Scottish Environment LINK

10 myths about Third Party Rights of Appeal (TPRA)

Briefing from the LINK Planning Task Force

Myth 1: TPRA would add significantly to delays in the planning system

Truth: The introduction of TPRA need not necessarily lead to a huge number of appeals. It is the last resort in cases where third parties feel that a decision has not been taken correctly. By introducing a limited TPRA along with other reforms to the planning system, any potential delays could also be minimised. Other mechanisms such as shorter time limits for appeals (first and third party), would help speed up the process - for example, the appeal period for all parties could be reduced to 28 days rather than the current time limit of 6 months or the proposed time limit of 3 months. Most appeals could also be dealt with by written representations, as in Ireland where 98% of appeals are by written submission, rather than oral hearings. Overall, if resourced sufficiently, TPRA would help rebuild public confidence and trust in the planning system, thus making it possible to speed up the majority of planning applications. Developers claim that TPRA "would clog up the whole system", yet the source of many current delays are those developers who submit repeat, twin-tracked or poor quality applications. Over 60% of all first party appeals are rejected, showing that developers are launching unreasonable appeals and adding to the workload of reporters.

Myth 2: TPRA would add to the cost of the planning system

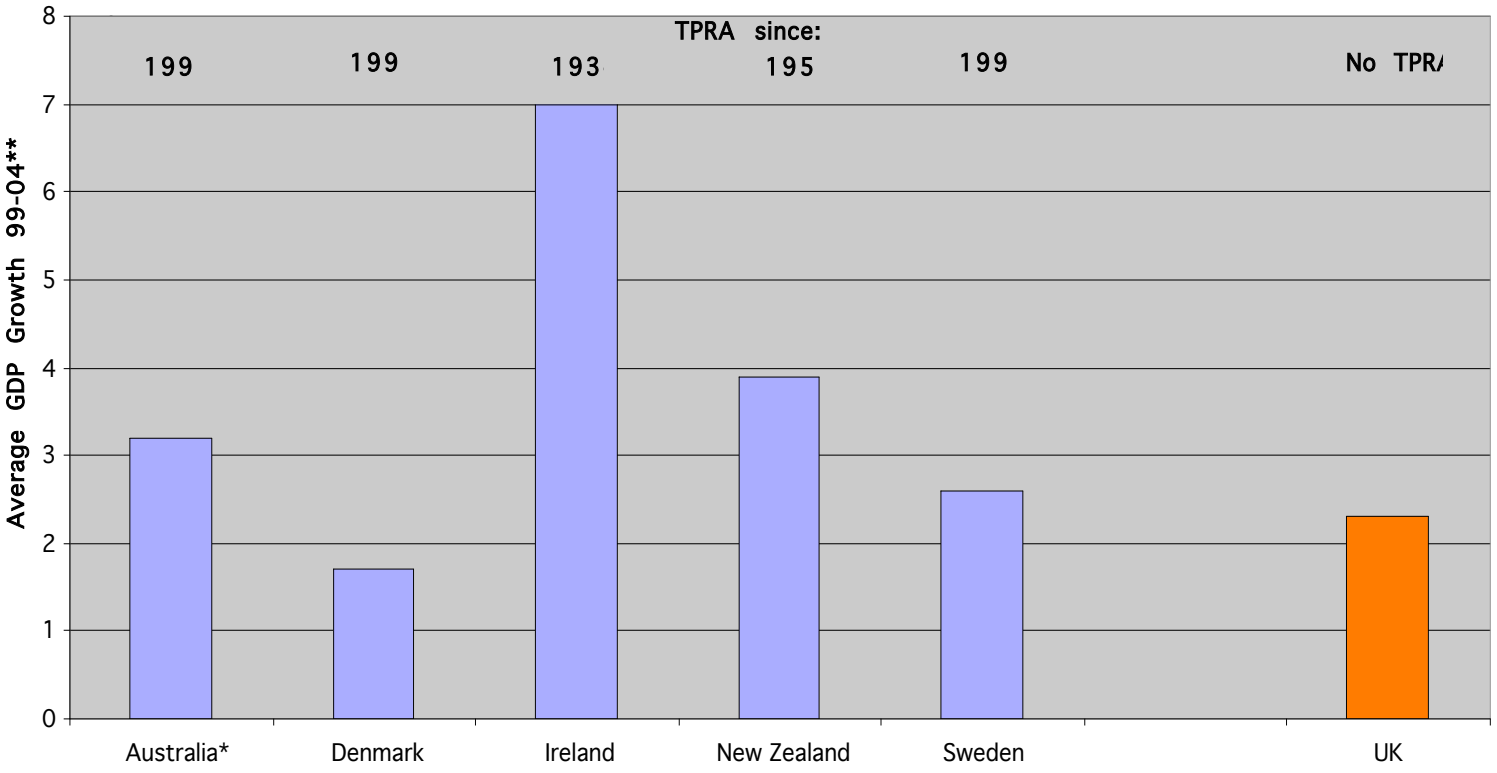
Truth: Again, many claimed costs could be significantly offset by other changes in the system such as those outlined above such as the use of written representations. If the system is designed well it will result in higher quality applications and greater levels of public participation at an earlier stage, with TPRA only used as a last resort. It is also true that any costs are incurred in the first few weeks of evaluating a development, while the better quality of development arising from TPRA is a benefit enjoyed over decades.

Myth 3: TPRA would create a 'meddler's charter'

Truth: This has not been the case in Ireland and it is unlikely to be the case in Scotland. We are advocating a limited right of appeal, limited to those people who had originally objected to the application, and only certain categories of application would be subject to TPRA (departures from the development plan, where an EIA is required, where the planning authority has an interest, and approvals made contrary to planning officers' advice). Fees and rules to deter frivolous and vexatious appeals could be easily put in place. Experience from Ireland suggests that repeated appeals by meddlers are unlikely to occur: 67% of all third party appellants in Ireland had never made an appeal before, and of the 15% who had made more than 5 appeals, these were all legitimate organisations such as local residents groups.

Myth 4: TPRA would be a deterrent to investment in the economy

Truth: The average GDP of Ireland, Sweden, Australia and New Zealand, all countries with TPRA, have, for the last five years, been greater than that of the UK (see graph below, based on information obtained from the World Bank). Evidence from regimes where TPRA has been introduced show that it has served mainly to improve the conditions attached to consents (in Ireland almost 60% of appeals led to revised conditions in 1999 and 2000), thus enhancing their public benefit, and not to block them.



*NSW and Queensland have TPRA

**Source: World Development Indicators: http:/www.worldbank.org/data/

Myth 5: TPRA would undermine local democracy

Truth*:* A limited TPRA would enhance local democracy by increasing the direct accountability of planning authorities to their citizens. The existing right of appeal for developers enables them to lodge appeals which scrutinise the decisions make by local authorities, why would extending this right to third parties undermine local authority decision-making any more than the current system? The White Paper also proposes to introduce mechanisms for development plans, which will limit the scope for local authorities to make their own decisions such as the introduction of model policies for some issues, the requirement to take on board the recommendations of Reporters following a local plan inquiry (which at the moment they are at liberty to ignore) and proposals to increase scrutiny of applications which depart from an adopted local plan. All these proposals are welcome. The introduction of a limited third party right of appeal would not undermine local-authority decision-making any more than the existing system already does and would be entirely in keeping with the range of other proposals aimed at allowing local-decision making within a clear national policy context.

Myth 6: TPRA would create an unmanageable administrative burden

Truth: Only a tiny fraction of permissions have been appealed in Ireland, and most appellants seek to revise the conditions of development rather than prevent it. There is also evidence in the past that authorities have been able to deal with any increase in workload. For example, numbers of planning appeals in England and Wales have been as high as double the current level, without overwhelming the authorities. In Ireland, the number of appeals increased rapidly during the 1990s. To ensure cases were met within the statutory 18 week period, in 2001 the appeals board increased its members and employed extra consultancy firms to handle the caseload. By 2003, 80% of all cases were being determined within the time period, thus showing that it is possible to respond quickly to administrative burdens if managed correctly. Despite these hurdles, studies have found that 100% of local authority officers and 88% of all appellants in Ireland were firmly in support of third party appeals.

Myth 7: The supporters of TPRA are unrepresentative of communities, fundamentally opposed to change, and would object to any development

Truth: Research from Ireland has shown that community representatives, individuals and organisations such as Community Councils, are those most likely to lodge a third party appeal. These groups are

surely more representative of communities than developers who already have a right of appeal. Interestingly, recent research from Australia and Spain has underlined the vital role of so-called nimbys in protecting the public interest against developers. There are very clear arguments for the importance of TPRA in upholding the community / public interest in development.

Myth 8: Other improvements in the planning system, such as greater front-end consultation, are more important that TPRA and should be pursued instead.

Truth: While the proposals in the Planning White Paper to strengthen the participation of local people at an earlier stage in the planning process are welcome, we still firmly believe that the possibility of an appeal would help ensure genuine participation not just consultation. A limited third party right of appeal (TPRA) cannot address all the shortcomings of the planning system but it could offer third parties a means of challenging those decisions which they believe to be wrong. By introducing a limited TPRA we are likely to see increased efforts on the part of local authorities to involve the public in development plan preparation and additional resources allocated to keep these plans up to date. We are also likely to see developers genuinely engaging in meaningful pre-application discussions rather than simply undertaking another statutory requirement and thereby ticking the appropriate boxes before an application can be formerly registered (a real possibility with the current proposals). We strongly support the concept of a plan led system and greater public involvement as early as possible in the planning process but without the necessary 'teeth' this concept is likely to end up generating expectation which cannot be adequately satisfied.

Myth 9: TPRA would block social developments, such as schools and hospitals

Truth: The net effect of TPRA is to ensure better implementation of democratically-agreed planning policy. Therefore, if such social developments were supported by planning policy, they should not be unduly affected by TPRA. As well as commercial developers, development is undertaken by community-based housing associations, cooperatives or voluntary organisations seeking to provide services for disadvantaged people, such as affordable rented housing, sheltered accommodation. etc. Mechanisms, such as exemptions for development which is subject to national strategic priorities for disadvantaged groups, would ensure that TPRA did not impact negatively on these proposals. The issue therefore is how TPRA is designed, not whether we need it or not. TPRA would lead to better projects being built, since it would ensure that commercial house builders deliver on promises to include affordable housing in new market-based developments, and many PFI projects would benefit from the greater scrutiny that TPRA would bring.

Myth 10: TPRA would reinforce an adversarial approach

Truth: In fact the opposite should be the case, since the community would feel their voices would be given more weight in pre-application consultations. Currently, if a community's objections are not taken on board by developers, the only route open to individuals or local community members is to campaign to get the Executive to call in the application, or to undertake a judicial review, a route that is costly and out of reach for most people. We advocate the use of mediation services, which have worked well in other countries where TPRA already exists.

For more information on rights of appeal in planning, contact:

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