

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

Petitioner written submission, 4 November 2024

We regret to inform the Committee that very little progress has been made on this Petition since [our last submission of 6 April 2024](#) in response to [the Minister's reply to the Committee's letter of 23 February 2024](#). We would like to update the committee and draw their attention to a number of issues.

The outcome of the consultation on 'Effective community engagement in local development planning guidance' has not yet been published. It is over a year since this consultation was closed.

The Minister did not reply to the Committee's query in relation to 'The Addressing Depopulation Action Plan' and how it would influence the Scottish Government's approach to community engagement on planning decisions.

[The Investing in Planning, Summary of responses was published in August 2024.](#)

Question 28, which related to our petition – *"Should the current threshold of 50MW for applications for electricity generation which are to be determined by authorities be altered?"* – was supported by all respondent categories except Development, Property & Land Management Sector & Agents. The majority of respondents from the Planning Authorities, Communities and Individuals, and Third Sector groups were in favour of the threshold being increased. Although decisions have been made on other aspects of the consultation, to date, no decision has been forthcoming on altering the 50MW threshold.

The Minister did not respond to concerns raised regarding the lack of professional support available to assist members of the public contributing to public inquiries. We were informed by the clerks that this issue was included in the Committee's letter to him, as agreed at the meeting on 21 February 2024.

In an effort to advance this important issue, we wrote directly to the Minister. We received a reply from a Senior Planner which stated:

"In regards to the provision of funding for individuals and communities wishing to take part in a Public Inquiry, it would not be appropriate for the Scottish Government to fund legal representation at appeals and inquiries. It is important that objectors can represent themselves at inquiry sessions, and there is an option for them to have a representative to assist. There is however no requirement for parties to be professionally represented at an inquiry session and the Reporter will ensure any unrepresented party is not unfairly disadvantaged. Finally, you may wish to note other sources of assistance available beyond the Faculty of Advocates Free Legal Services Unit. For example, the Environmental Rights Centre for Scotland exists to assist the public to exercise their rights in environmental law."

No explanation was offered as to why it would not be appropriate for the Scottish Government to fund legal representation. Legal Aid is government funded after all and is available for environmental cases. It seems to us that the Scottish Government do not wish members of the public to be able to compete on equal terms with appellants at Public Inquiries.

We do not understand what is meant by “there is an option for them to have a representative to assist”. Any representative would need to be more knowledgeable than the people he/she is representing which implies a legal or planning professional with knowledge of planning procedure, both of which are extremely expensive. Hence the reason for this petition.

We contacted the Environmental Rights Centre for Scotland who confirmed that: “we **don’t** provide representation in planning inquiries. This is mainly because we have limited resources and it takes a lot of time to prepare for and attend (often very long) inquiries”.

The length of time taken to prepare for and attend inquiries is another reason why it is difficult to secure pro bono representation from the Faculty of Advocates. [It states on their website that “any single piece of work for which assistance is requested will not take more than 3 days; The Unit has limited resources, and can only help in some cases.”](#)

Many Inquiries can last for a week and sometimes longer. Many members of the public may have to take unpaid time from work not knowing when and for how long they will be called to give evidence. That does not include the considerable assistance which is required leading up to the Inquiry and the time needed to write up closing submission thereafter.

There is in effect no assistance available for individuals and community groups, including community councils unless they have the ability to raise substantial funds. Some larger groups are well able to do this on one occasion, but it becomes increasingly difficult when faced with multiple inquiries. Many individuals and small groups have to make the decision to not take part.

We recently asked DPEA to review a number of clips from recordings of Inquiries which we believe show unacceptable behaviour. These recordings were removed from the DPEA website due to their new privacy policy however we lobbied to have them reinstated, not just because they include evidence of the difficulties encountered by some participants taking part in Inquiries but also because they are helpful for anyone participating for the first time to enable them to understand the process. We realise that viewing these videos, showing aggressive behaviour by applicant’s legal teams, could deter some prospective participants but we believe it is better to be forewarned. Very rarely do members of the public have experience of speaking in public and being subject to hostile cross examination.

DPEA has committed to ‘make people feel comfortable taking part in an inquiry’ and ‘to let the Reporter know if they feel they are being bullied’. We don’t believe that is possible to achieve without professional support, particularly for people with hidden disabilities, for example those with autism who may even be unaware that they are being verbally abused. It is possible they would not have the confidence to speak out

and admit they were feeling uncomfortable. Likewise, dyslexic individuals may struggle to write the required inquiry documents. The criminal justice system would not allow vulnerable persons or any witness to be questioned without a responsible person or advocate present and yet this practice is regarded as acceptable in Scottish Planning Inquiries. It is not acceptable and has a profound effect on individuals. Not everyone wishes to declare a disability to DPEA; some may not even have a formal diagnosis.

For participants who are lucky enough to have been able to raise funds for professional help, it is not uncommon to hear their representative advise them to refrain from answering a question. Without professional advice any inquiry participant would be disadvantaged. This is an obvious breach of Article 6 of the European Convention on Human Rights.

The number of applications for all renewable energy developments and resulting infrastructure continues to increase. All should now be covered by the ask of this petition.