



**PUBLIC PETITION NO.**

**PE01320**

**Name of petitioner**

Douglas McKenzie on behalf of Communities Against Airfield Open Cast

**Petition title**

Amending Planning Circular 3-2009

**Petition summary**

Calling on the Scottish Parliament to urge the Scottish Government to Planning Circular 3/2009, Notification of Planning Applications to (a) provide the same status to a planning objection to a major development from a neighbouring local authority as to one from a government agency in order to trigger a notification to Scottish Ministers and (b) state that such objections by a neighbouring local authority to major developments which represent a departure from the development plan should be a significant factor in the decision to call-in.

**Action taken to resolve issues of concern before submitting the petition**

Letters and emails have been submitted to—

1. Minister for Transport, Infrastructure and Climate Change (both directly and through MSPs)
2. David Hamilton MP (07.10.09)
3. Iain Gray MSP (01.09.09)
4. Rhona Brankin MSP (01.09.09.)
5. Robin Harper (01.09.09 with follow up correspondence)
6. All other Lothian MSPs (01.09.09)
7. David McLetchie MSP (11.11.09 with follow up correspondence)
8. Malcolm Chisholm MSP (25.09.09)
9. The chair and all members of the Local Government Committee (22.10.09)
10. The planning department of East Lothian Council (24.11.09)
11. The planning department of Midlothian Council (26.11.09)

Meetings also took place with East Lothian Planning Department on Tuesday November 24th and Midlothian Planning Department on December 7th.

Iain Gray MSP and East Lothian Councillors have been supportive of notification and call-in by the Scottish Government since East Lothian will be the main recipient of negative impacts from the proposed development within Midlothian.

Other MSPs such as Rhona Brankin, Robin Harper and David McLetchie have also been sympathetic and thoughtful in their responses. Other Lothian MSPs have merely noted our letters and failed to respond any further.

The response from the Chair of the Scottish Parliament Local Government Committee was extremely disappointing, In a brief reply he merely commented that the "Committee has no plans to examine this particular issue," thus failing to respond to the key issue

of a democratic deficit.

We have approached the relevant government department and planners whose response has been to refer us to Circular 3/2009 which states that planning is a local matter and that notification will only be triggered according to specified criteria. Furthermore, once notified, we are advised that in accordance with 3/2009, Ministers will generally only call-in applications which raise matters of national significance. However this is not defined.

### **Petition background information**

In August 2009 Scottish Coal submitted an application to extract two million tons of coal over a period of six and a half years from Airfield Farm close to the communities of Cousland in Midlothian and Ormiston in East Lothian.

Midlothian Council is now in the process of accepting submissions from consultees and responses/objections from a wide range of interested parties both local and national. There is great concern in surrounding communities over the potential impacts of this highly unpopular proposed development. A number of issues have been raised but those which pertain to this petition can be summarised as follows.

- 1 It is categorised as a major application
- 2 It is a departure from the recently adopted Development Plan
- 3 The neighbouring Local Authority has objected
- 4 There are communities/settlements within 500 metres
- 5 East Lothian communities will be most severely affected
- 6 There appear to be no community benefits.

While we at CAAOC understand that this is a local authority matter and that the Public Petitions Committee has no power to intervene in the operational decisions of local authorities, there is an important aspect of this proposal which should be of concern to the Committee going, as it does, to the heart of democratic governance in this country.

Although Airfield farm is situated in Midlothian, where the Council will make the final planning decision, the worst impacts, in terms of dust and noise will be experienced in Ormiston and other smaller settlements and dwelling houses in East Lothian. Consequently East Lothian has lodged an objection and requested Midlothian Council refuse planning permission.

Whilst Midlothian Council has not yet formally considered the Airfield application, if it decides to approve it, residents of Midlothian can look forward to passing judgement on the Council and individual councillors at the polling stations when elections are held in 2012. East Lothian residents on the other hand will have to endure the impact of dust, noise and landscape degradation without any means of passing judgement on the councillors who made the planning decision which may have negatively affected their quality of life. In other words they are being denied the most basic of democratic rights, the right to pass judgement on the impact of decisions made by elected representatives. It is a serious democratic deficit and a complete failure of representative democracy. One would hope that at this point a higher level of government would intervene to represent the disenfranchised voter and resolve disputes between neighbouring authorities. However the circumstances of Airfield have highlighted the absence of any such recourse in the planning process.

#### **Scope for notification**

It appears that East Lothian Council, despite being a statutory consultee, does not enjoy the same status as national government agencies such as SNH, Transport Scotland, SEPA etc in that its objection does not trigger a notification to Scottish Ministers which would raise the possibility of an application being "called in". In this sense the planning process appears severely defective. Despite potentially serious cross border impacts, Midlothian Council, has the power to overrule East Lothian's objection and grant planning permission without any requirement for such a dispute to be considered at a higher level of government by further examining the impact

on communities situated across the local authority border. In addition objectors have no right of appeal.

Under the previous Planning Circular 5/2007 'Notification of Planning Applications' (replaced by Planning Circular 3/2009 'Notification of Planning Applications' in April 2009) there were specific criteria which would have made such a outcome more likely. These included the situation where insufficient attention had been paid to legitimate planning concerns expressed by consultees or local people and where the planning authority had made an unjustified departure from the local plan. These criteria were removed by the new Circular and reduced to only three:-

- i) objections from a government agency;
- ii) the Council having a financial interest; and
- iii) an open cast mineral extraction proposal within 500 metres of a "community" or "sensitive establishment".

It is worth noting that the East Lothian Council's objection includes what it perceives as violations of the jointly agreed Edinburgh and Lothian Structure Plan thus undermining the concept of plan led development which the Scottish Government asserts should be guiding planning decisions at local level.

#### Scope for Call-in

Beyond the initial notification process, Circular 5/2007 went on to give specific examples of matters which might merit call-in, including where insufficient attention was paid to the views of consultees and local communities. These call-in criteria and examples have been removed from Circular 3/2009.

The reduced scope for call-in of planning applications to Scottish Ministers was underlined in a letter (12.08.09) in which Fiona Hepplewhite replied to us on behalf of the Minister for Transport, Infrastructure and Climate Change saying,

"The Scottish Ministers would consider intervening only in exceptional circumstances and would only become involved in cases that raise issues of genuine national as opposed to local significance."

There is now a serious potential dissonance in Circular 3/2009 between the three criteria for notification (only one of which can potentially be described as "national") and the need to qualify as an issue of "national significance" by which an application once notified, may be called in by Scottish Ministers. It seems to CAAOC entirely inappropriate that such intervention might preclude major applications which can have significant effects across local authority boundaries and where respective local authorities may have differing opinions on the merits of such proposals.

We believe that such circumstances merit consideration for the application to be called-in to ensure a fair and impartial determination by Scottish Ministers.

This could be achieved by a variation in the wording of Circular 3/2009. In particular para 6 could be amended to read:

"Ministers might choose to intervene where the possible impacts or benefits of a proposed development extend beyond the area of the local authority to the extent that they become of national importance for example where a neighbouring local authority has objected to a major development proposal."

We would also point out an inconsistency in 3/2009 in respect of open cast coal proposals. The Circular includes such proposals which are within 500 metres of a community or sensitive establishment as one of the three circumstances meriting notification of a planning application to Ministers. The other two are where a government agency has objected to an application and where the local authority has a financial interest.

However in its discussion of potential factors meriting a call-in of applications (paras 6-7) the Circular refers to the latter two factors but not to the open cast 500 metre criterion. It seems to CAAOC that if this criterion merits notification to Scottish Ministers as a matter of potential national importance then it must also merit consideration as a prospective reason for call-in on the same basis. For

the avoidance of confusion it thereby merits identification as such within the Circular.

We are therefore calling on the Scottish Government to:

a) give any objection by a local authority which is a statutory consultee the same status as an objection by one of the National Government Agency consultees thus triggering notification.

b) Widen the criteria for call-in such that the definition of “national significance” includes an objection by a neighbouring authority to a major development proposal which represents a departure from the development plan.

This would not close the democratic deficit but it would at least narrow it and democratise the planning process by allowing accountable representatives at a national level to take a strategic overview of cross border developments.

(Further information on all aspects of this application can be obtained at [www.cousland.net/airfieldopencast.asp](http://www.cousland.net/airfieldopencast.asp))

#### Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01320>

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