

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 31 May 2000
(Morning)

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TRANSPORT AND THE ENVIRONMENT COMMITTEE 14th Meeting 2000, Session 1

CONVENER

*Mr Andy Kerr (East Kilbride) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) LD)

COMMITTEE MEMBERS

Helen Eadie (Dunfermline East) (Lab)

*Linda Fabiani (Central Scotland) (SNP)

*Robin Harper (Lothians) (Green)

*Janis Hughes (Glasgow Rutherglen) (Lab)

*Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)

*Mr Kenny MacAskill (Lothians) (SNP)

Des McNulty (Clydebank and Milngavie) (Lab)

*Tavish Scott (Shetland) (LD)

*Mr Murray Tosh (South of Scotland) (Con)

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Alastair Macfie

LOCATION

The Festival Theatre

Scottish Parliament

Transport and the Environment Committee

Wednesday 31 May 2000

(Morning)

[THE CONVENER opened the meeting at 10:02]

The Convener (Mr Andy Kerr): I welcome everybody to the 14th meeting this year of the Transport and the Environment Committee. I have not received any apologies, so I suspect that colleagues who are absent will join us later.

Petitions

The Convener: The first item is petitions. I refer members to petition PE17 from Western Isles Council and to petition PE27 from Skye and Kyle Against Tolls. We dealt with them together previously. I suggest that we do the same at this meeting. They are accompanied by a covering note.

We previously considered a response from the Executive on the issues that are raised by the petitioners. We were broadly content with that response, which is attached with the documentation, but we requested further clarification on livestock exemptions. A further response from the Executive has now arrived and it, too, is accompanied by a covering note. At this stage, I invite any comments from the committee.

Mr Kenny MacAskill (Lothians) (SNP): I am not sure how the proposed changes to CalMac may ultimately affect matters. In both this matter and the Isle of Cumbrae matter, we are facing a state of flux if CalMac is to be split up and the boats acquired. A lot of what has been predicated by the Executive is based on the existing CalMac structure.

I do not know whether we want to keep this petition alive. I have some sympathy with the petitioners on date stamping, which appears rather harsh. There must be a system whereby someone's postcode, or another indication that they live locally, should allow them to buy a ticket. Their not using it within an allotted time should not mean that they lose it. I would be inclined to ask the Executive what effect the changes in CalMac may have and whether any consideration will be given, in dealing with CalMac, to how those changes might affect the Skye bridge.

Tavish Scott (Shetland) (LD): I support Kenny's points. I live on an island where a date-

stamp system is operated and I am persuaded by the case that he makes. The points about the local haulage industry in the e-mail that you copied to us this morning were important. There would need to be some economic analysis of what is happening in that part of Scotland. The committee might write to Highlands and Islands Enterprise and to Highland Council asking whether any work has been done in that regard.

Mr MacAskill: We expect to receive a transport bill later this week that might mention a Highland transport authority. We should consider what the bill suggests. It has been suggested that such a transport authority might provide a way of avoiding European directives on competition.

Mr Murray Tosh (South of Scotland) (Con): I was not entirely happy with the Executive's response. It was not clear to me that, while there is no haulage concession now, there used to be one. The e-mail that we received this morning made that clear. I felt that the Executive's letter skirted around that issue a little. We should relay back to the petitioners the information that we have got so far and invite them to respond on points of detail. The issue that they have brought up—date stamping—was not addressed in the Executive letter because it had not been raised before. It might be valid to support the petitioners' stance on date stamping, but I would like to know what the implications would be.

It would be useful to know whether the concessions for hauliers in island communities represent a commercial decision by CalMac or are built into whatever agreement exists between the Executive and CalMac. Would those concessions be translated into the tender specification? If it is not currently protected, we might suggest that it is when the specification for competitive tendering is drawn up.

The Convener: We should make some sort of interim response to the petitioners. I am more than happy to pick up on the issues that have been raised by committee members. The CalMac situation is fluid, as is the situation as regards the transport bill.

If members agree, we will make an interim response based on the response from the Executive, indicate the discussions that the committee has had and pursue the matters that have been raised previously and in the e-mail. Are we agreed?

Members indicated agreement.

The Convener: Petition 22 is from the Island of Cumbrae Tourist Association and concerns the fare structure of Caledonian MacBrayne's ferry service to the island of Cumbrae. As you will recall, we wrote to the Executive seeking information on the revenue receipts for the Largs-

Cumrae ferry service but the Executive's response, dated 18 January, did not provide that information fully. We wrote again and received a response, which members have before them.

Mr Tosh: When we asked about income information, I thought that we would also ask for information on costs. However, that has become difficult because of competitive tendering. The costs will be commercially sensitive. We should tell the petitioners about that. They can ask us to probe for more information, as long as it is not commercially sensitive.

Tavish Scott: The situation in the northern isles is comparable because of competitive tendering. No Government has given information on costs or fare structures to communities on those islands. Anyone who has studied the situation will share the concerns that are expressed in this petition.

Kenny MacAskill's point about the transport bill and the Highland transport authority is important. I do not think that we are in a position to help with this petition, but we should have a considerable input into the forthcoming bill, particularly as regards the research project that will be undertaken. We must ask that issues such as the one raised in the petition are analysed. The accounting methods must end up as open as possible.

Mr MacAskill: I agree with Tavish. We need to keep the issue alive pending an investigation into what the boundaries of a Highland transport authority would be and what would happen to CalMac.

I recently attended a meeting on the island and I was amazed that I had to pay £3.05 as a foot passenger. I have a lot of sympathy for Dr Bryson. I do not think that CalMac is being particularly clear here. Although I am generally a supporter of CalMac and the efforts it makes, I have some sympathy for the islanders who appear to be the tail-end Charlie of the CalMac service. There is an argument that the island of Cumrae might be better served by Strathclyde Passenger Transport than by CalMac. I would like the Executive to tell us where it sees the island of Cumrae service fitting in with either a Highland transport authority—it clearly does not—or a CalMac operation.

As I have said, I have a lot of sympathy for Dr Bryson. In Japan, ferries are run on a system where the tariff relates to the railway costs. If we took that approach in Scotland, the add-on for returning to Millport, having travelled from Glasgow to Largs, would be significantly less than £3.05.

Linda Fabiani (Central Scotland) (SNP): I agree with much of what has been said. The situation in Cumrae is different, because it is

such a small crossing. There is much merit in the idea of considering bringing it into Strathclyde Passenger Transport. SPT already operates a ferry, so it would not be a brand new thing.

The Convener: We seem to be moving beyond the content of the petition. I suggest that we make a fairly detailed interim response and say that we are going to keep our eye on several issues arising out of our discussion. Are we agreed?

Members indicated agreement.

The Convener: The next petition is PE132 from D W R Whittet, who calls on the Scottish Parliament to introduce legislation to streamline the planning system and to change other aspects of the planning system and associated procedures. It is accompanied by a covering note that contains extracts of the *Official Report* of the Public Petitions Committee meeting that the petitioner addressed. The petition was passed to us with the suggestion that we should consult the Local Government Committee on those issues that relate to the operations of the council.

Members considered PE132 last week, when it was noted that one of the attached papers was incomplete. The clerks have now verified that the petition was submitted in that form, as the petitioner did not have a complete copy of the original document. We are looking into that. Members may recall that the review of national planning policy guideline 1 might be an appropriate opportunity to consider the concerns raised by the petitioner. Members might find that it is possible to take that decision without a copy of the complete document. The clerks will seek to obtain the missing elements of the submission before it is brought back to us.

We all have experience of communities that have come up against the planning system. Recently, I met local constituents who live adjacent to a landfill site that is being developed. They felt very alienated from the process, even though the site went through a full public inquiry. The residents still felt that lessons could be learned. The telecommunications inquiry gave us a strong sense of people feeling alienated from local democracy and planning. We need to consider NPPG1 and how we can influence the process.

Nora Radcliffe (Gordon) (LD): I see from the letter on the timetable of NPPG1 that a draft guideline was going to the task group on 4 May and then on to ministers before being issued for comments. The group is meeting again in September to consider the comments that it has received. Can we push for copies of the report before the recess?

The Convener: That is a fair comment; we will do that.

10:15

Mr MacAskill: Friends of the Earth recently convened a meeting in Glasgow on third party rights in planning applications. We could ask it to give us its views on the general perspective. It was speaking to people from Denmark, where third party rights exist. The general consensus seemed to be that things were not unduly bureaucratic and cumbersome—the process did not grind to a halt.

We could ask Friends of the Earth whether it has any input to make and ask the Executive whether it is prepared to take on board the information that Friends of the Earth has distilled from that meeting. I am worried that the NPPGs are being dealt with by planners in isolation at Victoria Quay and that Friends of the Earth may be going in a different direction. We should see whether we can harmonise the situation.

My understanding is that Friends of the Earth deliberately decided not to come to a firm conclusion; it has tried to distil and germinate ideas. Having said that, it appears that consensus was appearing.

The Convener: That makes good sense. I am sure that the committee will pick up on those suggestions.

Linda Fabiani: Going back to the petition, I think that we should let the petitioner know that we will consider it. We should also submit it to the Local Government Committee as soon as possible so that its comments can inform our decision when we start to discuss it under NPPG1.

The Convener: That is a good idea.

Mr Tosh: I thought that the petition was quite well crafted. It obviously comes from a specific point that Mr Whittet has encountered in another case that he has given as an example of the flaws. He has tried to draw general policy points from that example. I thought that there were a couple of issues that we might want to pick up while waiting for NPPG1.

There is currently an NPPG1, which the new guidelines will overtake. One of the difficulties highlighted in the petition is the extent to which local authority procedures on receiving objections, hearing objectors at committees and convening local meetings close to the sites of the application and the homes of the objectors are all essentially voluntary practices. There might be justification for the new NPPG1 having more specific guidance about how the Scottish Executive expects local authorities to conduct those matters. That might be something worth flagging up with the Scottish Executive now, rather than reacting to NPPG1. We should ask whether the Executive has considered process in drawing up the new NPPG1.

Mr Whittet's point about the ombudsman was also interesting. He said that he has it on the highest authority that the ombudsman is not happy with his remit in relation to planning applications. Well, the highest authority is obviously the ombudsman himself. If the ombudsman has views on his scope, that is something we might encourage the Public Petitions Committee to consider. I do not think that that is a matter for us. It is not just a planning matter; the Public Petitions Committee might want to consider the power and remit of the ombudsman in relation to planning and other areas. That would give the Public Petitions Committee a wee investigation of its own to do.

The Convener: I would take pleasure in that. Are members agreed on how to progress the matter?

Members indicated agreement.

The Convener: We shall contact the Local Government Committee, inform the petitioner of the review of NPPG1, consult the Public Petitions Committee about the role of the ombudsman—

Mr Tosh: And raise with the Executive whether NPPG1 will in fact cover codes of guidance to local councils about planning matters.

The Convener: I could not have said it better myself.

We have received two new petitions: PE154 from Dr Joanne Beaumont on behalf of Hillhead Primary School board and school and PE156 from Mrs Jean Charsley on behalf of Hillhead Community Council. Both petitions address a planning decision made by Glasgow City Council in respect of 7 and 8 Albert Terrace, Glasgow G12. I suggest that we consider them together. Is that agreed?

Members indicated agreement.

The Convener: Members may wish to refer to the covering note, attached to which is an extract from the *Official Report* of the Public Petitions Committee at which the petitions were considered. The Public Petitions Committee has written to the Minister for Transport and the Environment for further information on the Executive's involvement in the case raised by the petitioners. The case was also the subject of an oral question answered by the minister on 6 April 2000. A copy of her response is also attached as an annexe to the covering note.

The Public Petitions Committee agreed to pass the petition to us for consideration of third party planning appeals. As we have just discussed, we have the opportunity to consider those issues relating to the planning system in the context of the Executive's forthcoming consultation on the revision of NPPG1.

Mr Tosh: At first sight, I saw these petitions as a bit of a challenge to the committee; we could become a sounding board for all the unpopular planning decisions in Scotland. However, some important points of principle arise from this case.

I suggest that in future, if we have a petition about a specific planning application, it would be helpful for members to have the committee report from the relevant council and a minute of the meeting so we know what the substance is from the council's point of view. That would save us considering the process with only the complainant's point of view and without having seen the papers from the council. I have always found that councils are quite happy to send out a copy of a committee report.

There is a lot in these petitions for us to raise with the Executive. The case centres on how the notice of intention to develop procedures are handled. The response that the petitioner received was that the complaint did not raise any issue of national importance. I may not be right, as I am a little rusty on these things, but I understood that the Scottish Office had a traditional right to call in a planning application if it felt that local authorities were not handling it properly. If objections had been made, it could call in the planning application if it was of national importance.

In the early 1990s, the review of procedures for notice of intention to develop was accompanied by all sorts of guidance founded on the argument that, in certain circumstances, specific planning applications in which local authorities had an interest should be run in front of the Scottish Executive to ensure that councils were handling them properly. By definition, it follows that such issues will rarely involve matters of national importance; they will be matters of local importance. The Scottish Office's—and now the Scottish Executive's—role was to hold the ring and satisfy itself that anything that a local authority did was not cheating the system.

I am not saying that Glasgow City Council cheated the system, because I do not know the score here, but the complainants are certainly alleging that, for a capital receipt, Glasgow City Council gave planning permission for land that it owned. Whether it owned it at the time is immaterial; if the developer owned it, he would presumably hold it subject to a condition depending on the change of use. What is alleged is that Glasgow City Council changed the rules to suit itself. If that happened—and it is not clear beyond reasonable doubt that that is what happened—that is something that the Scottish Executive should accept responsibility to check and clarify.

The petition raises important questions about how the Executive reviews all the notices that

councils throughout Scotland routinely send it. It may be that there are gaps in the procedure because, although it was conceived to examine local issues, the system is being interpreted to pick up only matters of national significance. If that is what is happening, the existing procedures are not working and we need to probe that with the Scottish Executive.

Tavish Scott: I think that Murray Tosh has hit the nail firmly on the head there. Are there any additional papers besides the two responses from Glasgow City Council that we have seen so far? As Murray suggested, getting hold of the committee reports that were sent to the planning authority at the time of the decision would be helpful in considering the matter. That is how we should proceed.

The wider problems for the Executive are important. Glasgow City Council is not the only council to make what the petitioners consider to be mistakes in planning applications. Having sat on a planning authority, I am surprised to see that there appears not to have been an appeal. The case was not taken further through other mechanisms, which is what has generally happened in cases with which I have been involved.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): Murray Tosh was correct to suggest that there is a danger that this committee might end up as a planning appeals committee. I would caution against that, as that is not our remit. We should be careful to draw on the points of principle that we want to raise with the Executive and to concentrate on amendments that are needed to regulations or procedures.

Linda Fabiani: I endorse what other members have said, but I add weight to Murray's plea that we get information from councils where possible. As an individual member of Parliament, it is difficult to get information from councils. I say that having experienced a wait of nine months for a simple piece of information about a planning issue from a council. It would be helpful if the committee could ask for appropriate back-up information.

Mr MacAskill: I take on board Cathy's comment, which was valid, because we cannot get bogged down in these matters. However, on the face of it, the petition appears to disclose an appalling abuse of power by the council. I would prefer the Executive to take action, but, if it is not going to, it may be incumbent upon us to try to make some inquiries. Would not it be worth at least inviting Glasgow City Council to the committee, which would give us the opportunity of giving the council a hard time? While there is an ombudsman or whatever, I have my doubts about how effective that office is. If the Executive takes no action, there must be a last port of call, which may well be us.

Robin Harper (Lothians) (Green): Over the past year, my mailbag has shown a high level of discontent—among individuals and groups—with the way in which the planning system operates. As a committee, and as a Parliament, we should be pressing the Executive to have a full-scale review of the planning system. The Local Government Committee should take evidence about that as soon as possible. There is such a high level of discontent that we should consider a review as a matter of urgency. As other members said, it is not our job to be the fall guy for all that discontent.

Janis Hughes (Glasgow Rutherglen) (Lab): I agree with Robin. My postbag also contains a lot of correspondence about planning problems—not just in Glasgow, but in other council areas—but I urge caution about the committee being used almost as an appeals panel for people who are unhappy with the outcome of the planning process. I am not forgetting for a minute that the case outlined in the petition throws up many worrying issues, but we must be careful, otherwise we will meet three times a week just to consider planning appeals. We must sort out the principle of planning and the intricacies of individual planning applications should be dealt with elsewhere. It is not for us to deal with them.

A petition from my constituency about a planning application involving South Lanarkshire Council recently went to the Public Petitions Committee, which asked for information from the council before considering the petition further. That is how that committee should deal with all such petitions, as we should see both sides of the situation before considering a petition.

Mr Tosh: It would be a mistake to start hauling in councils to account for specific planning decisions that they have made. Councils probably routinely make quite a few mistakes because the planning system is a democratic system in which decisions are taken by laymen—I beg your pardon, I meant to say lay people; I am old fashioned in many respects. If we start to follow that sort of procedure, we will encourage people to raise objections to get a hearing—to get their day in court.

Under the law, the review of planning is the Executive's responsibility. It is important that we draw that distinction, as our remit is to hold the Executive to account. If we feel that someone has highlighted an area where the Executive's rules or systems have not worked, it is up to us to say to the Executive, "Hey—let's look at the systems."

We must hold to that distinction, because the day will come when, having received a petition, we will say, "No—this is just a decision that a council took. There are no broader issues. It is not a valid petition and we are not accepting it." Otherwise, we will become the court of appeal for hundreds of

petitions a year from all over Scotland.

The Convener: I will attempt to sum up the way in which the committee is moving on this subject. For future petitions, we want to see supporting papers from the local authority concerned, restricting ourselves to the processes, systems and principles of the system, as opposed to papers on individual cases. We also wish to bring the matters outlined in this petition and raised by committee members to the attention of the Scottish Executive and will bear in mind what the petitioners say about NPPG1 on this occasion. That reflects the action that committee members want to be taken on the matter.

10:30

We now come to petition PE167, from the King's Park/Croftfoot Community Council. The petition calls for the Scottish Parliament

"to legislate to ensure that telecommunications masts will be subject to full planning controls, with this legislation being effective retrospectively."

The petition is accompanied by covering note TE/00/14/8. The Public Petitions Committee took evidence from the petitioner on this issue and the relevant extract from the *Official Report* is attached to the covering note. The Public Petitions Committee has also written to Glasgow City Council to raise the petitioner's concerns.

The Public Petitions Committee has asked us to provide details of the consideration that we gave to retrospective planning controls when we prepared our report. Set out in the covering note is a note that has been prepared for the media launch of the committee's report, which sets out the committee's thinking on not recommending retrospective planning controls. The note reads:

"The committee has not found any conclusive evidence concerning the health effects of mobile phone masts. Whilst it feels that a precautionary approach should be taken to new developments, it feels that retrospective action at this stage would be premature. However, it does recommend that opportunities to improve the siting of existing masts should be taken where possible in the contexts of new developments."

With that in mind, I open the matter to members of the committee.

Janis Hughes: I want to express an interest in this matter, as the petitioning council is in my constituency. Discussions on the thoughts behind the petition had been taking place a long time before the petition was submitted, and before we undertook our own investigation into the matter.

In the King's Park and Croftfoot area, several masts are sited in what we would now consider sensitive areas—next to schools and nurseries, for example. When the community council discussed telecommunications masts and whether the

legislation should require full planning control, the general feeling was that it wanted planning control to apply retrospectively to deal with the masts that were already in place. The committee has decided not to recommend that. We do not yet have any feedback from the Executive as to what it will take from our deliberations, but perhaps it should issue a recommendation to councils to examine the situation with sensitivity, as some masts are sited very near schools and nurseries. I have been concerned about that for a long time.

Robin Harper: We were fairly clear about the dangers of making any legislation apply retrospectively, but might it be possible to strengthen slightly the last sentence that you read out by making a firm recommendation to—or even putting an obligation on—companies to enter into negotiations with councils on the siting of existing masts when they are engaged in negotiations to erect new ones?

In other words, when companies want to put up a new mast, negotiations should be opened on the siting of existing masts, with a view to making improvements. That would not make the legislation retrospective; it would simply be a more assertive way of saying what we are saying already. At the moment, we are saying that such negotiations could take place; perhaps we should ensure that they do take place.

The Convener: To be fair, Robin, I think that we made that point quite explicitly in our report. Perhaps you can refer the petitioners to it. We said that the approach of the local authorities, working with companies on a local plan for masts,

“may also facilitate negotiation on the replacement of existing structures with more suitable structures in terms of environmental impact.”

We are clearly saying to local authorities that they should consider the matters that you have just raised.

We had a fairly lengthy debate on this matter in the chamber and the minister said that there will be a review—a summer summit—involving all those who are involved in the process. That will be reported on to us and we can then impact on the reporting process as well as on any further planning advice notes or national policy planning guidelines that may arise out of telecommunications developments.

We can bear in mind the issue that the petitioners have raised with us. We came to a conclusion on what the petitioners want to do with regard to retrospective action. We discussed it in some depth and agreed that it was not appropriate, due to the factors that Robin Harper and others have raised. I suggest that we inform the Public Petitions Committee in some detail why we came to that conclusion.

Some of our discussions were held in private and we came to a considered view on retrospective action. We felt that mechanisms are already available to local authorities to be creative in their approach to the siting of new masts and to resolving difficulties with existing masts. Perhaps that is the best approach at the moment. I am sure that we will revisit the issue, as we will keep a close eye on what the minister does as an outcome of the summit with the industry and the local authorities. If that sounds appropriate to members, we can respond on that basis.

I see agreement on that, so I thank members for their co-operation.

Subordinate Legislation

The Convener: Agenda item 2 is consideration of a negative Scottish statutory instrument—the Smoke Control Areas (Authorised Fuels) (Amendment) (Scotland) Regulations 2000 (SSI 2000/129). We have received an Executive covering note and a committee covering note. We will follow the standard procedure for handling negative instruments. We are required under standing orders to report on the instrument by 12 June 2000.

The Subordinate Legislation Committee considered the instrument on 16 May and questioned the Executive on whether it had plans to consolidate the principal regulations, the Smoke Control Areas (Authorised Fuels) Regulations 1991. The Executive has stated its intention to consolidate the regulations; the relevant extracts from the report from the Subordinate Legislation Committee can be found as an annexe to the committee covering note on the regulations.

If members have no comments on the SSI, I shall confirm we have nothing to report on this matter.

Agenda item 3 is consideration of a draft report to the Finance Committee as part of the annual budget process. We have previously agreed to take this matter in private. Before we move into private session, I ask members to address the agenda for the next meeting. It is hoped that the transport bill will be introduced this week. If that happens, the committee had previously agreed to receive a Scottish Parliament information centre briefing on transport issues at the next meeting. I ask that, following our past practice, the briefing be taken in private.

10:38

Meeting continued in private until 11:17.

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