TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

15th Meeting, 2001 (Session 1)

Wednesday 23 May 2001

The Committee will meet at 10.00 am in Committee Room 1 to consider the following agenda items:

1. **Items in private:** The Committee will consider whether to take items 4 and 5 in private.

2. **Public Petitions:** The Committee will consider the following public petitions—

   PE225: Petition by Mr William Ackland calling for the Scottish Parliament to take steps, including legislation if necessary, to protect the human rights of residents of homes adjacent to quarrying from vibration, noise and environmental threats.

   PE327 Petition by Mr Duncan Hope on behalf of the Blairingone and Saline Action Group, calling for the Scottish Parliament to request that legislation be revised to ensure that public health and the environment are not at risk from the current practice of spreading sewage sludge and other non-agriculturally derived waste on land in Scotland.

3. **Public Petition:** The Committee will consider the terms of a response from the Executive relating to Petition PE3 from Hospitalfield Area Residents’ Committee on commercial oil seed rape crushing.

4. **Water Inquiry:** The Committee will consider a second draft report on its inquiry into water and the water industry.

5. **Budget Process 2002-03:** The Committee will consider a draft report on the Budget Process for 2002-03.

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Introduction

This paper asks the Committee to consider for the second time PE225 from Mr William Ackland. A copy of the original petition is attached.

Background

Members will recall that the petition was considered by the Public Petitions Committee (PPC) at its meeting on 4 July when the PPC agreed to write to the then Minister for Transport and the Environment seeking her comments on the current protection for residents who live near to quarrying from noise, vibration and environmental threats, and to ask for details of any proposed legislative changes in this area. The PPC considered the petition again on 12 September 2000 when it agreed to pass the petition and the Executive response to the Transport and Environment Committee.

The petition was then considered by the Transport and Environment Committee at its meeting on 6 December 2000, where the Committee agreed to write to the Executive seeking clarification as to **who exactly is liable to pay compensation in cases when planning permission is revoked or working rights are restricted, and whether the process for compensation is compliant with the European Convention on Human Rights**.

The Petition

The petition sets out the petitioner’s concerns over the effects of quarrying activity at Sheephill Quarry in Dumbarton on the residents of Milton Hill Estate. It calls on the Parliament to take steps, including legislation if necessary, to protect the human rights of residents of homes adjacent to quarrying from vibration, noise and environmental threats.

The petition outlines the petitioner’s understanding of relevant planning permissions and decisions relating to the site. The petitioner is concerned at the historical processes which have led to a residential development being situated in close proximity to a quarrying operation. The petitioner claims that quarrying activity at Sheephill began more than 20 years after the relevant permission was granted and that in the intervening period the decision to develop a housing complex was taken. The petitioners state that the outcome of an environmental impact assessment of the site is awaited. The petition also records that the blasting which is the cause of their concern is “apparently in compliance with current guidelines”. The petitioners state that, in their view, such guidelines do not “pay sufficient regard to the wider effect such blasting imposes on the human condition” laying greater emphasis on the impact on structures.
Response

The Committee has now received a response from the Executive (attached) stating that whilst it is unable to discuss the merits of individual cases a claim for compensation could be made to the relevant planning authority under Section 76 of the Town and Country Planning (Scotland) Act 1997. Furthermore the Executive states that all planning legislation is ECHR compatible.

The Town and Country Planning (Scotland) Act 1997

The Clerks and SPICEe have done some initial research on the legislative background. The Executive’s response refers to Section 76 of the Town and Country Planning (Scotland) Act 1997, which allows an individual to claim compensation from planning authorities where the individual has had planning permission revoked.

Revocation Orders are covered by Section 65 of the Act. However such orders appear only to be relevant where the original planning consent has not been fully implemented.

Where planning consent has already been implemented another option is to seek a Discontinuance Order, which would bring to a halt all current permitted use. However in this event the Act entitles the operator to seek compensation payments if their working rights are restricted by the order.

Discontinuance orders are covered by sections 71-75 of the Act. Section 72 states that for an order to take effect the planning authority must first submit it to the Scottish Ministers for confirmation. It is also possible for the Scottish Ministers to make a discontinuance order under section 73 of the Act.

If an Order is made, the issue of compensation may then arise. If the Scottish Ministers were to make a discontinuance order, then compensation would have to be paid in respect of damage suffered, under section 83 of the Act. According to section 83 it appears to be the planning authority who have the responsibility to pay compensation.

In addition Schedule 13 of the Act would appear to empower the Scottish Ministers to make special provision for compensation in respect of minerals by statutory instrument.

Next Steps

In its letter to the Executive on 16 March the Committee asked who is liable to pay compensation in cases when planning permission is revoked or working rights are restricted. The Executive’s response refers the Committee to the Act. It would appear that the legal position is potentially complex depending on individual circumstances.

Therefore it follows that the Committee has two options before it.
Option 1

If the Committee wishes to pursue the issue of possible payment of compensation, it is recommended that the Committee seek advice on the relevant provisions in the Town and Country Planning Act from the Scottish Parliament Legal Office.

Option B

The Committee could note the petition, and write to the petitioner suggesting that he pursue the matter further with the Scottish Executive for the reasons outlined above, whilst stating that it is not appropriate for the Committee to express a view on individual planning decisions.

The Committee can of course take any other competent action it deems appropriate.

Recommendation

The Committee is asked to consider and agree how it wishes to deal with the petition.

Shelagh McKinlay
Clerk to the Transport and the Environment Committee
May 2001
**Note by the Clerk**

**Introduction**

This paper asks the Committee to consider for the first time PE327 from Mr Duncan Hope, on behalf of the Blairingone and Saline Action Group which asks the Scottish Parliament to request that legislation be revised to ensure that public health and the environment are not at risk from the current practice of spreading sewage sludge and other non-agriculturally derived waste on land in Scotland.

**Background**

The petition was considered by the Public Petitions Committee at its meeting on 23 January when the petition was referred to the Transport and the Environment Committee for further consideration, with the suggestion that the Committee may wish to seek the views of the Health and Community Care Committee on the issues raised.

The Petitioners are concerned that the current practice of spreading organic wastes from a variety of sources is inadequately regulated, is not environmentally friendly and is potentially dangerous to local communities, animals and plants. The petitioners are calling for more consistent legislation and regulations to be developed with regard to waste spreading of organic matter; for SEPA’s powers to prosecute to be strengthened; and for land management plans to be adopted. This is prompted by the fact that, since 1997, the communities of Blairingone and Saline have experienced environmental pollution and noxious odours from the spreading and injecting of raw and partially treated sewage sludge and other non-agriculturally derived wastes on neighbouring farmland.

**Actions taken by the Parliament and Executive in relation to the Petition**

The petitioners have held public meetings with a variety of groups including local communities and politicians, East of Scotland Water, Perth and Kinross Council, SEPA and most recently in November 1999 with George Reid in the Committee Chambers when other MSP’s were invited. Several MSPs have lodged questions on this matter. A review from SEPA (which was commissioned by Lord Sewell) stated that “the current approach to the regulation and management of organic waste spread on land is inadequate and inconsistent, leading to practices which pose a risk to the environment and pose potential public, animal and plant health risks.”

In response to Parliamentary Question S1W-12162 the Minister for the Environment responded to the SEPA Review of Organic Waste Spread on Land on 22 December 2000. A copy of this PQ, and a subsequent further submission by the Petitioners is attached.
The Executive has stated that it will consult on the recommendations put forward by SEPA in due course, with a view to amending the Waste Management Licensing Regulations. These recommendations include:

- the introduction of a consistent legislative framework for the spreading of organic wastes on land,
- a requirement for waste spreaders to demonstrate the agricultural benefit or improvement for animal or plant communities,
- restrictions on land utilisation following the application of wastes,
- a prohibition on spreading septic tank sludge on land,
- a requirement for audit trails to be produced if waste producers wish to recycle organic waste to land,
- the development of charges for inspections of those seeking exemptions from the regulations.

However, some recommendations still require to be addressed. These include the prohibition of spreading blood and gut contents from abattoirs, the introduction of Land Management Plans, the prohibition of practices such as spreading waste on land with field drains and the spreading of waste outwith daylight hours, and the introduction of competency schemes for contractors carrying out landspreading.

The fact that these points are not being taken forward is a matter of concern to the Petitioners. The Petitioners are also concerned that no clear actions are being proposed in relation to sewage sludge or odour nuisance. The Petitioners wish to see the Executive publish a programme for taking these matters forward, without delay.

**Options**

A number of options are open to the Committee and these are set out below:

**Option A**

The Committee could note the petition and agree to take no further action.

**Option B**

The Committee may wish to write to the Executive seeking information on the proposed time frame for consulting on and implementing changes to the regulations. The Committee may also wish to seek more information on aspects of the petition not covered by the proposed changes, as outlined above.

As these matters may require some ongoing work, the Committee may also wish to consider appointing a reporter to consider the issues and report back to the Committee.

The Committee should also consider whether it wishes to consult the Health and Community Care Committee regarding this matter.
Recommendation

The Committee is asked to consider and agree how it wishes to deal with the petition.

Tracey Hawe
Senior Assistant Clerk to the Transport and the Environment Committee
May 2001
Petition PE03: Hospitalfield Area Residents Committee (HARC)

Note by the Clerk

Introduction

1. Petition PE 03 was submitted by the Hospitalfield Area Residents Committee. The Petition related to the activity of oil seed rape crushing, and the petitioners alleged that the activity was responsible for discharges of “offensive odours”, “particulate emissions” and “noise nuisance” and called for the Scottish Parliament to “achieve a solution to this on-going environmental nuisance.”

Background

2. The Petition requested the following action:

(i) The First Minister to instruct SEPA to withdraw authorisation for the activity on the site;

(ii) An independent investigation into the actions of Angus Council in failing to comply with the Environmental Protection Act by not insisting upon an Environmental Impact Assessment (EIA) being commissioned prior to this company setting up operations;

(iii) Parliament instruct Angus Council to apply to the First Minister for permission to take nuisance action; and

(iv) a review, by Parliament, of the process by which the situation happened.

Progress of the Petition

3. PE03 was submitted to Parliament in July 1999 and considered by the Public Petitions Committee on 31 August. It was referred to the Transport and the Environment Committee and first discussed at the Committee meeting on 8 September 1999. The Committee decided to seek further advice from SEPA and Angus Council and seek a view on health matters from the Health Committee. The Committee sought legal advice to establish which parts of the petition the Committee could competently take action on.

4. The Committee discussed the petition again on 1 November 2000. The Committee agreed that the Clerk should write to the petitioners to inform them of those suggestions for action made in the petition which are not within the Committee’s remit, and that it is not appropriate for the Committee to take a view or recommend further action in respect of individual cases. The Committee agreed to write to the petitioners to pass on responses received on the petition from Angus Council and SEPA.
5. The Committee also agreed to write to the Scottish Executive to invite Ministers to consider whether they wish to consult on the adequacy of current procedures in relation to the granting of planning permission for, and the environmental regulation of, the activity of oil seed crushing, including whether the planning classification of the activity should be changed; the role of SEPA in relation to planning applications for the activity of oil seed rape crushing and similar activities; and whether SEPA has sufficient powers of enforcement and compliance in relation to its authorisation of activities such as seed crushing. The Committee agreed to pass the response received from the Executive to the petitioners in due course.

6. A copy of the letter written to the Executive is attached for members information, together with a copy of the Executive’s response, which has already been copied to the petitioners.

Action required by the Committee

7. As the consideration of this petition has formally been concluded there is no need for any further action on the part of the Committee. However, the response from the Executive indicates that having considered the issue at the Committee’s request, they believe that the petition has highlighted a technical loophole in the way in which the requirement to adopt the procedures of the EIA Regulations is triggered by the planning process.

8. The Executive intends to close this loophole and is exploring mechanisms to do so. They further state that they will consult once they have considered how best to close the loophole and will endeavour to remedy the position during the course of the year.

Recommendation

The Committee is requested to note and comment on the attached letter from the Executive.

Tracey Hawe
Senior Assistant Clerk to the Transport and the Environment Committee
May 2001