

Real Planning Rights for Communities: Planning White Paper Briefing

Introduction The Planning System plays a key role in protecting and enhancing urban and rural environments. However, experience of working with the existing planning system leads us to believe that unless specific changes are made to it, it will increasingly fail to deliver for the Scottish people and their environment. We are looking for Scotland to have an efficient, fair and just planning system that enables sustainable development in line with the needs of Scotland's people. The system should be fair both in how it treats different applicants and in how it balances the interests of those benefitting from development and those impacted adversely. The system should promote quality development through open, fair, participatory and accountable decision-making processes.

Planning White Paper The Scottish Executive's commitment to reforming the planning system is welcome, as are some of the measures within the Planning White Paper (such as the statutory provision to require development plans to be reviewed every 5 years, and the requirement for local authorities to give reasons for all of their planning decisions). The White Paper seeks to re-focus the planning system on development planning, which should increase certainty and efficiency for all of those involved with, or affected by, the planning system. Most development planning documents are subject to either public inquiry or examination in public in order to test the policies. Yet, the major exception to this is the National Planning Framework (a significant problem given its role in relation to national developments).

The paper also presents a few ideas on how to include communities at the front end of the process. While these proposals are welcome in principle, they do not address the fundamental problems that many third parties encounter with the planning system. The proposals simply provide additional opportunities for third parties to explain why they think something might be a bad idea: there are no obligations on developers or decision-makers to take these views into account. On their own, these measures are neither sufficient, nor the right mechanisms, for ensuring real rights for communities to influence planning decisions and the planning system. As drafted, the White Paper will not, as hoped, restore public confidence in planning.

In this briefing we will focus on the two major areas of change to the White Paper which are required to ensure real planning rights for communities.

Key issues:

1. National Planning Framework

Introduction The National Planning Framework will be used to identify developments of a national strategic importance, to be known as ‘national developments’. In principle it is welcomed by Scottish Environment LINK since it offers significant opportunities to address important issues, such as waste and renewables, at a national level. However, we have concerns at the limited opportunities there will be to object to or challenge its proposals.

What is proposed There will be public consultation on the National Planning Framework document, a Strategic Environmental Assessment and some form of Parliamentary scrutiny, but none of these measures alone will ensure that the public or planning professionals have the opportunity to really influence the document. There is no guarantee that the Executive will take points of view in the consultation into consideration and the opportunities for the Parliament to closely scrutinise and test the proposals are limited. In effect, the package as proposed amounts to a blank cheque for the Executive to pursue large-scale development proposals.

Solution The National Planning Framework should be subject to a Public Inquiry chaired by an independent professional who can hear and consider evidence and make recommendations. This has been done for other spatial strategies in the UK, for example the City of London and Northern Ireland. During the Parliamentary debate surrounding the publication of the Planning White Paper, the Minister indicated that a group would be set up to advise Parliament of an appropriate process for scrutiny. This need not be a lengthy or costly process but it is essential if the proposals are to be robustly tested before they are imposed upon local communities.

2. Public participation in planning

Introduction Various measures have been introduced to address the concerns of those in favour of TPRA, and to “improve the quality of public participation in planning”. Yet, as they stand, the package of measures proposed amounts to very little by way of new rights and may in fact cause additional problems. The focus is on ‘front loading’ the system, in other words providing some additional platforms from which people can explain why something is a bad idea, with no obligation for either developers or Councillors to listen to them, or act on their concerns. While these proposals are welcome, alone they are not enough.

What is proposed

- If national developments (likely to include major transport, water, energy and waste infrastructure projects) are accompanied by an EIA, they will be subject to pre-application consultation requirements and be subject to mandatory public hearings. However, the need for the development will have been established in the National Planning Framework making the scope for modification fairly limited.
- In addition to the proposals for national developments ‘enhanced scrutiny’ is also proposed for: (1) applications for major and local developments which are significantly contrary to the development plan; (2) those that require an EIA; and (3) applications for developments defined in secondary legislation as larger scale ‘bad neighbour’ developments. These applications would: be subject to pre-application consultation; be

subject to mandatory public hearings at which objectors or supporters would be able to present their views; have any decision taken by a planning committee to grant planning permission referred to the council as a whole and, subsequently be notified to Ministers, to decide whether to clear the application back to the council or call in for determination.

Pre-application consultation by good developers is already undertaken, and can be useful. However, in our experience developers can use these discussions to mislead local communities who believe that the concerns expressed during this process are taken to be a formal objection. A number of Councils already hold hearings and experience of these has generally been poor. There is no obligation on the Council to take the views expressed into account and hearings therefore simply provide an opportunity for people to vocalise what they have already put in writing. In a recent Douglas Valley example, 600 objectors to three opencast mining proposals were given just 15 minutes to get across their concerns, in a room big enough for 35 people. Essentially the White Paper suggests a more formalised approach to what is already happening and slightly extends an already opaque call-in procedure. We feel that while these proposals may be worthwhile, alone they are not sufficient to ensure real and effective planning rights for communities and other interests.

Solutions Limited Third Party Rights of Appeal (where applications are a departure from the Development Plan, subject to EIA, recommended for refusal by a planning officer, or where the local authority has an interest), alongside other reforms, can ensure that pre-application discussions are aimed at actually resolving problems rather than merely being a box ticking exercise. We are not suggesting that TPRA be a “bolt-on” to the existing system as this could lead to unnecessary delays and costs. TPRA should be seen as integral to the planning reform package, and in the context of other reforms, offers a major opportunity to enhance justice and fairness, without creating inefficiencies in the system. It would create a major incentive to developers to enhance the quality of proposals, and an incentive to planning authorities to enhance the quality of decisions.

The criteria for Ministerial call-in should be clarified, since the criteria, rationale and process behind call-ins remains unclear. Clarification would increase consistency and ensure accountability.

Conclusion: As currently drafted, the White Paper is a missed opportunity for radical reform of the planning to ensure participation, accountability and sustainable development at all levels – from the lack of Public Inquiry for the National Planning Framework, down to the failure to address the issue of unequal rights of appeal on local planning proposals.

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