

## Imminent Planning Review

We welcome the news that there is to be a root and branch planning review. We understand that the independent planning review panel will meet for the first time on the 13<sup>th</sup> October 2015. We ask that the minister ask them to ensure that the following elements are incorporated in the scope of the planning review:

- 1. A comprehensive analysis of public participation in planning**
- 2. A review of the current rights of appeal**
- 3. Consideration of how to deal with repeat planning applications**
- 4. Consideration of the effectiveness of current enforcement of planning consents**
- 5. Consideration of a more strategic approach to the re-development of brownfield sites.**
- 6. Measures to ensure that places important for wildlife are protected and new green infrastructure is included in all developments**

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

### Introduction

We welcome the Government's plans for a root and branch review of planning with an emphasis on housing. We recognise the opportunity that a root and branch reform of planning will offer to bring forward a progressive agenda of change and would like to see some key issues addressed through this review.

We recognise that there is huge pressure on housing currently and that new affordable high quality housing is essential for people's quality of life in Scotland. We aspire to see housing needs addressed and for Scotland to have a stable housing market, but we want to ensure that the reforms guarantee that housing is built in the right places, protecting and enhancing sensitive parts of our natural and cultural heritage and that housing developments are established through meaningful consultation with local communities.

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**1) A comprehensive analysis of public participation in planning** involving research, surveys or interviews with members of the public to analyse their experiences of the planning system and the impact of planning on their lives.

## Background

The 2006 planning reforms were intended to “bring in a much more inclusive and efficient planning system to improve community involvement, support the economy, and help it to grow in a sustainable way” (Scottish Government 2006). The Modernising the Planning System white paper 2005, discussed the need to restore public confidence in the Scottish planning system. The changes made in the legislation enshrined ‘frontloading’ in an attempt to involve the public much earlier in the planning process, through the development plan process. It contained some provision for public engagement at the planning application stage through Pre Application Consultation. However the impact of the reforms have not yet been investigated.

To date, in the 10 years since the legislation has been implemented, there has been

- no study or research conducted to establish whether the reforms have improved the public’s experience of planning
- no review of whether the reforms have contributed to the aim of restoring public confidence in planning
- no consideration of how the new frontloading approach affects the final decisions made and the subsequent impact of development on the local environment and people’s lives
- no assessment of public engagement in planning using the national standard of community engagement indicators which were held up as the standard by which participation should be measured.

Instead the quantitative and qualitative indicators in the planning performance framework are geared more towards measuring and improving service for applicants rather than ensuring that the public affected by development are effectively engaged.

We think that a comprehensive review might offer up substantial insights into how the reforms might provide a more satisfactory system of public involvement.

**2) A review of the current rights of appeal** within planning and other consenting processes which give deemed planning consent, considering the benefits of widening the scope of appeal, and providing an equal right of appeal.

## Background

Between 2000 and 2006 a coalition of civil society groups including many in Scottish Environment LINK campaigned for a 'Third Party Right of Appeal' in the planning system – a change that would balance the existing right of appeal against the **refusal** of planning permission with a right of appeal against the **grant** of planning permission (for certain people in specific circumstances).

The campaign had various levels of support from political parties. In 2004 the then Scottish Government published a consultation on what was then called a third party right

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of appeal. 86% of respondents were supportive but the government ultimately ruled out the introduction of a right of appeal in 2005. Incoming administrations have inherited, and so far retained, this policy approach.

Administrations before and after the 2007 election stated that the revisions to planning procedure which were put in place (through the Planning (Scotland) Act 2006 and subsequent Regulations), with an emphasis on “upfront consultation” should enable members of the public with concerns about planning proposals to positively influence Applications.

We believe this imbalance represents a fundamental injustice in the Scottish planning system which should be resolved, and Scottish Environment LINK propose that the Scottish Parliament call on the Scottish Government to commission a review of appeal rights in the planning system with a view to providing an Equal Right of Appeal (ERA).

With regard to community empowerment the planning reforms fall well behind the progressive agendas of Land Reform and Community Empowerment. In terms of Fairer Scotland one key step towards a fairer nation would be to create a level playing field with regard to appeals in planning.

### **3) A review of repeat planning applications.**

#### **Background**

The current idea of a plan-led system guiding development yet retaining the flexibility to adapt to changing circumstances is sound, but if a local campaign has fought against a particular type of development any repeat applications should be required to explain how they have addressed the concerns raised previously and rigorous efforts should be made by planning authorities to ensure that developers do not profit by simply wearing down local communities.

Our concern is that developers can win a war of attrition by repeatedly putting in proposals for the community to respond to.

The current planning regulations regarding repeat applications in circular 4 / 2009 state that section 39 of the 1997 planning act as amended by s15 of the 2006 act contains discretionary powers for planning authorities to decline to determine repeat planning applications if within a 2 year period.

We believe that the legislation means in practice that local planning authorities have fairly substantial powers to refuse 'repeat' applications within a two year period should they choose to use them. However this does not provide communities with the necessary certainty that once they have engaged significantly in an objection process that it won't be repeated again after two years.

We understand that this may be an exercise in political will of the local authority, but we do feel that communities and the environment deserve better certainty.

We make the following suggestions as a possible means of addressing this issue.

- Impose increased application fees in cases of repeat applications
- Devise a special category created by a refusal that flags up that particular types of development are not welcome on that site. Any subsequent application would then

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need to provide clear evidence as to why this no longer applied before it was validated

- Require local authorities to use their powers of discretion to refuse repeat applications.

#### **4) A review of enforcement of planning consents.**

To ensure that people are not subjected to unwarranted levels of environmental impact and that public trust in the operation of the system is maintained we believe greater political will is needed to ensure developments comply with planning conditions and agreed environmental limits.

#### **Background**

There can be no stronger indication of the need for thorough monitoring and robust enforcement than the circumstances surrounding the collapse of Scotland's two largest opencast coal companies, ATH Resources and Scottish Coal in 2013. When the companies went into bankruptcy it emerged that the independent bonds they were supposed to be funding to ensure there was sufficient finance available to deliver restoration of their opencast coal mines should they go bankrupt were woefully inadequate. It has been estimated that the shortfall could be around £200 million. This shortfall is going to have to be met from the public purse in some instances, where health and safety or environmental risks are greatest.

In other instances, local communities and the environment will likely just have to live with the legacy, not only of the coal companies' cavalier attitude but of the regulators' failure to invest properly in monitoring the situation to ensure that the liabilities could not exceed the bonds by such a huge amount. The regulators in this instance were primarily the local planning authorities but Scottish Ministers also had a role as they could have called in planning applications for their own consideration at any time. Ministers also set the national policy context but clearly were not ensuring that it was robust enough or implemented properly in this case.

Despite this huge regulatory failing, a new framework for the consideration of opencast coal mines is still being developed and the monitoring and enforcement of other development types has barely received any national scrutiny.

Before any moves are made to reduce the regulatory burden on any development sector, there needs to be certainty that the monitoring and enforcement aspects of the system will be reviewed to ensure they are up to the job.

#### **5) Consideration of a more strategic approach to the re-development of brownfield sites.**

Brownfield land can include spaces that are important for wildlife and for recreation and should only be considered for development following proper assessment of their value. A strategic view can be taken regarding the redevelopment of vacant and derelict land, identifying and then holding back sites of importance to allow less valuable sites to be brought forward and developed first.

Brownfield land is by its nature a temporary habitat. Without management intervention, it is likely to have an average lifespan of between 15 and 20 years and may take up to 15 years to achieve its maximum biodiversity benefit. Due to its ecological importance, brownfields, also known as Open Mosaic Habitat on Previously Developed Land (OMHPDL), have been identified as a UK Biodiversity Action Plan (UKBAP) priority habitat. By prioritising the brownfield sites most appropriate for redevelopment it would be possible to produce a redevelopment schedule whereby sites without valuable OMHPDL or those with OMHPDL coming to the end of its natural lifespan were developed first.

**6) Measures to ensure that places important for wildlife are protected and new green infrastructure is included in all developments,** such as wildlife areas and corridors and green roofs and walls.

Internationally, nationally and locally designated sites should be protected from inappropriate development. Additionally, development should not take place where this would result in adverse impacts on nationally and locally important species and habitats. Development should seek to enhance local biodiversity through green infrastructure, enabling LPAs to meet their Biodiversity Duty

## Background

There is a key, and at present unrecognised, opportunity to utilise the principles of brownfield habitat in new development to provide a myriad of benefits, including measures such as wildlife areas and corridors and green roofs and walls.

For example specifically designed roof top habitats act as stepping stones to aid species movement across urban areas.

Furthermore they provide benefits associated with green infrastructure, improved building performance, energy savings by reducing the need for heating and cooling, air quality and amenity.

Through green roofs it is possible to directly contribute to the biodiversity aspirations of SPP and NPF3 and reap the benefits associated with green infrastructure, improved building performance and amenity. Scotland is lagging behind Europe, the USA and Canada by not having policies supporting the routine use of green roofs on new buildings and missing out on environmental, social and economic gains. Other wildlife measures could include woodland areas, allotments, community gardens and ponds.

## **We thank the Minister for her assistance in this matter.**

This LINK Parliamentary Briefing is supported by the following member organisations: APRS, Badenoch and Strathspey Conservation Group, Buglife, Froglife, Planning Democracy, RSPB Scotland, Scottish Wildlife Trust, Woodland Trust Scotland

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