

Smoke, Mirrors and Planning Conditions

Dr Rachel Connor

Most of us understand that, whether it is for a home extension, industrial development or a windfarm, planning conditions are attached to a planning consent either to prevent harm to residential amenity and the environment, or to mitigate that harm if it occurs. That is basically what a Scottish Government Planning Circular 4/1998 says, "*Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission.*"

Windfarm and other renewable developments often have 30 or more conditions attached because of the recognised potential for significant environmental damage.

Local Authorities and windfarm developers usually draw up planning conditions between themselves; without third party input, although if DPEA are the consenting authority, (as opposed to ECU or LA's) third parties may have opportunity to comment on those conditions.

So imagine my surprise when I complained to my local authority (East Ayrshire Council) that approved planning conditions had not been upheld for monitoring of groundwater, surface water and for all but one of nine private water supplies for a nearby large windfarm development, only to be told that whilst EAC considered a breach had occurred, that enforcement of planning conditions was discretionary! The Council referred to Scottish Government Planning Circular 10/2009, which allows Councils discretion to ignore any breaches of planning conditions as they see fit.

So I complained to the Scottish Public Services Ombudsman (SPSO) and the Official line from SG is that this is correct. Local Authorities have no obligation to enforce breaches of approved planning conditions; enforcement is discretionary.

So, this is a warning:

Planning conditions are not written in stone. They may not be worth the paper they're written on.

Circular 4/1998 sets out 6 criteria that planning conditions must meet, but many critical conditions are so poorly worded that developers can use that poor wording as loopholes to disregard the purpose of that condition (such as monitoring PWS which may be at risk from a development).

Local Authorities may also use a caveat and other wording written into a condition to allow a planning officer to unilaterally change a condition in agreement with a developer – with no public input or notification.

Developers can also apply to change, or entirely remove a planning condition under section 42 of the Town and Country Planning (Scotland) Act 1997 – but that at least allows for third party input.

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So think carefully about the implications if planning conditions are poorly worded or don't adequately address site specific amenity, environmental hazards and risks, or what might happen if your Council chooses to change, or not enforce conditions that are important to you and your environment. Try and include those concerns in written objections.

Dr Rachel Connor

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