

PE1469/E

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

I thank the Scottish Government and COSLA for their responses to the two questions arising from the Committee's consideration of my Petition which were:

Scottish Government—

What are your views on the petition and the issues discussed at the meeting on 16 April?

What sanctions are available if a planning authority does not adhere to its statutory duties regarding neighbour notification for planning applications?

COSLA—

What are your views on the petition and the issues discussed at the meeting on 16 April?

My fellow witness to committee Graham Lang, representing Scotland Against Spin (SAS), wishes to make it clear that the petition is not just about wind farm proposals; on the contrary, it is mainly about smaller scale feed in tariff inspired applications by developers, investors and local land owners.

Having considered the responses we have the following comments to make:

It appears that while our concerns are understood and to a degree sympathised with, the tone appears to be that everything is fine and will carry on as before.

With my experience and that of SAS, who have a national reach, everything is far from fine and change is needed

Many members of the public who have been directly affected by wind turbine development agree, indeed we believe the planning service sympathises with and would agree to, changes proposed in the petition as it would remove a grey area and reduce the numbers of complaints that they receive from dissatisfied members of the public.

The neighbour notification as it stands is unsatisfactory and we believe that this was recognised by the Committee. By not notifying those neighbours closest to a turbine proposal those people are being disenfranchised from the planning process and development is being allowed unopposed where clearly there would be significant concerns.

This rankles and brings the planning process into disrepute. Members of the Petitions Committee who declared an interest at Committee on 16th April 2013 are aware of this. Assuming they are a sample of members of the Scottish Parliament,

my well supported petition should succeed and a simple variation to the criteria for neighbour notification should be made.

Before the legislation changed, the applicant was responsible for neighbour notification at their expense. Through secondary legislation changes brought in by the Planning etc. (Scotland) Act 2006 which came into force on 3rd August 2012, the responsibility for neighbour notification transferred from the applicant to the local planning authority with no funding awarded to meet the additional costs.

We do not believe, if the cost cannot be absorbed by the local planning authority, a small increase in planning application fees, to at least cover the cost of notifying the 10 nearest neighbours, is unreasonable. LPAs should be given the discretion to charge this and that would remove any financial burden from the local authority. The only possible justification to deny this petition would be the Scottish Government's belief that it may hamper development. We think that would be extremely unlikely! On 20th April 2013 the Scottish Government introduced legislation to increase the fees by circa 20% across the board for applications and notionally some of that could be applied to meeting the cost of neighbour notification. Interestingly there is no category of development that encompasses renewable development schemes either large or small scale. The increase in fees was derisory and a lost opportunity to introduce a more proportionate scale of fees for wind turbine applications where it is widely acknowledged there is a disproportionate amount of work in relation to the value of the development. This is an area where developers receive a further subsidy, this time through the council tax payer, by not meeting anything like the true costs of the application process.

We agree it is impossible to notify everyone locally who may have an interest in a development proposal but firmly believe residents in rural areas (particularly the elderly) are discriminated against for the reasons already set out in the Petition and my Opening Statement.

- Not everyone has access to a computer to check on-line planning applications on their local authority's website.
- Not everyone has the ability to visit their local library to check planning applications.
- Not everyone buys their local newspaper where planning applications should be advertise
- Those living on or close to a neighbouring local authority's boundary are generally unaware of another Council's procedures and local papers advertising planning applications are not always easily available. **(This has not been addressed in the replies from either COSLA or the Scottish government).**

The Scottish Government admits that structures over 20m in height are considered likely to have a wider impact on amenity. The vast majority of turbines exceed this

height and are commonly 50m to 120m. To compare them with a Waste Treatment Plant or a Mobile Phone Mast (15m) or even a Pylon (35-50m) is ridiculous. These structures do not rotate, causing annoyance by way of constant movement/flicker and they do not make more noise at night than during the day. They are not comparable. We agree extended neighbour notification for developments of this nature is desirable but believe wind turbines to be the most contentious and intrusive of developments and therefore the most in need of revised legislation. Single or multiple large turbines in a suburban area are unusual except on industrial estates which may border urban/suburban areas.

As the letter from the Scottish Government mentioned:

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.

To remind you of my Petition/Opening Statement – rural residents are at a disadvantage for the very reasons stated above.. However, an industrial estate bordered by hundreds of properties would only require the 10 nearest properties to be notified as word would spread quickly, supplemented by the other already available methods of notification.

It should be noted that windfarms 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.

The public are allowed to make representation to s. 36 applications via the Local Authority and the Consents Unit. Windfarms of this scale tend to get more publicity than small scale developments but there is still no statutory obligation to notify the public directly of a development which will have a significant effect on the amenity of a large number of people.

However the majority of planning applications for wind turbines are local or major development determined under delegated powers, Planning Committee Members or full Council.

What sanctions are available if a planning authority does not adhere to its statutory duties regarding neighbour notification for planning applications?

In the Uplawmoor area (213 households), the Local Planning Authority has failed in its statutory duty to notify our community council on two occasions in the last three years – once for Neilston Community Windfarm in 2010 and again in 2012 for a housing development.

The requisite three tier complaints procedure to the local authority followed by a Report to the Ombudsman is an arduous task, designed to deter complainants. The Ombudsman has no jurisdiction to overturn a decision and the majority of cases result, at best, in an apology from the local authority.

Judicial Review is outwith the means of the majority of people due to the extremely high legal costs involved. Legal Aid is difficult to obtain for Environmental cases and Protective Expenses Orders do not go nearly far enough to help the average person, with predicted expenses still in excess of £35,000.

In response to COSLA

We agree that the Scottish Government must recognise that local opinion on a planning application or section 36 application is a very important material consideration and access to technical help for community councils in the assimilation of a complex environmental statement would certainly be welcomed but their comments would still only be counted as ONE representation. As previously stated, the planning process benefits from public engagement allowing officials to prepare accurate reports and Councillors to make informed decisions, it seems reasonable that at least 10 properties be directly notified to facilitate responses and should they be objections, be given a Hearing by the Planning Applications Committee.

Aileen Jackson
Graham Lang (SAS)
11 June 2013