

Widening Rights of Appeal in Planning

Introduction

Scottish Environment LINK is the umbrella body for Scotland's voluntary environment organisations. There are 36 bodies in the network representing a broad spectrum of interests working towards a more environmentally sustainable society. This is a briefing from the planning working group, the LINK Planning Task Force.

The Scottish Executive are consulting on whether they should widen the rights of appeal in the planning process and allow third parties, e.g. local people, community organisations, neighbours and NGOs to appeal certain planning decisions.

We believe introducing a Third Party Right of Appeal would be a significant first step towards delivering an accessible, equitable and effective planning system in Scotland. But there is a huge lobby against it. If it is even to reach Parliament for consideration, those who want more equality in the system must respond before July 30th 2004.

An extended right of appeal must be a key part of the wider programme of modernisation of the planning system.

Widening the Right of Appeal

The introduction of a widened right of appeal, together with reforms, will result in a better planning system which people can trust to deliver quality outcomes.

A wider right of appeal would:

- Ensure a more reliable and predictable plan led system;
- Remove the inequality which exists between developers and third parties in the planning system;
- Increase the transparency of decision making, improving the quality and reliability of those decisions;
- Help deliver and meet the Executive's commitments to social inclusion and environmental justice; and
- Result in a more effective and efficient planning system for all.

When should there be third party rights of appeal?

We believe that there should be a Third Party Right of Appeal in the following cases:

1. Cases where the local authority has an interest.

Where local authorities are required to be both applicant and decision-maker the need for transparency of process is paramount. A Third Party Right of Appeal would allow access to independent arbitration, reducing the risks when there may be a conflict of interest.

2. Cases where the application is contrary to the development plan –

For more information contact LINK Parliamentary Officer, Jessica Pepper by tel:0131 225 4345 or email jessica@scotlink.org

The complete LINK consultation response can be viewed at www.scotlink.org

In a plan-led system where all are actively encouraged to engage in the forward planning process, any decisions which depart from the agreed plan must be subject to an increased level of scrutiny.

Failure to make decisions in accordance with development plans alienates people and devalues the forward planning process. The introduction of a widened right of appeal would serve to encourage local authorities to produce up-to-date plans in order to avoid departing from the development plan.

3. Cases which go against planning officers recommendation.

LINK organisations work across Scotland and are acutely aware of the different approaches taken by different local authorities to planning matters. While some level of local variation is a welcome reflection of local democracy, an inconsistent application of national policy does not reflect well on the planning process.

Planning officers are employed as professionals, operating under a professional code of conduct, which requires them to provide impartial advice on planning matters. Should councillors then decide to depart from this advice this decision should be made subject to an additional level of scrutiny to ensure the departure was for sound planning reasons.

4. Cases where an Environmental Impact Assessment is needed

Despite the relatively small number of proposals accompanied by an EIA, this is a highly important category for inclusion in any widened right of appeal. The requirement for an EIA serves as an indication that the development may have significant environmental impacts (either positive or negative). As such, it highlights those proposals that are likely to give rise to significant environmental change that often extends beyond the immediate vicinity of the development.

Scope of the New Rights

A universal third party right of appeal has the potential to generate a large number of appeals. In order to achieve a workable system the right of appeal should be limited to those who have objected *or submitted comments* to the original planning application. These parties have already indicated an interest in the proposal. However it should not be restricted simply to those who have lodged an objection as many parties may write to seek additional information or provide useful comments, and as such should be considered interested parties with a right to appeal.

Conclusion

Every year, individuals, communities and organisations across Scotland alert the Parliament to the lack of equality that exists within the Scottish planning system, yet there is little the Parliament can do about it.

For the first time, the Scottish Executive is consulting people on whether they should introduce rights for third parties to appeal planning decisions. This is the best opportunity to have your say and demand the right to be listened to in the future!

Now, during this current review of planning, it is time to seek to ensure equality and fairness is built into the system.

The Scottish Executive Consultation can be accessed at <http://www.scotland.gov.uk/consultations/planning/roap-00.asp>, by writing to Rights of appeal in planning, Scottish Executive Development Department, Area 2-H (Bridge), Victoria Quay, EDINBURGH, EH6 6QQ or calling 0131 244 7060.

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