

PE1518/I

Petitioner Letter of 4 January 2015

PUBLIC PETITION PE 1518

Dear Committee Members

The Government and their officials for whatever reason chose to ignore the veritable raft of warnings they received from respondents during the Planning Hierarchy Consultation process as to how easily developers would avoid the criteria where developments should be classed as Major and the requirement for **meaningful consultation with the public**.

It is therefore in my opinion unrealistic to expect some of the same officials who ignored all the warnings to admit to a layman that any shortcomings exist in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and to give a full and frank balanced response to the deficiencies highlighted in my petition. This is clearly reflected in their response which has failed completely to address the issue raised in PE 1518

Why were all these warnings ignored by the Scottish Government?

Similarly an official from the Scottish Government within the Directorate for Local Government and Communities had entered into verbal and e-mail communication with Aberdeenshire Council planners on the subject of Hierarchy of Development Order 2008. The correspondence was obtained under FOI requests but there are no recorded minutes of the verbal discussions.

The following is an extract from one of these e-mails:-

“Officials have taken the view therefore that it is what will be in the individual planning application that counts. We have acknowledged that, in line with that view, a proposal could be split into separate applications to avoid requirements around, for example, PAC.”

Is such an important interpretation and consequential effect within the remit of officials? Did the Scottish Government agree with this policy at that time?

An interpretation which turned the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 into no more than a voluntary code of practice. Or even a deregulated free for all where it is up to the developers whether they make the effort or not to comply with the regulations. The general public deserve regulations that are clear, concise and robust. A description one could not attribute to the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

What was not given as an example of this policy was of course that this interpretation also avoided the development being classed as Major within the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and **meaningful consultation with the public**.

From the information at hand and the subsequent outcome the practice of submitting two applications to avoid a development being classed as Major was the topic of conversation and

it is clear that at no time did the Scottish Government official in any way dissuade Aberdeenshire Council from using the two application scheme to avoid the development being classed as Major.

A basic fundamental flaw in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. A flaw that the Scottish Government for whatever reason chooses to ignore.

A situation described by the Minister for Local Government and Planning in a letter of December 2011 as “**is not ideal.**” Is “**is not ideal**” good enough for this regulation “**at the heart of a modernised planning system**”? The general public deserves very much better.

Given that there is a presumption in favour of any development application within the planning system it is unfortunate that the Scottish Government for whatever motive have shown to have limited ambition when it comes to formulating robust planning regulation to balance this presumption in favour of developers. This is borne out by the ease by which the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 can be avoided.

The following are my comments on the response from the Local Government and Communities Directorate.

Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. The revised Scottish Planning Policy1 (‘SPP’) provides that such engagement between stakeholders should be “early, meaningful and proportionate”.

This has become the standard reply when questions are raised regarding lack of public consultation in the planning system. Unfortunately it does not readily transfer from the written word into practice.

”Early, meaningful and proportional” public consultation although much lauded within the vast array of planning documentation and vaunted by the planning fraternity is in practice treated as little more than a tick box exercise as positive public consensus is not a consideration or requirement when it comes to planning.

All the evidence shows that the views of the general public or indeed community councils are given very little or in the vast majority of applications no credence when it comes to the planning decision making process.

Interestingly in their submission to the Petitions Committee regarding PE 1534 the Scottish Wildlife Trust is inclined to agree and concluded:-

The Scottish Wildlife Trust respectfully suggests that if there is no improvement in planning regarding meaningful engagement for the public in an agreed timescale then there should be a review of the current rights of appeal within planning.

In answer to your specific question on whether the Scottish Government will undertake works to ascertain practice on the phasing of applications, at present we have no plans for research on a review of the hierarchy or around the issue of pre-application consultation. However,

your comments on exploring the phasing of developments to avoid categorisation as major development and related concerns are noted.

With the mention of “phasing” the Committee has recognised that this malpractice is also used to avoid developments being classed as Major under the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. Not so blatant a scheme as the simple multi application approach for one development as agreed between Scottish Government officials and Aberdeenshire Council planners.

A perfect example of “phasing” was used at Westhill Aberdeenshire:-

Eleven 2 and 3 storey office blocks on a 3.33 hectare site classed as two local developments. Is it little wonder that the public do not feel listened to when it comes to key development decisions. The promises of better participation are not working in practice.

With regard to the direction making powers to require local development to be treated as major development, this was included in the legislation on the basis that there might conceivably be a development categorised as local which might require to be processed as a major development. It was not intended that this power would be used for regular interventions in the planning process and there is no specific procedure around exercising this direction making power. It would however be open to anyone - for example, a planning authority, government agency, non-government agency or an individual - to request that Scottish Ministers exercise this power in a particular case. Any such request would be considered on its individual merits.

I fail to understand how if there is “no specific procedure around exercising this direction making power” an individual can be expected to ascertain its purpose or process?

Would I be correct in suggesting a perfect example should have been used at Westhill Aberdeenshire? Eleven 2 and 3 storey office blocks on a 3.33 hectare site classed as two local developments specifically designed to avoid “early, meaningful and proportionate” consultation. Or in fact in this case any consultation. See previous submission for the full details. This is the reality of the planning system in action.

Perhaps the Scottish Government officials have some examples they considered would fit the criterion? Or is it just a piece of pointless regulation?

Last year we sought stakeholders’ views on good practice in pre-applications consultation. As a result, the updated Circular 3/2013 on Development Management Procedures, issued in December 2013, included additional good practice guidance on implementing the requirements in that regard. We currently have a public consultation on-going on good practice regarding “Public Engagement for Wind Turbine Proposals”, which closes on 15 December.

To reiterate the aim of my Petition

“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”.

Having read both several times, Circular 3/2013 and its predecessor planning advice note 3/2010 are completely irrelevant with regard to the aim of my petition. Neither of the documents explain nor indeed are designed to explain 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.

It is unfortunate that the Local Government and Communities Directorate have chosen to ignore and avoid answering the specific question raised by the petition. With the continued reluctance to address this issue the only conclusion one can reach is that this regulation “**at the heart of a modernised planning system**” can be classed as no more than a Voluntary Code of Practice. As yet I have read nothing that would counter this opinion.

None of the respondents including the Local Government and Communities Directorate chose to address the question I raised based on evidence where one day a development can be classed as Major by the planning authority and then by the deliberate manipulation of paper work next day it no longer fits that criterion.

If this situation is readily accepted within the planning system then there is little doubt that this regulation “**at the heart of a modernised planning system**” is not fit for purpose.

Yours sincerely

George Chalmers