



PUBLIC PETITION NO.

PE01518

### Name of petitioner

George M Chalmers

### Petition title

Meaningful Public Consultation within the Scottish Planning System

### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to clearly define, for the sake of good order within the planning system, the criterion which allows developers to ignore or avoid the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, with particular regard to Major Development applications.

### Action taken to resolve issues of concern before submitting the petition

A letter from **The Minister for Local Government and Planning** stated that the situation highlighted “is not ideal” but added “we have no plans at present to move away from the system of nationally prescribed thresholds in relation to the development as specified in an application for planning permission.”

If as the **Scottish Government Minister** stated in the same letter that the “nature of the project” is a consideration in the planning system and can be used by the developer to avoid the Hierarchy of Development Scotland Regulations 2009, then to avoid confusion, what constitutes this “nature of the project” should be clearly defined within the **National Planning Regulations**.

Hence the relevance of this petition on a **National Planning** issue.

Our local MSPs Alison McInnes and Nanette Milne raised questions at the **Scottish Parliament** but the **Government** gave the impression from their replies that they were comfortable with the situation where it was up to the developer if they chose to adhere to the Hierarchy of Developments Scotland Regulations 2009 or not.

The most recent reply on the 9th January 2014 from **The Minister for Local Government and Planning** to a question raised by Alison McInnes MSP on this issue of avoiding developments being classed as “Major” stated :-

“It is for the applicant to decide what size of development they wish to apply for”

The **Scottish Government** have been unable to quantify how prevalent this practice is in our planning system.

Planning Aid for Scotland was consulted PAS/C/2011/223 on the specific issue raised of 18 homes on a 2.655ha being divided to avoid being classed as Major. Their advice being that it could be open to a legal challenge.

The applications were discussed at several local Community Council meetings.

Comments from our local councillors varied from the simple “they can do it” to “if it doesn’t say it is illegal it must be legal” to “it’s a major development”. In a letter from Aberdeenshire Council their opinion was that the developer could have submitted 18 separate applications for the 18 houses if they had so wished.

## Petition background information

This petition is being raised to question the acceptability of **National Planning Regulations** which can be ignored by developers, planners and elected councillors with impunity.

With very little experience of the Scottish Planning Regulations in action I followed the ups and downs twists and turns of an application for a development at Whiteford Inverurie Aberdeenshire with interest and disbelief. Disbelief in that planning regulation could so easily be avoided and this avoidance accepted by council officials and our elected representatives at every level up to and including the **Scottish Government Minister**.

### Aberdeenshire Council

In the autumn of 2010 a development company submitted one application requesting full planning permission to build 18 dwelling houses on a 2.634 ha site at Whiteford Inverurie. This development was identified as site fh1 at Whiteford Inverurie in the relevant Aberdeenshire Local Plan.

With the site being in excess of 2 hectares this met the criteria for it to be classed as a Major Development. In compliance with the Town and Country Planning {Hierarchy of Developments} {Scotland} Regulations 2009. Reg 2 [1] and as included in the Schedule Aberdeenshire Council correctly defined this as a Major Development.

Following a meeting between Aberdeenshire Council and the developer’s agent the development company then submitted two applications for the site which were accepted by Aberdeenshire Council.

One for full planning permission for the erection of 13 dwelling houses on 1.9924 hectares at Whiteford Road Inverurie and one for full planning permission for the erection of 5 dwelling houses on 0.6416 hectares at Whiteford Road Inverurie adjacent to the 15 dwelling. These applications covered the exact same area as the single application for the 18 homes.

These two applications were withdrawn and replaced by one application for 15 houses and one for 3 houses again on the exact same area as the original single application for the 18 homes.

Aberdeenshire Council officials and Garioch Area Councillors all insisted that it was not within their remit or power to refuse this scheme from being used to avoid the development being classed as Major and the subsequent meaningful public consultation with the residents of Whiteford.

The **Scottish Government Directorate for Local Government and Communities** entered into verbal and written communication with Aberdeenshire Council on the subject of “Hierarchy of Development Order 2008”.

The correspondence was obtained under FOI requests but there is no recorded detail of the verbal discussions.

From the information at hand it is clear that at no time did the **Scottish Government** or its **officials** in any way dissuade Aberdeenshire Council from using the two application scheme to avoid the development being classed as Major.

The 15 dwelling application was refused planning permission by the Garioch Area Committee and the developer subsequently appealed this decision. This refusal was not based on how the developer had processed the applications.

The Reporter appointed by the **Scottish Ministers** to make the decision on their behalf

commented in the Appeal Decision Notice reference PPA-110-2139 that "The layouts make clear that the project before me and the 3-dwellings project can in many ways be regarded as part of a single scheme".

A letter dated 19th of February 2014 from Aberdeenshire Infrastructure Services Par 3 stated "The planning Authority does not hold details of the number of planning applications lodged which may fall within this category and, I am not in a position to provide you with any tangible evidence to show the number of instances when an applicant has submitted a planning application[s] to avoid exceeding the major development threshold."

#### Moray Council – Extensive Dairy Complex.

A letter received from Moray Council dated 21st January 2014 gives further evidence that in its current form The Hierarchy of Development Regulations are not fit for purpose and can be ignored at will as and when it suits the developer. It would appear to have become an accepted practice by planners and developers alike.

The letter from Moray Council stated in Para 2

"However, at the beginning of 2011 a number of concurrent planning applications were submitted for a number of buildings for the housing of cattle, formation of hard standings, slurry lagoon and silage storage. If these development proposals had been packaged into one application the major application requirements would have been triggered."

Whilst no planning application reference numbers were given in the letter it is safe to assume from the Moray Council planning web site that the letter from Moray Council refers to a "number of concurrent planning applications." Eight concurrent planning applications were submitted on the 25th of January 2011 and the following day a further two applications on the 26th January 2011. Ten applications in total to cover an "extensive dairy complex". This avoided any major application requirements.

As an example, one of the ten 11/00084/APP - Observations - Assessment of Proposal "This is one of a series of planning applications for an extensive dairy complex at Feddan Farm, near Bondie. The application is in respect of the erection of a cattle milking parlour building with hardstandings on each gable at the south end of the site".

All ten of these applications were signed sealed and approved on the 28th of February 2011. There is no evidence on line to show that any of these applications went before any planning committee.

Interestingly at the same time on the 26th of January 2011 a planning application for the "Construction of portal frame buildings slurry lagoon and silage pit on farm complex at Feddam Farm Moray IV36 2TD" which had been submitted on one application 10/01732/APP on the 30th of September 2010 was withdrawn.

Unfortunately all drawings and details have been removed from public access on their web site for this application.

I would suspect that this single application would have triggered the requirement of a major development which would have included pre application consultation with the community and was the reason for its withdrawal.

#### Dundee Council

Within a letter from Dundee Council Head of Planning dated 22nd of January 2014.

"I am aware of one or two instances where housing proposals have been submitted for just less than 50 houses with subsequent applications being submitted for a small number of additional houses principally to avoid the lead time involved in pre application consultation. These applications have not been controversial and involved tight funding packages where delay would have hampered implementation. At the same time I am also aware of cases where pre application consultation was carried out on a voluntary basis for local developments."

Is "to avoid the lead time involved" or "involved tight funding packages" a legitimate

reason for Planning Authorities to ignore The Town and Country [Hierarchy of Developments] [Scotland] Regulations 2009 Reg 2 [1] and as included in the Schedule?

Is it within the remit of Planning Authorities to decide what is and what is not "controversial"?

Unfortunately no planning reference numbers were included in the letter from Dundee Council so I can give no details as to what developments these "one or two instances" refer.

### Angus Council

Included within a letter from Angus Council dated 30th of January 2014.

"There have been examples where developers have applied for a number of applications for change of house type or revision to a previously approved layout on a larger site, and in some of these circumstances if the applications had all been submitted at the one time the application may have been regarded as major by virtue of either site area or number of units."

Again no planning reference numbers were included in the letter.

It is irrelevant how often this process has been employed, the precedent has been set by the **Scottish Government** in giving it the green light with no caveats being wholly designed to avoid but not limited to meaningful consultation with the communities affected. Thus a considerable saving in time and a significant reduction in costs for the developer all to the detriment of local communities is achieved.

Given the **Scottish Government's** acceptance of this practice being used to avoid the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, it is therefore incumbent on the **Scottish Government** to clearly define "the nature of the development" which allows this to happen. There should be no place for such ambiguity in a "modernised" planning system.

It is evident that a very lax approach has developed around this Scottish Planning Regulation at "the heart of the modernised planning system." It is far too easily bypassed!

### Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01518>

### Related information for petition

Do you wish your petition to be hosted on the Parliament's website to collect signatures online?

YES

How many signatures have you collected so far?

1

Closing date for collecting signatures online

## Comments to stimulate online discussion

Is this **Scottish Planning Regulation** fit for purpose? Not if Aberdeenshire Council's statement that "the developer could have submitted 18 separate applications for 18 homes if they had so wished" is a legitimate option?

Should applications be considered in isolation? I would suggest not.

The simple solution is for planning authorities to be given the power to consider multiple applications for the same site as one development.

The ambiguous statements by the **Scottish Minister for Local Government and Planning** "nature of the development" and "it is for the applicant to decide what size of development they wish to apply for" require clarification by the **Scottish Government**.

What constitutes a "development"?