

PE1469/D

Directorate for Local Government and Communities

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**The Scottish
Government**
Riaghaltas na h-Alba

Mr Stuart Todd
Assistant Clerk
Public Petitions Committee
The Scottish Parliament
EDINBURGH
EH99 1SP



LEGACY 2014
XX COMMONWEALTH GAMES
SCOTLAND

Your ref: PE 1469
Our ref: A5934778
22 May 2013

Dear Mr Todd

PETITION PE1469 – NEIGHBOUR NOTIFICATION DISTANCES FOR PLANNING APPLICATIONS FOR WIND TURBINES

Thank you for your letter of 30 April 2013 referring to the two questions arising from the Committee's 6 April consideration of petition PE 1469, urging the Scottish Government to consider increasing the 20 metres neighbour notification distance in relation to planning applications for wind turbines.

Scottish Government's Views on the Petition

It may be helpful if I set out briefly some background on publicity for planning applications, though further details are contained in the Annex to this letter. It should be noted that wind farms over 50MW do not go through the planning application process, but are considered by Scottish Ministers under separate procedures under the Electricity Act 1989. In those circumstances, publicity is achieved through press notices placed by the developer.

Neighbour notification of planning applications has been part of the application process since at least 1981. At that time the basic notification distance was four metres from the proposal site, ignoring the width of an intervening road.

There was no suggestion that this alone would notify everyone locally who might have an interest in a development proposal, and there were requirements to advertise in local newspapers certain types of proposal which were considered likely to have wider impact on amenity, e.g. structures over 20 metres in height.

Today, in addition to the above and additional requirements to advertise applications for proposals, planning authorities are required to put lists of applications on the planning authority web site and send weekly lists of new applications to community councils and make these lists available in public libraries and the planning office. In 2009, the basic neighbour notification distance was increased to 20 metres and responsibility for neighbour notification was transferred from applicants to the planning authority.

There is still some reliance placed on word of mouth; that is, not everyone with a potential interest will necessarily see or receive such notices or lists themselves.

Pre-application consultation requirements on prospective applicants for planning permission were introduced in 2009, and apply to, amongst other things, electricity generation stations of 20MW or more. Such consultation is about finalising the proposal prior to an application being made, and the application may differ from what was discussed during PAC.

We note the concerns in the petition and appreciate the concerns expressed. Our overall aim is to provide opportunities for interested parties to comment on applications while not placing disproportionate burdens on planning authorities and applicants.

Wind turbines may of course be proposed in many different circumstances, from large scale wind farms in remote locations to single, large turbines in more suburban contexts. The suggestion of neighbour notification distances of hundreds of metres may have very different implications in different settings.

Wind turbines are not unique in that people beyond the neighbour notification distance may have an interest or concerns. This can be the case in relation to urban, suburban and rural settings, from waste treatment plants to mobile phone masts. It would be difficult, therefore, to consider the notification requirements for one such development in isolation.

While some amendments to the general publicity requirements are about to be laid in Parliament as part of consolidated planning regulations, we have no plans at present for a further review of neighbour notification or other publicity requirements for planning applications. We will, however, consider further the issues raised by the petition and the Committee's discussion and update the Committee in the autumn.

Sanctions

As independent corporate bodies, whose powers and duties are set out in statute law, local authorities are free to exercise discretion within the law so far as carrying out their planning functions are concerned. The powers of the Scottish Ministers to investigate their actions or to intervene in their day-to-day activities are similarly expressed in, and limited by, statute.

It is open to individuals to approach the Council's Chief Executive and raise concerns about the actions or decisions of the authority. Additionally if a person feels that they have personally suffered an injustice as a result of maladministration, and if no other remedy is available, they can submit a complaint to the Scottish Public Services Ombudsman. The Ombudsman cannot consider complaints about discretionary decisions, but can look into the administrative processes involved in reaching that decision. Responsibility for deciding whether or not to investigate a complaint rests wholly with the Ombudsman who is entirely independent from the Scottish Government. Before taking on a case the Ombudsman would expect the local authority's complaints procedure to have been exhausted.

Remedies may also be sought through legal action in the courts, and it would be for individuals or parties to seek their own legal advice on what avenues may be open to them in this regard.

I should also mention that the Scottish Government is committed to ensure on going improvement of the planning service through Planning Reform. As part of Planning Reform – Next Steps, we published the Planning Performance Framework (PPF). This framework was devised by Heads of Planning Scotland in conjunction with the Scottish Government. The PPF is available on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/Built-Environment/planning/modernising/cc/ImprovementPlans/Framework>.

The PPF requires authorities to submit an annual report to Scottish Ministers for their consideration and will be an important tool in this assessment of the quality of planning service being provided.

I hope this information is of assistance.

Yours sincerely

ALAN CAMERON
Policy Manager

Publicity for Applications for Planning Permission

Requirements for pre-application consultation (PAC) are set out in the Town and Country Planning (Scotland) Act 1997 (the 1997 Act), as amended and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (the DMR). They apply to major developments – e.g. electricity generating stations of 20MW or more - and national developments.

The minimum PAC requirements are for the prospective applicant to hold a public event locally, to advertise in a local newspaper the event and where written representations can be sent and to consult the community council. The 1997 Act allows planning authorities to require further PAC measures on top of the statutory minimum.

The DMR require notice to be sent to premises on neighbouring land (land which, or part of which, is within 20 metres of the boundary of the land to be developed). Where there are no premises on neighbouring land to which notice can be sent a newspaper notice is required. A notice would also be required where the development was specified in the DMR as one with wider impacts on amenity (e.g. structures over 20 metres in height) or where the proposal was contrary to the development plan, or where the applicant could not notify the owners of the proposal site.

The planning authority must publish a list of planning applications on its web site and send weekly lists of new applications to community councils and make such lists available in the planning office and public libraries. There is also a public register of applications.

A date for representations to be made must be specified (a minimum of 14 days from the publication date of a newspaper notice and a minimum 21 days from the date of a neighbour notification)

Publicity for Applications to Ministers for Consent under the Electricity Act 1989

Wind farms greater than 50MW are subject to separate consent procedures outside the usual planning application process. Publicity is by newspaper notice.

The nature of these notices is defined by the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations and by the Electricity (Applications for Consent) (Scotland) Regulations. In practice, this requires the developer to place a notice at the time of application in one (or more) local papers for two consecutive weeks, The Edinburgh Gazette for two consecutive weeks and in a national paper once. This notice explains where members of the public can access the application information, how they can make representations on the application, and the closing date for these representations (a date a minimum of 28 days after the date of the last notice).

Once the Scottish Government have received their first consultation response by a statutory consultee (this being a response from SEPA, SNH or from the Planning Authority), this response is published on the Planning Register and on the Scottish Government website and a further round of press notices must be placed by the developer. These notices, placed for two successive weeks in one (or more) local newspapers and in the Edinburgh Gazette, alert members of the public to additional information they may wish to consider in relation to the application, and provides a new period of time within which representations are to be made.