

Petitioner submission of 9 July 2023

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

We thank the Minister for his response dated 27 June 2023 and we are grateful for this opportunity to respond to his comments.

DEFINITIONS

Defining or in any event understanding what is meant by 'meaningful' and 'a community' is a critical step in view of the use of these words in NPF4 and the references to planning legislation and guidance.

To recap, this petition has a well-defined social purpose. The aim of the petition is to require the Scottish Government to increase the ability of communities to influence decisions about onshore windfarms.

It is relevant that the Minister considers that by NPF4's definitions, two or more people in an area could constitute 'a community'.

Area is not defined under NPF4, but perhaps its meaning is self-evident. Our opinion is that a community's people, however grouped together, should be seen to have shared interests in a given geographical area. So, it might refer to a village and its outlying farms and houses. It might also include people of similar ethnicity, beliefs, even households. Examples are legion.

In the same way meaningful has not been defined in NPF4 and other guidance, neither has a clear understanding yet emerged of how the ability to influence decisions in a meaningful way is to be gauged. Without a formal definition, the use of 'meaningful' allows vague interpretation of any public consultation and communication as being effective by planning and other authorities. It must be defined so that the effectiveness of meaningful in planning legislation and guidance can be assessed and if necessary enforced.

WEIGHT OF OPINION

It is suggested that in the determination of a wind farm application, the opinions of the residents living directly adjacent to or in the host community should be given the greatest weight, particularly the opinions of those who are not financially involved in the development. Membership (e.g. by residence) of a community should be enough; formal incorporation or a Group Constitution should not be a requirement.

The views of members of the public or communities who are more distant from an onshore windfarm development, but still close enough to be potentially eligible for financial benefits in the event of consent, should receive less weight.

COMMUNITY BENEFIT

Although community benefit (CB) is ostensibly not a material planning consideration, it is encouraged by the Scottish Government and is clearly influential in decision making, particularly by Councils who see it as providing some financial relief for the never-ending calls on their limited funds. There are countless examples.

CB generates public support from those who have nothing to lose and everything to gain. CB contributions cannot be enforced, but they should be. They are often ignored by developers once consent is granted, yet the very promise of CB can have a significant influence on both public opinion and decision makers. CB obviously influences opinion polls. This is expanded upon in [Petitioner's submission of 3 August 2021](#).

ADVICE AND REPRESENTATION

Most planning authorities offer applicants, and those who have made representations on an application, opportunities to appear before a committee of the planning authority before a decision is made on major or national developments. This is as it should be, and is a requirement of the Aarhus Convention.

This petition goes a step further with its request for “sufficient professional help for communities to allow them to engage in the planning process”. It is well understood that many people have little or no experience of public speaking, with the general public largely unfamiliar with the complex statutory planning procedures. People quail

at the adversarial process of contributing to a Planning Committee, or worse, speaking in public at a Public Inquiry. Individual members of the public may also be disadvantaged with overt and/or hidden disabilities, such as autism or dyslexia, which can affect their ability to communicate. In remote rural areas subject to onshore wind farm planning applications, people, particularly elderly and isolated individuals, may not have adequate internet access or computing skills to be able to contribute without help. These are all problems that can be overcome with skilled help.

Turning to our request for help to support communities with participation in public inquiries on planning decisions, this was indeed discussed in May at the DPEA Stakeholders' Group meeting, of which SAS is a member.

Planning Aid Scotland does not take up individual cases. However, it has offered to refer any community groups seeking legal assistance to the Faculty of Advocates Free Legal Services Unit. Though very welcome, that has limitations. The Planning Bar is very small, and very busy. Every application for assistance is screened by an Advocate before it can be advanced for full advice or representation but finding available counsel is still difficult. Assuming a request for help passes basic criteria, help is available to individuals and community groups who cannot afford to pay for advice or representation. Legal Aid funding is not available.

However, like all voluntary or pro bono work, it has some limitations. Planning cases, by their nature can 'creep' and change their shape and importance, and an initial engagement with a generous (and free) adviser can turn into a long journey. Reliance on professional good will has its limits.

A BETTER SOLUTION

The petition suggests that a better solution would be to fund a panel of contributing lawyers from whom a selection could be made if the person or community meets certain criteria.

Four cost effective proposals have [previously been set out](#) and are expanded upon here:

- Advertise for and constitute a Panel of contributing lawyers. Appointments would be for a maximum of two years, and participants would be allowed Continuing Professional Development credit for their work. Firms and the Faculty would be encouraged to make public their efforts in contributing to this Scheme. Participants (or their firms, or the Faculty) would be paid at nominal rates, and have their expenses covered.
- Where requested, provide informed legal advice and representation to community groups to help prepare for and participate in Public Examinations whatever their form.
- Honour both the spirit and the letter of the Aarhus Convention by making public consultation by planning applicants both meaningful and recorded, with complete and contemporaneous Environmental Information Assessments being made publicly available, and with a record of public responses being kept for the decisionmaker.
- In the same vein, impose independent scrutiny, by a legally qualified person, of the content and manner of the public consultation process for all windfarm or overhead line applications, with an independent report of that consultation exercise to be included as part of the Environmental Report.

These proposals could be financed through an increase in planning application fees (still cheaper in Scotland than they are in England despite the December 2022 increase) with a nominally budgeted “1% for public consultation”. The reality is that developers do not take consultation seriously, rarely straying far beyond the walls of a village hall and providing *pro forma* routine reporting of their efforts.

EQUALITY OF ARMS

At public examinations there are usually unequally sized teams of ‘adversaries’. The odds can appear one sided and intimidating. The principle of ‘Equality of Arms’ is well understood in law. A key component of Article 6 of the European Convention on Human Rights means that tribunals or decision-makers must ensure that there is ‘equality of arms’ on both sides – meaning that a visibly fair balance must be struck between the opportunities given to both parties.

Third Parties have a clearly defined right to be present and to take part, yet when they take up this right, they are often treated and dismissed as an irritation by applicants, particularly by large utilities. That is a common experience.

CONCLUSION

This petition contains modest and well thought out proposals which would make a small call on the public purse. Its reach, and the consequences of its implementation, would yield disproportionately significant social benefit spread right across Scotland, encouraging fairness, equality and inclusivity. It would level up, and does not take away from anyone in any respect. The Petitioners are confident that it commands widespread public support and would be popular in communities.

It is submitted that the proposals sought by this petition are a small step towards levelling the uneven playing field upon which many important environmental decisions are made at present.

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Petitioner on behalf of SAS