

Citizen Participation and Public Petitions Committee

12th Meeting, 2022 (Session 6), Wednesday
29 June 2022

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

Note by the Clerk

Lodged on 24 March 2021

Petitioner Aileen Jackson on behalf of Scotland Against Spin

**Petition
summary** 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 [15 June 2022](#), where it took evidence from Tom Arthur, Minister for Public Finance, Planning and Community Wealth, Andy Kinnaird, Head of Transforming Planning, and Neal Rafferty, Senior Adviser, Heat in Buildings Strategy for the Scottish Government. At that meeting, the Committee agreed to consider the evidence heard at a future meeting.

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 a new response from the Petitioner, which is 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](#).

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 15 June 2022

The Convener: Welcome back. Item 4 is consideration of continued petitions. We will cover two petitions together, which focus on planning proposals and decisions on wind farm developments.

The first is PE1864, which was lodged by Aileen Jackson on behalf of Scotland Against Spin. The petition calls on the Scottish Parliament to urge the Scottish Government to increase the ability of communities to influence planning decisions for onshore wind farms by adopting English planning legislation for the determination of onshore wind farm developments, to empower local authorities to ensure that local communities are given sufficient professional help to engage in the planning process, and to appoint an independent advocate to ensure that local participants are not

“bullied and intimidated during public inquiries”.

We last considered the petition on 2 February, when we agreed to write to the Local Government Association. Unfortunately, the LGA has not been able to respond to us ahead of today’s meeting.

We have coupled that petition with PE1885, which was lodged by Karen Murphy and calls on the Scottish Parliament to urge the Scottish Government to make offering community shared ownership a mandatory requirement of all wind farm development planning proposals.

Our last consideration of PE1885 also took place on 2 February, when it was agreed that we would invite the relevant minister to join us this morning to give evidence on both petitions. Therefore, I am delighted to welcome Tom Arthur, Minister for Public Finance, Planning and Community Wealth; Andy Kinnaird, head of transforming planning, Scottish Government; and Neal Rafferty, senior adviser on the heat in buildings strategy, Scottish Government. Good morning to all three of you. The minister has made a hot dash across the Parliament campus from another committee in order to join us. We very much appreciate that effort; the timings have all worked out very nicely.

We also welcome back our MSP colleague Brian Whittle, who has a particular interest in the latter petition. I will turn to Brian once the committee members have had the opportunity to put their questions to our guests. He will be well used to the format and protocols of our procedures.

Members have a number of questions that they would like to explore this morning, so we will go straight to those. Some of it is familiar territory, so we are trying to focus the questions on the issues that are specifically raised in the petition.

David Torrance: This is probably a key question for both petitions: does the Scottish Government have legislative competence to increase or abolish the 50MW threshold for renewable energy developments that can be considered by planning authorities and, if so, has that been considered? If it has not, have you spoken with the UK Government about devolving that power?

The Minister for Public Finance, Planning and Community Wealth (Tom Arthur): Good morning. You will appreciate that matters pertaining to planning in the Town and Country Planning (Scotland) Act 1997 sit with me, but for developments over 50MW, as you alluded to, they sit with the Electricity Act 1989, which is a reserved piece of legislation. I will ask Neal Rafferty to come in on whether there are flexibilities within devolved competence to modify that threshold.

Neal Rafferty (Scottish Government): My understanding, although I do not work in that area any more, is that we do not have any competence to do anything with the provisions in the Electricity Act 1989 that affect consent applications for electricity stations. I could not say whether that has been explored, but the hard-and-fast fact when it comes to electricity generation, supply, transmission and so on is that there are reservations, so there is no flexibility for the Scottish Government to do anything differently on its own.

Tom Arthur: That reflects the general reservation of energy in the Scotland Act 1998. The processes that pertain to the consent process in line with that legislation are reserved, too, so we in this Parliament do not have any direct influence over it.

The Convener: That was a technical question and a technical answer in relation to our understanding of things.

Alexander Stewart: I will move on to talk about the treatment of pre-application consultations, because that area creates some difficulty for individuals, organisations and communities. Is there any evidence that how wind farm developments are treated when it comes to the pre-application consideration is anything other than a tick-box exercise? That is the perception that some people have. What is the Scottish Government doing to improve such engagement?

Tom Arthur: The procedures and process are clearly set out but, as a consequence of the reforms in the Planning (Scotland) Act 2019, significant change is happening around the PAC process. I will ask Andy Kinnaird to come in and narrate those points.

Andy Kinnaird (Scottish Government): Some changes are being made with effect from this October in the pre-application consultation arrangements. That is a follow-on from the Planning (Scotland) Act 2019. Coming into force on 1 October will be a

requirement to apply for permission within 18 months of the pre-application consultation having taken place. That is about making sure that the consultation that has happened with communities is still relevant at the point when the application goes in. At the moment, that is much more open ended.

Also, crucially, in the new provisions, we are setting in statute the requirements that need to go into the pre-application consultation report and, by doing that, what has to happen through the process. The regulations will add a second mandatory public event as part of that process; at the moment, only one event is required.

The statutory provisions had been suspended by coronavirus legislation, which expires at the end of September, which is why the new process will come into effect at the start of October. The entire point of all those new provisions is that we want to make sure that the content and quality of that consultation with communities is much stronger.

Alexander Stewart: I will follow up on that. There is a question about whether the Scottish Government would consider providing legal and technical support to individuals and community groups who appear before public inquiries on proposed wind farms and developments. Is there any opportunity for that to become reality?

Tom Arthur: We already provide support to Planning Aid Scotland, which can provide a range of different support in relation to the planning system to individuals and community groups. I recognise the concerns that the member articulates; we will all be familiar with examples of excellent work that community groups have done in engaging with the planning system, and they have set forth their views robustly, competently and with a great deal of expertise and consideration. Andy, do you want to add anything?

Andy Kinnaird: I want to pick up on the fact that, through the inquiry itself, there is an important role for the reporter in managing the whole process. The reporter will ensure that those who are less experienced in the planning system will be supported to enable them to give their evidence as best they can.

Alexander Stewart: It could put individuals off if they do not have that technical support or legal advice. That is in comparison to developers, who might have access to all that and be able to bring it to the table. That situation creates disadvantages for individuals. Therefore, the Scottish Government's support for that process might help to support the communities and individuals who want to put forward their views.

That can be developed slightly further, minister. There are already opportunities for things to happen, but that support is still not at the level where communities and individuals feel as though they are able to participate and have that support mechanism. There is still a gap between what is perceived and what is achieved. How does the Scottish Government see itself reflecting that and supporting that, to ensure that the gap is reduced?

Tom Arthur: On that specific point, I have articulated how support is provided through PAS and Andy Kinnaird has addressed the role of the reporter. Your points speak to a bigger issue, which is the culture of interaction with the planning system overall. A priority for me is to shift the dial and to move away from conflict towards collaboration. That is about earlier engagement with communities in the planning process.

Earlier this year, we introduced regulations to establish local place plans, which are a mechanism for communities to feed their priorities for their area into their local planning authority as part of the development of the local development plan. We are considering the responses to the consultation on new-style LDPs, which, again, will provide opportunities for greater community involvement and engagement. I recognise that all members are in agreement on that issue. We want to see more engagement in the planning system at an earlier stage for our communities so that the conversation moves from being one of conflict and discussions about what developments people perhaps do not want to see to one about what people want to see for the future.

Therefore, yes, there are specific points to be made about the role of the reporters and support through funding for PAS, but there is also that broader cultural change in the planning system, which we are seeking to take forward with specific actions such as the introduction of local place plans. Do you want to add anything to that, Andy?

Andy Kinnaird: No, I think that that is fine.

The Convener: Mr Sweeney, I will wind back slightly, because I think that you have a supplementary question to Mr Stewart's first point.

Paul Sweeney: My question relates to the question on the 50MW thresholds for devolved versus reserved planning applications. Has the Scottish Government engaged with Alister Jack at the Scotland Office or Greg Hands at the Department for Business Energy and Industrial Strategy on that issue—perhaps to seek a remedy through planning reform? I sense that, on the occasions when these issues are raised, they are discussed and, potentially, discrete elements could be devolved as a result or at least a mechanism could be established. It might be worth taking that action. If that is not happening, perhaps the committee could support that effort by calling for those ministers to come before the committee in due course.

Tom Arthur: I am sure that committee members will understand the Scottish Government's position on where a whole range of powers should rest. However, I am happy to write to the committee to provide further detailed information on what the Scottish Government's position on that area has been, historically. Obviously, I am happy to respond to any further correspondence that the committee might send on that issue.

The Convener: Mr Kinnaird, I heard you say that a second public event was to be incorporated. Is there a definition of what constitutes a public event?

Andy Kinnaird: It is not defined in law, but it is expected that the developer will advertise that it will engage with people in the community and hear what they have to say, and that that will happen before developers finalise their proposals and submit their applications.

The Convener: Do you expect that to be a physical public event that members of the public can engage with, or can a public event be a more holistic affair?

Andy Kinnaird: Since the provisions were introduced, it has been a physical public event. The coronavirus legislation removed that requirement temporarily and advised that virtual events should be happening; that is what we have had for the past two years or so. When the coronavirus legislation halts, we will be going back to the physical public events. There has been a lot of support for the virtual events; they seem to have attracted larger numbers of people to participate, so there is a question to be asked about whether both events need to be physical events.

The Convener: Have you been able to evaluate whether, when a public event is virtual as opposed to physical, that affects the developers' ability to influence the conduct of the public engagement? I am genuinely interested to know whether it has affected the balance and added a different dynamic which is pro or anti one particular aspect of the outcome that might be arrived at.

Andy Kinnaird: We have heard suggestions from both sides but, on whether it is an advantage to one side or the other, the evidence is all anecdotal. That is why we have not just gone straight on to continuing with a virtual event as we introduce the new regulations.

The Convener: So there has not been any research as yet as to what that balance might be.

Andy Kinnaird: No.

The Convener: My experience is the same—I am not sure. At some stage, as virtual events become more commonplace, it might be useful for us, beyond the context of this discussion, to understand the material impact on the management and control of the outcome of the discussions.

Fergus Ewing: The Scottish Government has very much supported community ownership. When I was energy minister in 2014, there was a programme for government commitment that stated that we should secure the co-operation of energy developers to offer a stake in developments to communities as a matter of course.

This is seen as a very worthy objective—across the board, I think, in politics—and one where much progress was made in 2014 and 2015, when a target that we then had of achieving 500MW of locally supplied energy was met five years early. It is not always the case that Government targets are met five years early, I have noticed, minister.

There were 154 projects and £10 million of investment and things were going really well, until the UK Government decided on the abrupt cessation of renewables obligation certificates, meant that that just fell off a cliff. That is in the past now, but the response from the Government as to why we cannot mandate community ownership of energy is that the Electricity Act 1989 makes that challenging.

I wonder, minister, whether you or the energy minister have approached the UK Government to seek approval for changing the necessary legal format—including the 1989 act, if necessary—to enable the mandating of community energy having a stake? For example, if there are 10 turbines in a wind farm development, you could very often have one or two which would be owned by the community. The developer would still proceed with the development, but the community would get a stake. Back in 2015, banks such as Triodos, the Co-op and the Close Brothers—as Mr Rafferty will remember from his good work then—were very willing to lend. They even brought the major banks to the table, funnily enough, to lend money—it is an extraordinary proposition that major banks lend money, but even they became slightly willing to do so towards the end.

Therefore, because there is an income stream, there is a bankable proposition for communities. It is entirely doable, and if I have gone on for too long, it is because I think that this is one of the big unmet challenges of our time across the UK, given the commitments to renewable energy.

Is this not the time for the Scottish Government to bring the UK Government to the table to mandate community ownership of renewables developments, which would be a tremendous achievement and legacy for people throughout these islands?

Tom Arthur: I know for a fact that Mr Ewing and I are completely aligned on this. We are undertaking a process where I hope we will not have to ask a UK Government for these particular provisions to be devolved, because we will have the powers in the Parliament and we can have those conversations in full.

I am conscious of my responsibilities as planning minister to ensure that we all have a clear understanding of what the planning system is for in relation to land use and what it is and is not appropriate for the system to ask of developers in terms of planning obligations.

With my community wealth hat on, I recognise the importance of community ownership of, and participation in, renewables. I have seen at first hand examples right across Scotland, whether at a vast, awe-inspiring scale, as in the convener's

constituency, or the impact that a single turbine can have in supporting fragile and remote communities in northern Lewis not only to sustain populations but to grow them and support local economic development.

From a community wealth building perspective I recognise the importance of community energy. Although I realise that, as things stand, that involves voluntary agreements, I am alive to the huge contribution that they can make locally and the role that community energy can play in advancing the community wealth building agenda.

I invite Neal Rafferty to say a bit more on interactions with existing legislation.

Neal Rafferty: I will probably end up repeating what I said earlier. As far as I am aware, there has been no engagement on that issue. However, it is worth pointing out a couple of things.

First, the UK Government has recently followed behind the Scottish Government in publishing its own facsimile of our good-practice principles and guidance for community energy and shared ownership and extolling the same principles for the same reasons. There is a common understanding on the matter.

It is also worth highlighting that, because of the guidance that we have had for several years—which you introduced when you were a minister, Mr Ewing—huge quantities of community benefits are going to communities. I think that, over the past year, £23 million went to communities. We find that developers are generally quite front footed about that. In more than half of the applications that are currently in the system, discussions about shared ownership are taking place.

There is a lot of momentum in the system. I do not know whether the Electricity Act 1989 could be amended to compel discussion about shared ownership and community benefit, to be perfectly honest. However, my understanding is that we have not had any such discussion. I am not sure what kind of reception it would have or what openness there would be to it.

Tom Arthur: As I said in response to Mr Sweeney, I would be happy to update the committee in writing on those matters.

Fergus Ewing: That would be helpful.

I have one further area of questioning that is also important and lies within the minister's portfolio. The Scottish Government's response seems to have been that it cannot mandate community energy but that it can use the planning system at least to encourage or require it. I have not read the draft national planning framework 4, I must confess, but I read in our papers that it makes no reference to community benefit and only one passing reference to community ownership of renewable energy projects. If I am right in assuming that we want to use planning law as a tool or compulsitor to try to deliver more community interest, whether ownership, benefit

or a mixture of the two—both are desirable, although ownership is immensely preferable in the long term—why is there is scant reference to it?

I would also say in passing—I know that this is not the minister’s responsibility—that the same criticism applies to the Bute house agreement, in which, extraordinarily, there seems to be no strong emphasis on delivering that policy. I had no part in the drafting of the agreement, but one would have expected that the issue might have been a prime candidate, given the political support for community ownership from the constituent parties to the Bute house agreement.

Can the Scottish Government do more in NPF4? I will put you on the spot, minister: can we use the final version of NPF4 as the means to deliver the policy by including a much stronger reference to the need for community ownership or, if that is for whatever reason not possible, strong and major community benefit, so that communities really benefit from the natural resources that, to many people’s way of thinking, are theirs?

The Convener: Before the minister comes in, I will bring in Mr Sweeney, who is interested in this theme, although I do not know whether that interest will match Mr Ewing’s passion.

Paul Sweeney: I think that Mr Ewing covered the matter fairly comprehensively. I am intrigued to hear the minister’s response.

Tom Arthur: Just over two months ago, we concluded the public consultation and parliamentary scrutiny process for the draft NPF4. My officials will correct me if I get this wrong, but we received, I think, more than 780 responses. It has been great to see such engagement on the framework. Throughout the consultation process, officials and I engaged directly with a range of stakeholders, including representatives of the renewables sector.

Addressing our contribution to climate change and the nature emergency are central to the draft NPF4. In the draft document, policy 19, on green energy, sets out our position. It is consistent with our ambition to increase onshore wind capacity by between 8GW and 12GW by the end of the decade, and it sets out some detail about how planning can contribute towards achieving that aim. NPF4 is, of course, currently a draft document, and I cannot speculate on what will be in the finalised version that we will bring back to Parliament. However, I assure the committee that we are giving careful and detailed consideration to all the representations that we have received.

I recognise the points that Mr Ewing has articulated. We have to be careful to remember that the role of the planning system relates to the use of land, and planning obligations have to be linked to a material concern about a development. That is a long-standing principle of how the planning system in this country operates, and it operates in that way for very good reasons.

I do not know whether Andy Kinnaird wants to add anything.

Andy Kinnaird: I will just sum up what has been said. In any decision in the planning system, a material matter must relate to the development or use of land and must fairly and reasonably relate to the development that is proposed. They must be about the development and use of land—they cannot be about who might benefit as a result of consent.

Tom Arthur: Again, they cannot relate to a general concern about ownership; they must relate to the use of land. It is very important to remember that. I am sure that members understand the reasons why the planning system operates in that way.

The draft NPF4 also contains a clear commitment to onshore wind and recognises that it has an incredibly important role to play in meeting our obligations to reach net zero by 2045 and, indeed, to achieve our reductions by 2030.

Paul Sweeney: I note an interesting interaction between this session and the previous evidence session with Mr Adam, the minister dealing with the Government's participatory and deliberative democracy agenda. There is a big concern about the attachment of community benefits to big planning projects, whether they relate to energy or something else, and it is an issue that needs to be addressed much more rigorously in NPF4. For example, I know from planning decisions made in Glasgow that there is real concern about funding disappearing centrally in council budget lines and not being attached to material and tangible improvements in the community that is the locus of the development.

There are clear issues that need to be tightened up and considered. There is also a potential interface with the agenda in Mr Adam's portfolio.

Tom Arthur: I take your point about broader engagement and participation in the planning system, which we touched on earlier in general terms. As you will be aware, we are continuing to review planning obligations, and there are provisions relating to an infrastructure levy in the Planning (Scotland) Act 2019. We will consider how we take those matters forward later this parliamentary session. I thought that it would be useful to bring that to the committee's attention.

The Convener: Mr Ewing, did you want to come back on that?

Fergus Ewing: We can consider our response later, but it occurs to me that one option would be to invite the minister back after he has had an opportunity to finalise the process. I entirely understand that he cannot prejudice the process and that he must properly consider the 780 consultation responses before coming to a conclusion. I also appreciate the evidence that we have heard about the planning system being able to do only so much. However, in life, things have always been difficult. As Seneca said more than 2,000 years ago,

“It is not because things are difficult that we do not dare; it is because we do not dare that things are difficult.”

I leave that helpful thought with the minister.

Tom Arthur: Did Seneca not throw himself into a volcano?

Fergus Ewing: Maybe he just found things too difficult. *[Laughter.]*

The Convener: This little exchange is showing the benefits of classical education all round. I am very impressed.

The minister might have heard me say in opening that the first of the two petitions is keen to appoint an independent advocate to ensure that local participants are not, in its words,

“bullied and intimidated during public inquiries”.

We have received written evidence that suggests that some individuals participating in public inquiries feel that they have been treated with contempt and abused by some of the legal representatives of wind farm developments and that, somewhat to their disappointment, the reporter has not intervened when that has happened. Is the Scottish Government aware of such instances? This sort of thing is always difficult—individuals have made submissions to us that this has been a practice and that the reporter has not intervened. Can anything be done to validate that evidence and, if indeed such a practice is taking place, to ensure that there is a remedy for it, given that it seems unreasonable?

Tom Arthur: As Andy Kinnaird outlined earlier, the reporter has a key role to play in that process. All our expectations would be that the reporter would ensure that the behaviour and conduct that the convener has related from the submissions that the committee has received did not take place and would not be accepted. We want to ensure the greatest opportunity to participate. As has been discussed, the reporter has a role to play in that and in recognising the respective backgrounds and positions that people are coming from in the process.

Do you want to add anything, Andy?

Andy Kinnaird: No. That is our understanding.

The Convener: We might well summarise the evidence that we have received so that the Government is made aware of the experience of those who have written to us. You might care to have a look at that, minister.

As I have said, Mr Whittle is with us for this item. It has been my practice as convener to invite colleagues joining us to make a statement. However, before we hear finally from our witnesses, if anything has occurred to Mr Whittle that he would like to put by way of a question, I am content for that to be the case, too.

Brian Whittle (South Scotland) (Con): Thank you very much, convener. I would just start by getting the committee to recognise that I represent the South Scotland region, which has, as my postbag reflects, a high propensity of wind farms. I was very interested in the question of the 50MW limit, given that we have Whitelee wind farm, which is the second biggest in Europe and sits just down the road from your constituency, convener, and up the road from mine. It is therefore obviously perfectly feasible to—

The Convener: Hold on a second, Mr Whittle—what has overtaken Whitelee? It used to be the biggest.

Brian Whittle: It was the biggest, but I have since been corrected, as there is apparently now a bigger one in Holland.

The Convener: I am not keen on being second best.

Brian Whittle: I am not a silver medallist myself.

As the convener alluded to in his question, what people often share with me is the lack—or the feeling of a lack—of consultation with local communities, as well as their being bullied and steamrollered. In addition, even when the council declines to give planning permission, the decision is often and routinely overturned by the Scottish Government. There is just a lack of connection between local communities and the planning decision itself.

With regard to Mr Ewing's point, communities have to benefit. The current situation has been described to me as the energy being taken on motorways away from where it is generated and into the central belt, leaving the communities where it is generated running on B roads. It is a very good analogy. It is extremely important that communities feel engaged and that they benefit, which brings us to the point that has been discussed about community shared ownership and whether it should be made mandatory.

I was interested in Mr Ewing's questions, which I want to follow up on, about using the planning process to encourage wind farm operators to ensure benefit to the local community. Andy Kinnaird responded by highlighting the fact that planning decisions relate to the use of land. Surely the use of land requirement is there for the benefit of the community at large, so I do not see how the two can be divorced. If planning applications were passed, or not, depending on whether there was a shared community benefit element to the proposal, that would surely encourage wind farm operators to follow that route.

The Convener: Thank you for that, Mr Whittle. Minister, do you and your colleagues want to pick up on that point? Given that our formal questioning has finished, we would also be happy to hear any concluding remarks that you want to make.

Tom Arthur: Certainly, convener.

I will make two points. First, I recognise the perceptions of your constituents, Mr Whittle, and their feeling that there is a lack of engagement or consultation in the planning system. I touched on that earlier, and I recognise that need. With the new national planning framework coming forward, and with the rolling out of the provisions in the Planning (Scotland) Act 2019, we have an opportunity to increase that important engagement with communities.

Earlier this morning, I was giving evidence on town centres and their future. Town centres offer solutions to so many of the big problems that we face around climate change, living local, decarbonising, reducing our carbon emissions and a range of other areas. However, for those solutions to be successful, we need community engagement. People need to feel that they have an opportunity to shape their places. In urban environments, in more rural environments and when applications for energy developments come forward, it is important that communities feel that they have a role in shaping their place. I will not repeat what was discussed earlier, but that is why various measures, such as the reformed PAC process and local place plans, have been introduced—they seek to enhance community engagement and involvement.

My second and broader point is that the planning system is about use of land. That is fundamental. Ownership is not really a part of it; instead, the system is about how we use our land, and it is that way for very good reasons. For example, it is why planning obligations are used; they are quite tightly defined and must relate to an aspect of the development and use of land. It is an established process and, for very good reasons, has been so for quite some time now.

Andy, do you want to say a bit more on that?

Andy Kinnaird: I just want to back up that point. The existing guidance that we have on community benefits and community ownership of wind farms is already supported or encouraged through the planning system. We have to be very careful, because there is a fine line here with regard to what planning is there to do. It relates to the development and use of land; it is not about who might be the beneficiaries.

The Convener: I thank the minister, Mr Kinnaird and Mr Rafferty for joining us this morning, and I thank Brian Whittle, too, for his participation.

Colleagues, are we content to consider the evidence that we have heard this morning at a future meeting of the committee?

Members indicated agreement.

Annexe C

Petitioner submission of 20 June 2022

PE1864/JJJJJ– Increase the ability of communities to influence planning decisions for onshore windfarms

It was, in our view, unfortunate that two unrelated wind farm petitions raising different issues were heard simultaneously at the Committee meeting on 15 June as issues raised in Scotland Against Spin (SAS) petition PE1864 were not properly considered. Some of our members who were watching the proceedings were left confused over which petition was actually being discussed.

The SAS Petition requests that wind energy schemes in Scotland, irrespective of size, are determined by the Local Planning Authority, as they are in England. As Energy is reserved to the UK Government, the Scottish Government would need to seek approval in order to do this. As this is current practice in England, it seems to us that the UK Government would readily agree to adjust the Electricity Act in Scotland to enable the determination of all windfarms to rest solely with Local Planning Authorities. The Prime Minister is quoted in the [British Energy Security Strategy](#) as saying:

"In Scotland, which has its own planning system, we will work with the Scottish Government to ensure communities and landscape issues are considered for future projects."

It was obvious from the discussion at the Committee Meeting on 15 June that the Scottish Government had made no attempt to approach the UK Government to ask if they would agree to an amendment of the Electricity Act, despite the fact they had been requested to respond to our Petition as far back as February 2022.

We welcome the [submission from RTPI of 6 October 2021](#) which states that RTPI "would welcome the exploration of opportunities and challenges of allowing Planning Authorities to determine more applications for onshore wind", which has the potential to result in

“greater involvement of communities throughout the consenting process”.

There was no consideration given to funding the professional support so desperately needed for communities involved in scrutinising wind farm applications and participating in Inquiries, other than volunteering that Planning Aid Scotland can offer support. As previously mentioned in [Petitioner’s submission of 11 June 2021](#), the charity Planning Aid Scotland (PAS) is very helpful for basic general planning information but being staffed by volunteers, does not have the resources to help scrutinise the vast number and thousands of pages of complex documents within a wind farm application and it does not have an advocacy role. They are not experts in Noise, Private Water Supplies and other technical issues. Having consulted our members, some had not heard of PAS and others who had used the service found they were less well informed than themselves, lacking experience in this very specialised area. We refer you to [PAS’s response](#) to our petition of the 6 October 2021 which states “PAS recognises 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”.

The reality is that communities require expert help to enable them to participate in the planning process and this help must be accessible pro bono. To suggest otherwise is for the Minister to ignore the reality of pleas from beleaguered rural communities, whilst believing that the status quo provides adequate help.

The Minister alluded to the provision of an extra pre application consultation for communities. Some developers already provide two community consultations, but it makes little difference if people are not made aware of the event in the first place or are unable to attend. Most windfarms are in remote rural areas. Many residents living in these areas have poor or no internet, have limited or no IT knowledge, cannot participate in community council meetings, rarely buy local newspapers and rely on the post and a few neighbours for occasional updates. They cannot access public notices online, download documents and are unable to take part in online consultations. These issues have previously been raised by SAS through their membership of the DPEA Stakeholders’ Forum. As we heard in Petition PE1845 - *Agency to advocate for the healthcare needs of rural Scotland*, addressing equality and inclusivity for rural inhabitants - these are the same people likely to have to travel the equivalent distance of a return trip to Newcastle from

Edinburgh, simply to access health care. Unless they are informed directly of a proposed development in their area, they are likely to miss the opportunity to make a representation. Being able to express their opinion has never been more important given the current trend for applications with increasing environmental and amenity impacts with turbines up to 260m in height, such as [Dunside in the Scottish Borders](#) which proposes turbines 150m taller than the height of those at the original Whitelee Wind Farm.

As there is currently no requirement for a record of public comments, planners must accept the developer's word of how many people are supportive (or not) of their plans. That, in our view, is unacceptable. Increasing public consultation events will not remove the need for the professional help which communities require to engage effectively in the planning process.

Concerning the abuse of community representatives at Public Inquiries:

During the evidence session, there appeared to be lack of understanding for the remit of Reporters. Ultimately, Reporters are both judge and jury in oral planning procedures and they are unable to informally or formally guide the public. In our experience, many Reporters lack the knowledge or experience to constrain inappropriate cross examination of public witnesses.

Harsh and prolonged questioning of members of the public at Public Inquiries was acknowledged by Brian Whittle MSP who had received many complaints from his own constituents.

As Chair of her Community Council, [Rachel Connor's submission of 11 June 2021](#) describes that before an Enforcement Appeal Inquiry the developer submitted allegations of gross misconduct against her, resulting in a 3-month investigation. She was exonerated and cleared on all counts. Nevertheless, as an individual member of the public, at the end of a four-hour cross examination by the developer's QC, those unfounded allegations were obviously raised in an attempt to impugn her reputation and discredit her evidence. The recording of this Inquiry is available for viewing on the DPEA website.

Other evidence of bullying multiple witnesses, referred to in [Audra MacPhee's submission of 29 September 2021](#), took place before the recording of Inquiries was commonplace. However the intimidation of witnesses described by Ms MacPhee - "As a witness the developers

legal counsel did an excellent job of character assassination and branded many of those who fought the development to be suffragette type objectors!" - was witnessed by members of SAS who were present in a support role.

There was much discussion of Petition PE1885 over the rights of communities to have mandatory shared ownership yet there was no thought given to the many communities throughout Scotland who do not want windfarms overshadowing their communities irrespective of the financial benefits on offer; their environment, health and wellbeing meaning more to them than money. That is their prerogative and it is in line with Scottish Government aspirations to give communities a greater say in the planning process and more control over the type of development they believe is acceptable in their own area.

Community benefit has been shown to be deeply divisive, destroying rural community cohesion, with communities distant from the wind farm site suffering no adverse effect but still receiving financial reward and residents who live closest to the site suffering overwhelming impacts and financial loss but receiving nothing. In other words, it is a balanced system of choice, which communities living in England currently enjoy and which, we believe, Scottish communities deserve.

Aileen Jackson
SAS
Petitioner