Scottish Government means by ensuring communities can have a “meaningful say” on planning applications.

The minister’s response refers to the definition of community set out in the national planning framework, and notes that, at the time of writing, a consultation was under way on

“effective community engagement in local development planning guidance.”

Members may be aware that the consultation closed on 13 September 2023.

The minister’s response goes on to highlight that the Government’s planning and environmental appeals division has agreed to consider a refresh of reporter training on handling inquiries to ensure that members of the public are able to give their views and to have those properly heard in a safe environment at inquiries.

We have received five submissions subsequently from the petitioner, the first of which comments on the response that we received from the minister and suggests that clearer definitions are required to make an effective assessment of the effectiveness of planning guidance. The petitioner has also restated their proposals for enabling communities to access professional help when engaging with the planning process, which they suggest could be financed through an increase in planning application fees.

The subsequent submissions from the petitioner draw our attention to the type of experience that community groups face when confronting or being confronted by a developer’s legal team during inquiries.

The petitioner highlights comments from the United Kingdom Government that

“decisions on onshore wind are best made by local representatives who know their areas.”

They also refer to the publication of a deal between the onshore wind industry and the Scottish Government with the industry and highlight a comment that was made in relation to that:

“A well-resourced and efficient planning system is needed ... to enable projects to go ahead where they have local support.”

We have received a range of submissions from the petitioner and a response from the Government. The consultation that it held has subsequently been published. Do members have any comments or suggestions as to how we might proceed?

**David Torrance:** I wonder whether the committee would consider writing to the Scottish Government once again to ask when it expects to publish the outcomes of the consultation on effective community engagement and local development planning guidance; to seek an update on the work to explore the scope for planning authorities to determine more applications for onshore windfarm developments, including the impact that onshore wind sector deals for Scotland has had on that work; and to highlight the petitioner’s continuing concerns about the lack of professional support that is available to assist members of the public contributing to public inquiries.

**Fergus Ewing:** I support Mr Torrance’s recommendation. I will add something that is hot off the press and has arisen since the papers were provided to us for this meeting. Last Friday, in response to an inspired question, the Scottish Government noted that a new depopulation action plan has been published, which contains an apparent new approach to be taken to areas with chronic depopulation, notably parts of the remote Highlands—although one is not allowed to call remote areas remote any longer, apparently—and Islands. The plan says that the approach will be

“local by default, national by agreement”,

which suggests to me that local decisions will prevail, unless I am missing something.

I raise that because I wonder whether the clerks, in drafting our letter, could draw the attention of the minister to the plan—a different minister is responsible for the plan—and ask if the new approach will influence the response regarding community engagement. On the face of it, at least for those areas suffering depopulation, which are the areas where many of the windfarms are proposed, that seems to me to be a new factor that the Scottish Government has brought in as, apparently, a new approach and a new policy.

I am sorry to go on at some length.

**The Convener:** That is a fair point and I am happy that we seek to accommodate that. That was not the suggestion that I had expected from Mr Torrance.

**David Torrance:** No, it was not. I was very tempted, convener. [Laughter.]

**The Convener:** Are we content, colleagues, to support Mr Torrance and Mr Ewing’s suggestions as to how we might proceed?

**Members *indicated agreement.***

## Annexe C: Written submissions

### Minister for Local Government Empowerment and Planning written submission, 15 March 2024

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

Thank you for your letter of 23 February 2024 about Public Petition PE1864: Increase the ability of communities to influence planning decisions for onshore wind farms. You referred to the Citizen Participation and Public Petitions Committee meeting of 21 February 2024 and raise three points for response:

- To ask when it expects to publish the outcome of the consultation on “effective community engagement in local development planning guidance”
- To seek an update on work to explore the scope for planning authorities to determine more applications for onshore windfarm developments, including the impact the Onshore Wind Sector Deal for Scotland has had on this work
- The Committee also noted the recent publication of the [Addressing Depopulation Action Plan](#) and its emphasis on a “local by default, national by agreement” approach. The Committee would welcome your views on how this approach will influence the Scottish Government’s approach to community engagement on planning decisions.

The Scottish Government consulted on draft guidance on “[Effective community engagement in local development planning](#)” between 24 May and 13 September 2023. Work is continuing on the final approach to the guidance, anticipated to be published later this year.

The [Onshore Wind Sector Deal](#), agreed in September 2023, includes a commitment to reducing the time it takes to determine Section 36 applications for onshore wind projects by increasing skills and resources and by streamlining approaches to scoping Environmental Impact Assessment Reports (EIARs).

On 28 February 2024, the Scottish Government published [Investing in Planning – a consultation on resourcing Scotland’s planning system](#) which responds to current resourcing challenges in planning. As well as considering the potential to do things differently, the consultation explores options for leveraging in additional financial resources to better support the planning system and move closer to full cost recovery.

As part of the Scottish Government’s commitment to explore the scope for planning authorities to determine more applications for onshore windfarm developments, this consultation invites stakeholder views on whether the current threshold of 50 megawatts (MW) should be raised. This threshold determines the requirement for consent from the Scottish Ministers for the construction, extension or operation of an electricity generating station. A change to the threshold could allow planning

authorities to determine more applications for electricity generating stations, such as on-shore windfarms. In addition, the consultation asks whether different thresholds should apply to different types of electricity generating stations, and what the resource implications from this change would be. Views are invited on proposals by 31 May 2024, and thereafter responses will be considered further.

Alongside this, following a report from the Electricity Networks Commissioner, the UK Government has agreed with the Scottish Government that the Scottish energy consenting system needs to be reformed, and the governments are working on a range of proposals for consultation next year. In scope of consideration is the need for formal, pre-application requirements for energy consents, which may include increased early participation and engagement for communities in energy infrastructure proposals.

I trust this information is helpful.

Yours sincerely,

**JOE FITZPATRICK MSP**

### **Petitioner written submission, 6 April 2024**

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

Scotland Against Spin (SAS) is grateful to the Minister for his response. We are aware of the Investing in Planning Consultation. We will make a submission in due course, lobbying that local support is a key material consideration in the decision-making process before an application can be consented. This must be introduced at the same time as raising the 50MW threshold to allow determination by local authorities. This is what the Petition requests and it is what [the Petitions Committee recommended in their letter to the Minister dated 17 March 2023](#).

This Petition has now been live for three years. We understand the need to consult stakeholders, but it appears to SAS and their supporters that it is being actively stalled, particularly in relation to our request for public funding. As previously explained, this would ensure all individuals and communities wishing to take part in a Public Inquiry receive professional support to help them participate equally with the appellant's team of lawyers and expert witnesses. The Minister has not responded to this issue which, we are informed by the clerks, was included in the Committee's letter to him, as [agreed at the meeting on 21 February 2024](#). This omission will result in yet further delay.

It appears from the [Minister's submission of 27 June 2023](#) that he is relying on the good will of the Faculty of Advocates Free Legal Services Unit to provide pro bono support for third parties in order to avoid the use of public funds. Although the offer from Planning Aid Scotland to refer individuals and community groups to the Faculty is appreciated, [as already explained in our submission of 9 July 2023 under the heading Advice and Representation](#), pro bono advice has limitations and many worthy cases are likely to be filtered out. A much better solution would be to fund a panel of contributing lawyers from whom a selection could be made if the person or

community meets certain criteria. Four cost effective solutions were suggested in that submission.

A recent survey of our members suggests they would be happy to take part in an Inquiry if they had professional help to do so. Having the support of an Advocate is of utmost importance, not just to shield them from aggressive cross examination, but to guide them through what is an alien frightening procedure and provide help with cross examination and closing submissions. Having to face an entire team of the appellant's experts is a daunting prospect for anyone and more so for members of the public with disabilities and communication problems. ('Scotland Against Spin' has drawn the DPEA's attention to a video of a recent Inquiry which demonstrates this particular situation). Most members of the public have no experience of public speaking or cross examination. Even without a disability, third parties find it difficult to express themselves and struggle under pressure to deliver valid points and concerns. An advocate's role is to facilitate the process such that a Reporter can make sound decisions based on all relevant information, including that from third parties. It is an unlevel playing field if one side has that privilege and the other side does not.

The Scottish Government is meant to be committed to equality in all areas; their vision being that individuals are respected, accepted, and valued by their communities, and have confidence in services to treat them fairly. At public examinations, well-funded applicants' teams may attempt to intimidate the unrepresented public. The odds can appear one sided and intimidating. The principle of 'Equality of Arms' is well understood in law. A key component of Article 6 of the European Convention on Human Rights means that tribunals or decision-makers must ensure that there is 'equality of arms' on both sides – meaning that a visibly fair balance must be struck between the opportunities given to both parties. The DPEA has suggested that if a member of the public appears to the Reporter to be an unqualified, but informed expert, then free rein should be given for aggressive cross examination. As assessment of what constitutes an unqualified informed expert member of the public appears subjective, that is wholly unacceptable and unfair.

We can never compete on equal terms with the teams of lawyers and experts produced by the applicant to provide interpretation of their environmental assessments which present their applications in the most favourable light, but providing support and ensuring some degree of equality in a supposed fact-finding public inquiry, would be a small step in the right direction. The Scottish Government cannot proclaim to be committed to equality until that becomes a reality.

Aileen Jackson  
On behalf of SAS

## **Petitioner written submission, 4 November 2024**

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

We regret to inform the Committee that very little progress has been made on this Petition since [our last submission of 6 April 2024](#) in response to [the Minister's reply](#)

[to the Committee's letter of 23 February 2024](#). We would like to update the committee and draw their attention to a number of issues.

The outcome of the consultation on 'Effective community engagement in local development planning guidance' has not yet been published. It is over a year since this consultation was closed.

The Minister did not reply to the Committee's query in relation to 'The Addressing Depopulation Action Plan' and how it would influence the Scottish Government's approach to community engagement on planning decisions.

[The Investing in Planning, Summary of responses was published in August 2024](#).

Question 28, which related to our petition – *"Should the current threshold of 50MW for applications for electricity generation which are to be determined by authorities be altered?"* – was supported by all respondent categories except Development, Property & Land Management Sector & Agents. The majority of respondents from the Planning Authorities, Communities and Individuals, and Third Sector groups were in favour of the threshold being increased. Although decisions have been made on other aspects of the consultation, to date, no decision has been forthcoming on altering the 50MW threshold.

The Minister did not respond to concerns raised regarding the lack of professional support available to assist members of the public contributing to public inquiries. We were informed by the clerks that this issue was included in the Committee's letter to him, as agreed at the meeting on 21 February 2024.

In an effort to advance this important issue, we wrote directly to the Minister. We received a reply from a Senior Planner which stated:

"In regards to the provision of funding for individuals and communities wishing to take part in a Public Inquiry, it would not be appropriate for the Scottish Government to fund legal representation at appeals and inquiries. It is important that objectors can represent themselves at inquiry sessions, and there is an option for them to have a representative to assist. There is however no requirement for parties to be professionally represented at an inquiry session and the Reporter will ensure any unrepresented party is not unfairly disadvantaged. Finally, you may wish to note other sources of assistance available beyond the Faculty of Advocates Free Legal Services Unit. For example, the Environmental Rights Centre for Scotland exists to assist the public to exercise their rights in environmental law."

No explanation was offered as to why it would not be appropriate for the Scottish Government to fund legal representation. Legal Aid is government funded after all and is available for environmental cases. It seems to us that the Scottish Government do not wish members of the public to be able to compete on equal terms with appellants at Public Inquiries.

We do not understand what is meant by "there is an option for them to have a representative to assist". Any representative would need to be more knowledgeable than the people he/she is representing which implies a legal or planning professional

with knowledge of planning procedure, both of which are extremely expensive. Hence the reason for this petition.

We contacted the Environmental Rights Centre for Scotland who confirmed that: “we **don't** provide representation in planning inquiries. This is mainly because we have limited resources and it takes a lot of time to prepare for and attend (often very long) inquiries”.

The length of time taken to prepare for and attend inquiries is another reason why it is difficult to secure pro bono representation from the Faculty of Advocates. [It states on their website that “any single piece of work for which assistance is requested will not take more than 3 days; The Unit has limited resources, and can only help in some cases.”](#)

Many Inquiries can last for a week and sometimes longer. Many members of the public may have to take unpaid time from work not knowing when and for how long they will be called to give evidence. That does not include the considerable assistance which is required leading up to the Inquiry and the time needed to write up closing submission thereafter.

There is in effect no assistance available for individuals and community groups, including community councils unless they have the ability to raise substantial funds. Some larger groups are well able to do this on one occasion, but it becomes increasingly difficult when faced with multiple inquiries. Many individuals and small groups have to make the decision to not take part.

We recently asked DPEA to review a number of clips from recordings of Inquiries which we believe show unacceptable behaviour. These recordings were removed from the DPEA website due to their new privacy policy however we lobbied to have them reinstated, not just because they include evidence of the difficulties encountered by some participants taking part in Inquiries but also because they are helpful for anyone participating for the first time to enable them to understand the process. We realise that viewing these videos, showing aggressive behaviour by applicant's legal teams, could deter some prospective participants but we believe it is better to be forewarned. Very rarely do members of the public have experience of speaking in public and being subject to hostile cross examination.

DPEA has committed to ‘make people feel comfortable taking part in an inquiry’ and ‘to let the Reporter know if they feel they are being bullied’. We don't believe that is possible to achieve without professional support, particularly for people with hidden disabilities, for example those with autism who may even be unaware that they are being verbally abused. It is possible they would not have the confidence to speak out and admit they were feeling uncomfortable. Likewise, dyslexic individuals may struggle to write the required inquiry documents. The criminal justice system would not allow vulnerable persons or any witness to be questioned without a responsible person or advocate present and yet this practice is regarded as acceptable in Scottish Planning Inquiries. It is not acceptable and has a profound effect on individuals. Not everyone wishes to declare a disability to DPEA; some may not even have a formal diagnosis.

For participants who are lucky enough to have been able to raise funds for professional help, it is not uncommon to hear their representative advise them to refrain from answering a question. Without professional advice any inquiry participant would be disadvantaged. This is an obvious breach of Article 6 of the European Convention on Human Rights.

The number of applications for all renewable energy developments and resulting infrastructure continues to increase. All should now be covered by the ask of this petition.