The Committee will meet at 9.30 am in Committee Room 3 to consider the following agenda items:

1. **Petition PE 449:** The Committee will consider a petition by Mr Alex Hogg, on behalf of the Scottish Gamekeepers Association.

2. **Petitions PE 422, PE 430 and PE 454:** The Committee will consider correspondence between the Convener and the Minister for Social Justice relating to petitions PE 422 by Mr James Docherty on protection for school playing fields, PE 430 by Mrs M Glendinning on the sale of school playing fields and PE 454 by Mr Peter Watson on the sale of playing fields.

3. **Petitions PE 346 and PE 369:** The Committee will consider a response from the Scottish Executive to a reporters’ paper on petition PE 346 by Scotland Opposing Opencast and petition PE 369 by the Confederation of UK Coal Producers.

4. **Subordinate Legislation:** The Committee will consider the following negative instrument—

   The Road Humps and Traffic Calming (Scotland) Amendment Regulations 2002, (SSI 2002/419).

5. **Water Environment and Water Services (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

6. **2003-04 Budget Process (in private):** The Committee will consider a paper by the Committee’s adviser on Stage 2 of the 2003-04 Budget Process.
The following papers are attached for this meeting:

<table>
<thead>
<tr>
<th>Paper</th>
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<tr>
<td>Cover note on petition PE 449</td>
<td>TE/02/28/1</td>
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<td>(Agenda item 1)</td>
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<td>Copy of petition PE 449</td>
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<td>Cover note on petitions PE 422, PE 430 and PE 454</td>
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<td>Cover note on petitions PE 346 and PE 369</td>
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<td>Cover note on the Road Humps and Traffic Calming (Scotland) Amendment Regulations 2002, (SSI 2002/419)</td>
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<td>(Agenda item 4)</td>
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<td>Copy of SSI 2002/419 (plus Executive Note)</td>
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<td>Agenda item 4</td>
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<td>Draft report on Stage 1 of the Water Environment and Water Services (Scotland) Bill (private paper)</td>
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<td>(Agenda item 5)</td>
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<td>Paper by the Committee’s adviser on the 2003-04 transport budget</td>
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<td>(private paper)</td>
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Papers not circulated:

**Agenda item 5**
Members are reminded to bring the written submissions (on peach paper) and the SPICe briefing notes which were issued in August (plus the Bill; Policy Memorandum and Explanatory Notes).

**Agenda item 6**
Members are reminded to bring a copy of the Executive’s 2003-2006 Spending Proposals: “Building a Better Scotland” and the correspondence between the Convener and the Minister for Enterprise, Transport and Lifelong Learning on the 2003-04 transport budget. These documents were circulated as part of last week’s meeting papers.
SCOTTISH HOMING UNION
231A LOW WATERS ROAD, HAMILTON ML1 7QN
TELEPHONE 01698 286983 FAX 01698 327469

Steve Farrell
Clerk to the Public Petitions Committee
The Scottish Parliament
Room 5.16
Parliamentary Headquarters
Edinburgh
EH9 1SP

18 March 2002

Dear Mr Farrell,

PB449: The Scottish Gamekeepers Association (SGA)

Thank you for your letter of 13 February in which you sought the views of the Scottish Homing Union (SHU) on the issues raised in the petition discussed at the meeting of the Public Petitions Committee on 12 February.

We have noted the views expressed at the meeting by Bert Burnett of the Scottish Gamekeepers Association. The experiences of the SGA in attempting to have their case heard are very similar to our own. Like the SGA, the SHU was excluded from the discussions of the Raptor Working Group (RWG) despite the fact that the largest populations of birds of prey exist in the northern part of Great Britain. We too suffered the indignity of being invited to attend only one meeting of the Group which was then time limited effectively preventing us from putting our side of the case. It was hardly surprising that when the report of the Working Group was produced both the SGA and the SHU rejected its findings as being inappropriate to the situation in Scotland.

Our discussions with Scottish Natural Heritage following the publication of the Raptor Working Group report proved equally fruitless. The group convened by SNH was heavily representative of the pro-raptor lobby. Inadequate records were kept of the meetings and there was a clear attempt to present the RWG report as representing some sort of consensus despite the fact that both the Scottish Gamekeepers Association and the Scottish Homing Union, the two organisations most affected by the report, resiled from the recommendations.

As a result of our experiences in these discussions we formed the view that SNH was being heavily influenced by organisations which were in favour of total protection being afforded to raptors, regardless of the consequences for other species. Further, we detected that this bias was being reflected in briefing material being offered to members of the Scottish Parliament. We therefore concluded early in 2001 that we had no alternative but to withdraw from discussions with SNH and to actively lobby members of the Parliament for our case to be given a fair hearing.
Following our withdrawal, The Transport & Environment Committee of the Parliament recommended in June 2001 that we should meet with SNH in a working group under the chairmanship of Alex Neil MSP to take forward further consideration of our concerns through a research project. This project would consider the success or otherwise of non-lethal and non-disruptive methods of discouraging raptor predation of racing pigeons.

The position reached at December 2001 in the discussions in the working group is summarised in the attached briefing note submitted to Members of the Scottish Parliament by the SHU in December 2001. Progress by SNH in letting the research contract has not been speedy and we remain concerned that the Scottish Executive will bring forward legislation to implement the proposals in "The Nature of Scotland" before the research is complete. Should that happen, as our briefing note makes clear, we reserve the right to resume our campaign in the Parliament to have changes made to legislation to give protection to racing pigeons.

Our experience in these matters has soured our view of the stances taken by the Scottish Executive and Scottish Natural Heritage over the concerns expressed by the SGA and the SHU. We have detected no great willingness in these quarters to take our views seriously and overall have gained an impression that we are regarded as little more than a nuisance. That the SHU is making some limited progress through the research project is largely due to the impetus given to the matter by the Transport and Environment Committee of the Parliament. We would therefore urge the Petitions Committee to give support to the petition submitted by the Scottish Gamekeepers Association.

Yours sincerely,

[Signature]

L. Brooks.
PUBLIC PETITION PE449 BY MR ALEX HOGG, THE SCOTTISH GAMEKEEPERS’ ASSOCIATION (SGA)

Thank you for your letter of 13 February. I am also in receipt of a letter from Mr Alastair Macfie, Assistant Clerk to the Transport & Environment Committee (dated 20 February) regarding another petition from the SGA.

Two points are raised by the SGA, and I will deal with each separately.

"The SGA asserts that the imbalance of ravens and some raptors has an unfavourable impact on waders, songbirds, fish stocks and game birds and unnecessarily "endangers rural sustainability and sustainable biodiversity".

The UK Raptor Working Group Report (published in February 2000) dealt comprehensively with the population size, distribution and interactions of raptors in the countryside. In particular, that report dealt with raptors and moorland interests, racing pigeons, lowland game and songbirds. The report revealed that there is still a great deal of concern about illegal persecution of raptors which, in places, is either limiting the distribution of birds or is rendering reintroduction programmes of some of our rarer species (notably red-kite) much less effective. A study of the UK distribution of ravens by Gibbons and others in 1995, for instance, concluded that the distribution and range of that species in Britain is limited over areas managed for gamebirds. There is no evidence that we know of to indicate that predation by ravens reduces the variety of waders or songbirds in any area.

The petition referred to impacts of predation on fish stocks. We are aware that the Centre for Ecology and Hydrology, based at Banchory, has done a good deal of research on the impacts of sawbill predation on game fish stocks, and has not found significant effects on these. We are aware also of some detailed research on raptor predation on coastal wader populations, and again there is no evidence to indicate wintering wader populations are threatened as a result of raptor predation.
"The petitioners believe that Scottish land managers have a wealth of knowledge and experience in conservation and land management, which should be fully drawn upon in the formulation of effective methods of promoting biodiversity. At present they believe that this knowledge and experience is not recognised, or insufficiently recognised by some of the bodies and agencies upon whose advice the Scottish Executive often appears to rely or value."

SNH does recognise the wealth of knowledge and experience held in organisations such as the SGA. SNH has led the Moorland Working Group (which has included the Game Conservancy Trust, The Royal Society for the Protection of Birds, The Scottish Landowners' Federation and Trustees of the Scottish Grouse Research Project). This working group has produced a practical guide Good Practice for Grouse Moor Management, which has been widely distributed (and reprinted twice).

Further, SNH proposes to establish a Moorland Forum which, importantly, will include the SGA, Game Conservancy Trust, British Association for Shooting and Conservation and other land management organisations active in the uplands. The Forum will direct and publicise work concerned with the conservation and management of moorland areas in Scotland, and will inform future policy thinking.

You will gather from this response that, whilst SNH cannot agree with the SGA assertion on the unfavourable impact of raptors on wildlife, and therefore on rural sustainability and sustainable biodiversity, it recognises the important role which land manager organisations, such as the SGA, can play in supporting the conservation and management of moorland in Scotland.

Roger Crofts
AN/IN

17th April 2002

John McAllion MSP
Scottish Parliament HQ
Rm 5.16
George IV Bridge
EDINBURG
EH99 1SP

Dear John

Many thanks for your letter of 27th March 2002 reference the response from the Public Petitions Committee to the petition raised from Mr Alex Hogg on behalf of the Scottish Gamekeepers Association.

Essentially the study that the Scottish Homing Union and Scottish Natural Heritage have initiated and funded is only concerned with the impact of Raptors on Racing Pigeon populations. It does not cover the wider issues of the impact of predatory birds on waders, songbirds, fish stocks and gamebirds.

I therefore suggest that you proceed on the basis that additional action needs to be taken to address these wider but associated issues.

Sorry for the delay in replying (due to recess).

Meantime if I can be of any further assistance please do not hesitate to get in touch.

Yours sincerely

Alex Neil MSP
Introduction

1. This paper asks the Committee to consider for the first time Petition PE449 by the Scottish Gamekeepers Association (SGA) on the impact of predatory birds on waders, songbirds, private stocks of fish and gamebirds. A copy of the petition is circulated for this meeting.

2. The petition contends that ravens and some raptors have an unfavourable impact on waders, songbirds, fish stocks and gamebirds, unnecessarily endangering Rural Sustainability and Sustainable Biodiversity. The petitioners believe that the knowledge and experience of Scottish land managers in conservation and land management should be utilised more effectively, particularly by those agencies and bodies which inform the Scottish Executive regarding formulating methods of promoting biodiversity.

3. The petition makes the following requests—
   - That the petition is passed to the Rural Development Committee for consideration;
   - That the Rural Development Committee calls the Scottish Gamekeepers Association to give oral evidence on this matter; and
   - That the Rural Development Committee launches an independent investigation as a matter of urgency.

Progress of the Petition

Public Petitions Committee – 12 February 2002

4. This petition was first considered by the Public Petitions Committee (PPC) on 12 February 2002. The Committee agreed to write to both Scottish Natural Heritage (SNH) and the Scottish Homing Union (SHU) requesting comments on the issues raised in the petition. Responses were received from these organisations and are attached at Annex A.

5. The response from Scottish Natural Heritage challenges some of the assertions made in the SGA petition. It states, for example, that SNH knows of no evidence
to indicate that predation by ravens reduces the variety of waders or songbirds in any area.

6. The SNH response also challenges the assertion made in the petition that the input of Scottish land managers is insufficiently recognised by bodies or agencies on whose advice the Scottish Executive relies. SNH notes that it proposes to establish a Moorland Forum which will include the Scottish Gamekeepers Association, the Game Conservancy Trust, the British Association for Shooting and Conservation, and other land management organisations. SNH states that this Moorland Forum will direct and publicise work concerned with the conservation and management of moorland areas in Scotland, and will inform future policy thinking.

7. The response from the Scottish Homing Union indicated support for Petition PE449. It expressed concern regarding the methodology and conclusions of the report of the UK Raptor Working Group (published in 2000) which researched, among other issues, raptor predation on gamebirds and raptor predation on racing pigeons (the particular concern of the SHU). The SHU response also noted that a working group has been established by SNH and the SHU, chaired by Alex Neil MSP to develop research on the success or otherwise of non-lethal and non-disruptive methods of discouraging raptor predation of racing pigeons.

Public Petitions Committee – 26 March 2002

8. On 26 March 2002, the PPC considered the responses from SNH and the SHU. The PPC agreed to copy the petition and responses received to Alex Neil MSP, seeking confirmation as to whether the issues raised in the petition would be likely to be addressed as part of the research commissioned by his working group.

9. The response received by the PPC from Alex Neil MSP indicated that the SNH/SHU research would only cover the issue of raptor predation on racing pigeons and would not address the wider issues of the impact of predatory birds on waders, songbirds, fish stocks and gamebirds. Alex Neil indicated his view that additional action needed to be taken to address these wider issues. A copy of this letter is attached to this covering note at Annex B.

10. On 14 May 2002, the PPC considered Alex Neil’s letter and, on the basis of his comments, agreed to formally refer the petition to the Transport and Environment Committee for further consideration.

Work Undertaken by the Transport and the Environment Committee – Petition PE187

11. Petition PE449 is similar to a previous petition submitted to the Parliament by the Scottish Gamekeepers Association – Petition PE187. Petition PE187 asserted that the raptor population in certain areas was artificially high and was being sustained at these levels through the availability of gamebirds as prey. The petition therefore called for the Scottish Parliament to allow limited licensed culling of raptors, under the existing provisions of the 1981 Wildlife and
Countryside Act in areas where local populations have increased beyond normal levels.

12. The Transport and the Environment Committee appointed Maureen Macmillan MSP as a reporter on this issue to examine Petition PE187 (and also a petition by the Scottish Homing Union on raptor predation on racing pigeons). During her work on this issue, the Reporter met with the Scottish Gamekeepers Association to discuss their concerns as well as receiving written evidence from the SGA. The relevant extract from the Reporter’s report is attached at Annex C.

13. As a result of this report, the Committee wrote to SNH on a number of specific legal questions raised by Petition PE187 (and set out at paragraph 15 of the extract of the Reporter’s report). In response, SNH set out its general view that the specific solution sought by the SGA of a licensed cull of raptors would not be legal.

14. The Committee then considered methods of addressing the concerns of the SGA which did not involve the culling of raptors. On 12 December 2001, the Committee recommended to the Scottish Gamekeepers Association, the Scottish Executive, and Scottish Natural Heritage that the SGA should become a member of the Moorland Working Group, and that the views of the SGA should be, where possible, taken into account in the work of the Group. The Moorland Working Group is a predecessor body to the Moorland Forum, which was referred to in the correspondence from SNH (see paragraph 6 of this paper). The Committee agreed on this basis to conclude Petition PE187.

Rural Development Committee

15. The Rural Development Committee had also been referred Petition PE187 by the PPC, but took forward its consideration of the petition at a slower rate than the Transport and the Environment Committee. The Rural Development Committee most recently considered PE187 at a meeting on 18 June 2002. By that date, the SGA had also submitted Petition PE449 and so during the Rural Development Committee’s discussion on Petition PE187 members also made reference to Petition PE449 (although that petition was not formally referred to the Rural Development by the PPC).

16. The Rural Development Committee agreed that its Convener should write to the Convener of the Transport and the Environment Committee to request that it be advised of when Petition PE449 would be considered, and to urge the Transport and the Environment Committee to consider taking oral evidence from the Scottish Gamekeepers Association. The Rural Development Committee also agreed that the Convener should write to the Convener of the Public Petitions Committee, seeking clarification on the reasons for Petition PE449 being referred to the Transport and the Environment Committee. This request followed comments from some members of the Rural Development Committee that the PPC appeared not to have taken account of the request made by the petitioners that the petition be referred to the Rural Development Committee.
Next Steps

17. As discussed above, the Transport and the Environment Committee has considered in some depth a previous petition by the Scottish Gamekeepers Association, and members expressed the view that the SGA should engage with SNH and other bodies via the Moorland Working Group (now the Moorland Forum), in order to address problems associated with raptor predation. SNH has confirmed they the SGA will be included in the new Moorland Forum, and that this body will direct and publicise work on moorland areas in Scotland, as well as informing future policy thinking. The Moorland Forum therefore might provide the SGA with a means of inputting into discussions on how to develop methods of promoting biodiversity, which might help address the second element of the petition.

18. The SGA petition requests that the petition is referred to the Rural Development Committee, and that the Rural Development Committee takes oral evidence from the SGA as well as launching an independent investigation into the issues raised by the petition. The work programme of the Transport and the Environment Committee is such that it would be very difficult in the near future to take oral evidence or launch an investigation, as proposed by the petition. It is also clear that the preference of the petitioners is for their petition to be considered by the Rural Development Committee.

Options

19. One option is that the Transport and the Environment Committee could note the petition and draw the attention of the petitioners to the Committee’s view that the Moorland Forum will provide a mechanism for addressing some of their concerns. The Transport and the Environment Committee could conclude its consideration of the petition, and then refer the petition to the Rural Development Committee. This would meet the first specific request made in the petition. The Rural Development Committee would then have an opportunity to consider the petition, and if members of that Committee were still of the view that they wished to take oral evidence from the SGA, they would be open to do so.

20. The Committee is, of course, able to take any other course of action it considers appropriate.

Recommendation

21. The Committee is invited to consider the petition and agree a course of action.

Alastair Macfie
Senior Assistant Clerk
October 2002
ANNEX C

Extracts from Reporter’s Report on PETITION PE187

Background – Petition PE187

1. Petition PE187 was submitted by the Scottish Gamekeepers Association (SGA) and, on 9 May 2000, the Public Petitions Committee agreed to pass the petition to the Rural Affairs Committee and the Transport and Environment Committee to take into consideration with Petition PE8 by the Scottish Homing Union.

2. The Transport and the Environment Committee considered the petition at a meeting on 7 March 2001, and agreed that Maureen Macmillan MSP should be appointed as a reporter to take forward consideration of the petition. As with Petition PE8 by the Scottish Homing Union, the Rural Development Committee have an interest in this petition, and is awaiting the outcome of the Transport and the Environment Committee’s consideration of the petition before taking any further action.

SGA Position

3. The SGA contend that there is mounting predation on wild birds and reared gamebirds within Scotland, due to a burgeoning population of certain raptor species. The SGA suggest that the raptor population in certain areas is artificially high and is being sustained at these levels through the availability of gamebirds as prey.

4. Petition PE187 therefore calls for the Scottish Parliament to allow limited licensed culling of raptors, under the existing provisions of the 1981 Wildlife and Countryside Act in areas where local populations have increased beyond normal levels.

5. As discussed at paragraph 18 above, the Wildlife and Countryside Act 1981 does allow for licences to be issued for killing otherwise protected species (such as peregrines) to prevent serious damage to livestock, but only if there is no satisfactory alternative solution. However, SPICe could find no evidence of such licenses having been issued and there are no examples of persons having been able to prove that they legally killed protected birds to safeguard livestock. The reporter welcomes the SGA’s opposition to the illegal killing of raptors, and strongly supports this position.

6. In a Parliamentary briefing, the SGA argue in favour of “changes in the law to allow for the control of raptors to maintain an ecological balance”. The SGA advocate a quota system, whereby any birds found to be over the stated quota could be controlled providing they are high number species such a buzzards, peregrines or sparrowhawks. The SGA suggest that a relocation programme could be used for less numerous species such as kites and harriers. The SGA ask “for the right to protect our stock and the diversity of wildlife in the countryside and consequently the jobs of gamekeepers across Scotland”.

1 Scottish Gamekeepers Association Parliamentary Briefing
7. The RWG Report considered the impact of raptors on gamebirds and moorland management.

8. The Report did not consider that increasing raptor predation was the main cause of declining numbers of grouse. It suggests “that much of the long-term solution to the problems faced by grouse moor owners lies in the need to restore and enhance the extent and quality of heather moorland”. The Report suggests that “the long term decline in grouse stocks has been caused by loss of heather moors and reduced numbers of gamekeepers”. However, the Report did recognise that in some cases an increase in raptor numbers could contribute to a suspension of driven grouse shooting. The Report recommends that measures are put in place to reduce the conflict between raptors and grouse.

9. The RWG Report does not support measures to reduce the predation of raptors on gamebirds which would necessitate a derogation from the Wild Birds Directive (as implemented in the UK by the Wildlife and Countryside Act 1981). Instead, as a solution to the problem of raptor predation, the Report suggests that habitat management could increase grouse numbers, and that various species management measures could be implemented, including—

- Captive rearing and releasing of red grouse.
- Restocking local densities of red grouse by the transfer and release of birds trapped on other moorland areas.
- Burning or interfering with raptor nests not in use.
- Diversionary feeding of raptors during the breeding season.

10. The Scottish Gamekeepers Association was not a member of the Raptor Working Group, and does not support its recommendations. The SGA did, however, attend a number of meetings of the RWG Group.

Derogations from the Wild Birds Directive

11. Although the RWG Report does not support derogations from the Wild Birds Directive, it does make reference, in passing, to some species management measures which might require a derogation. These include—

- Using conditioned taste aversion, whereby baits of a dead prey species are laced with a chemical agent causing the predator to become unwell.
- The temporary movement of hen harrier young to aviaries to be released after the grouse shooting season has begun.
- Scaring hen harriers in the pre-breeding or breeding season.
- Translocation of hen harrier eggs and young to potential settlement areas.
- A quota system by which grouse moors have a target of achieving a set number of hen harriers per acre, beyond which number nests could be removed and fertile eggs destroyed
- Killing of individual raptors
Potential Obstacles to Receiving a Derogation

12. The RWG Report rejects the methods of species management described above. This is in part because their implementation would require a derogation from the provisions of the Wild Birds Directive. Achieving this would not be straightforward, according to the RWG Report.

13. First, methods of raptor control requiring a derogation could only be undertaken “where there is no other satisfactory solution”\(^2\) to the problems posed by raptors. Second, the Report considered that there was “legal uncertainty” as to whether derogations under the Wild Birds Directive could be undertaken to protect a shootable surplus of grouse.

14. These obstacles would also be faced by the SGA, if it tried to implement its proposals for dealing with raptors.

Questions Raised by the Petition

15. In light of these potential obstacles to receiving a derogation, it is unclear whether the request made in Petition PE187 (for a “limited licensed culling of raptors, under the existing provisions of the 1981 Wildlife and Countryside Act”) would be possible within the current legislative framework. It would be useful to receive clarification in writing from the Scottish Executive and/or Scottish Natural Heritage on a number of issues, including—

- Whether it is possible for a derogation to be obtained from the Wild Birds Directive to protect a shootable surplus of grouse.
- Whether any licences have so far been issued for the culling of raptors to protect gamebirds in Scotland.
- On what specific grounds might such licences be issued (protection of livestock?)
- If a gamekeeper was to receive a derogation, in what ways can gamebirds be protected from raptors (by shooting raptors? by pricking raptors’ eggs?)
- To what extent is the applicant seeking a derogation required to demonstrate, as the legislation requires, that “there is no other satisfactory solution” to the problem of raptor predation.
- What views in general do the Executive and SNH have on the petitioner’s proposals.

Recommendation – Petition PE187

16. At present, it is not clear whether “a limited licensed culling of raptors, under the existing provisions of the 1981 Wildlife and Countryside Act” is possible. There is a need to clarify the current legal position.

17. The reporter therefore recommends that the Committee writes to the Scottish Executive and/or SNH to request clarification on the issues raised in paragraph 15 above. The aim would be to see whether the petitioner’s request is possible within the current legal framework, or whether it would require a change in the law. The Committee can take any further action it considers appropriate on the petition once a response has been received. The reporter

\(^2\) Wild Birds Directive (79/409/EEC)
also recommends writing to the Rural Development Committee to inform it of the action taken on the petition.
Subject: Petitions on Playing Fields

Petition PE 422 by Mr James Docherty on protection for school playing fields.

Petition PE 430 by Mrs M Glendinning on the sale of school playing fields.

Petition PE 454 by Mr Peter Watson on the sale of playing fields.

Meeting No: 28th Meeting

Date: 9 October 2002

Author: Note by the Assistant Clerk

Introduction

1. The Public Petitions Committee considered these petitions on 12 February 2002 and agreed to refer them to the Transport and the Environment Committee. The Public Petitions Committee requested that these petitions be considered together due to similarities in subject matter.

2. The Public Petitions Committee recommended that further consideration be given to the adequacy of current procedures and potential conflicts of interests arising from the selling of public land by local authorities and the granting of planning permission for the development of the land by the same authorities.

3. The Transport and the Environment Committee considered the petitions at its meeting on 6 June 2002 and agreed to write to the Minister for Social Justice on issues arising from the petitions.

4. The following items are attached for members’ information—
   - a copy of each of the petitions
   - a letter from the Convener to the Minister for Social Justice
   - a response from the Minister for Social Justice

Background

Petition PE 422

5. The petitioner is calling for the Scottish Parliament to take necessary steps to implement a similar protection for school playing fields in Scotland as provided by Section 77 of the Schools Standards and Framework Act, 1988 in England and Wales.

6. The petitioner is specifically concerned with a proposal by Stirling Council to amend Stirling Local Plan to re-zone two areas of playing fields within the area of
Torbex in Stirling to allow houses to be built on the land. One of these areas is owned by the Council and is used as a school playing field.

7. Section 77 of the Schools Standards and Framework Act 1988 states that local authorities, school authorities and foundation bodies may not dispose of or change the use of school playing fields, except with the consent of the Secretary of State.

8. The Executive response to the Public Petitions Committee, considered by this Committee on 6 June, noted that when the Act was being prepared, the conclusion was reached that a similar approach was not necessary in Scotland as adequate provisions already existed. The response detailed these provisions including:

- provisions within the School Premises (General Requirements and Standards) (Scotland) Regulations 1967 prescribe minimum area standards for school playing fields.
- guidance within NPPG 11: Sport Recreation and Open Space sets out a policy framework for local authorities considering proposals for the redevelopment of playing fields
- the requirement for local authorities to consult SportScotland on all planning applications likely to prejudice, or lead to the loss of, playing fields.
- the requirement for SportScotland to advise Scottish Ministers when planning authorities intend to grant consent for any proposal which SportScotland has advised against.

Petition PE 430

9. The petitioners are calling for the Scottish Parliament to consider (a) whether it is appropriate for local authorities as owners of school playing fields to be able to sell such assets and also grant planning permission to a developer, when such a sale is opposed, and (b) whether in the circumstances of an opposed sale, there should be legally binding guidelines as to the method of consultative procedures.

10. The petitioner is specifically concerned with the proposed sale of part of a playing field for house building purposes at Broomlands Primary School, Kelso. They point out that sufficient land for upmarket housing has already been identified for the next 11 years, according to the 2001-2011 Structure Plan.

11. Members should note that, since this petition was last considered by the Committee, the Scottish Borders Council has announced, in response to opposition from local residents, that it does not intend to proceed with the sale of the playing fields.
Petition PE 454

12. The petitioner is calling for the Scottish Parliament to (a) investigate whether the rules governing the disposal of playing fields in Scotland are strong enough and if those rules are being adhered to by local authorities and (b) ensure that planning legislation disallows planning authorities from agreeing a sale of playing fields and designating them a suitable for housing development where they have a conflict of interest.

13. The petitioner is specifically concerned with a proposal from South Ayrshire Council to sell North Park playing fields at Alloway to a prospective housing developer for £1.59 million. The playing fields adjoin Alloway, a conservation area, and major Heritage and Tourist attraction. This is an area of land designated for recreational use in both the current and emerging local plan.

Consideration of the Petitions

14. The Committee considered the petitions at its meeting on 6 June 2002 and agreed to write to the Minister for Social Justice on issues arising from the petition. The letter from the Convener, on behalf of the Committee, sought to ascertain the Executive’s position on the local authorities’ application of the planning guidelines in respect to the development of open spaces and playing fields.

15. The letter noted that the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 states that, in situations where a planning authority has a financial interest in a proposed development, and it has either been subject to a substantial body of objections, or it does not accord with the local plan, ministers must be notified.

16. The letter also noted that the Draft National Planning Policy Guideline 3 states that, where a planning proposal from a local authority involves the development of open space and playing fields in their ownership, ministers must be notified. The letter requested information on the number of planning applications that have been called in by the Executive since 1997.

17. The letter recommended that the Executive should stress to local authorities the importance of adhering to the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 and also NPPG 3 when it comes into force.

Executive Response

18. The Executive response states that two planning applications have been called in affecting playing fields since 1997 and explains that, although this is a relatively small number of cases, SportScotland often negotiates alternative sports pitches with developers and consequently withdraws any objections.
19. The Executive response notes that, in response to concerns over the loss of open spaces, the Executive commissioned research on local authority open space. The results of this research were published in 2001 and the main conclusion drawn by the Executive was that the approach taken by the majority of local authorities to open space planning was fundamentally flawed.

20. The response refers to a Planning Advice Note (PAN) currently being developed by the Executive to support NPPG 11. The intention of the PAN is to provide practical advice to local authorities in dealing with the many different types of open space in their areas and in developing open space strategies and appropriate development plans. The Executive states that it hopes to publish the finalised PAN in autumn 2002.

21. The response also notes that the consultation period on draft NPPG 3: Planning and Housing has been completed and that the Executive is currently considering the terms of the final version in light of comments received.

22. The response also notes that a document, entitled Planning Policy for the Protection of Playing Fields, has recently been issued to local authorities outlining SportScotland’s views on the factors which should be taken into account when considering planning applications concerning playing fields. The document also outlines on what basis SportScotland considers planning applications affecting playing fields.

23. The Executive response details the safeguards currently in place for the protection of playing fields and states that the Executive are of the view that adequate arrangements are in place to ensure that any application made in respect of playing fields will be properly considered.

Options for Action

24. The Executive response was circulated to members on 4 September and members were invited to express their views on the nature of any future action on the petitions No members have raised any comments on the petition with the Committee clerks.

25. Given the progress that has been made in relation to the preparation of a PAN to support NPPG 11, the imminent publication of NPPG 3 and the publication of SportScotland’s document, the Committee may consider that there is no need for any further action at the present time. Members could therefore agree to conclude the consideration of these petitions, and write to the petitioners informing them of the Committee’s policy not to take a view on individual local planning decisions.

26. Alternatively, the Committee can take any other action it feels appropriate.

Recommendation

27. The Committee is asked to consider and agree how it wishes to deal with the petitions.
Subject: Two Public Petitions on Opencast Coal Mining, by Scotland Opposing Opencast and the Confederation of UK Coal Producers

Meeting No: 27th Meeting, 9 October 2002

Author: Note by the Senior Assistant Clerk

Introduction

1. This paper invites the Committee to consider the Scottish Executive’s response to a paper agreed by the Committee and passed to the Minister for Social Justice on the subject of opencast coal mining.

2. Members will recall that this paper was based on work undertaken by Adam Ingram MSP and Nora Radcliffe MSP, in their role as reporters appointed by the Committee to consider further two public petitions on the subject of opencast coal mining. The Scottish Executive’s response to the Committee’s paper is set out at Annex A. The Committee’s paper is reproduced at Annex B.

3. For information, the terms of reference for the Reporters’ work was that—

   The Committee will consider the issues raised by Petition PE346 by Scotland Opposing Opencast and Petition PE369 by the Confederation of UK Coal Producers in the context of—
   (a) the application and effectiveness of National Planning Policy Guidance 16 on opencast coal and related minerals – in particular, the objectives of NPPG 16, and the degree to which these are being met; and
   (b) the current arrangements for meeting the cost of monitoring and enforcing mineral permissions – and the merits or otherwise of a new fees regime for Scotland.

Recommendations contained in the Paper

4. The paper submitted by the Committee made a number of recommendations for action by the Executive, including—

   • On National Planning Policy Guidance 16 (NPPG 16): “On balance, the Reporters believe that there is a need for a review of the operation of NPPG 16 to begin as soon as is practically possible. The Reporters recommend that the Executive should consider what might be the most appropriate format for such a review when it takes place. The Reporters also believe that when a review and evaluation of NPPG 16 does take place, it should address the issues highlighted in this paper and allow all parties the opportunity to comment.” (paragraph 23)

   • On Health Issues relating to NPPG 16: “The Reporters are not in a position to comment on the validity of the various pieces of scientific research into ill-health and opencast developments. However, the Reporters recommend that the further research into the “uncertainties” highlighted in the Executive’s response (see
paragraph 28 of the paper) is carried out as soon as possible. In this context, the Reporters also note the comparative lack of research conducted specifically in Scotland on the health impact of opencast developments.

The Reporters note and welcome the assurance by the Executive that Planning Ministers will seek to ensure that the planning system continues to reflect the advice of health experts. The Reporters would want to be reassured that a mechanism exists for revising NPPG 16 in response to any emerging scientific information on the health effects of opencast. The Reporters note that areas of the guidance which might require revision should such information emerge might include the recommended separation distance between proposed opencast sites and adjacent communities." (paragraphs 29 and 30)

- **On Monitoring and Enforcement Fees for Mineral Permissions:** “The Reporters recommend that the Executive proceeds with a consultation on a new fees regime, with a view to providing new legislative powers in the forthcoming Executive planning bill which has recently been announced.” (paragraph 52)

**Conclusion**

5. The Committee is invited to consider the response from the Minister for Social Justice and to consider what, if any, further action is required on the petitions. If members wished to conclude the petitions at this meeting, members may wish to write to the petitioners to provide them with a copy of the Committee’s paper, a copy of the response from the Executive, and a copy of the Official Report of members’ discussions.

Alastair Macfie  
Senior Assistant Clerk  
October 2002
Thank you for your letter of 20 June to my predecessor, Andy Nichol, seeking the Executive’s comments on the Reporters’ Paper on Petitions PE346 and PE369 on Opencast Coal Mining.

The Minister is grateful for the opportunity to respond to the paper. She welcomes the valuable, independent and thorough scrutiny that the Reporters have clearly given this issue. The conclusions of the Reporters are very similar to the views of the Executive on what is a controversial and emotive issue with often very contrasting and fixed opinions. This response focuses on the various recommendations that are made by the Reporters.

National Planning Policy Guideline 16 (NPPG 16)

The Executive notes the criticisms that were made of NPPG 16. Although we do not necessarily accept many of these we do acknowledge the Reporters own conclusions about the relationship between national and local implementation and interpretation of the guidance. The position will continue to be monitored very closely through our role in the development plan process and in dealing with applications that are notified to the Scottish Ministers. We are also in the process of undertaking our own internal review of how planning authorities have interpreted NPPG 16.

We also agree with the Reporters conclusion that there is much to be gained from undertaking a review of the operation of NPPG 16 as soon as is practically possible. The
Reporters ask the Executive to consider the most appropriate format for a review. Given the conflicting opinions on NPPG 16, we would propose that it is best if the Executive commissions independent research into the effectiveness and operation of NPPG 16. The intention would be to carry out the research as part of the 2003 – 04 Development Department Research Programme. However, any research could begin sooner if funds from this year’s Programme become available.

The remit for any review would likely be similar to that for the recently published research on NPPG 4 (copy attached). The research specification would attempt to draw out conclusions on the issues and criticisms raised in the Reporters’ paper whilst ensuring that mechanisms were in place so that the views of all the various interests are taken into account. The final report on the NPPG 4 research makes a number of recommendations and suggestions that will helpfully inform any future review of NPPG 4. Similarly, any conclusions of the NPPG 16 research will be taken into account during any future review of that document. As with all NPPGs, the review process will involve full and open consultation with all the interested parties.

**Health Issues**

Health colleagues have confirmed that the need for research on public health issues relating to specific local sources of exposure to potential pathogens would normally be determined either by (a) indications, for example, from local general practitioners, of an elevated incidence of a particular disease or group of diseases in a local community; or (b), indications from other, similar or related areas of research that health problems are likely. There are no strong indications from either of these two areas that further research on the impact of opencasting on public health should be considered as a particular priority.

The Executive’s Health Department does agree with the view of COMEAP that there is a need for further research to address current uncertainties surrounding the general relationship between environmental exposure to airborne particulates and respiratory ill health. This is supported by a US study into the long-term effect of airborne particles on mortality in cities. Any conclusions drawn therefore relate to airborne particles more generally, and in cities. The relationship between respiratory ill health and opencast development is not regarded as a major driver for research in this area.

Like the Reporters, Ms Curran is not in an authoritative position to comment on the various pieces of scientific research into ill health or to judge what further research needs to be undertaken. Others, such as COMEAP, are far better placed to do so. However, the Minister is satisfied that NPPG 16 provides a robust and positive response to the finding of the Newcastle University research and the endorsement that it received from COMEAP. She will continue to ensure that the planning system always takes full account of the conclusions of health experts such as COMEAP. As you know, this is a Committee of independent experts that are appointed for their scientific and medical expertise to provide advice on the potential toxicity and effects of air pollutants on people’s health.
If new scientific evidence does emerge, then the procedures for integrating any conclusions into the planning system would be similar to what happened when the Newcastle University research was published. On publication, both the research, and the endorsement of COMEAP, became material considerations in the planning process and should have immediately been taken into account when determining specific planning applications. The Executive then consulted on how best to reflect the conclusions into NPPG 16. However, should scientific evidence ever emerge that required immediate and decisive action, then the Scottish Ministers would not hesitate in issuing a Direction requiring all applications to be referred to them to ensure that such evidence had been fully taken into account.

**Monitoring and Enforcement Fees for Mineral Permissions**

I confirm that the Executive will issue a consultation paper on this subject to enable conclusions to be reached ahead of the forthcoming Planning Bill. We note the various issues and options that are highlighted in the Reporters’ paper and these will helpfully inform our consultation paper.

Please let me know if the Committee requires anything further.

DANIEL KLEINBERG
Private Secretary
ANNEX B: REPORTERS’ PAPER ON PETITIONS PE346 AND PE369 ON OPENCAST COAL MINING

Subject: Two Public Petitions on Opencast Coal Mining, by Scotland Opposing Opencast and the Confederation of UK Coal Producers

Meeting No: 20th Meeting, 12 June 2002

Authors: Adam Ingram MSP and Nora Radcliffe MSP

Introduction

1. This paper outlines work undertaken by Adam Ingram MSP and Nora Radcliffe MSP on two public petitions on the subject of opencast coal mining which were formally referred to the Transport and the Environment Committee by the Public Petitions Committee. The paper reviews the written and oral evidence gathered by the Reporters, and reaches conclusions and makes recommendation for action in a number of areas.

2. The first petition is Petition PE346 by Cllr Lawrence Fitzpatrick on behalf of Scotland Opposing Opencast, and it calls for the Scottish Parliament to take various steps to protect local communities and the environment from the adverse effects of opencast coal mining in Scotland.

3. The second petition, Petition PE369 by Mr Brian Roston on behalf of the Confederation of UK Coal Producers, calls for the Scottish Parliament to urge the Scottish Executive to take various positive steps with regard to the coal industry in relation to development plans and planning processes.

4. On 12 December 2001, the Committee considered the two petitions and agreed to appoint Adam Ingram and Nora Radcliffe as Reporters on the application of National Planning Policy Guidance 16 and the cost of monitoring and enforcing mineral permissions. On 23 January 2002, the Committee agreed the following terms of reference for the Reporters’ work—

   The Committee will consider the issues raised by Petition PE346 by Scotland Opposing Opencast and Petition PE369 by the Confederation of UK Coal Producers in the context of—
   (c) the application and effectiveness of National Planning Policy Guidance 16 on opencast coal and related minerals – in particular, the objectives of NPPG 16, and the degree to which these are being met; and
   (d) the current arrangements for meeting the cost of monitoring and enforcing mineral permissions – and the merits or otherwise of a new fees regime for Scotland.

5. The Committee subsequently agreed to arrangements proposed by the Reporters for the gathering of information and the conducting of site visits in relation to these terms of reference.
6. The Reporters have worked expressly within these terms of reference. In particular, the Reporters did not consider it would be appropriate to examine broader issues relating to the general desirability of opencast developments, nor to express a view on any individual opencast developments or any particular local authorities’ policies on opencast. The Transport and the Environment Committee has a long-standing policy of not becoming involved in individual planning cases.

Work Undertaken by the Reporters

7. The Reporters issued a call for written evidence on the terms of reference of their work on 6 February 2002, and received a number of responses. The Reporters also conducted various site visits to Livingston, to Muirkirk in Ayrshire, to meet with supporters of Petition PE346, and to St Ninian’s Opencast Mine in Fife to meet with supporters of PE369. In addition, the Reporters met with representatives of the Confederation of UK Coal Producers at a meeting at the Parliament on 13 March.

8. Following this initial gathering of written and oral evidence, the Reporters wrote to relevant local authorities and to the Scottish Executive on various specific questions arising from the evidence. All written evidence has been reviewed by the Reporters, and is available on request from the Clerks. Certain responses referred to in this paper are circulated for the Committee meeting, and are reproduced as a separate annex to this paper.

9. The Reporters wish to thank all those individuals and organisations providing written or oral evidence as part of their work on opencast. In particular, the Reporters acknowledge the willingness of both sets of petitioners to co-operate with their work in a constructive manner.

10. This paper addresses the two elements of the Reporters’ terms of reference in turn, beginning with a consideration of the application and effectiveness of National Planning Policy Guidance 16 in the context of the two petitions.

National Planning Policy Guidance 16 (NPPG 16)

Background

11. According to the Scottish Executive, National Planning Policy Guidelines (NPPGs) provide statements of Executive policy on nationally important land use and other planning matters, supported where appropriate by a locational framework. Statements of Scottish Executive policy contained in NPPGs may, so far as relevant, be material considerations to be taken into account in development plan preparation and development control.

13. NPPG 16 sets an overall framework for opencast developments, but the guidance states that it should fall to a planning authority to reach a judgement on whether an opencast proposal offers an overall benefit in the context of its own area and the communities directly concerned.

**NPPG 16 – Criticisms**

14. Both Petition PE346 and Petition PE369 made several criticisms of NPPG 16. In general, the criticisms made by supporters of Petition PE346 relate to the specific wording of the guidance, while supporters of Petition P369 seemed more concerned with the general strategic approach to opencast taken by the Executive and the manner in which particular planning authorities were implementing the guidance.

15. Petition PE346 argues that modifications are needed to NPPG 16 in order to better protect local communities and the environment from the impact of opencast developments, and specifically that NPPG 16 offers insufficient protection against these developments. The petition highlights a number of alleged weaknesses in the guidance—

- NPPG 16 sets out to protect “communities”. However, NPPG 16 states that “only exceptionally would a group of fewer than ten houses be likely to constitute a community”, and that planning authorities should define the identification of communities according to individual circumstances. Critics suggest that homes not considered by planning authorities to be in a community might be vulnerable.

- Critics argue that NPPG 16 provides insufficient protection against repeat applications by opencast developments at sites where an original application has been refused.

- NPPG 16 states that tests regarding environmental acceptability and community benefits must be met in order to receive planning permission, “unless there are exceptional circumstances”\(^2\). Critics argue that this caveat weakens the guidance.

- NPPG 16 states that “as a general rule, working faces within 500 metres are likely to pose a threat to the amenity of a community and are likely to be unacceptable”\(^3\). However, critics express concern that the guidance caveats this statement with an acknowledgement that local circumstances may justify a lesser distance than 500 metres.

- NPPG 16 states that planning authorities should take account of the “cumulative impact” of any proposed additional workings in areas where workings have

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1 [http://www.scotland.gov.uk/library/nppg/nppg16-00.htm](http://www.scotland.gov.uk/library/nppg/nppg16-00.htm)
2 NPPG 16, paragraph 23
3 NPPG 16, paragraph 25
already been approved\(^4\). Critics argue that some planning authorities are not fully taking cumulative impact into account when approving applications. Others suggest that it is difficult to measure properly the cumulative impact of workings.

16. Petition PE369 from the Confederation of UK Coal Producers (COALPro) raises different concerns regarding NPPG 16. COALPro suggest that the guidance does not sufficiently take into account the strategic need for coal in Scotland, and provides barriers to opencast coal developments which are significantly greater than barriers to other comparable developments. An example cited of a more strategic approach might be one in which opencast developments in an area are planned so that work at a new site can begin as soon as work has finished at a previous site. This would allow opencast operators to plan ahead, make best use of their resources, and encourage longer-term investment in infrastructure.

17. Many individuals and organisations in the coal industry suggest there is no need for a change in NPPG 16 in response to the concerns of campaigners against opencast developments. They note that the guidance is comparatively new and was the product of significant consultation, and that it strikes an appropriate balance between the needs of communities and the industry. Some operators, however, argue that the balance rather more favours objectors to opencast developments.

18. Many within the coal industry are rather more concerned with the way NPPG 16 is implemented at a local level, than with the actual contents of the guidance itself. Supporters of the COALPro petition suggest that some planning authorities are being overly restrictive in their interpretation of NPPG 16, and that there should be greater consistency between planning authorities in how the guidance is applied. It is suggested, for example, that some local authorities are paying insufficient attention to paragraph 11 of NPPG 16 which states that deposits of coal and related minerals capable of being extracted by opencasting should not be sterilised unnecessarily.

19. The need for consistency in the way that planning authorities interpret NPPG 16 is a theme continued in a submission from the Royal Institution of Chartered Surveyors in Scotland (RICS). It states that—

\[\text{“Although RICS Scotland does consider it too early to comment on the operation of NPPG 16, the Institution does have the following observations at this stage. It would appear that there is an inconsistency of approach and interpretation towards the guidance in NPPG 16 by some local authorities. Some authorities are following the guidance extremely rigidly, while others are adopting a more flexible approach. This level of inconsistency is not helpful to either local communities or to the industry”} \text{.}^{5}\]

\[\text{Issues Raised by the Petitions}\]
20. The Reporters do not consider it would be appropriate to comment on any specific decisions taken by individual planning authorities. However, the

\[^4\text{NPPG 16, paragraph 51}\]
\[^5\text{Response from Royal Institution of Chartered Surveyors in Scotland (RICS) – 15 March 2002}\]
Reporters consider that the two petitions do highlight some more general questions in relation to NPPG 16. First, does NPPG 16 strike the right balance between the level of direction provided by the Executive and the amount of discretion left to individual planning authorities to implement the guidance at a local level? Secondly, are planning authorities interpreting NPPG 16, and using their powers to implement the guidance at a local level, in a consistent way, and in a manner which accurately reflects the guidance?

21. The Reporters are not convinced that it would be appropriate to carry out a review of NPPG 16 at present, as NPPG 16 has been introduced comparatively recently, and time is needed to ascertain fully how it is operating in practice. This view is expressed by a number of submissions from those in the coal industry and by most local authorities. South Lanarkshire Council, for example, notes that—

“The measures contained within NPPG16 are only now starting to take effect and influence the decision making of the Council. It is also true to say that many of the recent and continuing problems attributed to opencast sites relate to older permissions granted prior to the publication of NPPG16.”

22. The Executive’s view is that “it is probably premature to say how well NPPG 16 is working in practice. The planning system is plan-led. The intention is that structure plans and local plans should form the basis for sound, informed and open decision making on individual proposals. While progress on incorporating NPPG 16 based policies into structure plans has been good, they have yet to be fully incorporated into many local plans.”

23. On balance, therefore, the Reporters believe that there is a need for a review of the operation of NPPG 16 to begin as soon as is practically possible. The Reporters recommend that the Executive should consider what might be the most appropriate format for such a review when it takes place. The Reporters also believe that when a review and evaluation of NPPG 16 does take place, it should address the issues highlighted in this paper and allow all parties the opportunity to comment.

**NPPG 16 – Health Issues**

24. The Reporters acknowledge that there has been debate on the possible impact of opencast developments on the health of local residents. Although the Reporters recognise that this issue largely falls within the remit of the Health and Community Care Committee, the Reporters did, in passing, hear some evidence on the health impact of opencast developments which has implications for NPPG 16.

25. During their visit to Livingston, the Reporters met Dr Helene Irvine, a Consultant in Public Health Medicine responsible for Communicable Disease and Environmental Health in the Public Health Protection Unit at Greater Glasgow

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6 Letter from South Lanarkshire Council, 9 May 2002
7 Letter from Mark Rae, Scottish Executive – Tues 21 May 2002
NHS Board. Dr Irvine highlighted what she felt was a comparative lack of health research into ill health from opencast developments—

“Although it is entirely predictable that opencast mining might affect the health of local populations, particularly of children and older adults suffering from existing cardio-respiratory disease, this has yet to be proven definitively. There is surprisingly little research specifically examining the potential for ill health in local communities resulting from opencast mining, perhaps reflecting the fact that the massive increase in the industry has occurred in Scotland, which also houses some of the largest opencast mines in the country, whereas it has actually declined in the other countries of the UK.”

26. Dr Irvine noted the clear limitations and methodological faults with existing research into the health impacts of opencast developments. Nevertheless, she suggested that currently available research does point to some correlation between opencast developments and ill health in the local population.

27. The Reporters wrote to the Scottish Executive to ask whether there was a need for further research into the health impacts of opencast developments. The Executive responded that generally it looked to the advice and expertise of the Committee on the Medical Effects of Air Pollutants (COMEAP), a UK Advisory Committee of independent experts that provides advice on matters concerning the potential toxicity and effects upon health of air pollutants. COMEAP has not recommended any further research specifically into the health impacts of opencast developments following the publication of a report “Do particulates from opencast coal mining impair children’s respiratory health?” in 1999. This report highlighted the need to ensure that PM10 particle emissions from individual sites were adequately monitored, and the Executive states that NPPG 16 was amended to take account of COMEAP’s conclusions.

28. The Executive’s response notes that COMEAP has recently considered the implications for the UK of evidence from studies of the long-term effects on mortality of airborne particles in US cities. While noting the various uncertainties involved, COMEAP concluded that “it is more likely than not that a causal association exists between long term exposure to particles and mortality”. However, COMEAP cautions that “the composition of the particles is important; it can by no means be assumed that these results extend to pollution climates very different from those typical of US cities”. The Executive’s response states that—

“Recognising the various uncertainties arising from the US studies, our colleagues in the Scottish Executive Health Department endorses the view of COMEAP that “These uncertainties need to be addressed by further research”. Planning Ministers will seek to ensure that the planning system continues to reflect the advice of health experts.”

29. The Reporters are not in a position to comment on the validity of the various pieces of scientific research into ill-health and opencast developments. However,

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8 Statement by Dr Helene Irvine, 25 February 2002
9 Letter from Mark Rae, Scottish Executive – Tues 21 May 2002
the Reporters recommend that the further research into the “uncertainties” highlighted in the Executive’s response is carried out as soon as possible. In this context, the Reporters also note the comparative lack of research conducted specifically in Scotland on the health impact of opencast developments.

30. The Reporters note and welcome the assurance by the Executive that Planning Ministers will seek to ensure that the planning system continues to reflect the advice of health experts. The Reporters would want to be reassured that a mechanism exists for revising NPPG 16 in response to any emerging scientific information on the health effects of opencast. The Reporters note that areas of the guidance which might require revision should such information emerge might include the recommended separation distance between proposed opencast sites and adjacent communities.

Monitoring and Enforcement Fees for Mineral Permissions

31. NPPG 16 states that it will be for the Scottish Executive and the Scottish Parliament to consider whether to empower local authorities to charge fees specifically to cover the costs of monitoring and enforcing minerals permissions (paragraph 59). One of the requests in Petition PE346 is that the Scottish Parliament “empower planning authorities to charge fees to cover the cost of monitoring and enforcing mineral permissions as proposed in paragraph 59 of NPPG 16” 10.

32. The second part of the Reporters’ terms of reference was to consider the current arrangements for meeting the cost of monitoring and enforcing mineral permissions, and the merits or otherwise of a new fees regime for Scotland.

Current Position

33. In a letter to the Committee on 25 October 2001, the Scottish Executive confirmed that planning authorities do not at present have the power to charge fees to cover the cost of monitoring and enforcing mineral permissions. The response noted that research undertaken on behalf of the Executive in 1999 on costs in the planning service had indicated a need for dedicated resources to be given to authorities for monitoring purposes, and that there was scope for some, or all, of these costs to be borne by operators. However, the Executive indicated that there was some uncertainty regarding the level of the costs involved.

34. The Department for Transport, Local Government and Regions (DTLR) issued a consultation in September 2001 seeking respondents’ views on a range of charging options in order to recover the costs of monitoring and enforcing mineral permissions in England11. Following this consultation, the DTLR indicated that it would take a view on a preferred option (or options), and a further consultation exercise would be undertaken on the preferred option(s), and a full draft Regulatory Impact Assessment will be prepared for comment.

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10 Petition PE346
11 http://www.planning.dtlr.gov.uk/consult/minfees/index.htm
35. The Executive indicated in its October 2001 correspondence with the Committee that this consultation would provide useful background for taking this issue forward in Scotland.

**Views of Local Authorities**

36. The Reporters invited relevant Scottish local authorities to comment on the costs of monitoring and enforcing mineral permissions for opencast coal mining, the scale of the resources devoted to this task, and whether there was merit in a new fees regime. In response, a number of local authorities were supportive of a change to the current arrangements.

37. North Lanarkshire Council stated—

“The current arrangements are not satisfactory. In all of the current operational sites in North Lanarkshire, the Council has to bear all of the costs involved and the original planning fees have long been exhausted. In some cases outside consultants, in addition to planning and protective services in-house staff, have to be called in to assist when things start to go wrong. The public, and community groups in particular, have little confidence that the Council has the ability to adequately monitor opencast coal workings. Too much is often left to the ‘goodwill’ of the operator.”

38. The Council noted that while most modern planning permissions have Bonds of Caution to cover site restoration and aftercare, these Bonds are not available to assist with the cost of site monitoring and enforcement.

39. North Lanarkshire Council also noted that, when it granted any new permissions for opencast coal working, it expected an agreement to be concluded with the operator under Section 75 of the Town & Country Planning (Scotland) Act 1997, which would require the operator to meet the cost of regular monitoring and reporting of site activities by a qualified mining engineer. However, the Council expressed concern that agreements under Section 75 of the 1997 Act are voluntary and there is no guarantee that every opencast operator will be prepared to conclude one with the Council.

40. Evidence from South Lanarkshire Council highlights similar points, pointing to the “exceptional and abnormal costs wholly attributable to the physical scale and operational complexity of large opencast sites. The scale and complexity of monitoring is far in excess of work generated by other types of development.” The Council therefore suggests that there would be merit in introducing a monitoring fees regime, similar to the subsistence fees payable to SEPA to cover the costs of their site monitoring. The Council also draws the Reporters’ attention to the recent DTLR consultation in England.

41. Other local authorities including West Lothian, East Lothian, Clackmannanshire and East Ayrshire are broadly supportive of the idea of a review of the current

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12 Letter from David Porch, 8 May 2002, North Lanarkshire Council
13 Letter from South Lanarkshire Council, 9 May 2002
arrangements for meeting the costs of monitoring and enforcing mineral permissions.

42. Fife Council, however, seemed content with the current arrangements. It employs a Minerals Consultant, paid for by the developer, to calculate restoration bond requirements and to monitor conditions. Fife Council suggests that this system works well as the Consultant has both the expertise and time to rigorously check compliance with conditions. The Council therefore suggests that there is no need for a new fees regime, and that the introduction of a new fees regime would not necessarily provide the flexibility required to address local circumstances that the current system does.

Views of other organisations
43. The Royal Institute of Chartered Surveyors in Scotland argues that caution should be exercised before any decisions are made about formal monitoring fees, due to their potential impact on the opencast coal industry. RICS Scotland adopts a neutral approach of neither being wholly opposed to the concept of fees nor convinced at this stage of the arguments in favour. However, RICS Scotland indicate that they would support a proper comprehensive study into the need for and the impact of the introduction of formal monitoring fees.

44. The evidence from opencast operators on the possibility of a charging regime for the monitoring and enforcing of mineral permissions varied. In general, operators did not express outright opposition to the idea of such a regime, but did express reservations about how such a regime might operate and how it might impact upon their businesses.

45. A submission from the Banks Group stated that—

"We also accept that, if significant improvements are to be made in the current arrangements, it will be necessary to consider introducing a system to allow planning authorities to charge fees for monitoring and enforcement. However, we strongly believe that any such system should avoid penalising operators such as ourselves who already operate open and comprehensive monitoring systems. Any system should ensure that it is the ‘problem’ sites which bear the brunt of any fee charging regime, to give operators an incentive to improve their own monitoring arrangements."\(^{14}\)

46. In written evidence to the Reporters, I & H Brown Limited also emphasised that any new regime should take account of measures already undertaken by operators: "We believe that it is, in principle, correct to implement such a scheme as a means by which to demonstrate good performance. Cognisance should however be taken of the existing measures and accreditation that companies have voluntarily embraced such as environmental management systems and quality management schemes."\(^{15}\)

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\(^{14}\) Submission from Banks Group

\(^{15}\) I & H Brown submission
47. A written submission from Scottish Coal is less sympathetic to the idea of a new fees regime, stating that it believed the existing arrangements are adequate and successful, and that it would be unfair for coal mining operations to be subject to an additional fee if this was not to be applied to other extractive industries.

48. As might be expected, groups campaigning against opencast developments generally welcomed the idea of a new fees regime, as providing an opportunity for more effective monitoring of conditions at opencast sites.

Argument for Change
49. The Reporters believe that, on balance, the case has been made for the introduction in Scotland of a new fees regime for meeting the cost of monitoring and enforcing opencast permissions.

50. The Reporters would not wish to be prescriptive at this stage as to the format of a new fees regime. More information is required as to the likely impact of different possible types of regimes, and a consultation in Scotland would be required. However, the Reporters wish, in passing, to highlight the following issues arising from the evidence taken on this subject, which might be considered when developing a new fees regime—

- Agreements between operator and local authorities under Section 75 of the Town & Country Planning (Scotland) Act 1997 could be made compulsory, rather than the current voluntary arrangements;
- Bonds of Caution could be extended to cover monitoring and enforcement as well as site restoration and aftercare; and
- Current good practice by operators should be encouraged and rewarded in any new fees regime.

51. The latest position of the Scottish Executive on monitoring and enforcement fees is outlined in a letter dated 21 May 2002—

"My response of 25 October gave the relevant background to this issue and confirmed that empowering planning authorities to charge monitoring and enforcement fees would require primary legislation. This is certainly something that the Executive intends to consult on. Depending on the outcome of consultations, the intention would be to ensure that any legislative proposals would be worked up in time to be incorporated into a forthcoming Planning Bill. We continue to have an open mind about the structure of any fees regime but will certainly follow the progress down south with interest."

52. The Reporters note that the Executive is far more positive towards the idea of a new fees regime in this letter than in previous correspondence. The Reporters welcome the progress in the Executive’s thinking on this issue since the Reporters began their work on opencast. The Reporters recommend that the Executive proceeds with a consultation on a new fees regime, with a view to

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16 Letter from Mark Rae, Scottish Executive – Tues 21 May 2002
providing new legislative powers in the forthcoming Executive planning bill which has recently been announced.\footnote{17 http://www.scotland.gov.uk/pages/news/extras/00007600.aspx}

Conclusion and Recommendation

53. The Transport and the Environment Committee is invited to consider and comment on this paper. An agreed paper could be then passed by the Committee to the Minister for Social Justice for the Scottish Executive’s response.

Adam Ingram MSP
Nora Radcliffe MSP
PETITION 422, 430 AND 454: DISPOSAL OF PLAYING FIELDS

At its meeting on 6 June 2002, the Transport and the Environment Committee considered three petitions on the disposal of playing fields. These petitions are all concerned with specific local authority planning decisions allowing local authorities to sell playing fields in their ownership for the purpose of building housing developments. Due to the similar nature of the subject matter, the Committee considered all three petitions together.

Petitions PE 430 and PE 454 suggest that, in situations where local authorities consider planning proposals that allow for the sale of land in their ownership, authorities face conflicts of interest as they stand to benefit financially in the event of planning permission being granted.

Members discussed the current regulations and noted that the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 states that, in situations where a planning authority has a financial interest in a proposed development, and it has either been subject to a substantial body of objections, or it does not accord with the local plan, ministers must be notified.

Members also noted that the Draft National Planning Policy Guideline 3 states that, where a planning proposal from a local authority involves the development of open space and playing fields in their ownership, ministers must be notified.

During the Committee’s consideration of the petitions, members noted their awareness of many other instances where local authorities have allowed open spaces in their ownership such as playing fields, to be built upon. Members argued that the number of instances of which they, themselves, were aware indicates that the current are not sufficiently stringent or that the rules should be should be better enforced.

The Committee agreed that I should write to you to ascertain the Executive’s position on local authorities’ application of the planning guidelines in respect to the development of open spaces and playing fields. The Committee would be interested
to learn the number of such planning applications that have been called in by the Scottish Executive since 1997. Finally, the Committee agreed that the Executive must stress to local authorities the importance of adhering to the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 and also NPPG 3 when it comes into force.

I should be grateful if you would reflect on these issues and I look forward to hearing from you.

I should be grateful if you would copy your response to the clerk to the Committee, Callum Thomson.

Copies of this letter go to the petitioners, Mr James Docherty, Mrs M Glendinning and Mr Peter Watson.

Yours sincerely

Bristow Muldoon MSP
Convener
Thank you for your letter of 3 July on behalf of the Scottish Parliament’s Transport and Environment Committee in response to public petitions PE 422, 430 and 454 regarding the disposal of playing fields.

May I offer some general remarks before dealing with the committee’s particular points. The Scottish Executive supports the protection of playing fields and endorses sportscotland’s objective which is to ensure that there are sufficient playing fields and sports pitches of an acceptable standard to meet existing and future demands. Primary responsibility for protection and maintenance lies with local authorities and they should adopt robust planning policies, in their development plans, to safeguard established open spaces, playing fields and access routes where they contribute to local community needs and enjoyment.

We are satisfied that sportscotland fulfils its responsibilities in this respect. Sportscotland is encouraging local authorities to develop playing field strategies in order to strengthen and enhance commitment to the protection of playing fields but often faces difficulties created by the absence of local authority playing field strategies.

With regard to the role of the planning system, it remains the principle under which the system operates that decision should be taken at the most local administrative level, unless there are strong reasons for taking them at a higher level. This results in most planning decisions being determined by planning authorities taking into account the framework set out in their development plans, national planning guidance and any wider international obligations.

However, it should be noted that in relation to national planning guidance it is for the decision maker to assess both the weight to be attached to such consideration and whether individually or together they are sufficient to outweigh the provisions of the development plan.
Notification Directions

The legislative basis for notification to the Scottish Ministers is SODD Circular 4/1997: *Town and Country Planning (Notification of Applications) (Scotland) Direction 1997* (as amended by Circular 43/1997) which sets out instances where planning applications must be notified to the Scottish Ministers. Category 17 defines the requirement for notification for playing fields as follows:

"Development affecting any land currently in use, or last used, as a playing field (defined as land of 0.4 hectares or more for any pitch sports, including any adjacent tennis courts and bowling greens, and athletics tracks) in circumstances where:

(a) the proposal has been the subject of consultation with the Scottish Sports Council (now sportscotland) under Article 15(1)(o) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 where the Scottish Sports Council has advised against granting planning permission, or has recommended conditions which the planning authority do not propose to attach to the planning permission; or,

(b) the Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981 apply to the development."

The purpose of the Direction is to give the Scottish Ministers the opportunity to decide whether to call an application in for their own determination or to allow the planning authority to determine the application themselves. You will appreciate that, because of the Scottish Ministers’ possible future role it would not be appropriate to comment on the particular cases referred to by the petitioners at this stage. With regard to the committee's particular question regarding the number of notified applications issued subject to Category 17 since 1997, two planning applications have been called in affecting playing fields.

While this may seem a relatively small number of cases, it should be noted that sportscotland will often enter into negotiations with developers for the provision of alternative sports pitches for the area. When this is achieved to its satisfaction, sportscotland will withdraw their objection, thereby removing the need for the planning authority to notify the case to the Scottish Ministers.

Current planning policy on Open Space

Current planning policy regarding playing fields is contained in National Planning Policy Guideline (NPPG) 11: *Sport, Physical Recreation and Open Space*. NPPG 11 acknowledges that councils have, for some years, been encouraged to make use of their schools for community recreation purposes. More recently, in response to a fluctuating school population, some education authorities have taken decisions to dispose of land and buildings surplus to educational requirements. Such decisions are a matter for local discretion, but once redeveloped, it is unlikely that school playing fields can ever be reinstated, so the loss to the community can be regarded as permanent. Disposals should only be entertained if open space analysis demonstrates that the land is surplus to requirements, taking account of its recreational and amenity value. The underlying aim of NPPG 11 is therefore to safeguard playing fields and sport pitches by discouraging development where it is likely to conflict with local needs either now or in the future. NPPG 11 also confirms that playing fields should not be redeveloped except where:
• the retention or enhancement of the facilities can best be achieved by the redevelopment of part of the site without affecting its sporting potential and its amenity value; or
• there would be no loss of amenity, and alternative provision of equal community benefit and accessibility would be made available, and
• there is a clear long-term excess of pitches, playing fields and public open space in the wider area.

**Recent policy developments**

Concerns over the loss of open spaces led to the Executive commissioning research on current local authority open space policies. This was published in March 2001 and considers the effectiveness of existing arrangements for the planning, design and management of open space. The overall conclusion is that the way most Scottish local authorities approach open space planning is fundamentally flawed. The research includes examples of good practice on how to prepare proper strategies using a simple methodology.

A Planning Advice Note is being prepared by the Executive to complement the research and to support NPPG 11. The PAN is intended to assist authorities in dealing with the many different types of open space in their areas, of which playing fields is only one, by giving them practical advice on the preparation of both open space strategies and appropriate development plan policies. This will hopefully lead to proper analysis, identifying the level of provision and need within Council areas, and the prevention of piece-meal decisions on land disposal. The Executive hopes to publish the PAN in autumn 2002.

The committee was also correct in noting that consultation draft NPPG 3: Planning and Housing states that new housing development should not be located on established open space where it contributes to local community needs and enjoyment. It also states that local authorities should lead by example by resisting the development of open space and playing fields in their ownership. The consultation period for this draft NPPG has just closed and we shall be considering the terms of the final version in the light of comments received.

In addition, sportscotland published its Planning Policy for the Protection of Playing Fields in May 2002, which has been issued to all local authorities. This document says that sportscotland follows the guidelines set out in NPPG 11 and it also sets out in detail how they deal with planning applications affecting playing fields and their views on the factors which should be taken into account when determining such applications.

I hope this reassures the Committee that there are adequate arrangements in place to ensure that any application made in respect to the development of playing fields will be properly and fairly considered.

MARGARET CURRAN
SSI Cover Note For Committee Meeting

SSI title and number: The Road Humps and Traffic Calming (Scotland) Amendment Regulations 2002, (SSI 2002/419)

Type of Instrument: Negative

Meeting: 28th meeting, 9 October 2002

Date circulated to members: 17 September 2002

Motion for annulment lodged: No

T and E deadline to consider SSI: 28 October 2002

SSI drawn to Parliament’s attention by Sub Leg Committee: No