

EXAMPLE 1.

The response received from Dundee City Council contains descriptions of actions which do not appear to be in compliance with recommendations. Whether or not a development is for single or numbers of turbines such developments are environment related, so must be the subject of consultation. As indicated in their reply below, Dundee C.C. did not hold a consultation on wind power developments or prepare for statutory supplementary guidance on renewable energy:

“By way of background we can advise you that due to the proximity of the administrative boundary of the City of Dundee to the edge of the urban area Dundee is unable to accommodate wind farms - Scottish Planning Policy 2014 sets a community separation distance of 2km around cities. For this reason the planning policy in the Dundee Local Development Plan 2014 relating to wind power development relates to smaller scale wind power development only i.e. single wind turbines.

1. The current Local Development Plan for Dundee – Dundee Local Development Plan 2014 - was adopted in 2014 following public consultation as set out in Figure 2 of the plan. The plan can be downloaded via our website <http://www.dundee.gov.uk/localdevplan> . There was no specific consultation on wind power developments.
2. The Dundee Local Development Plan 2014 contains a section on renewable energy (paragraphs 9.4 to 9.6) including Policy 31: Wind Turbines. This sets out the Council's position on this subject matter.
3. Dundee City Council did not consider it necessary to prepare for supplementary guidance on renewable energy in addition to the policy provision contained in the Dundee Local Development Plan 2014.”

As reported by South Lanarkshire Council no further public consultation took place on their adopted LDP as it was stated that no grounds existed under Scottish Government Circular on Development Planning (Circular 6/2013) to depart from Reporter’s recommendation. Because the recommendations are binding on the council, consequently as the council cannot depart from them and is obliged to incorporate them into the LDP, there is no provision for allowing them to be the subject of further public consultation. This ruling affects every council in Scotland. Coupled with the fact that the Scottish Government have refused to adopt the right enjoyed by U.K. Communities

south of the border to reject unwanted developments, taken together these combine to demonstrate a loss of democratic rights. The effect of this on councils who have wished to challenge Reporters' recommendations inevitably brings them into conflict with cost considerations, thereby negatively affecting decisions to proceed. Where Local Planning Inquiries have been held and councils are unsuccessful in resisting enforced changes, cost prevents Council challenges being taken to the Courts of Session. The casualty of this is loss of further public participation on Reporter's recommendations and resulting loss of access to justice due to cost issues.

Relevant rights in this regard, as appearing under Articles 9(3) and 9(4) of the Convention should apply to councils who are in this respect, often the public's representatives:

- *3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.*
- *4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.*

Unfortunately the UK is not good at complying with its obligations above, see findings and recommendations below:

112. Given that (a) the Party concerned takes the view that private nuisance proceedings fall outside the costs limits introduced through the procedural rules, (b) the Party has not put before the Committee any other means (besides those already examined in the Committee's findings on communication ACCC/C/2008/33) through which it ensures private nuisance proceedings are not prohibitively expensive, and (c) it is not disputed that the costs in private nuisance proceedings typically exceed £100,000, the Committee finds that the Party concerned has failed to ensure that private nuisance proceedings falling within the scope of article 9, paragraph 3, of the Convention, and for which there is no fully adequate alternative procedure, are not prohibitively expensive.

113. This conclusion is further strengthened by the entry into force of section 46 of LASPOA, since its prohibition on successful claimants recovering the premium for ATE insurance introduces an additional financial burden for members of the public seeking access to private nuisance procedures. On the basis of the information before it, the Committee considers that the Party concerned cannot presently rely on BTE insurance as a mechanism to eliminate this additional burden as the vast majority of the public, i.e., potential private nuisance claimants, do not have BTE insurance. Moreover, the Committee does not consider any kind of private insurance scheme whose general

availability is not guaranteed by law to be capable of ensuring a Party's compliance with the Convention's requirement that members of the public have access to procedures which are not prohibitively expensive. The same reasoning applies to the possibility for claimants to engage solicitors on conditional fee agreements, an option which is likewise not guaranteed by law but depends on the willingness of the solicitor involved, and which furthermore does not prevent claimants from the risk of other high costs in the proceedings.

114. The Committee accordingly finds that, by failing to ensure that private nuisance proceedings within the scope of article 9, paragraph 3, of the Convention, and for which there is no fully adequate alternative procedure, are not prohibitively expensive, the Party concerned fails to comply with article 9, paragraph 4, of the Convention.

https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-55/ece.mp.pp.c.1.2016.10_advance_edited_version.pdf

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23 April 2017