

PE1864/A

Scottish Government submission of 1 June 2021

Thank you for your e-mail of 12 May 2021 requesting the Scottish Government's views on those actions called for in Petition 'PE01864' by Aileen Jackson, on behalf of Scotland against Spin, concerning the ability of communities to influence planning decisions for onshore windfarms.

Scotland has prided itself on a positive policy framework around renewable energy, which has allowed us (at most recent estimates) to generate 97% of our electricity demand from renewables in 2020. However, our legal obligations around net zero, and the speed at which we are approaching a tipping point where the damage from climate change is irreversible, means that we must go further and go faster.

We are currently reviewing Scotland's national planning policies and expect to publish a draft National Planning Framework 4 this autumn. The National Planning Framework (NPF) is a long term plan for Scotland that sets out where development and infrastructure is needed to support sustainable and inclusive growth. The transition to net zero greenhouse gas emissions by 2045 is a key driver of this work and, as our [NPF4 position statement](#) published in November 2020 set out, we are currently considering priority policy changes to support a spatial strategy for net-zero, including strengthening our support for re-powering and expanding existing wind farms. NPF4 will bring the climate change agenda together with wider considerations including: the need to build resilient communities; support inclusive growth; and create better, greener places.

In addition to our consultation on the NPF4 position statement, we sought early views on NPF4 from January to April 2020. We were pleased to receive nearly 350 written responses to our call for ideas, as well as participation by 180 people at our Scotplan 2050 roadshow workshops. We also spoke to around 100 people who came to drop in sessions across the country. In Autumn 2021 we will lay a draft NPF4 in the Scottish Parliament, and we will carry out further extensive public consultation at that time.

The legislative framework

In Scotland, as you will be aware, any application to construct or operate an onshore windfarm with a capacity of over 50 megawatts (MW) requires the consent of Scottish Ministers under section 36 of [the Electricity Act 1989](#). Applications of 50MW or less are made to the relevant Planning Authority, of which applications which are above 20MW (but below 50MW), are subject to pre-application consultation with communities.

Where the relevant planning authority objects to the proposed development there is a statutory requirement to hold a public inquiry. A Reporter is appointed to examine the proposed development and report with recommendations to Scottish Ministers who will make the final decision. It is for Ministers to decide whether or not to accept the reporters' recommendation.

It is important to note that the Electricity Act, under which the right to a public inquiry is confirmed, is not devolved to the Scottish Parliament. As such, whilst the Reporter will try and encourage parties involved in the examination to adopt a proportionate approach to obtaining the evidence (similar to the approach taken in planning appeals) they cannot insist on this. If a party involved requests a public inquiry to consider any part of the evidence, then an inquiry must be held.

The petition refers to decisions made following a public inquiry and suggests that a consent is granted in the majority of such cases. Since 1 January 2016 Reporters have reported on, and have made recommendations on, 17 proposals. In 11 such cases the reporter recommended refusal of permission, and Ministers agreed with this recommendation on 10 occasions. In 6 cases the Reporter recommended that permission be granted, and Ministers agreed on each occasion.

Turning to planning applications for proposals of 50MW or less, the right to appeal certain planning decisions to Scottish Ministers is an important part of the planning system. The petition raises concern that appeals can be very costly to the planning authority, particularly if a Reporter decides that the appeal should be determined by means of a hearing or public local inquiry. It should be noted that Reporters are responsible for deciding how an appeal should be considered and will adopt a proportionate approach to obtaining the information required, and will only hold a hearing or inquiry where absolutely necessary. Since 1 January 2016 DPEA has dealt with 89 planning appeals relating to wind turbine/farm proposals and reporters have held 6 inquiries and 9 hearings to hear evidence. All other cases have been dealt with by a combination of written submissions and site inspections.

With regard to concerns raised by the petitioners concerning live streaming and archived video footage of inquiries visible on the DPEA website, it is the case that most inquiries or hearings held by DPEA are either live streamed or recorded and made available for parties to view at a later time. This initiative, which was suggested by Planning Democracy, is designed to allow interested parties to view proceedings even if they cannot attend in person. It has also allowed parties who may be attending an inquiry or hearing for the first time to familiarise themselves with the process and what to expect.

You will appreciate that detailed careful questioning and cross examination play an important part of the inquiry process, as would be expected when parties are expressing different views on evidence on which the success or failure of a proposed development may turn. In addition to this, it is reasonable for a party to be questioned on their credentials in relation to the evidence they are giving. However, the bullying and badgering of witnesses is not acceptable, it happens exceedingly rarely and the Reporter will intervene if they think this is taking place. The Reporter will also take into account the experience of the parties involved in making any such decisions, and will assist parties who are having difficulty in giving their evidence. This is particularly so in the case of legally unrepresented lay witnesses who are unfamiliar with inquiry procedure.

Reporters regularly find the evidence given by community groups and other unrepresented groups to be well presented and relevant to the case and, whilst their views do not always prevail, it is almost always relevant to the Reporter's

considerations. The insight provided by such groups or individuals is often of great assistance to Reporters in gauging the likely acceptability or otherwise of local impacts.

Community engagement within the planning system

Finally, I should point out that the Planning (Scotland) Act 2019 contains a range of provisions designed to enhance the engagement of communities throughout the Scottish planning system.

The 2019 Act includes a number of measures intended to improve the process of preparing local development plans, and the involvement of communities in influencing the future of their places. In preparing their evidence report, the first stage in the local development plan, the planning authority must show how it has sought the views of “the public at large” and community councils, and how those views have been taken into account. There are also requirements to consult widely on the proposed plan before it is finalised. We want community engagement on local development plans to be more effective than it has been in the past.

Work is currently underway to develop guidance on effective community engagement in Local Development Plans, and the Act will require planning authorities to have regard to that guidance. Community bodies will also be able to prepare local place plans, setting out their views on how the area should develop, and these must be taken into account in the local development plan. A local place plan can include reference to assets which are particularly valued by the community, which may be open spaces as well as buildings or structures. We are currently consulting on proposals on regulations to support the delivery of local place plans.

The Scottish Government has recently consulted on draft guidance on the role that mediation may be able to play in reducing conflict between parties. We are currently considering the responses to the consultation in advance of publishing guidance in due course.

In addition, whilst not providing an advocacy service for communities, the Scottish Government provides financial assistance to PAS to provide a free advice service on planning and environmental matters for communities and the public at large, through its professional planner volunteers.

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