

Briefing: Planning etc. (Scotland) Bill Debate 15th & 16th November 2006

Introduction

Scottish Environment LINK Planning Task Force is concerned that the Planning etc. (Scotland) Bill, as it currently stands, will not deliver the objective of greater public involvement and confidence in the planning process. There are amendments being proposed at Stage 3 that could rectify this. This legislation offers a rare opportunity to set the framework for the development process across Scotland for decades to come. We encourage MSPs to consider the benefits that the following amendments would bring to the Bill.

Background

Scottish Environment LINK has been involved throughout the preparation process for this Bill, extending back almost 6 years. We worked with the Association of Community Councils on a joint petition, which attracted well over 5,000 signatures and ran a series of public meetings around Scotland that encouraged individuals to get involved in the consultation process.

Unfortunately, the issues which attracted most public attention and support are issues which the Bill continues to ignore. These issues were raised in response to consultations, at the pre-legislative event in the Parliament, at Stages 1 and 2 and in the committee report arising from Stage 2. Stage 3 represents the last opportunity to address the concerns raised by thousands of members of the public.

1. Third party rights

Throughout the passage of the Bill there has been ongoing debate about the absence of a right of appeal for third parties. Scottish Environment LINK supports the introduction of a limited third party appeal as an important part of the current package of measures. A third party right of appeal will ensure that the pre-application consultation measures are undertaken effectively, that the hearing process is meaningful and that communities feel some value in actually engaging in the production of development plans.

There are a number of amendments which seek to introduce additional rights of appeal in a range of circumstances, all of these have some merit and we therefore support all of the following: Amendments 85, 129, 130, 131, 133, 134 and 135

2. Removing developer appeal rights

In the Bill, there are a number of provisions to reduce or modify the rights of appeal held by developers. These proposals, have, in part been prompted by concerns about the volume of appeals arising from planning applications. The introduction of a limited third party right of appeal is regarded, by some, as having the potential to add further demands to a planning system which may not be able to cope. An alternative, and relatively straight forward means of providing parity between the parties involved in planning proposals and a most effective mechanism for freeing up additional resources would be to simply put a stop to appeals by developers.

If developers engage with the production of development plans (as communities are being encouraged to do), undertake pre-application consultation and participate in hearings it is unclear why they should continue to need a right of appeal against decisions.

We therefore support amendments 128, 157 and 158.

3. Prior notification for Community Bodies

At Stage 2 an amendment was considered which would provide community bodies with a new power to require local authorities to notify Scottish Ministers about developments that caused them concerns. This would represent a modest extension of the existing notification process and would not introduce a third party appeal process. However, it is likely to address some of the concerns felt by local communities who simply wish a decision, taken by their local authority, to be considered by Scottish Ministers.

This amendment offers an improvement on the existing situation and we therefore support Amendment 123

4. National Planning Framework (NPF)

The second issue that attracted significant interest during the preparation and passage of the Bill was the extent to which members of the public would be involved in the production of the NPF. The concern arose principally in relation to the proposal to include 'National Developments'.

The Bill enables Ministers to designate any type or individual proposal as a 'national development'. Once designated, consent 'in principle' has been given leaving local authorities, communities or individuals with no opportunity to object or challenge the need for the proposal.

This is a broad piece of enabling legislation which provides for a degree of public consultation in relation to the NPF and allows Parliament 60 days to scrutinise and make recommendations.

Equivalent documents across the UK are subject to a process called 'Examination in Public' which allows the assumptions and proposals to be tested and the objections of those affected by the proposals to be heard. It is illogical that individuals and communities may be able to attend a public hearing to discuss a local retail application but would not be able to object to the principle of a special waste facility on their doorstep.

We are hugely concerned that this 'fast-track' process for the largest and most potentially damaging developments in Scotland will not be tested by an Examination in Public. There are a range of amendments which would either provide this or improve other elements of the process. **We therefore encourage MSPs so support the following amendments: 43, 44, 46, 93, 94, 95, 96 and 97.**

5. Delivering sustainable development

Scrutiny by the Parliament and the Communities Committee at Stages 1 and 2 has resulted in an extension of the proposed sustainable development duty within the Bill. This is warmly welcome.

Previously the bill required local authorities to undertake their duties in relation to development plans with *'the objective of contributing to sustainable development'*. This duty now extends, in part, to the NPF. Scottish Ministers are required to meet this obligation in relation to the preparation and revision of the NPF. However, they are not required to do so when implementing the NPF. Nor does the Bill apply to development control activities. Given the clear intention of the Sustainable Development Strategy it is hard to understand this omission:

"Sustainable development is a concept easy to subscribe to, harder to put into practice. What matters is the change to culture, policy and action that results from a strategy – and this one is designed to deliver such a change."

Foreword to Choosing our Future (Scottish Sustainable Development Strategy):

First Minister Jack McConnell & Deputy First Minister Nicol Stephen

Amendments 97 and 155 would resolve this anomaly and we therefore recommend that they be agreed to.

This briefing is issued on behalf of the Scottish Environment LINK Planning Task Force. For further details, please contact **either** Jane Herbstritt or Alex Hopkinson on 0131 225 4325 (email jane@scotlink.org)

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